

N.J.S.A. 54:10A-4 (f) & (g)

Legislative Notes on N.J.S.A. 54:10A-4 (f) and 4 (g)
(Corporation Business Tax Act - Definitions of (f) "Investment company" and (g) "Regulated investment company".)

Laws of 1945, C. 162, A395

(Provided franchise tax for corporate business to replace tax on intangible personal property and capital stock tax).

March 27 - Introduced by W.H. Jones.
April 2 - Hearing (not recorded).
April 6 - Reported, amended. 2nd reading. Passed in Assembly, amended.
April 9 - Received in Senate. 2nd reading. Passed in Senate.
April 13 - Approved.

The term "Regulated investment company" was not included in the original A395, but was defined in the amended version (A395 § 4 OCR).

"Regulated investment company" shall mean any corporation which, for the period covered by its report, is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789, as amended) and meets the requirements of and is taxable under "Supplement Q" of the Internal Revenue Code (53 Stat. 1, 98, as amended).

974.90 N.J. Commission on Taxation of Intangible
T235 Personal Property. Report of...1945.
1945

The report listed above is mentioned in the Statement to A395 set out below.

STATEMENT TO A 395

The purposes of this bill are:

- (1) To establish a simple and defensible tax on corporate business in lieu of an ad valorem tax on intangible personalty and the present capital stock tax, as part of the program recommended in the Report of the Commission on Taxation of Intangible Personal Property (March 26, 1945), to eliminate "tax lightning" on intangibles.

- (2) To provide a yield sufficient to justify the abandonment of the present authorized tax on corporate intangibles. It is estimated that this yield will be between \$6,000,000 and \$7,000,000 annually, beginning in 1946.
- (3) To provide a tax base which would relieve the burden of taxes on real estate throughout the State. This is accomplished by applying \$4,000,000 of the anticipated yield to reduce the State school tax on local property.
- (4) To have due regard for the tremendous tax burdens of the present day and for the competitive conditions that exist between New Jersey and its neighboring States, in taking this first step in State-wide corporate tax adjustment since 1884.

Hearings were held and recorded.

See

974.90 NJ Commission on Taxation of Intangible
T235 Personal Property. Hearings 1945.
1945b

Laws of 1947, C. 50 A464

Amended 1945 Corporation Tax Act as recommended by Commission on State Tax Policy; defined "investment company".

March 24 - Introduced by Dixon.
March 31 - 2nd reading.
April 7 - Amended. Passed in Assembly, amended.
April 7 - Received in Senate.
April 14 - 2nd reading. Passed in Senate.
April 14 - Approved.

STATEMENT TO A464

This bill incorporates the several changes in the Corporation Business Tax Act (1945) recommended in the Second Report of the Commission on State Tax Policy.

The bill also provides for a "Short Rate Table" which may be used by corporations having total assets of less than one hundred thousand dollars (\$100,000.00), in lieu of the detailed form of tax return now required. It is estimated that some twenty-five thousand domestic and foreign corporations will be able to compute their tax on this convenient basis.

The bill also contains a number of changes in the corporate franchise tax law which a year's experience in its administration has proved to be desirable. These administrative changes are recommended by the Department of Taxation and Finance.

Assembly Bill No. 464 shows that the definition of "Regulated Investment company" was deleted and that a new term, "Investment company" was defined. (Copy of original A464 § 4 (f) enclosed).

"Investment Company" was defined in L 1947, C. 50 s 4 (f) as,

(f) "Investment company" shall mean any corporation whose business during the period covered by its report consisted, to the extent of at least ninety per centum (90%), thereof of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patents patent rights and other securities for its own account, but this shall not include any corporation which:
(1) is a merchant or a dealer of stocks, bonds and other securities, regularly engaged in buying the same and selling the same to customers; or (2) had less than ninety per centum (90%) of its average gross assets in New Jersey, at cost, invested in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities or consisting of cash on deposit during the period covered by its report; or (3) owned more than ten per centum (10%) of either the aggregate outstanding shares of capital stock of all classes entitled to vote, or of the aggregate outstanding shares of nonvoting capital stock of any other corporation, during the period covered by its report.

974.90 N.J. Commission on State Tax Policy.
T235 First Report. 1946.
1946

974.90 N.J. Commission on State Tax Policy.
T235 Second report. 1947.
1947

Laws of 1948, C. 459 § 1 A552

Defined "Regulated investment company" and fixed lower tax basis for regulated investment companies than for other investment companies.

A552

August 23 - Introduced by Mackey.
August 27 - Passed in Assembly.
Sept. 1 - Passed in Senate.
Oct. 27 - Approved.

Not amended during passage.

"(g) Regulated investment company shall mean any corporation which, for a period covered by its report, is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended."

The statement to A552 reads:

The object of this bill is to prescribe a more equitable measure for the assessment of the tax on regulated investment companies doing business in New Jersey. Neighboring States have accorded more favorable and realistic tax treatment to regulated investment companies and there has been an exodus of such companies from the State. This bill is designed to remedy this situation.

Laws of 1971, C. 267 A2510

Broadens the definition of "Investment Company"; applicable to taxpayers whose accounting periods end after June 30, 1971.

June 14 - Introduced by De Korte.
June 14 - Passed both houses under emergency resolution.
July 21 - Approved.

This amendment which deleted § 4 (f) (3) was not amended during passage and had no statement of purpose.

Governor's Statement on signing into law Assembly Bill No. 2510 is enclosed.

9/20/1975

ASSEMBLY, No. 464

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1947

By Mr. DIXON

Referred to Committee on Taxation

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 four of the act of which this act is amendatory is amended
2 to read as follows:

3 4. For the purposes of this act, unless the context requires a different
4 meaning:

5 (a) "Commissioner" shall mean the director of the division of tax-
6 tion of the State Department of Taxation and Finance.

7 (b) "Allocation factor" shall mean the proportionate part of a tax-
8 payer's net worth used to determine a measure of its tax under this act.

9 (c) "Corporation" shall mean any corporation, joint stock company or
10 association and any business conducted by a trustee or trustees wherein
11 interest or ownership is evidenced by a certificate of interest or ownership
12 or similar written instrument.

13 (d) "Net worth" shall mean the aggregate of the values disclosed by
14 the books of the corporation for (1) issued and outstanding capital stock,

15 (2) paid-in or capital surplus, (3) earned surplus and undivided profits,
16 (4) surplus reserves which can reasonably be expected to accrue to holders
17 or owners of equitable shares, not including reasonable valuation reserves,
18 such as reserves for depreciation or obsolescence or depletion and (5) the
19 amount of all indebtedness owing directly or indirectly to holders of ten per
20 centum (10%) or more of the aggregate outstanding shares of the taxpay-
21 er's capital stock of all classes, as of the close of a calendar or fiscal year.
22 However, if in the opinion of the commissioner, the corporation's books do
23 not disclose fair valuations the commissioner may make a reasonable deter-
24 mination of the net worth which, in his opinion, would reflect the fair value of
25-26 the assets carried on the books of the corporation, in accordance with sound
27 accounting principles, and such determination shall be used as net worth for
28 the purpose of this act.

29 (c) "Indebtedness owing directly or indirectly" shall include, without
30 limitation thereto, all indebtedness owing to any stockholder or shareholder
31 and to members of his immediate family where a stockholder and members
32 of his immediate family together or in the aggregate own ten per centum
33 (10%) or more of the aggregate outstanding shares of the taxpayer's capi-
34 tal stock of all classes.

35 (f) "Investment company" shall mean any corporation whose business
36 during the period covered by its report consisted, to the extent of at least
37 ninety per centum (90%) thereof of holding, investing and reinvesting in
38 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
39 other securities for its own account, but this shall not include any corpora-
40 tion which: (1) is a merchant or a dealer of stocks, bonds and other secur-
41 ities, regularly engaged in buying the same and selling the same to cus-
42 tomers; or (2) had less than ninety per centum (90%) of its average gross
43 assets in New Jersey, at cost, invested in stocks, bonds, debentures, mort-
44 gages, notes, patents, patent rights or other securities or consisting of cash
45 on deposit during the period covered by its report; or (3) owned more than
46 ten per centum (10%) of either the aggregate outstanding shares of capi-

47 tal stock of all classes entitled to vote, or of the aggregate outstanding shares
47A of nonvoting capital stock, of any other corporation, during the period cov-
47B ered by its report.

48 (g) "Taxpayer" shall mean any corporation required to report or to
49 pay taxes, interest or penalties under this act.

50 (h) "Fiscal year" shall mean an accounting period ending on any day
51 other than the last day of December.

52 (i) "Privilege year" shall mean the calendar year in and for which a
53 tax is payable under this act.

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

3 5. The franchise tax to be annually assessed to and paid by each tax-
4 payer shall be measured by the greater of:

5 (a) that portion of its entire net worth as may be allocable to this
6 State as provided in section six; or

7 (b) that proportion of its entire net worth as the average value of
8 its total assets in this State during the period covered by its report is to
9 the average value of its total assets everywhere during such period (for
10 the purpose of which there shall be included as within this State all in-
11 tangible personal property of domestic corporations not having a busi-
12 ness situs outside this State, one-half of the value of such property having
13 a business situs outside this State, and the entire amount of the
14 intangible personal property of foreign corporations as would have
15 a business situs within this State for the purpose of a property tax);
16 at the rate of 8/10 of a mill per dollar on the first one hundred million dollars
17 (\$100,000,000.00) of allocated net worth; 4/10 of a mill per dollar on the
18 second hundred million dollars (\$100,000,000.00); 3/10 of a mill per dollar on
19 the third one hundred million dollars (\$100,000,000.00); and 2/10 of a mill
20 per dollar on all amounts of allocated net worth in excess of three hundred
21 million dollars (\$300,000,000.00).

22 (c) *Provided, however,* that the franchise tax to be annually as-
 23 sessed to and paid by any investment company shall be measured by
 24 twenty-five per centum (25%) of its entire net worth, at the rates here-
 25 inabove set forth but in no case less than one hundred dollars (\$100.00),
 26 unless the taxpayer shall elect to remain taxable pursuant to any other
 27-33 subsection of this section.

34 (d) The tax assessed to any taxpayer pursuant to this act, notwith-
 35 standing the provisions of the preceding subsections of this section, shall
 36 not be less than the greater of 2/10 of a mill per dollar of total assets al-
 37 located to this State in accordance with subsection (b) hereof, and
 38 twenty-five dollars (\$25.00) in the case of a domestic corporation, or fifty
 39 dollars (\$50.00) in the case of a foreign corporation.

40 (e) In lieu of the tax imposed by subsections (a), (b), (c) and (d)
 41 of this section, any taxpayer, the value of whose total assets everywhere,
 42 less reasonable reserves for depreciation, as of the close of the period
 43 covered by its report, amounts to less than one hundred thousand dollars
 44 (\$100,000.00), may elect to pay the tax shown in the following table:

	If total assets are at least	But less than	The tax shall be	
			For Domestic Corporations	For Foreign Corporations
45	\$ 0	\$ 45,000	\$ 25.00	\$ 50.00
46	45,000	50,000	28.00	50.00
47	50,000	55,000	32.00	50.00
48	55,000	60,000	35.00	50.00
49	60,000	65,000	38.00	50.00
50	65,000	70,000	41.00	50.00
51	70,000	75,000	45.00	50.00
52	75,000	80,000	48.00	50.00
53	80,000	85,000	51.00	51.00
54	85,000	90,000	54.00	54.00
55	90,000	95,000	58.00	58.00
56	95,000	100,000	61.00	61.00

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

3 10. Whenever it shall appear to the commissioner that any taxpayer con-
4 ducts its business or maintains its records in such manner as either directly
5 or indirectly to distort its true net worth under this act or the proportion
6 thereof properly allocable to this State, or that any taxpayer maintains a
7 place of business outside this State, or that any agreement, understanding
8 or arrangement exists between a taxpayer and any other corporation or any
9 person or firm, for the purpose of evading tax under this act, or whereby the
10 activity, business, receipts or net worth of the taxpayer is improperly or
11 inaccurately reflected, the commissioner is authorized and empowered in his
12 discretion and in such manner as he may determine to adjust and redeter-
13 mine such net worth, and to adjust items of gross receipts, tangible property
14 and payrolls within and without the State and the allocation of net worth,
15 or to make such other adjustments in any tax report or tax returns as may
16 be necessary. The commissioner may require any person or corporation to
17 submit such information under oath, or to permit such examination of its
18 books, papers and documents, as may be necessary to enable him to de-
19 termine the existence, nature or extent of an agreement, understanding or
20 arrangement to which this section relates, whether or not such person or
21 corporation is subject to the tax imposed by this act.

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

3 11. Any receiver, referee, trustee, assignee or other fiduciary, or any
4 officer or agent appointed by any court, to conduct the business or conserve
5 the assets of any corporation shall be subject to the tax imposed by this act
6 in the same manner and to the same extent as a corporation hereunder.

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

3 13. In the case of any corporation which organizes or qualifies on or
4 after January first in any year no tax shall be payable in such privilege

5 year; *provided, however*, that this section shall not apply to a foreign cor-
6 poration, which after January first, one thousand nine hundred and thirty-
7 seven, and prior to the year in which it qualifies, possessed the privilege of
8 exercising its corporate franchise in this State, or did business, or employed
9 or owned capital or property, or maintained an office in this State.

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

3 15. The tax imposed by this act shall be due and payable with respect
4 to the calendar year one thousand nine hundred and forty-six, and each year
5 thereafter, measured by the taxpayer's net worth as of the close of the calen-
6 dar year or of its fiscal year next preceding the privilege year, except that
7 in the case of a taxpayer whose fiscal year ends not later than June thirtieth
8 in the privilege year such measure shall be as of the close of such fiscal year.
9 For the purpose of this section every taxpayer shall use the same calendar
10 or fiscal year upon which it reports to the United States Treasury Depart-
11 ment for Federal income tax purposes.

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

3 17. (a) On or before the fifteenth day of April, in the case of taxpayers
4 reporting on a calendar year basis, and on or before the fifteenth day of
5 April or the fifteenth day of the fourth month following the close of
6 a fiscal year, whichever is later, in the case of taxpayers reporting on a
7 fiscal year basis, each taxpayer shall duly execute and file a tax return with
8 the commissioner, in such form and containing such information as he may
9 prescribe, which return shall truly and accurately, set forth its liability
10 under this act; and the full amount of the tax hereunder shall be due and pay-
11 able to the commissioner on or before the date prescribed herein for the filing
12 of the return; *provided, however*, that for the privilege year one thousand
12a nine hundred and forty-seven any return and tax payment which under the
12b foregoing provisions of this section would be due on or before the fifteenth
12c day of April or on or before the fifteenth day of May shall be due on or be-

12b fore the thirty-first day of May, one thousand nine hundred and forty-seven.

13 (b) Any taxpayer which shall fail to file its return when due shall be
14 liable to a penalty of two dollars (\$2.00) for each day of delinquency, which
15 penalty shall be payable to, and recoverable by, the commissioner as a part
16 of the tax herein imposed. If any tax be not paid when the same becomes
17 due, as herein provided, there shall be added to the amount of the tax a sum
18 equivalent to five per centum (5%) thereof, as a penalty, and, in addition
19 thereto, interest at the rate of one per centum (1%) per month or fraction
20 thereof from the date the tax became due until the same be paid. The com-
21 missioner, if satisfied that the failure to comply with any provision of this
22 section was excusable, may abate or remit the whole or part of any penalty.

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

3 19. The commissioner may grant a reasonable extension of time for the
4 filing of returns or the payment of tax, or both, under such rules and regula-
5 tions as he shall prescribe, which rules and regulations may require the filing
6 of a tentative return and the payment of an estimated tax, but no such ex-
7 tension shall be granted beyond the first day of December of the privilege
8 year. If the time for filing the return shall be extended, the payment of the
9 portion of the tax remaining to be paid, if any, shall be postponed to the date
10 fixed by the extension of the time for the filing of the return, but in every
11 such case the corporation shall pay, in addition to the unpaid portion of the
12 tax, interest thereon at the rate of six per centum (6%) per annum from the
13 time when the return originally was required to be filed to the date of actual
14 payment under the extension; *provided*, that if such unpaid portion of the tax
15 is not paid within the time fixed under the extension, the interest on such un-
16 paid portion shall be computed at the rate of one per centum (1%) per month
17 or fraction thereof to be calculated from the date the tax was originally due to
18 the date of actual payment.

1 9. Section twenty-three of the act of which this act is amendatory is
2 amended to read as follows:

3 23. The administration, collection and enforcement of the tax imposed by
4 this act shall be subject to the provisions of the State tax uniform procedure
5 law as therein provided (chapters forty-eight through fifty-two of Title 54
6 of the Revised Statutes) to the extent that the provisions of such law are
7 not inconsistent with any provision of this act.

1 10. The act of which this act is amendatory and supplementary is
2 amended by adding a new section, numbered 19:1, to read as follows:

3 19:1. (a) After a final return in due form is filed, the commissioner shall
4 cause the same to be examined and may make such further audit or in-
5 vestigation or reaudit as he may deem necessary, and if therefrom he shall
6 determine that there is a deficiency with respect to the payment of any tax
7 due under this act, he shall assess or reassess the additional taxes, penalties
8 and interest due the State, give notice of such assessment or reassessment
9 to the taxpayer, and make demand upon him for payment. There shall be
10 added to the amount of any deficiency assessment or reassessment interest
11 at the rate of one per centum (1%) for each month or fraction thereof to be
12 calculated from the date the tax was originally due and payable until the
13 date of actual payment. If the failure to pay any such tax when due is ex-
14 plained to the satisfaction of the commissioner, he may remit or waive the
15 payment of any interest charge in excess of the rate of one-half of one per
16 centum ($\frac{1}{2}\%$) per month.

17 (b) Except in the case of a willful, false or fraudulent return with in-
18 tent to evade the tax, the amount of tax due under any return duly made
19 under this act shall be finally determined by the commissioner within five
20 years after such return shall have been filed.

1 11. The act of which this act is amendatory and supplementary is
2 amended by adding a new section, numbered 19:2, to read as follows:

3 19:2. (a) Any aggrieved taxpayer may, within three months after any
4 decision, order, finding, assessment or action of the commissioner made pur-

5 suant to the provisions of this act, appeal therefrom to the Division of Tax
6 Appeals, by filing a petition of appeal with said division in the manner and
7 form prescribed by the said division and on giving security, approved by the
8 commissioner, conditioned to pay the tax heretofore levied, if the same re-
9 mains unpaid, with interest and costs.

10 (b) No such appeal shall stay the collection of any tax or the enforce-
11 ment of the same by entry as a judgment, unless by order of such division,
12 and then only after security approved by the commissioner or said division
13 has been furnished to the commissioner. The judgment or order of the Divi-
14 sion of Tax Appeals respecting any matter arising under the provisions of
15 this subtitle may be reviewed by certiorari in the same manner as other judg-
16 ments of said division.

1 12. This act shall take effect immediately, and shall apply to taxes due
2 and payable in the year one thousand nine hundred and forty-seven and
3 thereafter.

STATEMENT

This bill incorporates the several changes in the Corporation Business Tax Act (1945) recommended in the Second Report of the Commission on State Tax Policy.

The bill also provides for a "Short Rate Table" which may be used by corporations having total assets of less than one hundred thousand dollars (\$100,000.00), in lieu of the detailed form of tax return now required. It is estimated that some twenty-five thousand domestic and foreign corporations will be able to compute their tax on this convenient basis.

The bill also contains a number of changes in the corporate franchise tax law which a year's experience in its administration has proved to be desirable. These administrative changes are recommended by the Department of Taxation and Finance.

MAY 21, 1971

FOR RELEASE
IMMEDIATE

Governor William T. Cahill today signed into law Assembly Bill 2510 which amends the Corporation Business Tax Act by deleting the ten percent stock ownership requirements in the case of investment companies.

"The effect of such an amendment," the Governor said, "permits a corporation otherwise qualified, to obtain the benefits of the twenty-five percent allocation provision although it may hold ten percent or more of the stock of another corporation. This means that such companies will pay taxes on the basis of twenty-five percent of their net income and twenty-five percent of their net worth instead of 100 percent as previously required."

At the same time, the Governor stressed that "there would be no revenue loss from existing taxpayers" under the provisions of this legislation. He said that a survey of the 300 largest corporate tax returns plus a random survey of other corporate tax returns confirmed this.

"While there will be no anticipated loss of revenue to the State," the Governor said, "the signing of this bill should stimulate more companies to locate in New Jersey with resultant increased job opportunities and added revenues to the State."

Present at the signing was Russell McFall, President of the Western Union Telegraph Company. McFall's interest in the legislation was manifested by this announcement that Western Union will be the first company to take advantage of the legislation by relocating in New Jersey.

The Governor said that on September 1st, Western Union, a corporation that qualifies under the new legislation, will move from New York City to Mahwah.

The Governor went on to say that this would not be the only benefit to the State of New Jersey "in as much as investment companies today

-more-

transportation problem. The tax would be retroactive to January 1, 1971.

APPROVED AUGUST 4, 1975

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 3339

STATE OF NEW JERSEY

INTRODUCED APRIL 21, 1975

By Assemblyman PERSKIE

Referred to Committee on Taxation

AN ACT to amend the "Financial Business Tax Law (1946)," approved April 26, 1946 (P. L. 1946, c. 174) and to amend and supplement the "Corporation Business Tax Act (1945)," approved April 13, 1945 (P. L. 1945, c. 162) and repealing sections 7, 20 and 21 of P. L. 1946, c. 174.

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

1 1. Section 2 of P. L. 1946, c. 174 (C. 54:10B-2) is amended to
2 read as follows:

3 2. Definitions. For the purposes of this act, unless the context
4 otherwise requires:

5 (a) "Director" shall mean the Director of the Division of Tax-
6 ation of the State Department of the Treasury.

7 (b) "Financial business" shall mean all business enterprise
8 *except those organized or operating in a corporate capacity* which
9 is (1) in substantial competition with the business of national
10 banks and which (2) employs moneyed capital with the object of
11 making profit by its use as money, through discounting and negotiat-
12 ing promissory notes, drafts, bills of exchange and other evidences
13 of debt; buying and selling exchange; making of or dealing in
14 secured or unsecured loans and discounts; dealing in securities and
15 shares of corporate stock by purchasing and selling such securities
16 and stock without recourse, solely upon the order and for the
17 account of customers; or investing and reinvesting in marketable
18 obligations evidencing indebtedness of any person, copartnership,
19 association or corporation in the form of bonds, notes or debentures
20 commonly known as investment securities; or dealing in or under-
21 writing obligations of the United States, any State or any political
22 subdivision thereof, or of a corporate instrumentality of any of

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

23 them. This shall include, without limitation of the foregoing busi-
 24 ness commonly known as industrial banks, dealers in commercial
 25 paper and acceptances, sales finance, personal finance, small loan
 26 and mortgage financing businesses, as well as any other enterprise
 27 employing moneyed capital coming into competition with the busi-
 28 ness of national banks; provided, that the holding of bonds, notes,
 29 or other evidense of indebtedness by individual persons not em-
 30 ployed or engaged in the banking or investment business and rep-
 31 resenting merely personal investments not made in competition
 32 with the business of national banks, shall not be deemed financial
 33-34 business. Nor shall "financial business" include national banks,
 35 production credit associations organized under the Farm Credit
 36 Act of 1933, stock and mutual insurance companies duly autho-
 37 rized to transact business in this State, security brokers or dealers
 38 or investment companies or bankers not employing moneyed capital
 39 coming into competition with the business of national banks, real
 40 estate investment trusts, or any of the following entities organized
 41 ~~under~~ under the laws of this State: credit unions, savings banks, savings
 42 and loan and building and loan associations, pawnbrokers, and
 43 State banks and trust companies.

44 (c) "Net worth" shall mean:

45 **[(1)** In the case of a corporation—the aggregate of the values
 46 disclosed by the books of the corporation for (1) issued and out-
 47 standing capital stock, (2) paid-in or capital surplus, (3) earned
 48 surplus and undivided profits, (4) surplus reserves which can
 49 reasonably be expected to accrue to holders or owners of equita-
 50 ble shares, excluding reasonable valuation reserves and (5) the
 51 amount of all indebtedness owing directly or indirectly to holders
 52 of 10% or more of the aggregate outstanding shares of the tax-
 53 payer's capital stock of all classes, as of the close of a tax year.]

54 **[(2)]** In the case of a partnership, individual proprietorship,
 55 joint venture or any other unincorporated association—the aggre-
 56 gate of the values disclosed by the books of the taxpayer for capital
 57 and undivided profits; provided, that there shall be no deduction
 58 from assets of debts owing to partners, proprietors or members,
 59 as of the close of a tax year.

60 (d) "Tax year" shall mean the calendar year with respect to
 61 which a tax is measured pursuant to this act.

62 (e) "Taxpayer" shall mean any person, ~~copartnership~~ partnership[,] or as-
 63 sociation [or corporation] subject to taxation under this act.

1 2. Section 3 of P. L. 1946, c. 174 (C. 54:10B-3) is amended to
 2 read as follows:

3 3. There is hereby imposed upon every person, copartnership~~[,]~~
 4 and association ~~[and corporation]~~ doing a financial business in
 5 this State, an annual excise tax, payable in the year 1970 and in
 6 each year thereafter, at the rate of 1½% upon its net worth, less
 7 the deductions hereinafter allowed, as of the close of the preceding
 8 calendar year, but in no event less than \$25.00. Such tax shall also
 9 be in lieu of any State franchise tax or of any State or local taxation
 10 of, upon or measured by personal property entering into the de-
 11 termination of net worth.

1 3. Section 4 of P. L. 1946, c. 174 (C. 54:10B-4) is amended to
 2 read as follows:

3 4. A person, partnership~~[,]~~ or association ~~[or corporation]~~
 4 shall not be deemed to be doing financial business, by reason of (1)
 5 the maintenance of cash balances with banks or trust companies
 6 in this State, or (2) the ownership of shares of stock or securities
 7 in this State if such shares or securities are pledged as collateral
 8 security, or deposited with one or more banks or trust companies,
 9 or brokers who are members of a recognized security exchange,
 10 in safe-keeping or custody accounts, or kept in safe deposit boxes,
 11 or (3) the taking of any action by any such bank or trust company
 12 or broker, which is incidental to the rendering of safe-keeping or
 13 custodian service.

1 4. Section 8 of P. L. 1946, c. 174 (C. 54:10B-8) is amended to
 2 read as follows:

3 8. A taxpayer doing business in more than one state ~~[directly or~~
 4 ~~through a wholly-owned subsidiary having capital stock with a~~
 5 ~~par value or stated value of \$5,000.00 or less]~~ shall allocate the
 6 value of its net worth (after allowable deductions) within this
 7 State, which allocated value shall be the measure of its tax pursuant
 8 to this act, according to the proportion of its gross business in this
 9 State to its gross business everywhere during the tax year,
 10 determined as the sum of:

11 (a) Fees, commissions or other compensation for financial ser-
 12 vices rendered within this State;

13 (b) Gross profits from trading in stocks, bonds, or other securi-
 14 ties managed within this State;

15 (c) Interest and dividends received on loans, stocks, bonds and
 16 other securities managed within this State;

17 (d) Interest charged to customers, at places of business main-
 18 tained within this State, for carrying debit balances of margin
 19 accounts, without deduction of any costs incurred in carrying
 20 such accounts; and

21 (e) Any other gross income resulting from the operation of
 22 financial business within this State;
 23 divided by the aggregate amount of such items of the taxpayer
 24 everywhere.

1 5. Section 12 of P. L. 1946, c. 174 (C. 54:10B-12) is amended to
 2 read as follows:

3 12. No taxpayer shall dissolve, liquidate or distribute any assets
 4 in dissolution or liquidation[, nor shall any foreign corporation
 5 withdraw from the State,] without having first duly filed its return
 6 under this act and paid or secured the tax, interest and penalties
 7 due thereon for the preceding tax year and for the year in which
 8 such dissolution[, or liquidation [or withdrawal] occurs, as well
 9 as all delinquent taxes, interest, and penalties then due. For the
 10 purpose of determining the tax due with respect to the year in
 11 which dissolution[, or liquidation [or withdrawal] occurs, the tax
 12 year shall be deemed to have closed on the last day of the month
 13 in which the taxpayer ceases to do business in this State; and the
 14 amount of tax due hereunder shall be such proportion of the tax
 15 for a full tax year as the number of months in the tax year so
 16 determined is to 12; provided, that in no event shall the last day
 17 of doing business be deemed to have occurred more than 30 days
 18 prior to the filing of a duly executed tax return and the payment
 19 of the tax due as shown therein for the tax year in which such
 20 dissolution[, or liquidation[, or withdrawal] occurs.

1 6. Section 17 of P. L. 1946, c. 174 (C. 54:10B-17) is amended to
 2 read as follows:

3 17. The director shall design a form of return and forms for such
 4 additional statements or schedules as he may require to be filed
 5 therewith. Such forms shall provide for the setting forth of such
 6 facts as the director may deem necessary for the proper enforce-
 7 ment of this act. He shall cause a supply thereof to be printed and
 8 shall furnish appropriate blank forms to each taxpayer upon
 9 application or otherwise as he may deem necessary. Failure to
 10 receive a form shall not relieve any taxpayer from the obligation
 11 to file a return under the provisions of this act. Each such return
 12 shall be made upon the oath or affirmation [of the president, vice-
 13 president, or secretary or treasurer of a corporation, or] of a
 14 partner or proprietor [in the case of other taxpayers,] and in the
 15 case of a taxpayer in liquidation or in the hands of a receiver or
 16 trustee, shall be made on the oath or affirmation of the person
 17 responsible for the conduct of the affairs of such taxpayer.

1 7. Section 4 of P. L. 1945, c. 162 (C. 54:10A-4) is amended to
2 read as follows:

3 4. For the purposes of this act, unless the context requires a
4 different meaning:

5 (a) "Commissioner" shall mean the Director of the Division
6 of Taxation of the State Department of the Treasury.

7 (b) "Allocation factor" shall mean the proportionate part of
8 a taxpayer's net worth or entire net income used to determine a
9 measure of its tax under this act.

10 (c) "Corporation" shall mean any corporation, joint-stock com-
11 pany or association and any business conducted by a trustee or
12 trustees wherein interest or ownership is evidenced by a certificate
13 of interest or ownership or similar written instrument.

14 (d) "Net worth" shall mean the aggregate of the values dis-
15 closed by the books of the corporation for (1) issued and outstand-
16 ing capital stock, (2) paid-in or capital surplus, (3) earned surplus
17 and undivided profits, (4) surplus reserves which can reasonably
18 be expected to accrue to holders or owners of equitable shares, not
19 including reasonable valuation reserves, such as reserves for de-
20 preciation or obsolescence or depletion, and (5) the amount of all
21 indebtedness owing directly or indirectly to holders of 10% or more
22 of the aggregate outstanding shares of the taxpayer's capital stock
23 of all classes, as of the close of a calendar or fiscal year. The fore-
24 going aggregate of values shall be reduced by 50% of the amount
25 disclosed by the books of the corporation for investment in the
26 capital stock of one or more subsidiaries, which investment is de-
27 fined as ownership (1) of at least 80% of the total combined voting
28 power of all classes of stock of the subsidiary entitled to vote and
29 (2) of at least 80% of each class, if any, of nonvoting stock. In
30 the case of investment in an entity organized under the laws of a
31 foreign country, the foregoing requisite degree of ownership shall
32 effect a like reduction of such investment from net worth of the
33 taxpayer, if the foreign entity is considered a corporation for any
34 purpose under the United States Federal income tax laws, such as
35 (but not by way of sole examples) for the purpose of supplying
36 deemed-paid foreign tax credits or for the purpose of status as a
37 controlled foreign corporation. In calculating the net worth of a
38 taxpayer entitled to reduction for investment in subsidiaries, the
39 amount of liabilities of the taxpayer shall be reduced by such pro-
40 portion of the liabilities as corresponds to the ratio which the ex-
41 cluded portion of the subsidiary values bears to the total assets
42 of the taxpayer.

43 If in the opinion of the commissioner, the corporation's books
44 do not disclose fair valuations the commissioner may make a rea-
45 sonable determination of the net worth which, in his opinion, would
46 reflect the fair value of the assets, exclusive of subsidiary invest-
47 ments as defined aforesaid, carried on the books of the corporation,
48 in accordance with sound accounting principles, and such determi-
49 nation shall be used as net worth for the purpose of this act.

50 (e) "Indebtedness owing directly or indirectly" shall include,
51 without limitation thereto, all indebtedness owing to any stock-
52 holder or shareholder and to members of his immediate family
53 where a stockholder and members of his immediate family to-
54 gether or in the aggregate own 10% or more of the aggregate
55 outstanding shares of the taxpayer's capital stock of all classes.

56 (f) "Investment company" shall mean any corporation whose
57 business during the period covered by its report consisted, to the
58 extent of at least 90% thereof of holding, investing and reinvesting
59 in stocks, bonds, notes, mortgages, debentures, patents, patent
60 rights and other securities for its own account, but this shall not
61 include any corporation which: (1) is a merchant or a dealer of
62 stocks, bonds and other securities, regularly engaged in buying the
63 same and selling the same to customers; or (2) had less than 90%
64 of its average gross assets in New Jersey, at cost, invested in
65 stocks, bonds, debentures, mortgages, notes, patents, patent rights
66 or other securities or consisting of cash on deposit during the period
67 covered by its report or (3) is a banking corporation or a financial
68 business corporation as defined in the Corporation Business Tax
69 Act.

70 (g) "Regulated investment company" shall mean any corpora-
71 tion which for a period covered by its report, is registered and
72 regulated under the Investment Company Act of 1940 (54 Stat.
73 789), as amended.

74-75 (h) "Taxpayer" shall mean any corporation required to report
76 or to pay taxes, interest or penalties under this act.

77 (i) "Fiscal year" shall mean an accounting period ending on
78 any day other than the last day of December on the basis of which
79 the taxpayer is required to report for Federal income tax purposes.

80 (j) Except as herein provided, "privilege period" shall mean
81 the calendar or fiscal accounting period for which a tax is payable
82 under this act.

83 (k) "Entire net income" shall mean total net income from all
84 sources, whether within or without the United States, and shall
85 include the gain derived from the employment of capital or labor,

86 or from both combined, as well as profit gained through a sale or
87 conversion of capital assets. For the purpose of this act, the
88 amount of a taxpayer's entire net income shall be deemed prima
89 facie to be equal in amount to the taxable income, before net op-
90 erating loss deduction and special deductions, which the taxpayer
91 is required to report to the United States Treasury Department
92 for the purpose of computing its Federal income tax; provided,
93 however, that in the determination of such entire net income,

94 (1) Entire net income shall exclude 100% of dividends which
95 were included in computing such taxable income for Federal income
96 tax purposes, paid to the taxpayer by one or more subsidiaries
97 owned by the taxpayer to the extent of the 80% or more owner-
98 ship of investment described in subsection (d) of this section. With
99 respect to other dividends, entire net income shall not exclude 50%
100 of the total included in computing such taxable income for Federal
101 income tax purposes;

102 (2) Entire net income shall be determined without the exclusion,
103 deduction or credit of:

104 (A) the amount of any specific exemption or credit allowed in
105 any law of the United States imposing any tax on or measured by
106 the income of corporations;

107 (B) any part of any income from dividends or interest on any
108 kind of stock, securities or indebtedness, except as provided in
109 subsection (k)(1) of this section;

110 (C) taxes paid or accrued to the United States on or measured
111 by profits or income, or the tax imposed by this act, or any tax
112 paid or accrued with respect to subsidiary dividends excluded from
113 entire net income as provided in subsection (k)(1) of this section;

114 (D) net operating losses sustained during any year or period
115 other than that covered by the report;

116 (E) 90% of interest on indebtedness owing directly or indirectly
117 to holders of 10% or more of the aggregate outstanding shares of
118 the taxpayer's capital stock of all classes; except that such interest
119 may, in any event, be deducted

120 (i) up to an amount not exceeding \$1,000.00,

121 (ii) in full to the extent that it relates to bonds or other
122 evidences of indebtedness issued, with stock, pursuant to a
123 bona fide plan of reorganization, to persons, who, prior to
124 such reorganization, were bona fide creditors of the corpora-
125 tion or its predecessors, but were not stockholders or share-
126 holders thereof;

127 (3) The commissioner may, whenever necessary to properly

128 reflect the entire net income of any taxpayer, determine the year or
129 period in which any item of income or deduction shall be included,
130 without being limited to the method of accounting employed by
131 the taxpayer.

132 (l) "Real estate investment trust" shall mean any unincor-
133 porated trust or unincorporated association qualifying and electing
134 to be taxed as a real estate investment trust under Federal law.

135 (m) "*Financial business corporation*" shall mean any corporate
136 enterprise which is (1) in substantial competition with the business
137 of national banks and which (2) employs moneyed capital with the
138 object of making profit by its use as money, through discounting and
139 negotiating promissory notes, drafts, bills of exchange and other
140 evidences of debt; buying and selling exchange; making of or deal-
141 ing in secured or unsecured loans and discounts; dealing in securities
142 and shares of corporate stock by purchasing and selling such secu-
143 rities and stock without recourse, solely upon the order and for the
144 account of customers; or investing and reinvesting in marketable
145 obligations evidencing indebtedness of any person, copartnership,
146 association or corporation in the form of bonds, notes or debentures
147 commonly known as investment securities; or dealing in or under-
148 writing obligations of the United States, any State or any political
149 subdivision thereof, or of a corporate instrumentality of any of
150 them. This shall include, without limitation of the foregoing busi-
151 ness commonly known as industrial banks, dealers in commercial
152 paper and acceptances, sales finance, personal finance, small loan
153 and mortgage financing businesses, as well as any other enterprise
154 employing moneyed capital coming into competition with the busi-
155 ness of national banks; provided, that the holding of bonds, notes,
156 or other evidences of indebtedness by individual persons not em-
157 ployed or engaged in the banking or investment business and rep-
158 resenting merely personal investments not made in competition
159 with the business of national banks, shall not be deemed financial
160 business. Nor shall "financial business" include national banks,
161 production credit associations organized under the Farm Credit
162 Act of 1933, stock and mutual insurance companies duly autho-
163 rized to transact business in this State, security brokers or dealers
164 or investment companies or bankers not employing moneyed capital
165 coming into competition with the business of national banks, real
166 estate investment trusts, or any of the following entities organized
167 under the laws of this State: credit unions, savings banks, savings
168 and loan and building and loan associations, pawnbrokers, and
169 State banks and trust companies.

1 8. (New section) The aggregate amount of tax, penalty and
2 interest payable by financial business corporations pursuant to this
3 act shall upon payment be distributable among the State, the
4 various taxing districts and counties in which taxpayers hereunder
5 have maintained places of business at any time during the tax year.
6 On or before November 1 in each year the director shall determine
7 from receipts allocations contained in tax returns filed subsequent
8 to June 30 of the previous calendar year and prior to July 1 of the
9 current year the aggregate amount of tax, penalty and interest
10 attributable to places of business located in each of the various
11 taxing districts of this State during the tax year. The tax, penalty
12 and interest collected by the director shall be apportioned one-half
13 to the State, one-quarter to such county and one-quarter to the
14 taxing districts in which the financial business corporation has an
15 office or offices. Each county shall be entitled to receive out of the
16 one-quarter allocated to the counties that proportion thereof which
17 the receipts at all offices of such financial business corporations in
18 such county during the taxpayers' fiscal or calendar year accounting
19 period bear to the total receipts of all offices of such financial
20 business corporations in this State during the taxpayers' fiscal or
21 calendar year accounting period. Each taxing district is entitled
22 to that proportion of one-quarter of the tax collected by the
23 director as the receipts at all offices of such financial business
24 corporations in such district during the taxpayers' fiscal or calendar
25 year accounting period bear to the total receipts of all offices of
26 such financial business corporations in such county during the tax-
27 payers' fiscal or calendar year accounting period. The director
28 shall forthwith certify such apportionment to the State Treasurer
29 who shall upon proper audit transmit to each county treasurer
30 a certificate showing the amounts allocated to the taxing district
31 therein and shall on or before November 10 of the year in which
32 the taxes are payable draw and transmit his warrant upon the
33 State Treasurer in favor of the several county treasurers for the
34 amounts allotted to their several counties. Each county treasurer
35 shall forthwith and not later than December 15 pay to the collector
36 or other proper officer of each taxing district the amount allotted
37 thereto deducting, however, the amount due for county taxes from
38 the taxing district. The amount thus paid to the county and taxing
39 district shall be at the disposal of the proper authorities for public
40 purposes.

1 9. (New section) None of the taxes, penalties and interest col-
2 lected from financial business corporations pursuant to this act

3 shall be distributable to municipalities pursuant to P. L. 1966, c. 135
4 as amended and supplemented (C. 54:11D-1 et seq.).

1 10. (New section) During each of the years 1976, 1977 and 1978,
2 each financial business corporation shall pay as taxes under the
3 provisions of the act to which this act is a supplement, the greater
4 of a sum equal to the amount such financial business corpora-
5 tion paid pursuant to the "Financial Business Tax Law" P. L. 1946,
6 c. 174 (C. 54:10B-1, et seq.) in the calendar year 1975, or a sum
7 equal to the total of the taxes payable by such financial business
8 corporation pursuant to the "Corporation Business Tax Act,"
9 P. L. 1945, c. 162 (C. 54:10A-1 et seq.).

1 11. Sections 7 (C. 54:10B-7), 20 (C. 54:10B-20) and
2 21 (C. 54:10B-21) of P. L. 1946, c. 174 are repealed.

1 12. This act shall take effect immediately **but shall remain*
2 *inoperative until Assembly Bill No. 1915 now pending before the*
3 *Legislature is enacted and becomes operative** and shall be appli-
4 cable to all fiscal and calendar accounting periods ending after
5 December 31, 1974.

A3339 (1975)

10

3 shall be distributable to municipalities pursuant to P. L. 1966, c. 135
4 as amended and supplemented (C. 54:11D-1 et seq.).

1 10. (New section) During each of the years 1976, 1977 and 1978,
2 each financial business corporation shall pay as taxes under the
3 provisions of the act to which this act is a supplement, the greater
4 of a sum equal to the amount such financial business corpora-
5 tion paid pursuant to the "Financial Business Tax Law" P. L. 1946,
6 c. 174 (C. 54:10B-1, et seq.) in the calendar year 1975, or a sum
7 equal to the total of the taxes payable by such financial business
8 corporation pursuant to the "Corporation Business Tax Act,"
9 P. L. 1945, c. 162 (C. 54:10A-1 et seq.).

1 11. Sections 7 (C. 54:10B-7), 20 (C. 54:10B-20) and
2 21 (C. 54:10B-21) of P. L. 1946, c. 174 are repealed.

1 12. This act shall take effect immediately and shall be applicable
2 to all fiscal and calendar accounting periods ending after Decem-
3 ber 31, 1974.

STATEMENT

This bill is presented as part of the business tax reform package of the Assembly Taxation Committee. It replaces an unfair tax with a fairer one, and does not cost the State any revenue.

ASSEMBLY TAXATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3339

STATE OF NEW JERSEY

DATED: APRIL 28, 1975

This bill proposes to bring corporations now taxed under the Financial Business Tax Act under the provisions of the Corporation Franchise Tax Act. It is in keeping with the action of the committee in releasing Assembly Bill No. 1915 (OCR) favorably which brings Banking Corporations under the Corporation Franchise Tax Act, but remains inoperative until Assembly Bill No. 1915 is enacted.

Provision is made in the bill for the apportionment of receipts under this act among the counties and municipalities in the same account and same proportion as is presently made under the Financial Business Tax Act.

Furthermore, a "save harmless" provision is incorporated in the bill to insure that the revenues under this bill are equal to or greater than those due in 1975 under the Financial Business Tax Act.

The committee believes this to be a bill which should be acted upon favorably by the Legislature as a further step in restructuring business taxes in the State.

STATEMENT BY GOVERNOR BRENDAN BYRNE

August 4, 1975

A-3557

I have signed into law the supplemental appropriations bill and the tax and other revenue bills to finance it. These revenues will keep the buses and trains in operation and will restore the other programs that a majority of the Legislature adjudged to be vital to the public welfare.

Even with these restorations, New Jersey remains the most tight-fisted state in the nation. We will spend in this fiscal year about \$75 million less than we spent last year, despite the toll of continuing inflation which falls as heavily on government as it does on household budgets. And this Administration will continue its effort to cut corners and realize further economies wherever possible to make stretch every tax dollar as far as it will go.

The new taxes included in this revenue package are far less regressive than some of the taxes that the Legislature considered and wisely rejected. For the most part, the burden falls most heavily on segments of the economy that are able to bear that additional burden. And one of them -- the capital gains or unearned income tax -- is truly progressive.

Nevertheless, I take no particular pride in signing these taxes into law. And I noticed that few members of the Legislature exhibited much pride in enacting them. For this is strictly a stopgap revenue program and we must not lose sight of what it fails to do, as well as what it accomplishes.

This revenue package does nothing to meet our commitment -- the Legislature's and mine -- to fund the new education formula under which the State is to assume a greater portion of the costs of operating our public schools. The State Supreme Court has ordered that this be done and the Legislature has publicly declared its intention to deal with that commitment beginning on November 10.

* A-1915
A-3339
A-3556
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This revenue package does nothing to reform New Jersey's patchwork tax structure and provide relief from rising and too often confiscatory property taxes, a goal to which I remain personally committed. The most we can say for these new taxes is that they will not make that tax structure measurably more regressive than it is.

And several of the bills I signed today are, by design, temporary sources of revenue. The funds they provide will, of necessity, have to be replaced from some other source next year if the programs they finance are to continue. These temporary measures, together with other fiscal facts of life, increase the already inevitable need for substantial new revenues next year.

The Legislature has demonstrated dramatically in the past several months that there are no easy taxes -- nor should there be. The true test of a potential new tax or tax increase should not be whether it will be easy to pass, but how equitably its burden will be distributed on those who will pay it.

I am confident that the Legislature will work for true tax reform in addressing our unmet obligations in the months ahead. I will, as always, be ready to work with it in a pursuit of that goal.

###

Attachment

September 17, 1964

LEGISLATIVE HISTORY OF R.S. 54:10A-5
(Corporation Business Tax - Tax on net income)

L. 1945, Chapter 162 - A395
Original act.

Net income provision added in 1958:

- L. 1958, Chapter 63 - A501
Introduced April 17, 1958 by Mr. Kurtz.
Original bill had statement. (copy enclosed)

Chronology:

- April 17 - Introduced.
- April 21 - Passed Assembly.
- May 12 - Passed Senate amended.
- May 19 - Senate Amendment lost in Assembly.
- May 26 - Passed both houses under emergency resolution
with further amendments.
- June 19 - Approved.

As you see, the lower rate, inserted by the Senate on May 5 was unacceptable to the Assembly, which had passed the higher rate. The extensive amendments of May 26 were the result of estimates of the small income from the integrated tax. (See Newark Evening News, 5-21-58 & 5-23-58)

The net income levy was advocated early in 1958 by the State Tax Policy Commission:

974.90 N.J. Commission on State Tax Policy.
T235 Ninth Report, (see p. 115).
1958

The storm of controversy over this new tax broke even before the above report was published. The enclosed file of clippings indicates the forces at work for and against the tax during 1958. See also May 27, 1958 statement of N.J. Manufacturers' Association (also enclosed).

Although the newspapers call this bill an "administration" measure, we could not find in Governor Meyner's 1958 messages any such specific suggestion.

We located no hearings or reports on this bill.

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CHAPTER 63 LAWS OF N. J. 1958

APPROVED 6-19-58
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ASSEMBLY, No. 501

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1958

By Assemblyman KURTZ

Referred to Committee on Appropriations

AN ACT to revise the laws imposing a franchise tax upon certain corporations, and amending and supplementing 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 32-A of Title 54, of the Revised Statutes, and making an appropriation for the administration of such tax," approved April 13, 1945 (P. L. 1945, c. 162), as amended and supplemented.

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

1 1. Section 4 of the act of which this act is amendatory is amended to read
2 as follows:

3 4. For the purposes of this act, unless the context requires a different
4 meaning:

5 (a) "Commissioner" shall mean the Director of the Division of Taxation
6 of the State Department of [Taxation and Finance] *the Treasury.*

7 (b) "Allocation factor" shall mean the proportionate part of a tax-
8 payer's net worth *or entire net income* used to determine a measure of its
9 tax under this act.

10 (c) "Corporation" shall mean any corporation, joint-stock company or
11 association and any business conducted by a trustee or trustees wherein in-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

12 terest or ownership is evidenced by a certificate of interest or ownership
13 or similar written instrument.

14 (d) "Net worth" shall mean the aggregate of the values disclosed by
15 the books of the corporation for (1) issued and outstanding capital stock,
16 (2) paid-in or capital surplus, (3) earned surplus and undivided profits, (4)
17 surplus reserves which can reasonably be expected to accrue to holders or
18 owners of equitable shares, not including reasonable valuation reserves, such
19 as reserves for depreciation or obsolescence or depletion, and (5) the
20 amount of all indebtedness owing directly or indirectly to holders of 10%
21 or more of the aggregate outstanding shares of the taxpayer's capital stock
22 of all classes, as of the close of a calendar or fiscal year. However, if in the
23 opinion of the commissioner, the corporation's books do not disclose fair
24 valuations the commissioner may make a reasonable determination of the net
25 worth which, in his opinion, would reflect the fair value of the assets car-
26 ried on the books of the corporation, in accordance with sound accounting
27 principles, and such determination shall be used as net worth for the pur-
28 pose of this act.

29 (e) "Indebtedness owing directly or indirectly" shall include, without
30 limitation thereto, all indebtedness owing to any stockholder or shareholder
31 and to members of his immediate family where a stockholder and members
32 of his immediate family together or in the aggregate own 10% or more of
33 the aggregate outstanding shares of the taxpayer's capital stock of all classes.

34 (f) "Investment company" shall mean any corporation whose business
35 during the period covered by its report consisted, to the extent of at least
36 90% thereof of holding, investing and reinvesting in stocks, bonds, notes,
37 mortgages, debentures, patents, patent rights and other securities for its own
38 account, but this shall not include any corporation which: (1) is a merchant
39 or a dealer of stocks, bonds and other securities, regularly engaged in buy-
40 ing the same and selling the same to customers; or (2) had less than 90%
41 of its average gross assets in New Jersey, at cost, invested in stocks, bonds,
42 debentures, mortgages, notes, patents, patent rights or other securities or

43 consisting of cash on deposit during the period covered by its report; or
44 (3) owned more than 10% of either the aggregate outstanding shares of
45 capital stock of all classes entitled to vote, or of the aggregate outstanding
46 shares of nonvoting capital stock, of any other corporation, during the
47 period covered by its report.

48 (g) "Regulated investment company" shall mean any corporation which
49 for a period covered by its report, is registered and regulated under the In-
50 vestment Company Act of 1940 (54 Stat. 789), as amended.

51 (h) "Taxpayer" shall mean any corporation required to report or to
52 pay taxes, interest or penalties under this act.

53 (i) "Fiscal year" shall mean an accounting period ending on any day
54 other than the last day of December *on the basis of which the taxpayer is*
55 *required to report for Federal income tax purposes.*

56 (j) *Except as herein otherwise provided, "privilege [year] period" shall*
57 *mean the calendar [year] or fiscal accounting period [in and] for which a*
57A *tax is payable under this act.*

58 (k) *"Entire net income" shall mean total net income from all sources,*
59 *whether within or without the United States, and shall include the gain de-*
60 *rived from the employment of capital or labor, or from both combined, as*
61 *well as profit gained through a sale or conversion of capital assets. For*
62 *the purpose of this act, the amount of a taxpayer's entire net income shall be*
63 *deemed prima facie to be equal in amount to the taxable income, before net*
64 *operating loss deduction and special deductions, which the taxpayer is re-*
65 *quired to report to the United States Treasury Department [,] for the pur-*
66 *pose of computing its Federal income tax; provided, however, that in the de-*
67 *termination of such entire net income,*

68 (1) *Entire net income shall not include 50% of dividends which were in-*
69 *cluded in computing such taxable income for Federal income tax purposes;*

70 (2) *Entire net income shall be determined without the exclusion, deduc-*
71 *tion or credit of:*

72 (A) the amount of any specific exemption or credit allowed in any
73 law of the United States imposing any tax on or measured by the in-
74 come of corporations;

75 (B) any part of any income from dividends or interest on any kind
76 of stock, securities or indebtedness, except as provided in subsection
77 (k) (1) of this section;

78 (C) taxes paid or accrued to the United States on or measured by
79 profits or income, or the tax imposed by this act;

80 (D) net operating losses sustained during any year or period other
81 than that covered by the report;

82 (E) 90% of interest on indebtedness owing directly or indirectly to
83 holders of 10% or more of the aggregate outstanding shares of the tax-
84 payer's capital stock of all classes; except that such interest may, in any
85 event, be deducted

86 (i) up to an amount not exceeding \$1,000.00,

87 (ii) in full to the extent that it relates to bonds or other evi-
88 dences of indebtedness issued, with stock, pursuant to a bona fide
89 plan of reorganization, to persons, who, prior to such reorganization,
90 were bona fide creditors of the corporation or its predecessors, but
91 were not stockholders or shareholders thereof;

92 (3) The commissioner may, whenever necessary to properly reflect the
93 entire net income of any taxpayer, determine the year or period in which any
94 item of income or deduction shall be included, without being limited to the
95 method of accounting employed by the taxpayer.

1 2. Section 5 of the act of which this act is amendatory is amended to
2 read as follows:

3 5. The franchise tax to be annually assessed to and paid by each taxpayer
4 shall be [measured by [the greater of] whichever of the following results in
5 the greatest amount of tax] the sum of the amount computed under subsection
5A (a) or (b) hereof, whichever is greater, and the amount computed under sub-
5B section (c) hereof:

6 (a) that portion of its entire net worth as may be allocable to this State

7 as provided in section 6 *[computed at]* multiplied by the rates set forth in
8 subsection (b) of this section; or

9 (b) that proportion of its entire net worth as the average value of its
10 total assets in this State during the period covered by its report is to the
11 average value of its assets everywhere during such period (for the purpose
12 of which there shall be included as within this State all intangible personal
13 property of domestic corporations not having a business situs outside this
14 State, 40% of the value of such property having a business situs outside this
15 State, and the entire amount of the intangible personal property of foreign
16 corporations as would have a business situs within this State for the purpose
17 of a property tax) *[; at the rate of]* multiplied by the following rates: 2 mills
18 per dollar on the first \$100,000,000.00 of allocated net worth; $\frac{1}{10}$ of a mill per
19 dollar on the second \$100,000,000.00; $\frac{3}{10}$ of a mill per dollar on the third
20 \$100,000,000.00; and $\frac{2}{10}$ of a mill per dollar on all amounts of allocated net
20A worth in excess of \$300,000,000.00 *[.] ; [or]*

21 *[(c) Provided, however, that the franchise tax to be annually assessed to*
22 *and paid by any investment company, other than a regulated investment*
23 *company, shall be measured by 25%, and in the case of a regulated invest-*
24 *ment company by 15% of its entire net worth, at the rates hereinabove set*
25 *forth but in no case less than \$250.00, unless the taxpayer shall elect to remain*
26 *taxable pursuant to any other subsection of this section.]*

27 *(c) [a tax measured by] 1 3/4% of its entire net income or such portion*
28 *thereof as may be allocable to this State as provided in section 6 [, computed*
29 *at the rate of 3 1/2%].*

30 *[(d) The tax assessed to any taxpayer pursuant to this act under sub-*
31 *sections (a) and (b) of this section shall not be less than the greater of $\frac{1}{10}$*
32 *of a mill per dollar on the first \$100,000,000.00 and $\frac{2}{10}$ of a mill per dollar on*
33 *all amounts in excess of \$100,000,000.00 of total assets allocated to this State*
34 *in accordance with subsection (b) hereof, and \$25.00 in the case of a domestic*
35 *corporation, or \$50.00 in the case of a foreign corporation.]*

36 *(d) Provided, however, that the franchise tax to be annually assessed to*
37 *and paid by any investment company or regulated investment company which*

38 has elected to report as such and has filed its return in the form and within
 39 the time provided in this act and the rules and regulations promulgated in
 40 connection therewith, shall, in the case of an investment company, be measured
 41 by [the greater of] 25% of its entire net income [or] and 25% of its entire
 42 net worth, and, in the case of a regulated investment company, by [the
 43 greater of] 15% of its entire net income [or] and 15% of its entire net
 44 worth, at the rates hereinabove set forth for the computation of tax on net in-
 45 come [or] and net worth, respectively, but in no case less than \$250.00.

46 [(e) In lieu of the tax imposed by subsections (a), (b), (c) and (d) of
 47 this section, any taxpayer, the value of whose total assets everywhere, less
 48 reasonable reserves for depreciation, as of the close of the period covered by
 49 its report, amounts to less than \$100,000.00, may elect to pay the tax shown
 50 in the following table:

	If Total Assets Are at Least	But Less Than	The Tax Shall Be	
			For Domestic Corporations	For Foreign Corporations
51	\$0 00	\$20,000 00	\$25 00	\$50 00
52	20,000 00	24,000 00	31 00	50 00
53	24,000 00	28,000 00	37 00	50 00
54	28,000 00	32,000 00	43 00	50 00
55	32,000 00	36,000 00	49 00	50 00
56	36,000 00	40,000 00	55 00	55 00
57	40,000 00	44,000 00	61 00	61 00
58	44,000 00	48,000 00	67 00	67 00
59	48,000 00	52,000 00	73 00	73 00
60	52,000 00	56,000 00	79 00	79 00
61	56,000 00	60,000 00	85 00	85 00
62	60,000 00	64,000 00	91 00	91 00
63	64,000 00	68,000 00	97 00	97 00
64	68,000 00	72,000 00	103 00	103 00
65	72,000 00	76,000 00	109 00	109 00

66	76,000 00	80,000 00	115 00	115 00
67	80,000 00	84,000 00	121 00	121 00
68	84,000 00	88,000 00	127 00	127 00
69	88,000 00	92,000 00	133 00	133 00
70	92,000 00	96,000 00	139 00	139 00
71	96,000 00	100,000 00	145 00	145 00]

72 (e) *The tax assessed to any taxpayer pursuant to [this act under] sub-*
73 *sections (a) [,] and (b) [and (c)] of this section shall not be less than the*
74 *greater of 5/10 of a mill per dollar on the first \$100,000,000.00 and 2/10 of a*
75 *mill per dollar on all amounts in excess of \$100,000,000.00 of total assets al-*
76 *located to this State in accordance with subsection (b) hereof, and \$25.00 in the*
77 *case of a domestic corporation, or \$50.00 in the case of a foreign corporation.*

1 3. Section 6 of the act of which this act is amendatory is amended to read
2 as follows:

3 6. In the case of a taxpayer which maintains a regular place of business
4 outside this State other than a statutory office, the portion of its entire net
5 worth to be used as a measure of the tax imposed by section 5(a) of this act,
6 *and the portion of its entire net income to be used as a measure of the tax im-*
7 *posed by section 5(c) of this act, shall be determined by multiplying such en-*
8 *tire net worth and entire net income, respectively, by an allocation factor*
9 *which shall be the average of the fractions computed in (A), (B) and (C)*
10 *below, or of so many of them as may be applicable, that is:*

11 (A) The average value of the taxpayer's real and tangible personal
12 property within the State during the period covered by its report divided by
13 the average value of all the taxpayer's real and tangible personal property
14 wherever situated during such period;

15 (B) The receipts of the taxpayer, computed on the cash or accrual basis
16 according to the method of accounting used in the computation of its net in-
17 come for Federal tax purposes, arising during such period from

18 (1) sales of its tangible personal property located within this State at
19 the time of the receipt of or appropriation to the orders where shipments are
20 made to points within this State,

21 (2) sales of tangible personal property located within this State at the
22 time of the receipt of or appropriation to the orders where shipment is made
23 to points outside of the State and sales of tangible personal property located
24 without the State at the time of the receipt of or appropriation to the orders
25 where shipment is made to points within the State, but only to the extent of
26 50% of the receipts from the sales referred to in this subsection (2),

27 (3) sales of any such property not located at the time of the receipt of or
28 appropriation to the orders at any permanent or continuous place of business
29 maintained by the taxpayer without the State, where the orders were received
30 or accepted within the State, but only to the extent of 50% of the receipts
31 from the sales referred to in this subsection (3). For the purposes of this
32 subsection (3), an order shall be deemed received or accepted within the
33 State if it has been received or accepted by an employee, agent, agency or in-
34 dependent contractor chiefly situated at, connected with, by contract or other-
35 wise, or sent out from a permanent or continuous place of business of the tax-
36 payer within the State,

37 (4) services performed within the State,

38 (5) rentals from property situated, and royalties from the use of patents
39 or copyrights, within the State,

40 (6) all other business receipts earned within the State, divided by the
41 total amount of the taxpayer's receipts, similarly computed, arising during
42 such period from all sales of its tangible personal property, services, rentals,
43 royalties and all other business receipts, whether within or without the State;

44 (C) The total wages, salaries and other personal service compensation,
45 similarly computed, during such period of officers and employees within the
46 State divided by the total wages, salaries and other personal service compen-
47 sation, similarly computed, during such period of all the taxpayer's officers
48 and employees within and without the State.

49 In the case of a taxpayer which does not maintain a regular place of busi-
50 ness outside this State other than a statutory office, the allocation factor shall
51 be 100%.

1 4. Section 8 of the act of which this act is amendatory is amended to read
2 as follows:

3 8. If it shall appear to the commissioner that an allocation factor deter-
4 mined pursuant to section 6 does not properly reflect the activity, business,
5 receipts, [or] capital, *entire net worth or entire net income* of a taxpayer rea-
6 sonably attributable to the State, he may adjust it by:

7 (a) excluding 1 or more of the factors therein;

8 (b) including 1 or more other factors, such as expenses, purchases, con-
9 tract values (minus subcontract values);

10 (c) excluding 1 or more assets in computing entire net worth; or

11 (d) *excluding 1 or more assets in computing an allocation percentage;*

12 *or*

13 [(d)] (e) applying any other similar or different method calculated to
14 [affect] *effect* a fair and proper allocation [according to the receipts, activ-
15 ity, business and capital] *of the entire net income and the entire net worth*
16 reasonably attributable to the State.

17 Nothing herein shall be construed to require or permit the commissioner
18 to adjust an allocation factor determined pursuant to section 5(b).

1 5. Section 10 of the act of which this act is amendatory is amended to
2 read as follows:

3 [10. Whenever it shall appear to the commissioner that any taxpayer
4 conducts its business or maintains its records in such manner as either di-
5 rectly or indirectly to distort its true net worth under this act or the propor-
6 tion thereof properly allocable to this State, or that any taxpayer maintains
7 a place of business outside this State, or that any agreement, understanding
8 or arrangement exists between a taxpayer and any other corporation or any
9 person or firm, for the purpose of evading tax under this act, or whereby the
10 activity, business, receipts or net worth of the taxpayer is improperly or in-
11 accurately reflected, the commissioner is authorized and empowered in his
12 discretion and in such manner as he may determine to adjust and redeter-
13 mine such net worth, and to adjust items of gross receipts, tangible property

14 and payrolls within and without the State and the allocation of net worth,
15 or to make such other adjustments in any tax report or tax returns as may be
16 necessary. The commissioner may require any person or corporation to submit
17 such information under oath, or to permit such examination of its books,
18 papers and documents, as may be necessary to enable him to determine the
19 existence, nature or extent of an agreement, understanding or arrangement
20 to which this section relates, whether or not such person or corporation is
21 subject to the tax imposed by this act.]

22 10. *Whenever it shall appear to the commissioner that any taxpayer fails*
23 *to maintain its records in accordance with sound accounting principles or*
24 *conducts its business or maintains its records in such manner as either di-*
25 *rectly or indirectly to distort its true entire net income or its true entire net*
26 *worth under this act or the proportion thereof properly allocable to this State,*
27 *or whenever any taxpayer maintains a place of business outside this State, or*
28 *whenever any agreement, understanding or arrangement exists between a tax-*
29 *payer and any other corporation or any person or firm, for the purpose of*
30 *evading tax under this act, or whereby the activity, business, receipts, ex-*
31 *penses, assets, liabilities, income or net worth of the taxpayer are improperly*
32 *or inaccurately reflected, the commissioner is authorized and empowered, in*
33 *his discretion and in such manner as he may determine, to adjust and rede-*
34 *termine such items, and to adjust items of gross receipts, tangible or intan-*
35 *gible property and payrolls within and without the State and the allocation*
36 *of entire net income or entire net worth or to make any other adjustments in*
37 *any tax report or tax returns as may be necessary to make a fair and reason-*
38 *able determination of the amount of tax payable under this act. Where (a)*
39 *any taxpayer conducts its activity or business under any agreement, arrange-*
40 *ment or understanding in such manner as either directly or indirectly to bene-*
41 *fit its members or stockholders, or any of them, or any person or persons di-*
42 *rectly or indirectly interested in such activity or business, by entering into*
43 *any transaction at more or less than a fair price which, but for such agree-*
44 *ment, arrangement or understanding, might have been paid or received*

45 therefor, or (b) any taxpayer, a substantial portion of whose capital stock
46 is owned either directly or indirectly by or through another corporation,
47 enters into any transaction with such other corporation on such terms as
48 to create an improper loss or net income, the commissioner may include in
49 the entire net income of the taxpayer the fair profits which, but for such
50 agreement, arrangement or understanding, the taxpayer might have derived
51 from such transaction. The commissioner may require any person or corpora-
52 tion to submit such information under oath or affirmation, or to permit such
53 examination of its books, papers and documents, as may be necessary to
54 enable him to determine the existence, nature or extent of an agreement,
55 understanding or arrangement to which this section relates, whether or not
56 such person or corporation is subject to the tax imposed by this act.

1 6. Section 13 of the act of which this act is amendatory is amended to
2 read as follows:

3 [13. In the case of any corporation which organizes or qualifies on or
4 after January 1 in any year no tax shall be payable in such privilege year;
5 provided, however, that this section shall not apply to a foreign corporation,
6 which after January 1, 1937, and prior to the year in which it qualifies, pos-
7 sessed the privilege of exercising its corporate franchise in this State, or did
8 business, or employed or owned capital or property, or maintained an office
9 in this State.]

10 13. If the amount of the taxable income for any year of any taxpayer as
11 returned to the United States Treasury Department is changed or corrected
12 by the Commissioner of Internal Revenue or other officer of the United States
13 or other competent authority, or where a renegotiation of a contract or sub-
14 contract with the United States results in a change in said taxable income, or
15 where a recovery of a war loss results in a computation or recomputation of
16 any tax imposed by the United States, such taxpayer shall report such
17 changed or corrected taxable income, or the results of such renegotiation, or
18 such computation or recomputation, within 90 days after the final determina-
19 tion of such change or correction or renegotiation, or such computation or

20 *recomputation, or as required by the commissioner, and shall concede the*
21 *accuracy of such determination or state wherein it is erroneous. Any tax-*
22 *payer filing an amended return with such department shall also file within*
23 *90 days thereafter an amended report with the commissioner.*

1 7. Section 15 of the act of which this act is amendatory is amended to
2 read as follows:

3 [15. The tax imposed by this act shall be due and payable with respect
4 to the calendar year 1946, and each year thereafter, measured by the taxpay-
5 er's net worth as of the close of the calendar year or of its fiscal year next
6 preceding the privilege year, except that in the case of a taxpayer whose
7 fiscal year ends not later than June 30 in the privilege year such measure
8 shall be as of the close of such fiscal year. For the purpose of this section
9 every taxpayer shall use the same calendar or fiscal year upon which it re-
10 ports to the United States Treasury Department for Federal income tax pur-
11 poses.]

12 15. *The tax imposed by this act shall be due and payable annually here-*
13 *after, commencing with the calendar year 1959, in the manner provided under*
14 *either subsection (a) or subsection (b) of this section, whichever shall be ap-*
15 *plicable.*

16 (a) *Every taxpayer shall annually pay a franchise tax, with respect to*
17 *all or any part of each of its fiscal or calendar accounting years [.] beginning*
18 *after January 1, 1959, to be computed [upon the basis of its entire net income*
19 *or upon such other basis as may be applicable,] as herein provided, for such*
20 *fiscal or calendar accounting year or part thereof, on a report which shall be*
21 *filed on or before April 15 next succeeding the close of each such accounting*
22 *year, or, if any such fiscal year ends after the last day of December and prior*
23 *to July 1, on or before the fifteenth day of the fourth month after the close of*
24 *such fiscal year, and the full amount of the tax hereunder shall be due and pay-*
25 *able on or before the date prescribed herein for the filing of the return.*

26 (b) *Every taxpayer shall pay a like franchise tax with respect to all or*
27 *any part of the period beginning January 1, 1959 [.] and extending through*

28 any subsequent part of its first fiscal or calendar accounting year ending after
29 said date. Such tax shall be computed [upon the basis of its entire net in-
30 come, or upon such other basis as may be applicable,] as herein provided, for
31 each and every fiscal or calendar accounting year or part thereof begun not
32 earlier than July 2, 1957 and ending not later than December 31, 1959 [during
33 which such taxpayer has its charter or had the privilege of exercising its cor-
34 porate charter, or did business, employed or owned capital or property or
35 maintained an office, or otherwise conducted any activity for profit, in this
36 State and] on the basis of which a franchise tax has not accrued under this
37 act prior to January 1, 1959. The tax imposed pursuant to this subsection
38 shall be deemed a single tax for such [privilege] period but shall be computed
39 separately with respect to each such fiscal or calendar accounting year or
40 part thereof on the basis of which a franchise tax has not previously
41 accrued as aforesaid, on a report which shall be filed on or before April
42 15 next succeeding the close of each such accounting year, or, if any
42A such fiscal year ends after the last day of December and prior to July
43 1, on or before the fifteenth day of the fourth month after the close of such
44 fiscal year, and the full amount of the tax hereunder shall be due and payable
45 on or before the date prescribed herein for the filing of the report.

46 (c) For the purpose of this act, every taxpayer shall use the same cal-
47 endar or fiscal year upon which it reports to the United States Treasury De-
48 partment for Federal income tax purposes.

49 [(d) Nothing in this section shall operate to relieve any taxpayer from
50 the obligation to pay a tax heretofore imposed under this act.]

1 8. Section 16 of the act of which this act is amendatory is amended to
2 read as follows:

3 [16. For the privilege year 1946, the tax imposed by this act shall con-
4 stitute a lien on all of the taxpayer's property and franchises on and after
5 January 1 of such year, and all interest, penalties, and costs of collection
6 which fall due or accrue shall be added to and become a part of such lien.

7 For the privilege year 1947 and thereafter, the tax imposed by this act
8 shall constitute a lien on all of the taxpayer's property and franchises on and

9 after January 1 of the year next succeeding the privilege year in which it is
10 due and payable, and all interest, penalties and costs of collection which fall
11 due or accrue shall be added to and become a part of such lien. Notwithstand-
12 ing the provisions of any other law, all such taxes, interest, penalties and costs
13 heretofore or hereafter imposed or incurred, whether levied or assessed or
14 not, under this act shall, unless sooner paid, continue and remain a lien on all
15 of the taxpayer's property and franchises until January 1, 1956, or until the
16 expiration of 10 years after January 1 of the privilege year in which they
17 became or become due and payable, whichever shall be later, and no longer.]

18 16. *The tax imposed by this act shall constitute a lien on all of the tax-*
19 *payer's property and franchises on and after January 1 of the year next suc-*
20 *ceeding the year in which it is due and payable, and all interest, penalties*
21 *and costs of collection which fall due or accrue shall be added to and become*
22 *a part of such lien. Notwithstanding the provisions of any other law, all such*
23 *taxes, interest, penalties and costs heretofore or hereafter imposed or in-*
24 *curred, whether levied or assessed or not, under this act shall, unless sooner*
25 *paid, continue and remain a lien on all of the taxpayer's property and fran-*
26 *chises until the expiration of 10 years after January 1 of the year in which*
27 *they became or become due and payable.*

1 9. Section 17 of the act of which this act is amendatory is amended to
2 read as follows:

3 17. [(a) on or before April 15, in the case of taxpayers reporting on a
4 calendar year basis, and on or before April 15 or the fifteenth day of the
5 fourth month following the close of a fiscal year, whichever is later, in the
6 case of taxpayers reporting on a fiscal year basis, each taxpayer shall duly
7 execute and file a tax return with the commissioner, in such form and con-
8 taining such information as he may prescribe, which return shall truly and
9 accurately, set forth its liability under this act; and the full amount of the
10 tax hereunder shall be due and payable to the commissioner on or before the
11 date prescribed herein for the filing of the return; provided, however, that
12 for the privilege year 1947 any return and tax payment which under the
13 foregoing provisions of this section would be due on or before April 15 or

14 on or before May 15 shall be due on or before May 31, 1947.] (a) *If the period*
15 *covered by the report under this act is other than the period covered by the*
16 *report to the United States Treasury Department or is a period of less than*
17 *12 calendar months, the commissioner may, under regulations prescribed by*
18 *him, determine the entire net worth and entire net income of the taxpayer in*
19 *such manner as shall properly reflect its entire net worth and entire net in-*
20 *come for the period covered by its report under this act.*

21 (b) Any taxpayer which shall fail to file its return when due shall be
22 liable to a penalty of \$2.00 for each day of delinquency, which penalty shall
23 be payable to, and recoverable by, the commissioner as a part of the tax
24 herein imposed. If any tax be not paid when the same becomes due, as herein
25 provided, there shall be added to the amount of the tax a sum equivalent to
26 5% thereof, as a penalty, and, in addition thereto, interest at the rate of 1%
27 per month or fraction thereof from the date the tax became due until the same
28 be paid. The commissioner, if satisfied that the failure to comply with any
29 provision of this [section] act was excusable, may abate or remit the whole
30 or part of any penalty.

1 10. Section 18 of the act of which this act is amendatory is amended to
2 read as follows:

3 [18. The commissioner shall design a form of return and forms for such
4 additional statements or schedules as he may require to be filed therewith.
5 Such forms shall provide for the setting forth of such facts as the commis-
6 sioner may deem necessary for the proper enforcement of this act. He shall
7 cause a supply thereof to be printed and shall furnish appropriate blank
8 forms to each taxpayer upon application or otherwise as he may deem neces-
9 sary. Failure to receive a form shall not relieve any taxpayer from the ob-
10 ligation to file a return under the provisions of this act. Each such return
11 shall be made upon the oath or affirmation of the president, vice-president,
12 or secretary or treasurer of the taxpayer, and in the case of a corporation in
13 liquidation or in the hands of a receiver or trustee, shall be made on the oath
14 or affirmation of the person responsible for the conduct of the affairs of such
15 corporation.]

16 18. *The commissioner shall design a form of return and forms for such*
17 *additional statements or schedules as he may require to be filed therewith.*
18 *Such forms shall provide for the setting forth of such facts as the commis-*
19 *sioner may deem necessary for the proper enforcement of this act. He shall*
20 *cause a supply thereof to be printed and shall furnish appropriate blank*
21 *forms to each taxpayer upon application or otherwise as he may deem neces-*
22 *sary. Failure to receive a form shall not relieve any taxpayer from the ob-*
23 *ligation to file a return under the provisions of this act. Each such return*
24 *shall have annexed thereto a certification by the president, vice-president,*
25 *comptroller, secretary, treasurer, assistant treasurer, accounting officer of the*
26 *taxpayer or any other officer of the taxpayer duly authorized so to act to the*
27 *effect that the statements contained therein are true. The fact that an indi-*
28 *vidual's name is signed on a certification of the report shall be prima facie*
29 *evidence that such individual is authorized to sign and certify the report on*
30 *behalf of the corporation. In the case of a corporation in liquidation or in*
31 *the hands of a receiver or trustee, certification shall be made by the person*
32 *responsible for the conduct of the affairs of such corporation.*

1 11. Section 19 of the act of which this act is amendatory is amended to
2 read as follows:

3 19. The commissioner may grant a reasonable extension of time for the
4 filing of returns or the payment of tax, or both, under such rules and regu-
5 lations as he shall prescribe, which rules and regulations may require the fil-
6 ing of a tentative return and the payment of an estimated tax[, but no such
7 extension shall be granted beyond December 1 of the privilege year.]. If the
8 time for filing the return shall be extended, the payment of the portion of
9 the tax remaining to be paid, if any, shall be postponed to the date fixed by
10 the extension of the time for the filing of the return, but in every such case
11 the corporation shall pay, in addition to the unpaid portion of the tax,
12 interest thereon at the rate of 6% per annum from the time when the return
13 originally was required to be filed to the date of actual payment under the
14 extension; provided, that if such unpaid portion of the tax is not paid within

15 the time fixed under the extension, the interest on such unpaid portion shall
16 be computed at the rate of 1% per month or fraction thereof to be calculated
17 from the date the tax was originally due to the date of actual payment.

1 [12. This act shall take effect immediately, except that the amended sub-
2 section (c) of section 5 of the act of which this act is amendatory shall take
3 effect on January 1, 1959.]

4 12. *The provisions of this act shall be effective with respect to the tax*
5 *payable in the year 1959 and thereafter and, with respect to the tax payable*
6 *in 1958 and prior years, shall not affect the provisions of, or any obligations*
7 *heretofore incurred under, the Corporation Business Tax Act (1945).*

1 13. *This act shall be effective immediately.*

ASSEMBLY, No. 501

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1958

By Assemblyman KURTZ

Referred to Committee on Appropriations

AN ACT to revise the laws imposing a franchise tax upon certain corporations, and amending and supplementing 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 32-A of Title 54, of the Revised Statutes, and making an appropriation for the administration of such tax," approved April 13, 1945 (P. L. 1945, c. 162), as amended and supplemented.

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

1 1. Section 4 of the act of which this act is amendatory is amended to read
2 as follows:

3 4. For the purposes of this act, unless the context requires a different
4 meaning:

5 (a) "Commissioner" shall mean the Director of the Division of Taxation
6 of the State Department of [Taxation and Finance] *the Treasury.*

7 (b) "Allocation factor" shall mean the proportionate part of a tax-
8 payer's net worth *or entire net income* used to determine a measure of its
9 tax under this act.

10 (c) "Corporation" shall mean any corporation, joint-stock company or
11 association and any business conducted by a trustee or trustees wherein in-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

12 terest or ownership is evidenced by a certificate of interest or ownership
13 or similar written instrument.

14 (d) "Net worth" shall mean the aggregate of the values disclosed by
15 the books of the corporation for (1) issued and outstanding capital stock,
16 (2) paid-in or capital surplus, (3) earned surplus and undivided profits, (4)
17 surplus reserves which can reasonably be expected to accrue to holders or
18 owners of equitable shares, not including reasonable valuation reserves, such
19 as reserves for depreciation or obsolescence or depletion, and (5) the
20 amount of all indebtedness owing directly or indirectly to holders of 10%
21 or more of the aggregate outstanding shares of the taxpayer's capital stock
22 of all classes, as of the close of a calendar or fiscal year. However, if in the
23 opinion of the commissioner, the corporation's books do not disclose fair
24 valuations the commissioner may make a reasonable determination of the net
25 worth which, in his opinion, would reflect the fair value of the assets car-
26 ried on the books of the corporation, in accordance with sound accounting
27 principles, and such determination shall be used as net worth for the pur-
28 pose of this act.

29 (e) "Indebtedness owing directly or indirectly" shall include, without
30 limitation thereto, all indebtedness owing to any stockholder or shareholder
31 and to members of his immediate family where a stockholder and members
32 of his immediate family together or in the aggregate own 10% or more of
33 the aggregate outstanding shares of the taxpayer's capital stock of all classes.

34 (f) "Investment company" shall mean any corporation whose business
35 during the period covered by its report consisted, to the extent of at least
36 90% thereof of holding, investing and reinvesting in stocks, bonds, notes,
37 mortgages, debentures, patents, patent rights and other securities for its own
38 account, but this shall not include any corporation which: (1) is a merchant
39 or a dealer of stocks, bonds and other securities, regularly engaged in buy-
40 ing the same and selling the same to customers; or (2) had less than 90%
41 of its average gross assets in New Jersey, at cost, invested in stocks, bonds,
42 debentures, mortgages, notes, patents, patent rights or other securities or

43 consisting of cash on deposit during the period covered by its report; or
44 (3) owned more than 10% of either the aggregate outstanding shares of
45 capital stock of all classes entitled to vote, or of the aggregate outstanding
46 shares of nonvoting capital stock, of any other corporation, during the
47 period covered by its report.

48 (g) "Regulated investment company" shall mean any corporation which
49 for a period covered by its report, is registered and regulated under the In-
50 vestment Company Act of 1940 (54 Stat. 789), as amended.

51 (h) "Taxpayer" shall mean any corporation required to report or to
52 pay taxes, interest or penalties under this act.

53 (i) "Fiscal year" shall mean an accounting period ending on any day
54 other than the last day of December *on the basis of which the taxpayer is*
55 *required to report for Federal income tax purposes.*

56 (j) "Privilege [year] period" shall mean the calendar [year] or fiscal
57 accounting period [in and] for which a tax is payable under this act.

58 (k) "Entire net income" shall mean total net income from all sources,
59 whether within or without the United States, and shall include the gain de-
60 rived from the employment of capital or labor, or from both combined, as
61 well as profit gained through a sale or conversion of capital assets. For
62 the purpose of this act, the amount of a taxpayer's entire net income shall be
63 deemed prima facie to be equal in amount to the taxable income before net
64 operating loss deduction and special deductions which the taxpayer is re-
65 quired to report to the United States Treasury Department, for the purpose
66 of computing its Federal income tax; provided, however, that in the de-
67 termination of such entire net income,

68 (1) Entire net income shall not include 50% of dividends which were in-
69 cluded in computing such taxable income for Federal income tax purposes;

70 (2) Entire net income shall be determined without the exclusion, deduc-
71 tion or credit of:

72 (A) the amount of any specific exemption or credit allowed in any
73 law of the United States imposing any tax on or measured by the in-
74 come of corporations;

75 (B) any part of any income from dividends or interest on any kind
 76 of stock, securities or indebtedness, except as provided in subsection
 77 (k), (1) of this section;

78 (C) taxes paid or accrued to the United States on or measured by
 79 profits or income, or the tax imposed by this act;

80 (D) net operating losses sustained during any year or period other
 81 than that covered by the report;

82 (E) 90% of interest on indebtedness owing directly or indirectly to
 83 holders of 10% or more of the aggregate outstanding shares of the tax-
 84 payer's capital stock of all classes; except that such interest may, in any
 85 event, be deducted

86 (i) up to an amount not exceeding \$1,000.00,

87 (ii) in full to the extent that it relates to bonds or other evi-
 88 dences of indebtedness issued, with stock, pursuant to a bona fide
 89 plan of reorganization, to persons, who, prior to such reorganization,
 90 were bona fide creditors of the corporation or its predecessors, but
 91 were not stockholders or shareholders thereof;

92 (3) The commissioner may, whenever necessary, to properly reflect the
 93 entire net income of any taxpayer, determine the year or period in which any
 94 item of income or deduction shall be included, without being limited to the
 95 method of accounting employed by the taxpayer.

1 2. Section 5 of the act of which this act is amendatory is amended to
 2 read as follows:

3 5. The franchise tax to be annually assessed to and paid by each taxpayer
 4 shall be measured by [the greater of] whichever of the following results in
 5 the greatest amount of tax:

6 (a) that portion of its entire net worth as may be allocable to this State
 7 as provided in section 6 computed at the rates set forth in subsection (b) of
 8 this section; or

9 (b) that proportion of its entire net worth as the average value of its
 10 total assets in this State during the period covered by its report is to the
 11 average value of its assets everywhere during such period. (for the purpose

12. of which there shall be included as within this State all intangible personal
 13 property of domestic corporations not having a business situs outside this
 14 State, 40% of the value of such property having a business situs outside this
 15 State, and the entire amount of the intangible personal property of foreign
 16 corporations as would have a business situs within this State for the purpose
 17 of a property tax.); at the rate of 2 mills per dollar on the first \$100,000,000.00;
 18 of allocated net worth; $\frac{1}{10}$ of a mill per dollar on the second \$100,000,000.00;
 19 $\frac{1}{10}$ of a mill per dollar on the third \$100,000,000.00; and $\frac{1}{10}$ of a mill per dollar
 20 on all amounts of allocated net worth in excess of \$300,000,000.00[.] ; or

21 [(c). Provided, however, that the franchise tax to be annually assessed to
 22 and paid by any investment company, other than a regulated investment
 23 company, shall be measured by 25%, and in the case of a regulated invest-
 24 ment company by 15% of its entire net worth, at the rates hereinabove set
 25 forth but in no case less than \$250.00, unless the taxpayer shall elect to remain
 26 taxable pursuant to any other subsection of this section.]

27 (c) a tax measured by its entire net income or such portion thereof as
 28 may be allocable to this State as provided in section 6, computed at the rate
 29 of 3 1/2%.

30 [(d) The tax assessed to any taxpayer pursuant to this act under sub-
 31 sections (a) and (b) of this section shall not be less than the greater of $\frac{1}{10}$
 32 of a mill per dollar on the first \$100,000,000.00 and $\frac{1}{10}$ of a mill per dollar on
 33 all amounts in excess of \$100,000,000.00 of total assets allocated to this State
 34 in accordance with subsection (b) hereof, and \$25.00 in the case of a domestic
 35 corporation, or \$50.00 in the case of a foreign corporation.]

36 (d) Provided, however, that the franchise tax to be annually assessed to
 37 and paid by any investment company or regulated investment company which
 38 has elected to report as such and has filed its return in the form and within
 39 the time provided in this act and the rules and regulations promulgated in
 40 connection therewith, shall, in the case of an investment company, be measured
 41 by the greater of 25% of its entire net income or 25% of its entire net worth,
 42 and, in the case of a regulated investment company, by the greater of 15% of

43 its entire net income or 15% of its entire net worth, at the rates hereinabove
 44 set forth for the computation of tax on net income or net worth, respectively,
 45 but in no case less than \$250.00.

46 [(e) In lieu of the tax imposed by subsections (a), (b), (c) and (d) of
 47 this section, any taxpayer, the value of whose total assets everywhere, less
 48 reasonable reserves for depreciation, as of the close of the period covered by
 49 its report, amounts to less than \$100,000.00, may elect to pay the tax shown
 50 in the following table:

	If Total Assets Are at Least	But Less Than	The Tax Shall Be	
			For Domestic Corporations	For Foreign Corporations
51	\$0 00	\$20,000 00	\$25 00	\$50 00
52	20,000 00	24,000 00	31 00	50 00
53	24,000 00	28,000 00	37 00	50 00
54	28,000 00	32,000 00	43 00	50 00
55	32,000 00	36,000 00	49 00	50 00
56	36,000 00	40,000 00	55 00	55 00
57	40,000 00	44,000 00	61 00	61 00
58	44,000 00	48,000 00	67 00	67 00
59	48,000 00	52,000 00	73 00	73 00
60	52,000 00	56,000 00	79 00	79 00
61	56,000 00	60,000 00	85 00	85 00
62	60,000 00	64,000 00	91 00	91 00
63	64,000 00	68,000 00	97 00	97 00
64	68,000 00	72,000 00	103 00	103 00
65	72,000 00	76,000 00	109 00	109 00
66	76,000 00	80,000 00	115 00	115 00
67	80,000 00	84,000 00	121 00	121 00
68	84,000 00	88,000 00	127 00	127 00
69	88,000 00	92,000 00	133 00	133 00
70	92,000 00	96,000 00	139 00	139 00
71	96,000 00	100,000 00	145 00	145 00]

72 (e) *The tax assessed to any taxpayer pursuant to this act under sub-*
73 *sections (a), (b) and (c) of this section shall not be less than the greater of*
74 *5/10 of a mill per dollar on the first \$100,000,000.00 and 2/10 of a mill per*
75 *dollar on all amounts in excess of \$100,000,000.00 of total assets allocated to*
76 *this State in accordance with subsection (b) hereof, and \$25.00 in the case of*
77 *a domestic corporation, or \$50.00 in the case of a foreign corporation.*

1 3. Section 6 of the act of which this act is amendatory is amended to read
2 as follows:

3 6. In the case of a taxpayer which maintains a regular place of business
4 outside this State other than a statutory office, the portion of its entire net
5 worth to be used as a measure of the tax imposed by section 5(a) of this act,
6 *and the portion of its entire net income to be used as a measure of the tax im-*
7 *posed by section 5(c) of this act, shall be determined by multiplying such en-*
8 *tire net worth and entire net income, respectively, by an allocation factor*
9 *which shall be the average of the fractions computed in (A), (B) and (C)*
10 *below, or of so many of them as may be applicable, that is:*

11 (A) The average value of the taxpayer's real and tangible personal
12 property within the State during the period covered by its report divided by
13 the average value of all the taxpayer's real and tangible personal property
14 wherever situated during such period;

15 (B) The receipts of the taxpayer, computed on the cash or accrual basis
16 according to the method of accounting used in the computation of its net in-
17 come for Federal tax purposes, arising during such period from

18 (1) sales of its tangible personal property located within this State at
19 the time of the receipt of or appropriation to the orders where shipments are
20 made to points within this State,

21 (2) sales of tangible personal property located within this State at the
22 time of the receipt of or appropriation to the orders where shipment is made
23 to points outside of the State and sales of tangible personal property located
24 without the State at the time of the receipt of or appropriation to the orders
25 where shipment is made to points within the State, but only to the extent of
26 50% of the receipts from the sales referred to in this subsection (2),

27 (3) sales of any such property not located at the time of the receipt of or
 28 appropriation to the orders at any permanent or continuous place of business
 29 maintained by the taxpayer without the State, where the orders were received
 30 or accepted within the State, but only to the extent of 50% of the receipts
 31 from the sales referred to in this subsection (3). For the purposes of this
 32 subsection (3), an order shall be deemed received or accepted within the
 33 State if it has been received or accepted by an employee, agent, agency or in-
 34 dependent contractor chiefly situated at, connected with, by contract or other-
 35 wise, or sent out from a permanent or continuous place of business of the tax-
 36 payer within the State,

37 (4) services performed within the State,

38 (5) rentals from property situated, and royalties from the use of patents
 39 or copyrights, within the State,

40 (6) all other business receipts earned within the State, divided by the
 41 total amount of the taxpayer's receipts, similarly computed, arising during
 42 such period from all sales of its tangible personal property, services, rentals,
 43 royalties and all other business receipts, whether within or without the State;

44 (C) The total wages, salaries and other personal service compensation,
 45 similarly computed, during such period of officers and employees within the
 46 State divided by the total wages, salaries and other personal service compen-
 47 sation, similarly computed, during such period of all the taxpayer's officers
 48 and employees within and without the State.

49 In the case of a taxpayer which does not maintain a regular place of busi-
 50 ness outside this State other than a statutory office, the allocation factor shall
 51 be 100%.

1 4. Section 8 of the act of which this act is amendatory is amended to read
 2 as follows:

3 8. If it shall appear to the commissioner that an allocation factor deter-
 4 mined pursuant to section 6 does not properly reflect the activity, business,
 5 receipts, [or] capital, *entire net worth or entire net income* of a taxpayer rea-
 6 sonably attributable to the State, he may adjust it by:

7 (a) excluding 1 or more of the factors therein;

8 (b) including 1 or more other factors, such as expenses, purchases, con-
9 tract values (minus subcontract values);

10 (c) excluding 1 or more assets in computing entire net worth; or

11 *(d) excluding 1 or more assets in computing an allocation percentage;*
12 *or*

13 ~~[(d)]~~ *(e) applying any other similar or different method calculated to*
14 ~~[affect]~~ *effect a fair and proper allocation [according to the receipts, activ-*
15 *ity, business and capital] of the entire net income and the entire net worth*
16 *reasonably attributable to the State.*

17 Nothing herein shall be construed to require or permit the commissioner
18 to adjust an allocation factor determined pursuant to section 5(b).

1 5. Section 10 of the act of which this act is amendatory is amended to
2 read as follows:

3 [10. Whenever it shall appear to the commissioner that any taxpayer
4 conducts its business or maintains its records in such manner as either di-
5 rectly or indirectly to distort its true net worth under this act or the propor-
6 tion thereof properly allocable to this State, or that any taxpayer maintains
7 a place of business outside this State, or that any agreement, understanding
8 or arrangement exists between a taxpayer and any other corporation or any
9 person or firm, for the purpose of evading tax under this act, or whereby the
10 activity, business, receipts or net worth of the taxpayer is improperly or in-
11 accurately reflected, the commissioner is authorized and empowered in his
12 discretion and in such manner as he may determine to adjust and redeter-
13 mine such net worth, and to adjust items of gross receipts, tangible property
14 and payrolls within and without the State and the allocation of net worth,
15 or to make such other adjustments in any tax report or tax returns as may be
16 necessary. The commissioner may require any person or corporation to submit
17 such information under oath, or to permit such examination of its books,
18 papers and documents, as may be necessary to enable him to determine the
19 existence, nature or extent of an agreement, understanding or arrangement

20 to which this section relates, whether or not such person or corporation is
21 subject to the tax imposed by this act.]

22 10. Whenever it shall appear to the commissioner that any taxpayer fails
23 to maintain its records in accordance with sound accounting principles or
24 conducts its business or maintains its records in such manner as either di-
25 rectly or indirectly to distort its true entire net income or its true entire net
26 worth under this act or the proportion thereof properly allocable to this State,
27 or whenever any taxpayer maintains a place of business outside this State, or
28 whenever any agreement, understanding or arrangement exists between a tax-
29 payer and any other corporation or any person or firm, for the purpose of
30 evading tax under this act, or whereby the activity, business, receipts, ex-
31 penses, assets, liabilities, income or net worth of the taxpayer are improperly
32 or inaccurately reflected, the commissioner is authorized and empowered, in
33 his discretion and in such manner as he may determine, to adjust and rede-
34 termine such items, and to adjust items of gross receipts, tangible or intan-
35 gible property and payrolls within and without the State and the allocation
36 of entire net income or entire net worth or to make any other adjustments in
37 any tax report or tax returns as may be necessary to make a fair and reason-
38 able determination of the amount of tax payable under this act. Where (a)
39 any taxpayer conducts its activity or business under any agreement, arrange-
40 ment or understanding in such manner as either directly or indirectly to bene-
41 fit its members or stockholders, or any of them, or any person or persons di-
42 rectly or indirectly interested in such activity or business, by entering into
43 any transaction at more or less than a fair price which, but for such agree-
44 ment, arrangement or understanding, might have been paid or received
45 therefor, or (b) any taxpayer, a substantial portion of whose capital stock
46 is owned either directly or indirectly by or through another corporation,
47 enters into any transaction with such other corporation on such terms as
48 to create an improper loss or net income, the commissioner may include in
49 the entire net income of the taxpayer the fair profits which, but for such
50 agreement, arrangement or understanding, the taxpayer might have derived

51 from such transaction. The commissioner may require any person or corpora-
52 tion to submit such information under oath or affirmation, or to permit such
53 examination of its books, papers and documents, as may be necessary to
54 enable him to determine the existence, nature or extent of an agreement,
55 understanding or arrangement to which this section relates, whether or not
56 such person or corporation is subject to the tax imposed by this act.

1 6. Section 13 of the act of which this act is amendatory is amended to
2 read as follows:

3 [13. In the case of any corporation which organizes or qualifies on or
4 after January 1 in any year no tax shall be payable in such privilege year;
5 provided, however, that this section shall not apply to a foreign corporation,
6 which after January 1, 1937, and prior to the year in which it qualifies, pos-
7 sessed the privilege of exercising its corporate franchise in this State, or did
8 business, or employed or owned capital or property, or maintained an office
9 in this State.]

10 13. If the amount of the taxable income for any year of any taxpayer as
11 returned to the United States Treasury Department is changed or corrected
12 by the Commissioner of Internal Revenue or other officer of the United States
13 or other competent authority, or where a renegotiation of a contract or sub-
14 contract with the United States results in a change in said taxable income, or
15 where a recovery of a war loss results in a computation or recomputation of
16 any tax imposed by the United States, such taxpayer shall report such
17 changed or corrected taxable income, or the results of such renegotiation, or
18 such computation or recomputation, within 90 days after the final determina-
19 tion of such change or correction or renegotiation, or such computation or
20 recomputation, or as required by the commissioner, and shall concede the
21 accuracy of such determination or state wherein it is erroneous. Any tax-
22 payer filing an amended return with such department shall also file within
23 90 days thereafter an amended report with the commissioner.

1 7. Section 15 of the act of which this act is amendatory is amended to
2 read as follows:

3 [15. The tax imposed by this act shall be due and payable with respect
4 to the calendar year 1946, and each year thereafter, measured by the taxpay-
5 er's net worth as of the close of the calendar year or of its fiscal year next
6 preceding the privilege year, except that in the case of a taxpayer whose
7 fiscal year ends not later than June 30 in the privilege year such measure
8 shall be as of the close of such fiscal year. For the purpose of this section
9 every taxpayer shall use the same calendar or fiscal year upon which it re-
10 ports to the United States Treasury Department for Federal income tax pur-
11 poses.]

12 *15. The tax imposed by this act shall be due and payable annually here-*
13 *after, commencing with the calendar year 1959, in the manner provided under*
14 *either subsection (a) or subsection (b) of this section, whichever shall be ap-*
15 *plicable.*

16 *(a) Every taxpayer shall annually pay a franchise tax, with respect to*
17 *all or any part of each of its fiscal or calendar years, beginning after Jan-*
18 *uary 1, 1959, to be computed upon the basis of its entire net income or upon*
19 *such other basis as may be applicable, as herein provided, for such fiscal or*
20 *calendar year or part thereof, on a report which shall be filed on or before*
21 *April 15 next succeeding the close of each such accounting year, or, if any*
22 *such fiscal year ends after the last day of December and prior to July 1, on*
23 *or before the fifteenth day of the fourth month after the close of such fiscal*
24 *year, and the full amount of the tax hereunder shall be due and payable on*
25 *or before the date prescribed herein for the filing of the return.*

26 *(b) Every taxpayer shall pay a like franchise tax with respect to all or*
27 *any part of the period beginning January 1, 1959, and extending through*
28 *any subsequent part of its first fiscal or calendar year ending after said date.*
29 *Such tax shall be computed upon the basis of its entire net income, or upon*
30 *such other basis as may be applicable, as herein provided, for each and every*
31 *fiscal or calendar year or part thereof begun not earlier than July 2, 1957 and*
32 *ending not later than December 31, 1959 during which such taxpayer has its*
33 *charter or had the privilege of exercising its corporate charter, or did busi-*

34 nes, employed or owned capital or property or maintained an office, or other-
35 wise conducted any activity for profit, in this State and on the basis of which
36 a franchise tax has not accrued under this act prior to January 1, 1959. The
37 tax imposed pursuant to this subsection shall be deemed a single tax for such
38 privilege period but shall be computed separately with respect to each such
39 fiscal or calendar year or part thereof on the basis of which a franchise tax
40 has not previously accrued as aforesaid, on a report which shall be filed on
41 or before April 15 next succeeding the close of each such accounting year, or,
42 if any such fiscal year ends after the last day of December and prior to July
43 1, on or before the fifteenth day of the fourth month after the close of such
44 fiscal year, and the full amount of the tax hereunder shall be due and payable
45 on or before the date prescribed herein for the filing of the report.

46 (c) For the purpose of this act, every taxpayer shall use the same cal-
47 endar or fiscal year upon which it reports to the United States Treasury De-
48 partment for Federal income tax purposes.

49 (d) Nothing in this section shall operate to relieve any taxpayer from the
50 obligation to pay a tax heretofore imposed under this act.

1 8. Section 16 of the act of which this act is amendatory is amended to
2 read as follows:

3 [16. For the privilege year 1946, the tax imposed by this act shall con-
4 stitute a lien on all of the taxpayer's property and franchises on and after
5 January 1 of such year, and all interest, penalties, and costs of collection
6 which fall due or accrue shall be added to and become a part of such lien.

7 For the privilege year 1947 and thereafter, the tax imposed by this act
8 shall constitute a lien on all of the taxpayer's property and franchises on and
9 after January 1 of the year next succeeding the privilege year in which it is
10 due and payable, and all interest, penalties and costs of collection which fall
11 due or accrue shall be added to and become a part of such lien. Notwithstand-
12 ing the provisions of any other law, all such taxes, interest, penalties and costs
13 heretofore or hereafter imposed or incurred, whether levied or assessed or
14 not, under this act shall, unless sooner paid, continue and remain a lien on all
15 of the taxpayer's property and franchises until January 1, 1956, or until the

16 expiration of 10 years after January 1 of the privilege year in which they
17 became or become due and payable, whichever shall be later, and no longer.]

18 16. *The tax imposed by this act shall constitute a lien on all of the tax-*
19 *payer's property and franchises on and after January 1 of the year next suc-*
20 *ceeding the year in which it is due and payable, and all interest, penalties*
21 *and costs of collection which fall due or accrue shall be added to and become*
22 *a part of such lien. Notwithstanding the provisions of any other law, all such*
23 *taxes, interest, penalties and costs heretofore or hereafter imposed or in-*
24 *curred, whether levied or assessed or not, under this act shall, unless sooner*
25 *paid, continue and remain a lien on all of the taxpayer's property and fran-*
26 *chises until the expiration of 10 years after January 1 of the year in which*
27 *they became or become due and payable.*

1 9. Section 17 of the act of which this act is amendatory is amended to
2 read as follows:

3 17. [(a) on or before April 15, in the case of taxpayers reporting on a
4 calendar year basis, and on or before April 15 or the fifteenth day of the
5 fourth month following the close of a fiscal year, whichever is later, in the
6 case of taxpayers reporting on a fiscal year basis, each taxpayer shall duly
7 execute and file a tax return with the commissioner, in such form and con-
8 taining such information as he may prescribe, which return shall truly and
9 accurately, set forth its liability under this act; and the full amount of the
10 tax hereunder shall be due and payable to the commissioner on or before the
11 date prescribed herein for the filing of the return; provided, however, that
12 for the privilege year 1947 any return and tax payment which under the
13 foregoing provisions of this section would be due on or before April 15 or
14 on or before May 15 shall be due on or before May 31, 1947.] (a) *If the period*
15 *covered by the report under this act is other than the period covered by the*
16 *report to the United States Treasury Department or is a period of less than*
17 *12 calendar months, the commissioner may, under regulations prescribed by*
18 *him, determine the entire net worth and entire net income of the taxpayer in*
19 *such manner as shall properly reflect its entire net worth and entire net in-*
20 *come for the period covered by its report under this act.*

21 (b) Any taxpayer which shall fail to file its return when due shall be
22 liable to a penalty of \$2.00 for each day of delinquency, which penalty shall
23 be payable to, and recoverable by, the commissioner as a part of the tax
24 herein imposed. If any tax be not paid when the same becomes due, as herein
25 provided, there shall be added to the amount of the tax a sum equivalent to
26 5% thereof, as a penalty, and, in addition thereto, interest at the rate of 1%
27 per month or fraction thereof from the date the tax became due until the same
28 be paid. The commissioner, if satisfied that the failure to comply with any
29 provision of this [section] act was excusable, may abate or remit the whole
30 or part of any penalty.

1 10. Section 18 of the act of which this act is amendatory is amended to
2 read as follows:

3 [18. The commissioner shall design a form of return and forms for such
4 additional statements or schedules as he may require to be filed therewith.
5 Such forms shall provide for the setting forth of such facts as the commis-
6 sioner may deem necessary for the proper enforcement of this act. He shall
7 cause a supply thereof to be printed and shall furnish appropriate blank
8 forms to each taxpayer upon application or otherwise as he may deem neces-
9 sary. Failure to receive a form shall not relieve any taxpayer from the ob-
10 ligation to file a return under the provisions of this act. Each such return
11 shall be made upon the oath or affirmation of the president, vice-president,
12 or secretary or treasurer of the taxpayer, and in the case of a corporation in
13 liquidation or in the hands of a receiver or trustee, shall be made on the oath
14 or affirmation of the person responsible for the conduct of the affairs of such
15 corporation.]

16 18. *The commissioner shall design a form of return and forms for such*
17 *additional statements or schedules as he may require to be filed therewith.*
18 *Such forms shall provide for the setting forth of such facts as the commis-*
19 *sioner may deem necessary for the proper enforcement of this act. He shall*
20 *cause a supply thereof to be printed and shall furnish appropriate blank*
21 *forms to each taxpayer upon application or otherwise as he may deem neces-*

22 sary. Failure to receive a form shall not relieve any taxpayer from the ob-
23 ligation to file a return under the provisions of this act. Each such return
24 shall have annexed thereto a certification by the president, vice-president,
25 comptroller, secretary, treasurer, assistant treasurer, accounting officer of the
26 taxpayer or any other officer of the taxpayer duly authorized so to act to the
27 effect that the statements contained therein are true. The fact that an indi-
28 vidual's name is signed on a certification of the report shall be prima facie
29 evidence that such individual is authorized to sign and certify the report on
30 behalf of the corporation. In the case of a corporation in liquidation or in
31 the hands of a receiver or trustee, certification shall be made by the person
32 responsible for the conduct of the affairs of such corporation.

1. 11. Section 19 of the act of which this act is amendatory is amended to
2 read as follows:

3 19. The commissioner may grant a reasonable extension of time for the
4 filing of returns or the payment of tax, or both, under such rules and regu-
5 lations as he shall prescribe, which rules and regulations may require the fil-
6 ing of a tentative return and the payment of an estimated tax[, but no such
7 extension shall be granted beyond December 1 of the privilege year.]. If the
8 time for filing the return shall be extended, the payment of the portion of
9 the tax remaining to be paid, if any, shall be postponed to the date fixed by
10 the extension of the time for the filing of the return, but in every such case
11 the corporation shall pay, in addition to the unpaid portion of the tax,
12 interest thereon at the rate of 6% per annum from the time when the return
13 originally was required to be filed to the date of actual payment under the
14 extension; provided, that if such unpaid portion of the tax is not paid within
15 the time fixed under the extension, the interest on such unpaid portion shall
16 be computed at the rate of 1% per month or fraction thereof to be calculated
17 from the date the tax was originally due to the date of actual payment.


1 12. This act shall take effect immediately, except that the amended sub-
2 section (c) of section 5 of the act of which this act is amendatory shall take
3 effect on January 1, 1959.

A 501

17
SPONSOR'S
STATEMENT

This bill is designed to revise the Corporation Business Tax Act (1945) which is the corporation franchise tax law applicable to general business corporations chartered and doing business in this State. The net worth base of the present law would be supplemented by an additional alternative measure of tax computed at the rate of $3\frac{1}{2}\%$ on the taxpayer's net income allocable to New Jersey. The taxpayer would pay the greater, not both, of the amounts computed separately on the basis of each of these 2 alternative measures. New York and Connecticut are among other States using this alternative measure method.

The proposed amendment would adjust the corporate tax burden in this State more nearly to the ability-to-pay principle. Thirty-three States, including the 4 States adjoining New Jersey, now impose corporate net income taxes. State franchise taxes are deductible by a corporation in computing its liability for Federal income taxes.


SENATE AMENDMENTS TO
ASSEMBLY, No. 501

STATE OF NEW JERSEY

ADOPTED MAY 26, 1958

Amend page 3, section 1, line 56, after "(j)" insert "Except as herein otherwise provided,".

Amend page 3, section 1, line 63, after the word "income" insert a comma.

Amend page 3, section 1, line 64, after the words "special deductions" insert a comma.

Amend page 3, section 1, line 65, after the word "Department" delete the comma.

Amend page 4, section 2, lines 4 and 5, delete the words "measured by whichever of the following results in the greatest amount of tax" and insert in lieu thereof "the sum of the amount computed under subsection (a) or (b) hereof, whichever is greater, and the amount computed under subsection (c) hereof".

Amend page 4, section 2, line 7, delete "computed at" and insert in lieu thereof "multiplied by".

Amend page 5, section 2, line 17, delete "; at the rate of" and insert in lieu thereof "multiplied by the following rates:".

Amend page 5, section 2, line 20, delete "or".

Amend page 5, section 2, line 27, delete "a tax measured by" and insert in lieu thereof " $1\frac{3}{4}\%$ of".

Amend page 5, section 2, lines 28 and 29, delete the words: ", computed at the rate of $3\frac{1}{2}\%$ ".

Amend page 5, section 2, line 41, delete the words "the greater of".

Amend page 5, section 2, line 41, delete the word "or" and insert in lieu thereof "and".

Amend page 5, section 2, line 42, delete the words "the greater of".

Amend page 6, section 2, line 43, delete the word "or" and insert in lieu thereof "and".

Amend page 6, section 2, line 44, delete the word "or" and insert in lieu thereof "and".

Amend page 7, section 2, line 72, delete the words "this act under".

Amend page 7, section 2, line 73, after "(a)" delete the comma and insert in lieu thereof "and".

Amend page 7, section 2, line 73, after "(b)" delete "and (c)".

Amend page 12, section 7, line 17, after the word "calendar" insert "accounting".

Amend page 12, section 7, line 17, after the word "years" delete the comma.

Amend page 12, section 7, lines 18 and 19, delete "upon the basis of its entire net income or upon such other basis as may be applicable,".

Amend page 12, section 7, line 20, after the word "calendar" insert "accounting".

Amend page 12, section 7, line 27, after the words "January 1, 1959" delete the comma.

Amend page 12, section 7, line 28, after the word "calendar" insert "accounting".

Amend page 12, section 7, lines 29 and 30, delete "upon the basis of its entire net income, or upon such other basis as may be applicable,".

Amend page 12, section 7, line 31, after the word "calendar" insert "accounting".

Amend page 12, section 7, lines 32 to 35, delete all the words after "1959" in line 32 through the words "in this State and" on line 35.

Amend page 13, section 7, line 39, after the word "calendar" insert "accounting".

Amend page 13, section 7, lines 49 and 50, delete in their entirety.

Amend page 16, section 12, delete in its entirety, and insert:

“12. The provisions of this act shall be effective with respect to the tax payable in the year 1959 and thereafter and, with respect to the tax payable in 1958 and prior years, shall not affect the provisions of, or any obligations heretofore incurred under, the Corporation Business Tax Act (1945).

“13. This act shall be effective immediately.”.

(CORRECTED COPY)
SENATE AMENDMENT TO
ASSEMBLY, No. 501

STATE OF NEW JERSEY

ADOPTED MAY 5, 1958

Amend page 5, section 2, line 29, delete "3½" and insert "1½".

54:10A-6, 7, 8, 10

October 15, 1962

Copy 3

LEGISLATIVE HISTORY OF R. S. 54:10A-6, 7, 8, 10

(Bills and Amendments to Sections)

✓ Laws 1945, Chapter 162 - A-395

We enclose photostat of bill. As to amendments, see Assembly Minutes 1945,
~~_____~~

Laws 1947, Chapter 50 - A-464

✓ We enclose photostats of A-464, p. 3, 4, 5, 6. Also of the Amendment appearing on A-464 2d Sess., p. 4.

✓ Laws 1948, Chapter 159 - A-552

We enclose photostat of bill. It was not amended.

Laws 1949, Chapter 235 - A-11

We enclose photostat of bill. It was not amended.

✓ Laws 1953, Chapter 236 - A-554

We enclose photostat of bill. It was not amended.

Laws 1954, Chapter 88 - A-388

The bill does not change the text, only the figures. It had the following

Statement

This bill is one of a series intended to carry out the recommendations of the Seventh Report of the Commission on State Tax Policy submitted March 22, 1954.

Laws 1958, Chapter 63 - A-501

We are enclosing the bill and Senate Amendments.

Laws 1959, Chapter 162 - A-654

This bill does not change the text, only the figures.

✓ Laws 1959, Chapter 190 - A-715

We are enclosing the bill.

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Trenton, N. J.

ASSEMBLY, No. 395

STATE OF NEW JERSEY

INTRODUCED MARCH 27, 1945

By Mr. W. H. JONES

Referred to Committee on Judiciary

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.

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

1 1. This act shall be known as the Corporation Business Tax Act (1945).

1 2. Every domestic or foreign corporation which is not hereinafter ex-
2 empted shall pay an annual franchise tax for the year one thousand nine
3 hundred and forty-six and each year thereafter, as hereinafter provided, for
4 the privilege of having or exercising its corporate franchise in this State,
5 or for the privilege of doing business, employing or owning capital or prop-
6 erty, or maintaining an office, in this State. And such franchise tax shall
7 be in lieu of all other State, county or local taxation upon or measured by
8 intangible personal property used in business by corporations liable to
9 taxation under this act.

1 3. The following corporations shall be exempt from the tax imposed by
2 this act:

3 (a) corporations subject to a tax under the provisions of article
4 two of chapter thirteen of Title 54 of the Revised Statutes, or to a tax as-
5 sessed upon the basis of gross receipts or insurance premiums collected;

6 (b) railway, canal or banking corporations, savings banks;

7 (c) cemetery corporations not conducted for pecuniary profit of any
8 private shareholder or individual;

9 (d) non-profit corporations, associations or organizations estab-
10 lished, organized or chartered, without capital stock, under the provisions
11 of Titles 15, 16 or 17 of the Revised Statutes, or under a special charter
12 or under any similar general or special law of this or any other State,
13 and not conducted for pecuniary profit of any private shareholder or
14 individual;

15 (e) corporations subject to a tax under the provisions of chapter
16 four of the laws of one thousand nine hundred and forty, or chapter five
17 of the laws of one thousand nine hundred and forty, or any statute or
18 law imposing a similar tax or taxes.

1 4. For the purposes of this act, unless the context requires a different
2 meaning:

3 "Commissioner" shall mean the director of the division of taxation of
4 the State Department of Taxation and Finance.

5 "Allocation factor" shall mean the proportionate part of a taxpayer's
6 net worth used to determine a measure of its tax under this act.

7 "Corporation" shall mean any corporation, joint-stock company or
8 association and any business conducted by a trustee or trustees wherein
9 interest or ownership is evidenced by a certificate of interest or ownership
10 or similar written instrument.

11 "Net worth" shall mean the fair market value of a taxpayer's total
12 assets less liabilities (in the determination of which the commissioner may
13 consider book value, earnings value and the aggregate market value of a
14 corporation's capital stock) plus the amount of all indebtedness owing di-
15 rectly or indirectly to holders of ten per centum (10%) or more of the
16 aggregate fair market value of the taxpayer's capital stock, as of the close
17 of a calendar or fiscal year.

18 "Taxpayer" shall mean any corporation required to report or to pay
19 taxes, interest or penalties under this act.

20 "Fiscal year" shall mean an accounting period ending on the last day
21 of any month other than December.

22 "Privilege year" shall mean the calendar year in and for which a tax
23 is payable under this act.

1 5. The franchise tax to be annually assessed to and paid by each tax-
2 payer shall be measured by the greater of:

3 (a) that portion of its entire net worth as may be allocable to this
4 State as provided in section six; or

5 (b) that proportion of its entire net worth as the average value of
6 its assets in this State during the period covered by its report is to the
7 average value of its assets everywhere during such period (for the pur-
8 pose of which there shall be included as within this State all intangi-
9 ble personal property of domestic corporations, and such intangible per-
10 sonal property of other corporations as would have a business situs
11 within this State for the purpose of a property tax)

12 at the rate of $\frac{8}{10}$ of a mill on the first one hundred million dollars
13 (\$100,000,000.00) of allocated net worth; $\frac{4}{10}$ of a mill on the second one
14 hundred million dollars (\$100,000,000.00); $\frac{3}{10}$ of a mill on the third one
15 hundred million dollars (\$100,000,000.00); and $\frac{2}{10}$ of a mill on all amounts
16 of allocated net worth in excess of three hundred million dollars (\$300,000,-
17 000.00); but not less than twenty-five dollars (\$25.00) in the case of domes-
18 tic corporations, or fifty dollars (\$50.00) in the case of foreign corporations.

1 6. In the case of a taxpayer which maintains a regular place of business
2 outside this State other than a statutory office, the portion of its entire net
3 worth to be used as a measure of the tax imposed by section five (a) of this
4 act shall be determined by multiplying such entire net worth by an alloca-
5 tion factor which shall be the average of the fractions computed in (A),
6 (B) and (C) below, or of so many of them as may be applicable, that is:

7 (A) The average value of the taxpayer's real and tangible personal
8 property within the State during the period covered by its report divided

9 by the average value of all the taxpayer's real and tangible personal prop-
10 erty wherever situated during such period;

11 (B) The receipts of the taxpayer, computed on the cash or accrual
12 basis according to the method of accounting used in the computation of its
13 net income for Federal tax purposes, arising during such period from

14 (1) sales of its tangible personal property located within the State
15 at the time of the receipt of or appropriation to the orders,

16 (2) sales of any such property not located at the time of the receipt
17 of or appropriation to the orders at any permanent or continuous place
18 of business maintained by the taxpayer without the State, where the
19 orders were received or accepted within the State,

20 (3) services performed within the State,

21 (4) rentals from property situated, and royalties from the use of
22 patents or copyrights, within the State,

23 (5) all other business receipts earned within the State,

24 divided by the total amount of the taxpayer's receipts, similarly computed,
25 arising during such period from all sales of its tangible personal property,
26 services, rentals, royalties and all other business receipts, whether within or
27 without the State;

28 (C) The total wages, salaries and other personal service compensation,
29 similarly computed, during such period of officers and employees within the
30 State divided by the total wages, salaries and other personal service com-
31 pensation, similarly computed, during such period of all the taxpayer's
32 officers and employees within and without the State; *provided*, that the
33 amount of compensation in excess of twenty-five thousand dollars
34 (\$25,000.00) per annum of any individual officer or employee shall be
35 excluded from both the numerator and the denominator of such fraction.

1 7. As used in section six (C), compensation of officers and employees
2 within this State shall include the entire amount of wages, salaries and
3 other personal service compensation for services performed within or both
4 within and without this State if:

5 (a) The service is performed entirely within this State; or

6 (b) The service is performed both within and without this State,
7 but the service performed without this State is incidental to the
8 individual's service within the State, for example, is temporary or
9 transitory in nature or consists of isolated transactions;

10 (c) The service is not performed entirely in any State but some of
11 the service is performed in this State, and (1) the base of operation,
12 or, if there is no base of operations, then the place from which such
13 service is directed or controlled, is in this State; or (2) the base of
14 operations or place from which such service is directed or controlled is
15 not in any State in which some part of the service is performed, but the
16 individual's residence is in this State;

17 (d) Contributions are not required and paid with respect to such
18 services under an unemployment compensation law of any other State.

1 8. If it shall appear to the commissioner that an allocation factor de-
2 termined pursuant to section six does not properly reflect the activity, busi-
3 ness, receipts or capital of a taxpayer reasonably attributable to the State,
4 he may adjust it by:

5 (a) excluding one or more of the factors therein;

6 (b) including one or more other factors, such as expenses, pur-
7 chases, contract values (minus subcontract values);

8 (c) excluding one or more assets in computing entire net worth; or

9 (d) applying any other similar or different method calculated to
10 effect a fair and proper allocation according to the receipts, activity,
11 business and capital reasonably attributable to the State.

12 The commissioner shall from time to time publish his rulings with respect
13 to any application of the provisions of this section. Nothing herein shall
14 be construed to require or permit the commissioner to adjust an allocation
15 factor determined pursuant to section five (b).

1 9. Any taxpayer which holds capital stock of a subsidiary during all or
2 part of any year may, for the purposes of the tax imposed by this act, de-
3 duct from its net worth such proportion, not exceeding fifty per centum

4 (50%), of the average value of such holdings less net liabilities (if any) to
5 subsidiaries, as the ratio of the subsidiary's taxable net worth, for the same
6 year under this act, to its entire net worth; *provided, however*, that if the
7 subsidiary is subject to a franchise tax measured by gross receipts under any
8 other law of this State, such deductible portion of such holdings shall be
9 determined as the ratio of the subsidiary's business within the State to its
10 business everywhere during its next preceding taxable year under such law,
11 but shall not exceed seventy-five per centum (75%) of the average value of
12 such holdings. For the purpose of this section, a subsidiary shall be deemed
13 to be any corporation in which a taxpayer is the beneficial owner of at least
14 eighty per centum (80%) of the total combined voting power of all classes of
15 stock entitled to vote and of at least eighty per centum (80%) of the total
16 number of shares of all other classes of stock except nonvoting stock which
17 is limited and preferred as to dividends.

1 10. Whenever it shall appear to the commissioner that any taxpayer
2 maintains a place of business outside this State, or that any agreement,
3 understanding or arrangement exists between a taxpayer and any other cor-
4 poration or any person or firm, for the purpose of evading tax under this act,
5 or whereby the activity, business, receipts or net worth of the taxpayer is
6 improperly or inaccurately reflected, the commissioner is authorized and em-
7 powered in his discretion and in such manner as he may determine, to
8 adjust items of gross receipts, tangible property and payrolls within and with-
9 out the State and the allocation of net worth, or to make such other adjust-
10 ments in any tax report or tax returns as may be necessary. The commis-
11 sioner may require any person or corporation to submit such information
12 under oath, or to permit such examination of its books, papers and documents,
13 as may be necessary to enable him to determine the existence, nature or ex-
14 tent of an agreement, understanding or arrangement to which this section
15 relates, whether or not such person or corporation is subject to the tax im-
16 posed by this act.

1 11. Any receiver, referee, trustee, assignee or other fiduciary, or any
2 officer or agent appointed by any court, who conducts the business of any
3 taxpayer shall be subject to the tax imposed by this act in the same manner
4 and to the same extent as if the business were conducted by the agents or
5 officers of such taxpayer. A dissolved taxpayer which continues to conduct
6 business in the process of liquidation shall also be subject to the tax imposed
7 by this act.

1 12. No domestic corporation shall dissolve, liquidate or distribute any
2 assets to its stockholders, nor shall any other corporation withdraw from
3 the State in any privilege year without having first duly filed its return under
4 this act and paid or secured the tax, interest and penalties due thereon for
5 the year in which such dissolution or withdrawal occurs as well as all de-
6 linquent taxes, interest, and penalties then due.

1 13. In the case of any corporation which organizes or qualifies on or
2 after January first in any year no tax shall be payable with respect to such
3 year.

1 14. The commissioner may by general rule or by special notice require
2 any taxpayer to submit copies or pertinent extracts of its Federal income
3 tax returns, or of any other tax return made to any agency of the Federal
4 Government, or of this or any other State, or of any statement or registra-
5 tion made pursuant to any State or Federal law pertaining to securities or
6 securities exchange regulation.

1 15. The tax imposed by this act shall be due and payable with respect
2 to the calendar year one thousand nine hundred and forty-six, and each year
3 thereafter, measured by the taxpayer's net worth as of the close of the cal-
4 endar year or of its fiscal year next preceding the privilege year, except
5 that in the case of a taxpayer whose fiscal year ends not later than July
6 first in the privilege year such measure shall be as of the close of such fiscal
7 year. For the purpose of this section every taxpayer shall use the same
8 calendar or fiscal year upon which it reports to the United States Treasury
9 Department for Federal income tax purposes.

1 16. The tax imposed by this act shall constitute a lien on all of the tax-
2 payer's property and franchises on and after January first of the year in
3 which it is due and payable, and all interest, penalties, and costs of collec-
4 tion which thereafter fall due or accrue shall be added to and become a
5 part of such lien.

1 17. On or before the fifteenth day of April, in the case of taxpayers
2 reporting on a calendar year basis, and on or before the fifteenth day of
3 January or the one hundred fifth day following the close of a fiscal year,
4 whichever is later, in the case of taxpayers reporting on a fiscal year basis,
5 each taxpayer shall duly execute and file a tax return with the commis-
6 sioner, in such form and containing such information as he may prescribe,
7 which return shall truly and accurately set forth its liability under this act;
8 and the full amount of the tax hereunder shall be due and payable to the
9 commissioner together with such return.

1 18. The commissioner shall design a form of return and forms for such
2 additional statements or schedules as he may require to be filed therewith.
3 Such forms shall provide for the setting forth of such facts as the commis-
4 sioner may deem necessary for the proper enforcement of this act. He shall
5 cause a supply thereof to be printed and shall furnish appropriate blank
6 forms to each taxpayer upon application or otherwise as he may deem neces-
7 sary. Failure to receive a form shall not relieve any taxpayer from the obli-
8 gation to file a return under the provisions of this act. Each such return
9 shall be made upon the oath or affirmation of the president, vice-president,
10 or secretary or treasurer of the taxpayer, and in the case of a corporation
11 in liquidation or in the hands of a receiver or trustee, shall be made on the
12 oath or affirmation of the person responsible for the conduct of the affairs
13 of such corporation.

1 19. The commissioner may grant a reasonable extension of time for the
2 filing of returns or the payment of tax, or both, under such rules and regu-
3 lations as he shall prescribe, but no such extension shall be granted beyond
4 the first day of December of the privilege year. If the time for filing the

5 return shall be extended, the payment of the tax shall be postponed to the
6 date fixed by the extension of the time for the filing of the return, but in
7 every such case the corporation shall pay, in addition to the tax, interest
8 thereon at the rate of six per centum (6%) per annum from the time when
9 the return originally was required to be filed to the time of payment under
10 the extension.

1 20. In addition to other remedies for the collection of the tax imposed
2 by this chapter, it shall be lawful for the Attorney-General either of his
3 own motion or upon the request of the commissioner, whenever any tax due
4 under this chapter shall have remained in arrears for a period of three
5 months after the tax shall have become payable, to apply to the Court of
6 Chancery, by petition in the name of the State, on five days' notice to such
7 corporation, which notice may be served in such manner as the Chancellor
8 may direct, for an injunction to restrain such corporation from the exer-
9 cise of any franchise, or the transaction of any business within this State
10 until the payment of such tax and penalties and interest due thereon, and
11 the costs of such application, to be fixed by the Chancellor; the said court is
12 hereby authorized to grant such injunction, if a proper case appear, and
13 upon the granting and service of such injunction it shall not be lawful for
14 such company thereafter to exercise any franchise or transact any business
15 in this State until such injunction be dissolved.

1 21. In the event of failure or neglect of any taxpayer which is a foreign
2 corporation to pay the tax imposed by this chapter, on or before the first
3 day of December in each year, immediate notice thereof shall be given by
4 the commissioner to the Secretary of State who shall immediately revoke
5 the certificate of authority of said corporation to do business in the State
6 of New Jersey and notice of such revocation shall be given by the Secretary
7 of State to the corporation affected and thereafter such corporation, so far
8 as the further transaction of business in the State of New Jersey is con-
9 cerned, shall be in the same condition as if no certificate of authority
10 had ever been issued to it by the Secretary of State, but remedies provided

11 by this chapter for the collection of the tax and interest and penalties shall
12 remain unimpaired. After the revocation of any such certificate of authority,
13 no new certificate shall be issued by the Secretary of State to such de-
14 faulting corporation until the payment of all assessments imposed hereunder
15 and remaining unpaid with penalties and interest and any costs that may have
16 accrued, such payment to be evidenced by a certificate of the commissioner.

1 22. Any corporation of this State failing to pay the tax imposed by this
2 act shall be subject to the forfeiture of its charter as provided by chapter
3 eleven of Title 54 of the Revised Statutes.

1 23. The administration, collection and enforcement of the tax imposed by
2 this act shall be subject to the provisions of the State tax uniform procedure
3 law as therein provided (chapters forty-eight through fifty-two of Title 54
4 of the Revised Statutes).

1 24. Out of the proceeds of the taxes, interest and penalties collected
2 pursuant to this act, there is hereby appropriated, for the purpose of main-
3 taining free public schools, the sum of four million dollars (\$4,000,000.00) an-
4 nually, which sum shall on or before December twentieth in each year be
5 transferred by the State Treasurer to the State school tax account. Such ap-
6 propriation shall be applied toward reduction of the State school tax as pro-
7 vided by section 18:10-18 of the Revised Statutes, and shall be apportioned
8 and distributed in the same manner and for the same purposes as the pro-
9 ceeds of the State school tax.

1 25. If any clause, sentence, paragraph, section or part of this act shall
2 be adjudged by any court of competent jurisdiction to be invalid, such judg-
3 ment shall not affect, impair or invalidate the remainder thereof, but shall be
4 confined in its operation to the clause, sentence, paragraph, section or part
5 thereof directly involved in the controversy in which such judgment shall
6 have been rendered.

1 26. There is hereby appropriated for the expense of administering this
2 act during the fiscal year ending June thirtieth, one thousand nine hundred
3 and forty-six, the sum of seventy-five thousand dollars (\$75,000.00) in addi-
4 tion to such other sums as may have been appropriated for the division of
5 taxation.

1 27. Sections 54:13-1 through 54:13-8 and chapter thirty-two-A of Title
2 54 of the Revised Statutes are repealed; *provided, however*, that this
3 shall not affect the obligation of any corporation to pay accrued taxes or
4 interest, penalties or costs with respect thereto, nor to invalidate any assess-
5 ments or proceedings pending upon the effective date hereof.

1 28. The commissioner shall prescribe and issue such rules and regula-
2 tions, not inconsistent herewith, for the interpretation and application of the
3 provisions of this act, as he may deem necessary.

1 29. This act shall take effect January first, one thousand nine hundred
2 and forty-six, except that the commissioner may prior thereto take such action
3 as he may deem appropriate in anticipation or in preparation for the opera-
4 tion of the provisions hereof, and except further that the appropriation con-
5 tained herein for the reduction of the State school tax shall be first made for
6 the fiscal year beginning July first, one thousand nine hundred and forty-six.

STATEMENT

The purposes of this bill are:

(1) To establish a simple and defensible tax on corporate business in lieu of an ad valorem tax on intangible personalty and the present capital stock tax, as part of the program recommended in the Report of the Commission on Taxation of Intangible Personal Property (March 26, 1945), to eliminate "tax lightning" on intangibles.

(2) To provide a yield sufficient to justify the abandonment of the present authorized tax on corporate intangibles. It is estimated that this yield will be between \$6,000,000 and \$7,000,000 annually, beginning in 1946.

(3) To provide a tax base which would relieve the burden of taxes on real estate throughout the State. This is accomplished by applying \$4,000,000 of the anticipated yield to reduce the State school tax on local property.

(4) To have due regard for the tremendous tax burdens of the present day and for the competitive conditions that exist between New Jersey and its neighboring States, in taking this first step in State-wide corporate tax adjustment since 1884.

Ch 102 2/19/45

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 395

STATE OF NEW JERSEY

INTRODUCED MARCH 27, 1945

By Mr. W. H. JONES

Referred to Committee on Judiciary

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.

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

1 1. This act shall be known as the Corporation Business Tax Act (1945).

1 2. Every domestic or foreign corporation which is not hereinafter ex-
2 empted shall pay an annual franchise tax for the year one thousand nine
3 hundred and forty-six and each year thereafter, as hereinafter provided, for
4 the privilege of having or exercising its corporate franchise in this State,
5 or for the privilege of doing business, employing or owning capital or prop-
6 erty, or maintaining an office, in this State. And such franchise tax shall
7 be in lieu of all other State, county or local taxation upon or measured by
8 intangible personal property used in business by corporations liable to
9 taxation under this act.

10 A foreign corporation shall not be deemed to be doing business, employ-
11 ing or owning capital or property in the State, for the purposes of this act,
12 by reason of (1) the maintenance of cash balances with banks or trust com-
13 panies in this State, or (2) the ownership of shares of stock or securities in

14 this State if such shares or securities are pledged as collateral security, or
15 deposited with one or more banks or trust companies or brokers who are
16 members of a recognized security exchange, in safekeeping or custody ac-
17 counts, or (3) the taking of any action by any such bank or trust company
18 or broker, which is incidental to the rendering of safekeeping or custodian
19 service to such corporation.

1 3. The following corporations shall be exempt from the tax imposed by
2 this act:

3 (a) corporations subject to a tax under the provisions of article
4 two of chapter thirteen of Title 54 of the Revised Statutes, or to a tax as-
5 sessed upon the basis of gross receipts or insurance premiums collected;

6 (b) railway, canal or banking corporations, savings banks, or build-
6½ ing and loan or savings and loan associations;

7 (c) cemetery corporations not conducted for pecuniary profit of any
8 private shareholder or individual;

9 (d) non-profit corporations, associations or organizations estab-
10 lished, organized or chartered, without capital stock, under the provisions
11 of Titles 15, 16 or 17 of the Revised Statutes, or under a special charter
12 or under any similar general or special law of this or any other State,
13 and not conducted for pecuniary profit of any private shareholder or
14 individual;

15 (e) corporations subject to a tax under the provisions of chapter
16 four of the laws of one thousand nine hundred and forty, or chapter five
17 of the laws of one thousand nine hundred and forty, or any statute or
18 law imposing a similar tax or taxes.

1 4. For the purposes of this act, unless the context requires a different
2 meaning:

3 "Commissioner" shall mean the director of the division of taxation of
4 the State Department of Taxation and Finance.

5 "Allocation factor" shall mean the proportionate part of a taxpayer's
6 net worth used to determine a measure of its tax under this act.

7. "Corporation" shall mean any corporation, joint-stock company or
8 association and any business conducted by a trustee or trustees wherein
9 interest or ownership is evidenced by a certificate of interest or ownership
10 or similar written instrument.

11. "Net worth" shall mean the aggregate of the values disclosed by the
12 books of the corporation for (1) issued and outstanding capital stock, (2)
13 paid-in or capital surplus, (3) earned surplus and undivided profits, (4) sur-
14 plus reserves which can reasonably be expected to accrue to holders or owners
15 of equitable shares, not including reasonable valuation reserves, such as re-
16 serves for depreciation or obsolescence or depletion and (5) the amount of
17 all indebtedness owing directly or indirectly to holders of ten per centum
18 (10%) or more of the aggregate outstanding shares of the taxpayer's capi-
19 tal stock of all classes, as of the close of a calendar or fiscal year. However,
20 if in the opinion of the commissioner, the corporation's books do not disclose
21 fair valuations the commissioner may require any additional information
22 which may be necessary for a reasonable determination of the net worth
23 which, in his opinion, would reflect the fair value of the assets carried on the
24 books of the corporation, in accordance with sound accounting principles,
25 and such determination shall be used as net worth for the purpose of this act.

26. "Regulated investment company" shall mean any corporation which, for
27 the period covered by its report, is registered and regulated under the In-
28 vestment Company Act of 1940 (54 Stat. 789, as amended) and meets the re-
29 quirements of and is taxable under "Supplement Q" of the Internal Rev-
30 enue Code (53 Stat. 1, 98, as amended).

31. "Taxpayer" shall mean any corporation required to report or to pay
32 taxes, interest or penalties under this act.

33. "Fiscal year" shall mean an accounting period ending on the last day
34 of any month other than December.

35. "Privilege year" shall mean the calendar year in and for which a tax
36 is payable under this act.

1 5. The franchise tax to be annually assessed to and paid by each tax-
2 payer shall be measured by the greater of:

3 (a) that portion of its entire net worth as may be allocable to this
4 State as provided in section six; or

5 (b) that proportion of its entire net worth as the average value of
6 its assets in this State during the period covered by its report is to the
7 average value of its assets everywhere during such period (for the pur-
8 pose of which there shall be included as within this State all intangi-
9 ble personal property of domestic corporations, and such intangible per-
10 sonal property of other corporations as would have a business situs
11 within this State for the purpose of a property tax)

12 at the rate of 8/10 of a mill on the first one hundred million dollars
13 (\$100,000,000.00) of allocated net worth; 4/10 of a mill on the second one
14 hundred million dollars (\$100,000,000.00); 3/10 of a mill on the third one
15 hundred million dollars (\$100,000,000.00); and 2/10 of a mill on all amounts
16 of allocated net worth in excess of three hundred million dollars (\$300,000,-
17 000.00); but not less than twenty-five dollars (\$25.00) in the case of domes-
18 tic corporations, or fifty dollars (\$50.00) in the case of foreign corporations.

19 (c) *Provided, however,* that the franchise tax to be annually assessed
20 to and paid by any regulated investment company shall be measured by
21 that proportion of its entire net worth, but not less than ten per centum
22 (10%) thereof, as the average aggregate value of its capital stock of all
23 classes held by residents of this State during the period covered by its
24 report bears to the average aggregate value of all its shares of stock
25 issued and outstanding during such period, at the rates hereinabove set
26 forth; but in no case less than one hundred dollars (\$100.00).

1 6. In the case of a taxpayer which maintains a regular place of business
2 outside this State other than a statutory office, the portion of its entire net
3 worth to be used as a measure of the tax imposed by section five (a) of this
4 act shall be determined by multiplying such entire net worth by an alloca-
5 tion factor which shall be the average of the fractions computed in (A),

6 (B) and (C) below, or of so many of them as may be applicable, that is:

7 (A) The average value of the taxpayer's real and tangible personal
8 property within the State during the period covered by its report divided
9 by the average value of all the taxpayer's real and tangible personal prop-
10 erty wherever situated during such period;

11 (B) The receipts of the taxpayer, computed on the cash or accrual
12 basis according to the method of accounting used in the computation of its
13 net income for Federal tax purposes, arising during such period from

14 (1) sales of its tangible personal property located within the State
15 at the time of the receipt of or appropriation to the orders,

16 (2) sales of any such property not located at the time of the receipt
17 of or appropriation to the orders at any permanent or continuous place
18 of business maintained by the taxpayer without the State, where the
19 orders were received or accepted within the State,

20 (3) services performed within the State,

21 (4) rentals from property situated, and royalties from the use of
22 patents or copyrights, within the State,

23 (5) all other business receipts earned within the State,

24 divided by the total amount of the taxpayer's receipts, similarly computed,
25 arising during such period from all sales of its tangible personal property,
26 services, rentals, royalties and all other business receipts, whether within or
27 without the State;

28 (C) The total wages, salaries and other personal service compensation,
29 similarly computed, during such period of officers and employees within the
30 State divided by the total wages, salaries and other personal service com-
31 pensation, similarly computed, during such period of all the taxpayer's
32 officers and employees within and without the State.

33 In the case of a taxpayer which does not maintain a regular place of
34 business outside this State other than a statutory office, the allocation factor
35 shall be one hundred per centum (100%).

1 7. As used in section six (C), compensation of officers and employees
2 within this State shall include the entire amount of wages, salaries and

3 other personal service compensation for services performed within or both
4 within and without this State if:

5 (a) The service is performed entirely within this State; or

6 (b) The service is performed both within and without this State,
7 but the service performed without this State is incidental to the
8 individual's service within the State, for example, is temporary or
9 transitory in nature or consists of isolated transactions;

10 (c) The service is not performed entirely in any State but some of
11 the service is performed in this State, and (1) the base of operation,
12 or, if there is no base of operations, then the place from which such
13 service is directed or controlled, is in this State; or (2) the base of
14 operations or place from which such service is directed or controlled is
15 not in any State in which some part of the service is performed, but the
16 individual's residence is in this State;

17 (d) Contributions are not required and paid with respect to such
18 services under an unemployment compensation law of any other State.

1 8. If it shall appear to the commissioner that an allocation factor de-
2 termined pursuant to section six does not properly reflect the activity, busi-
3 ness, receipts or capital of a taxpayer reasonably attributable to the State,
4 he may adjust it by:

5 (a) excluding one or more of the factors therein;

6 (b) including one or more other factors, such as expenses, pur-
7 chases, contract values (minus subcontract values);

8 (c) excluding one or more assets in computing entire net worth; or

9 (d) applying any other similar or different method calculated to
10 effect a fair and proper allocation according to the receipts, activity,
11 business and capital reasonably attributable to the State.

12 The commissioner shall from time to time publish his rulings with respect
13 to any application of the provisions of this section. Nothing herein shall
14 be construed to require or permit the commissioner to adjust an allocation
15 factor determined pursuant to section five (b).

1 9. Any taxpayer which holds capital stock of a subsidiary during all or
2 part of any year may, for the purposes of the tax imposed by this act, de-
3 duct from its net worth such proportion, not exceeding fifty per centum
4 (50%), of the average value of such holdings less net liabilities (if any) to
5 subsidiaries, as the ratio of the subsidiary's taxable net worth, for the same
6 year under this act, to its entire net worth; *provided, however*, that if the
7 subsidiary is subject to a franchise tax measured by gross receipts under any
8 other law of this State, such deductible portion of such holdings shall be
9 determined as the ratio of the subsidiary's business within the State to its
10 business everywhere during its next preceding taxable year under such law,
11 but shall not exceed seventy-five per centum (75%) of the average value of
12 such holdings. For the purpose of this section, a subsidiary shall be deemed
13 to be any corporation in which a taxpayer is the beneficial owner of at least
14 eighty per centum (80%) of the total combined voting power of all classes of
15 stock entitled to vote and of at least eighty per centum (80%) of the total
16 number of shares of all other classes of stock except nonvoting stock which
17 is limited and preferred as to dividends.

1 10. Whenever it shall appear to the commissioner that any taxpayer
2 maintains a place of business outside this State, or that any agreement,
3 understanding or arrangement exists between a taxpayer and any other cor-
4 poration or any person or firm, for the purpose of evading tax under this act,
5 or whereby the activity, business, receipts or net worth of the taxpayer is
6 improperly or inaccurately reflected, the commissioner is authorized and em-
7 powered in his discretion and in such manner as he may determine, to
8 adjust items of gross receipts, tangible property and payrolls within and with-
9 out the State and the allocation of net worth, or to make such other adjust-
10 ments in any tax report or tax returns as may be necessary. The commis-
11 sioner may require any person or corporation to submit such information
12 under oath, or to permit such examination of its books, papers and documents,
13 as may be necessary to enable him to determine the existence, nature or ex-
14 tent of an agreement, understanding or arrangement to which this section

15 relates, whether or not such person or corporation is subject to the tax im-
16 posed by this act.

1 11. Any receiver, referee, trustee, assignee or other fiduciary, or any
2 officer or agent appointed by any court, who conducts the business of any
3 taxpayer shall be subject to the tax imposed by this act in the same manner
4 and to the same extent as if the business were conducted by the agents or
5 officers of such taxpayer. A dissolved taxpayer which continues to conduct
6 business in the process of liquidation shall also be subject to the tax imposed
7 by this act.

1 12. No domestic corporation shall dissolve, liquidate or distribute any
2 assets in dissolution or liquidation to its stockholders, nor shall any other
3 corporation withdraw from the State in any privilege year without having
4 first duly filed its return under this act and paid or secured the tax, interest
5 and penalties due thereon for the year in which such dissolution or with-
6 drawal occurs as well as all delinquent taxes, interest, and penalties then due.

1 13. In the case of any corporation which organizes or qualifies on or
2 after January first in any year no tax shall be payable in such privilege.

1 14. The commissioner may by general rule or by special notice require
2 any taxpayer to submit copies or pertinent extracts of its Federal income
3 tax returns, or of any other tax return made to any agency of the Federal
4 Government, or of this or any other State, or of any statement or registra-
5 tion made pursuant to any State or Federal law pertaining to securities or
6 securities exchange regulation.

1 15. The tax imposed by this act shall be due and payable with respect
2 to the calendar year one thousand nine hundred and forty-six, and each year
3 thereafter, measured by the taxpayer's net worth as of the close of the cal-
4 endar year or of its fiscal year next preceding the privilege year, except
5 that in the case of a taxpayer whose fiscal year ends not later than July
6 first in the privilege year such measure shall be as of the close of such fiscal
7 year. For the purpose of this section every taxpayer shall use the same
8 calendar or fiscal year upon which it reports to the United States Treasury
9 Department for Federal income tax purposes.

1 16. The tax imposed by this act shall constitute a lien on all of the tax-
2 payer's property and franchises on and after January first of the year in
3 which it is due and payable, and all interest, penalties, and costs of collec-
4 tion which thereafter fall due or accrue shall be added to and become a
5 part of such lien.

1 17. On or before the fifteenth day of April, in the case of taxpayers
2 reporting on a calendar year basis, and on or before the fifteenth day of
3 January or the fifteenth day of the fourth month following the close of a
4 fiscal year, whichever is later, in the case of taxpayers reporting on a fiscal
5 year basis, each taxpayer shall duly execute and file a tax return with the
6 commissioner, in such form and containing such information as he may pre-
7 scribe, which return shall truly and accurately set forth its liability under this
8 act; and the full amount of the tax hereunder shall be due and payable to the
9 commissioner together with such return.

1 18. The commissioner shall design a form of return and forms for such
2 additional statements or schedules as he may require to be filed therewith.
3 Such forms shall provide for the setting forth of such facts as the commis-
4 sioner may deem necessary for the proper enforcement of this act. He shall
5 cause a supply thereof to be printed and shall furnish appropriate blank
6 forms to each taxpayer upon application or otherwise as he may deem neces-
7 sary. Failure to receive a form shall not relieve any taxpayer from the obli-
8 gation to file a return under the provisions of this act. Each such return
9 shall be made upon the oath or affirmation of the president, vice-president,
10 or secretary or treasurer of the taxpayer, and in the case of a corporation
11 in liquidation or in the hands of a receiver or trustee, shall be made on the
12 oath or affirmation of the person responsible for the conduct of the affairs
13 of such corporation.

1 19. The commissioner may grant a reasonable extension of time for the
2 filing of returns or the payment of tax, or both, under such rules and regu-
3 lations as he shall prescribe, but no such extension shall be granted beyond
4 the first day of December of the privilege year. If the time for filing the

5 return shall be extended, the payment of the tax shall be postponed to the
6 date fixed by the extension of the time for the filing of the return, but in
7 every such case the corporation shall pay, in addition to the tax, interest
8 thereon at the rate of six per centum (6%) per annum from the time when
9 the return originally was required to be filed to the time of payment under
10 the extension.

1 20. In addition to other remedies for the collection of the tax imposed
2 by this chapter, it shall be lawful for the Attorney-General either of his
3 own motion or upon the request of the commissioner, whenever any tax due
4 under this chapter shall have remained in arrears for a period of three
5 months after the tax shall have become payable, to apply to the Court of
6 Chancery, by petition in the name of the State, on five days' notice to such
7 corporation, which notice may be served in such manner as the Chancellor
8 may direct, for an injunction to restrain such corporation from the exer-
9 cise of any franchise, or the transaction of any business within this State
10 until the payment of such tax and penalties and interest due thereon, and
11 the costs of such application, to be fixed by the Chancellor; the said court is
12 hereby authorized to grant such injunction, if a proper case appear, and
13 upon the granting and service of such injunction it shall not be lawful for
14 such company thereafter to exercise any franchise or transact any business
15 in this State until such injunction be dissolved.

1 21. In the event of failure or neglect of any taxpayer which is a foreign
2 corporation to pay the tax imposed by this chapter, on or before the first
3 day of December in each year, immediate notice thereof may be given by
4 the commissioner to the Secretary of State who shall immediately revoke
5 the certificate of authority of said corporation to do business in the State
6 of New Jersey and notice of such revocation shall be given by the Secretary
7 of State to the corporation affected and thereafter such corporation, so far
8 as the further transaction of business in the State of New Jersey is con-
9 cerned, shall be in the same condition as if no certificate of authority
10 had ever been issued to it by the Secretary of State, but remedies provided

11 by this chapter for the collection of the tax and interest and penalties shall
12 remain unimpaired. After the revocation of any such certificate of authority,
13 no new certificate shall be issued by the Secretary of State to such de-
14 faulting corporation until the payment of all assessments imposed hereunder
15 and remaining unpaid with penalties and interest and any costs that may have
16 accrued, such payment to be evidenced by a certificate of the commissioner.

1 22. Any corporation of this State failing to pay the tax imposed by this
2 act shall be subject to the forfeiture of its charter as provided by chapter
3 eleven of Title 54 of the Revised Statutes.

1 23. The administration, collection and enforcement of the tax imposed by
2 this act shall be subject to the provisions of the State tax uniform procedure
3 law as therein provided (chapters forty-eight through fifty-two of Title 54
4 of the Revised Statutes).

1 24. Out of the proceeds of the taxes, interest and penalties collected
2 pursuant to this act, there is hereby appropriated, for the purpose of main-
3 taining free public schools, the sum of four million dollars (\$4,000,000.00) an-
4 nually, which sum shall on or before December twentieth in each year be
5 transferred by the State Treasurer to the State school tax account. Such ap-
6 propriation shall be applied toward reduction of the State school tax as pro-
7 vided by section 18:10-18 of the Revised Statutes, and shall be apportioned
8 and distributed in the same manner and for the same purposes as the pro-
9 ceeds of the State school tax.

1 25. If any clause, sentence, paragraph, section or part of this act shall
2 be adjudged by any court of competent jurisdiction to be invalid, such judg-
3 ment shall not affect, impair or invalidate the remainder thereof, but shall be
4 confined in its operation to the clause, sentence, paragraph, section or part
5 thereof directly involved in the controversy in which such judgment shall
6 have been rendered.

1 26. There is hereby appropriated for the expense of administering this
2 act during the fiscal year ending June thirtieth, one thousand nine hundred
3 and forty-six, the sum of seventy-five thousand dollars (\$75,000.00) in addi-

4 tion to such other sums as may have been appropriated for the division of
5 taxation.

1 27. Sections 54:13-1 through 54:13-8 and chapter thirty-two-A of Title
2 54 of the Revised Statutes are repealed; *provided, however*, that this
3 shall not affect the obligation of any corporation to pay accrued taxes or
4 interest, penalties or costs with respect thereto, nor to invalidate any assess-
5 ments or proceedings pending upon the effective date hereof, nor to affect the
6 legal authority to assess and collect taxes which may have been due and pay-
7 able prior to the effective date hereof together with such interest and pen-
8 alties as would have accrued thereon, under any provisions of law herein re-
9 pealed; nor shall such repeal affect the tenure or employment of any employ-
10 ees heretofore appointed pursuant to any such repealed provision or section.

1 28. The commissioner shall prescribe and issue such rules and regula-
2 tions, not inconsistent herewith, for the interpretation and application of the
3 provisions of this act, as he may deem necessary.

1 29. This act shall take effect January first, one thousand nine hundred
2 and forty-six, except that the commissioner may prior thereto take such action
3 as he may deem appropriate in anticipation of or in preparation for the opera-
4 tion of the provisions hereof, and except further that the appropriation con-
5 tained herein for the reduction of the State school tax shall be first made for
6 the fiscal year beginning July first, one thousand nine hundred and forty-six.

ASSEMBLY, No. 464

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1947

By Mr. DIXON

Referred to Committee on Taxation

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 four of the act of which this act is amendatory is amended
2 to read as follows:

3 4. For the purposes of this act, unless the context requires a different
4 meaning:

5 (a) "Commissioner" shall mean the director of the division of taxa-
6 tion of the State Department of Taxation and Finance.

7 (b) "Allocation factor" shall mean the proportionate part of a tax-
8 payer's net worth used to determine a measure of its tax under this act.

9 (c) "Corporation" shall mean any corporation, joint-stock company or
10 association and any business conducted by a trustee or trustees wherein
11 interest or ownership is evidenced by a certificate of interest or ownership
12 or similar written instrument.

13 (d) "Net worth" shall mean the aggregate of the values disclosed by
14 the books of the corporation for (1) issued and outstanding capital stock,
15 (2) paid-in or capital surplus, (3) earned surplus and undivided profits,
16 (4) surplus reserves which can reasonably be expected to accrue to holders
17 or owners of equitable shares, not including reasonable valuation reserves,
18 such as reserves for depreciation or obsolescence or depletion and (5) the
19 amount of all indebtedness owing directly or indirectly to holders of ten per
20 centum (10%) or more of the aggregate outstanding shares of the taxpay-
21 er's capital stock of all classes, as of the close of a calendar or fiscal year.
22 However, if in the opinion of the commissioner, the corporation's books do
23 not disclose fair valuations the commissioner may make [require any addi-
24 tional information which may be necessary for] a reasonable determination
25 of the net worth which, in his opinion, would reflect the fair value of the
26 assets carried on the books of the corporation, in accordance with sound
27 accounting principles, and such determination shall be used as net worth for
28 the purpose of this act.

29 (e) "Indebtedness owing directly or indirectly" shall include, without
30 limitation thereto, all indebtedness owing to any stockholder or shareholder
31 and to members of his immediate family where a stockholder and members
32 of his immediate family together or in the aggregate own ten per centum
33 (10%) or more of the aggregate outstanding shares of the taxpayer's capi-
34 tal stock of all classes.

35 (f) "[Regulated] Investment company" shall mean any corporation
36 [which, for the period covered by its report, is registered and regulated
37 under the investment company act of one thousand nine hundred and forty
38 (54 Stat. 789, as amended) and meets the requirements of and is taxable
39 under "Supplement Q" of the Internal Revenue Code (53 Stat. 1, 98, as
40 amended).] whose business during the period covered by its report consists
41 principally of holding, investing and reinvesting in stocks, bonds, notes,
42 mortgages, debentures, patents, patent rights and other securities for

43 its own account, but this shall not include any corporation which: (1) is
 44 a merchant or a dealer of stocks, bonds and other securities, regularly en-
 45 gaged in buying the same and selling the same to customers; or (2) has
 46 less than ninety per centum (90%) of its average gross assets in New Jer-
 47 sey, at cost, invested in stocks, bonds, debentures, mortgages, notes, pat-
 48 ents, patent rights or other securities or consisting of cash on deposit dur-
 49 ing the period covered by its report; or (3) has more than ten per centum
 50 (10%) of its average gross assets in New Jersey, at cost, invested in the
 51 stocks of any corporation other than an investment company as herein de-
 52 fined, during the period covered by its report.

53 (g) "Taxpayer" shall mean any corporation required to report or to
 54 pay taxes, interest or penalties under this act.

55 (h) "Fiscal year" shall mean an accounting period ending on [the last
 56 day of any month] any day other than the last day of December.

57 (i) "Privilege year" shall mean the calendar year in and for which a
 58 tax is payable under this act.

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

3 5. The franchise tax to be annually assessed to and paid by each tax-
 4 payer shall be measured by the greater of:

5 (a) that portion of its entire net worth as may be allocable to this
 6 State as provided in section six; or

7 (b) that proportion of its entire net worth as the average value of
 8 its total assets in this State during the period covered by its report is to
 9 the average value of its total assets everywhere during such period (for
 10 the purpose of which there shall be included as within this State all in-
 11 tangible personal property of domestic corporations not having a busi-
 12 ness situs outside this State, one-half of the value of such property having
 13 a business situs outside this State, and [such] the entire amount of the
 14 intangible personal property of [other] foreign corporations as would

15 have a business situs within this State for the purpose of a property tax);
16 at the rate of 8/10 of a mill per dollar on the first one hundred million dollars
17 (\$100,000,000.00) of allocated net worth; 4/10 of a mill per dollar on the
18 second hundred million dollars (\$100,000,000.00); 3/10 of a mill per dollar on
19 the third one hundred million dollars (\$100,000,000.00); and 2/10 of a mill
20 per dollar on all amounts of allocated net worth in excess of three hundred
21 million dollars (\$300,000,000.00).]; but not less than twenty-five dollars
22 (\$25.00) in the case of domestic corporations, or fifty dollars (\$50.00) in the
23 case of foreign corporations.]

24 (c) *Provided, however,* that the franchise tax to be annually as-
25 sessed to and paid by any **[regulated]** investment company shall be
26 measured by **[that proportion]** twenty-five per centum (25%) of its en-
27 tire net worth, **[but not less than ten per centum (10%)** thereof, as the
28 average aggregate value of its capital stock of all classes held by resi-
29 dents of this State during the period covered by its report bears to the
30 average aggregate value of all its shares of stock issued and outstanding
31 during such period, at the rates hereinabove set forth; but in no case
32 less than one hundred dollars (\$100.00).] unless the taxpayer shall elect to
33 remain taxable pursuant to subsection (b) of this section.

34 (d) The tax assessed to any taxpayer pursuant to this act, notwith-
35 standing the provisions of the preceding subsections of this section, shall
36 not be less than the greater of 2/10 of a mill per dollar of total assets al-
37 located to this State in accordance with subsection (b) hereof, and
38 twenty-five dollars (\$25.00) in the case of a domestic corporation, or fifty
39 dollars (\$50.00) in the case of a foreign corporation.

40 (e) In lieu of the tax imposed by subsections (a), (b), (c) and (d)
41 of this section, any taxpayer, the value of whose total assets everywhere,
42 less reasonable reserves for depreciation, as of the close of the period
43 covered by its report, amounts to less than one hundred thousand dollars
44 (\$100,000.00), may elect to pay the tax shown in the following table:

	<u>The tax shall be</u>			
	<u>If total assets</u> <u>are at least</u>	<u>But less</u> <u>than</u>	<u>For Domestic</u> <u>Corporations</u>	<u>For Foreign</u> <u>Corporations</u>
45	\$ 0	\$ 45,000	\$ 25.00	\$ 50.00
46	45,000	50,000	28.00	50.00
47	50,000	55,000	32.00	50.00
48	55,000	60,000	35.00	50.00
49	60,000	65,000	38.00	50.00
50	65,000	70,000	41.00	50.00
51	70,000	75,000	45.00	50.00
52	75,000	80,000	48.00	50.00
53	80,000	85,000	51.00	51.00
54	85,000	90,000	54.00	54.00
55	90,000	95,000	58.00	58.00
56	95,000	100,000	61.00	61.00

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

3 10. Whenever it shall appear to the commissioner that any taxpayer con-
4 ducts its business or maintains its records in such manner as either directly
5 or indirectly to distort its true net worth under this act or the proportion
6 thereof properly allocable to this State, or that any taxpayer maintains a
7 place of business outside this State, or that any agreement, understanding
8 or arrangement exists between a taxpayer and any other corporation or any
9 person or firm, for the purpose of evading tax under this act, or whereby the
10 activity, business, receipts or net worth of the taxpayer is improperly or
11 inaccurately reflected, the commissioner is authorized and empowered in his
12 discretion and in such manner as he may determine to adjust and redeter-
13 mine such net worth, and to adjust items of gross receipts, tangible property
14 and payrolls within and without the State and the allocation of net worth,
15 or to make such other adjustments in any tax report or tax returns as may

16 be necessary. The commissioner may require any person or corporation to
 17 submit such information under oath, or to permit such examination of its
 18 books, papers and documents, as may be necessary to enable him to de-
 19 termine the existence, nature or extent of an agreement, understanding or
 20 arrangement to which this section relates, whether or not such person or
 21 corporation is subject to the tax imposed by this act.

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

3 11. Any receiver, referee, trustee, assignee or other fiduciary, or any
 4 officer or agent appointed by any court, [who] to [conducts] conduct the
 5 business or conserve the assets of any [taxpayer] corporation shall be sub-
 6 ject to the tax imposed by this act in the same manner and to the same ex-
 7 tent [as if the business were conducted by the agents or officers of such tax-
 8 payer. A dissolved taxpayer which continues to conduct business in the
 9 process of liquidation shall also be subject to the tax imposed by this act.]
 10 as a corporation hereunder.

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

3 13. In the case of any corporation which organizes or qualifies on or
 4 after January first in any year no tax shall be payable in such privilege
 5 year; provided, however, that this section shall not apply to a foreign cor-
 6 poration, which after January first, one thousand nine hundred and thirty-
 7 seven, and prior to the year in which it qualifies, possessed the privilege of
 8 exercising its corporate franchise in this State, or did business, or employed
 9 or owned capital or property, or maintained an office in this State.

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

3 15. The tax imposed by this act shall be due and payable with respect
 4 to the calendar year one thousand nine hundred and forty-six, and each year
 5 thereafter, measured by the taxpayer's net worth as of the close of the calen-
 6 dar year or of its fiscal year next preceding the privilege year, except that

7 in the case of a taxpayer whose fiscal year ends not later than [July 1
8 June thirtieth in the privilege year such measure shall be as of the close
9 such fiscal year. For the purpose of this section every taxpayer shall use
10 the same calendar or fiscal year upon which it reports to the United States
11 Treasury Department for Federal income tax purposes.

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

3 17. (a) On or before the fifteenth day of April, in the case of taxpayers
4 reporting on a calendar year basis, and on or before the fifteenth day of
5 [January] April or the fifteenth day of the fourth month following the close
6 of a fiscal year, whichever is later, in the case of taxpayers reporting on a
7 fiscal year basis, each taxpayer shall duly execute and file a tax return with
8 the commissioner, in such form and containing such information as he may
9 prescribe, which return shall truly and accurately, set forth its liability
10 under this act; and the full amount of the tax hereunder shall be due and pay-
11 able to the commissioner [together with such return.] on or before the date
12 prescribed herein for the filing of the return.

13 (b) Any taxpayer which shall fail to file its return when due shall be
14 liable to a penalty of two dollars (\$2.00) for each day of delinquency, which
15 penalty shall be payable to, and recoverable by, the commissioner as a part
16 of the tax herein imposed. If any tax be not paid when the same becomes
17 due, as herein provided, there shall be added to the amount of the tax a sum
18 equivalent to five per centum (5%) thereof, as a penalty, and, in addition
19 thereto, interest at the rate of one per centum (1%) per month or fraction
20 thereof from the date the tax became due until the same be paid. The com-
21 missioner, if satisfied that the failure to comply with any provision of this
22 section was excusable, may abate or remit the whole or part of any penalty.

23 [Provided, however, that for the privilege year one thousand nine hun-
24 dred and forty-seven any return which under the foregoing provisions of this
25 section would be required to be filed with the commissioner prior to the fif-

13teenth day of April shall be filed after the fifteenth day of April and before
7 the first day of May and in accordance with the provision of this act in effect
28 on the fifteenth day of April one thousand nine hundred and forty-seven in-
29 cluding amendments and supplements in effect on that date; and the full
30 amount of the tax imposed by this act as supplemented and amended on the
31 fifteenth day of April one thousand nine hundred and forty-seven shall be due
32 and payable to the commissioner together with such return; *provided, fur-*
33 *ther,* any corporation which desires to dissolve, liquidate, or distribute assets
34 in dissolution to its stockholders or to withdraw from the State during the
35 period after the thirty-first day of December, one thousand nine hundred and
36 forty-six, and before the fifteenth day of April, one thousand nine hundred
37 and forty-seven, may, at its election, either file a return and pay or secure
38 the tax interest and penalties in accordance with the provisions of this act
39 and any supplements or amendments thereto in effect at the time such dis-
40 solution, liquidation, distribution or withdrawal is sought, or give to the com-
41 missioner security in form or with a surety or sureties satisfactory to the
42 commissioner, but not to exceed one hundred fifty per centum (150%) of the
43 amount of the tax payable under the provisions of this act then in effect, and
44 conditioned upon the taxpayer filing between the fifteenth day of April and
45 the first day of May, one thousand nine hundred and forty-seven, a return
46 under and the payment of the full amount of the tax imposed by this act in-
47 cluding amendments and supplements in effect on such fifteenth day of April.
48 The right or interest of the State in the tax levied by or assessed pursuant to
49 this act for the privilege year one thousand nine hundred and forty-seven
50 shall not vest until the fifteenth day of April in that year.】

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

3 19. The commissioner may grant a reasonable extension of time for the
4 filing of returns or the payment of tax, or both, under such rules and regula-
5 tions as he shall prescribe, which rules and regulations may require the filing
6 of a tentative return and the payment of an estimated tax, but no such ex-

7 tension shall be granted beyond the first day of December of the privileg,
8 year. If the time for filing the return shall be extended, the payment of the
9 portion of the tax remaining to be paid, if any, shall be postponed to the date
10 fixed by the extension of the time for the filing of the return, but in every
11 such case the corporation shall pay, in addition to the unpaid portion of the
12 tax, interest thereon at the rate of six per centum (6%) per annum from the
13 time when the return originally was required to be filed to the date of actual
14 [time of] payment under the extension; provided, that if such unpaid por-
15 tion of the tax is not paid within the time fixed under the extension, the in-
16 terest on such unpaid portion shall be computed at the rate of one per centum
17 (1%) per month or fraction thereof to be calculated from the date the tax
18 was originally due to the date of actual payment.

1 9. Section twenty-three of the act of which this act is amendatory is
2 amended to read as follows:

3 23. The administration, collection and enforcement of the tax imposed by
4 this act shall be subject to the provisions of the State tax uniform procedure
5 law as therein provided (chapters forty-eight through fifty-two of Title 54
6 of the Revised Statutes) to the extent that the provisions of such law are
7 not inconsistent with any provision of this act.

1 10. The act of which this act is amendatory and supplementary is
2 amended by adding a new section, numbered 19:1, to read as follows:

3 19:1. (a) After a final return in due form is filed, the commissioner shall
4 cause the same to be examined and may make such further audit or in-
5 vestigation or reaudit as he may deem necessary, and if therefrom he shall
6 determine that there is a deficiency with respect to the payment of any tax
7 due under this act, he shall assess or reassess the additional taxes, penalties
8 and interest due the State, give notice of such assessment or reassessment
9 to the taxpayer, and make demand upon him for payment. There shall be
10 added to the amount of any deficiency assessment or reassessment interest

11 at the rate of one per centum (1%) for each month or fraction thereof to be
12 calculated from the date the tax was originally due and payable until the
13 date of actual payment. If the failure to pay any such tax when due is ex-
14 plained to the satisfaction of the commissioner, he may remit or waive the
15 payment of any interest charge in excess of the rate of one-half of one per
16 centum ($\frac{1}{2}\%$) per month.

17 (b) Except in the case of a willful, false or fraudulent return with in-
18 tent to evade the tax, the amount of tax due under any return duly made
19 under this act shall be finally determined by the commissioner within five
20 years after such return shall have been filed.

1 11. The act of which this act is amendatory and supplementary is
2 amended by adding a new section, numbered 19:2, to read as follows:

3 19:2. (a) Any aggrieved taxpayer may, within three months after any
4 decision, order, finding, assessment or action of the commissioner made pur-
5 suant to the provisions of this act, appeal therefrom to the Division of Tax
6 Appeals, by filing a petition of appeal with said division in the manner and
7 form prescribed by the said division and on giving security, approved by the
8 commissioner, conditioned to pay the tax heretofore levied, if the same re-
9 mains unpaid, with interest and costs.

10 (b) No such appeal shall stay the collection of any tax or the enforce-
11 ment of the same by entry as a judgment, unless by order of such division,
12 and then only after security approved by the commissioner or said division
13 has been furnished to the commissioner. The judgment or order of the Divi-
14 sion of Tax Appeals respecting any matter arising under the provisions of
15 this subtitle may be reviewed by certiorari in the same manner as other judg-
16 ments of said division.

1 12. This act shall take effect immediately, and shall apply to taxes due
2 and payable in the year one thousand nine hundred and forty-seven and
3 thereafter.

STATEMENT

This bill incorporates the several changes in the Corporation Business Tax Act (1945) recommended in the Second Report of the Commission on State Tax Policy.

The bill also provides for a "Short Rate Table" which may be used by corporations having total assets of less than one hundred thousand dollars (\$100,000.00), in lieu of the detailed form of tax return now required. It is estimated that some twenty-five thousand domestic and foreign corporations will be able to compute their tax on this convenient basis.

The bill also contains a number of changes in the corporate franchise tax law which a year's experience in its administration has proved to be desirable. These administrative changes are recommended by the Department of Taxation and Finance.

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 464

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1947

By Mr. DIXON

Referred to Committee on Taxation

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 four of the act of which this act is amendatory is amended
2 to read as follows:

3 4. For the purposes of this act, unless the context requires a different
4 meaning:

5 (a) "Commissioner" shall mean the director of the division of taxa-
6 tion of the State Department of Taxation and Finance.

7 (b) "Allocation factor" shall mean the proportionate part of a tax-
8 payer's net worth used to determine a measure of its tax under this act.

9 (c) "Corporation" shall mean any corporation, joint-stock company or
10 association and any business conducted by a trustee or trustees wherein
11 interest or ownership is evidenced by a certificate of interest or ownership
12 or similar written instrument.

13 (d) "Net worth" shall mean the aggregate of the values disclosed by
14 the books of the corporation for (1) issued and outstanding capital stock,

15 (2) paid-in or capital surplus, (3) earned surplus and undivided profits,
16 (4) surplus reserves which can reasonably be expected to accrue to holders
17 or owners of equitable shares, not including reasonable valuation reserves,
18 such as reserves for depreciation or obsolescence or depletion and (5) the
19 amount of all indebtedness owing directly or indirectly to holders of ten per
20 centum (10%) or more of the aggregate outstanding shares of the taxpay-
21 er's capital stock of all classes, as of the close of a calendar or fiscal year.
22 However, if in the opinion of the commissioner, the corporation's books do
23 not disclose fair valuations the commissioner may make a reasonable deter-
24 mination of the net worth which, in his opinion, would reflect the fair value of
25-26 the assets carried on the books of the corporation, in accordance with sound
27 accounting principles, and such determination shall be used as net worth for
28 the purpose of this act.

29 (e) "Indebtedness owing directly or indirectly" shall include, without
30 limitation thereto, all indebtedness owing to any stockholder or shareholder
31 and to members of his immediate family where a stockholder and members
32 of his immediate family together or in the aggregate own ten per centum
33 (10%) or more of the aggregate outstanding shares of the taxpayer's capi-
34 tal stock of all classes.

35 (f) "Investment company" shall mean any corporation whose business
36 during the period covered by its report consists principally of holding, in-
37 vesting and reinvesting in stocks, bonds, notes, mortgages, debentures, pat-
38 ents, patent rights and other securities for its own account, but this shall not
39 include any corporation which: (1) is a merchant or a dealer of stocks, bonds
40 and other securities, regularly engaged in buying the same and selling the
41 same to customers; or (2) has less than ninety per centum (90%) of its aver-
42 age gross assets in New Jersey, at cost, invested in stocks, bonds, debentures,
43 mortgages, notes, patents, patent rights or other securities or consisting of
44 cash on deposit during the period covered by its report; or (3) has more than
45 ten per centum (10%) of its average gross assets in New Jersey, at cost, in-
46 vested in the stocks of any corporation other than an investment company as
47 herein defined, during the period covered by its report.

48 (g) "Taxpayer" shall mean any corporation required to report or to
49 pay taxes, interest or penalties under this act.

50 (h) "Fiscal year" shall mean an accounting period ending on any day
51 other than the last day of December.

52 (i) "Privilege year" shall mean the calendar year in and for which a
53 tax is payable under this act.

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

3 5. The franchise tax to be annually assessed to and paid by each tax-
4 payer shall be measured by the greater of:

5 (a) that portion of its entire net worth as may be allocable to this
6 State as provided in section six; or

7 (b) that proportion of its entire net worth as the average value of
8 its total assets in this State during the period covered by its report is to
9 the average value of its total assets everywhere during such period (for
10 the purpose of which there shall be included as within this State all in-
11 tangible personal property of domestic corporations not having a busi-
12 ness situs outside this State, one-half of the value of such property having
13 a business situs outside this State, and the entire amount of the
14 intangible personal property of foreign corporations as would have
15 a business situs within this State for the purpose of a property tax);
16 at the rate of 8/10 of a mill per dollar on the first one hundred million dollars
17 (\$100,000,000.00) of allocated net worth; 4/10 of a mill per dollar on the
18 second hundred million dollars (\$100,000,000.00); 3/10 of a mill per dollar on
19 the third one hundred million dollars (\$100,000,000.00); and 2/10 of a mill
20 per dollar on all amounts of allocated net worth in excess of three hundred
21 million dollars (\$300,000,000.00).

22 (c) *Provided, however,* that the franchise tax to be annually as-
23 sessed to and paid by any investment company shall be measured by
24 twenty-five per centum (25%) of its entire net worth, unless the taxpayer
25-33 shall elect to remain taxable pursuant to subsection (b) of this section.

34 (d) The tax assessed to any taxpayer pursuant to this act, notwith-
 35 standing the provisions of the preceding subsections of this section, shall
 36 not be less than the greater of 2/10 of a mill per dollar of total assets al-
 37 located to this State in accordance with subsection (b) hereof, and
 38 twenty-five dollars (\$25.00) in the case of a domestic corporation, or fifty
 39 dollars (\$50.00) in the case of a foreign corporation.

40 (e) In lieu of the tax imposed by subsections (a), (b), (c) and (d)
 41 of this section, any taxpayer, the value of whose total assets everywhere,
 42 less reasonable reserves for depreciation, as of the close of the period
 43 covered by its report, amounts to less than one hundred thousand dollars
 44 (\$100,000.00), may elect to pay the tax shown in the following table:

The tax shall be				
	If total assets are at least	But less than	For Domestic Corporations	For Foreign Corporations
45	\$ 0	\$ 45,000	\$ 25.00	\$ 50.00
46	45,000	50,000	28.00	50.00
47	50,000	55,000	32.00	50.00
48	55,000	60,000	35.00	50.00
49	60,000	65,000	38.00	50.00
50	65,000	70,000	41.00	50.00
51	70,000	75,000	45.00	50.00
52	75,000	80,000	48.00	50.00
53	80,000	85,000	51.00	51.00
54	85,000	90,000	54.00	54.00
55	90,000	95,000	58.00	58.00
56	95,000	100,000	61.00	61.00

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

3 10. Whenever it shall appear to the commissioner that any taxpayer con-
 4 ducts its business or maintains its records in such manner as either directly
 5 or indirectly to distort its true net worth under this act or the proportion

6 thereof properly allocable to this State, or that any taxpayer maintains a
7 place of business outside this State, or that any agreement, understanding
8 or arrangement exists between a taxpayer and any other corporation or any
9 person or firm, for the purpose of evading tax under this act, or whereby the
10 activity, business, receipts or net worth of the taxpayer is improperly or
11 inaccurately reflected, the commissioner is authorized and empowered in his
12 discretion and in such manner as he may determine to adjust and redeter-
13 mine such net worth, and to adjust items of gross receipts, tangible property
14 and payrolls within and without the State and the allocation of net worth,
15 or to make such other adjustments in any tax report or tax returns as may
16 be necessary. The commissioner may require any person or corporation to
17 submit such information under oath, or to permit such examination of its
18 books, papers and documents, as may be necessary to enable him to de-
19 termine the existence, nature or extent of an agreement, understanding or
20 arrangement to which this section relates, whether or not such person or
21 corporation is subject to the tax imposed by this act.

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

3 11. Any receiver, referee, trustee, assignee or other fiduciary, or any
4 officer or agent appointed by any court, to conduct the business or conserve
5 the assets of any corporation shall be subject to the tax imposed by this act
6 in the same manner and to the same extent as a corporation hereunder.

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

3 13. In the case of any corporation which organizes or qualifies on or
4 after January first in any year no tax shall be payable in such privilege
5 year; *provided, however*, that this section shall not apply to a foreign cor-
6 poration, which after January first, one thousand nine hundred and thirty-
7 seven, and prior to the year in which it qualifies, possessed the privilege of
8 exercising its corporate franchise in this State, or did business, or employed
9 or owned capital or property, or maintained an office in this State.

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

3 15. The tax imposed by this act shall be due and payable with respect
4 to the calendar year one thousand nine hundred and forty-six, and each year
5 thereafter, measured by the taxpayer's net worth as of the close of the calen-
6 dar year or of its fiscal year next preceding the privilege year, except that
7 in the case of a taxpayer whose fiscal year ends not later than June thirtieth
8 in the privilege year such measure shall be as of the close of such fiscal year.
9 For the purpose of this section every taxpayer shall use the same calendar
10 or fiscal year upon which it reports to the United States Treasury Depart-
11 ment for Federal income tax purposes.

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

3 17. (a) On or before the fifteenth day of April, in the case of taxpayers
4 reporting on a calendar year basis, and on or before the fifteenth day of
5 April or the fifteenth day of the fourth month following the close of
6 a fiscal year, whichever is later, in the case of taxpayers reporting on a
7 fiscal year basis, each taxpayer shall duly execute and file a tax return with
8 the commissioner, in such form and containing such information as he may
9 prescribe, which return shall truly and accurately, set forth its liability
10 under this act; and the full amount of the tax hereunder shall be due and pay-
11 able to the commissioner on or before the date prescribed herein for the filing
12 of the return.

13 (b) Any taxpayer which shall fail to file its return when due shall be
14 liable to a penalty of two dollars (\$2.00) for each day of delinquency, which
15 penalty shall be payable to, and recoverable by, the commissioner as a part
16 of the tax herein imposed. If any tax be not paid when the same becomes
17 due, as herein provided, there shall be added to the amount of the tax a sum
18 equivalent to five per centum (5%) thereof, as a penalty, and, in addition
19 thereto, interest at the rate of one per centum (1%) per month or fraction
20 thereof from the date the tax became due until the same be paid. The com-
21 missioner, if satisfied that the failure to comply with any provision of this
22 section was excusable, may abate or remit the whole or part of any penalty.

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

3 19. The commissioner may grant a reasonable extension of time for the
4 filing of returns or the payment of tax, or both, under such rules and regula-
5 tions as he shall prescribe, which rules and regulations may require the filing
6 of a tentative return and the payment of an estimated tax, but no such ex-
7 tension shall be granted beyond the first day of December of the privilege
8 year. If the time for filing the return shall be extended, the payment of the
9 portion of the tax remaining to be paid, if any, shall be postponed to the date
10 fixed by the extension of the time for the filing of the return, but in every
11 such case the corporation shall pay, in addition to the unpaid portion of the
12 tax, interest thereon at the rate of six per centum (6%) per annum from the
13 time when the return originally was required to be filed to the date of actual
14 payment under the extension; *provided*, that if such unpaid portion of the tax
15 is not paid within the time fixed under the extension, the interest on such un-
16 paid portion shall be computed at the rate of one per centum (1%) per month
17 or fraction thereof to be calculated from the date the tax was originally due to
18 the date of actual payment.

1 9. Section twenty-three of the act of which this act is amendatory is
2 amended to read as follows:

3 23. The administration, collection and enforcement of the tax imposed by
4 this act shall be subject to the provisions of the State tax uniform procedure
5 law as therein provided (chapters forty-eight through fifty-two of Title 54
6 of the Revised Statutes) to the extent that the provisions of such law are
7 not inconsistent with any provision of this act.

1 10. The act of which this act is amendatory and supplementary is
2 amended by adding a new section, numbered 19:1, to read as follows:

3 19:1. (a) After a final return in due form is filed, the commissioner shall
4 cause the same to be examined and may make such further audit or in-
5 vestigation or reaudit as he may deem necessary, and if therefrom he shall
6 determine that there is a deficiency with respect to the payment of any tax
7 due under this act, he shall assess or reassess the additional taxes, penalties

8 and interest due the State, give notice of such assessment or reassessment
9 to the taxpayer, and make demand upon him for payment. There shall be
10 added to the amount of any deficiency assessment or reassessment interest
11 at the rate of one per centum (1%) for each month or fraction thereof to be
12 calculated from the date the tax was originally due and payable until the
13 date of actual payment. If the failure to pay any such tax when due is ex-
14 plained to the satisfaction of the commissioner, he may remit or waive the
15 payment of any interest charge in excess of the rate of one-half of one per
16 centum ($\frac{1}{2}\%$) per month.

17 (b) Except in the case of a willful, false or fraudulent return with in-
18 tent to evade the tax, the amount of tax due under any return duly made
19 under this act shall be finally determined by the commissioner within five
20 years after such return shall have been filed.

1 11. The act of which this act is amendatory and supplementary is
2 amended by adding a new section, numbered 19:2, to read as follows:

3 19:2. (a) Any aggrieved taxpayer may, within three months after any
4 decision, order, finding, assessment or action of the commissioner made pur-
5 suant to the provisions of this act, appeal therefrom to the Division of Tax
6 Appeals, by filing a petition of appeal with said division in the manner and
7 form prescribed by the said division and on giving security, approved by the
8 commissioner, conditioned to pay the tax heretofore levied, if the same re-
9 mains unpaid, with interest and costs.

10 (b) No such appeal shall stay the collection of any tax or the enforce-
11 ment of the same by entry as a judgment, unless by order of such division,
12 and then only after security approved by the commissioner or said division
13 has been furnished to the commissioner. The judgment or order of the Divi-
14 sion of Tax Appeals respecting any matter arising under the provisions of
15 this subtitle may be reviewed by certiorari in the same manner as other judg-
16 ments of said division.

1 12. This act shall take effect immediately, and shall apply to taxes due
2 and payable in the year one thousand nine hundred and forty-seven and
3 thereafter.

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 464

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1947

By Mr. DIXON

Referred to Committee on Taxation

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 four of the act of which this act is amendatory is amended
2 to read as follows:

3 4. For the purposes of this act, unless the context requires a different
4 meaning:

5 (a) "Commissioner" shall mean the director of the division of taxa-
6 tion of the State Department of Taxation and Finance.

7 (b) "Allocation factor" shall mean the proportionate part of a tax-
8 payer's net worth used to determine a measure of its tax under this act.

9 (c) "Corporation" shall mean any corporation, joint-stock company or
10 association and any business conducted by a trustee or trustees wherein
11 interest or ownership is evidenced by a certificate of interest or ownership
12 or similar written instrument.

13 (d) "Net worth" shall mean the aggregate of the values disclosed by
14 the books of the corporation for (1) issued and outstanding capital stock,

15 (2) paid-in or capital surplus, (3) earned surplus and undivided profits,
16 (4) surplus reserves which can reasonably be expected to accrue to holders
17 or owners of equitable shares, not including reasonable valuation reserves,
18 such as reserves for depreciation or obsolescence or depletion and (5) the
19 amount of all indebtedness owing directly or indirectly to holders of ten per
20 centum (10%) or more of the aggregate outstanding shares of the taxpay-
21 er's capital stock of all classes, as of the close of a calendar or fiscal year.
22 However, if in the opinion of the commissioner, the corporation's books do
23 not disclose fair valuations the commissioner may make a reasonable deter-
24 mination of the net worth which, in his opinion, would reflect the fair value of
25-26 the assets carried on the books of the corporation, in accordance with sound
27 accounting principles, and such determination shall be used as net worth for
28 the purpose of this act.

29 (e) "Indebtedness owing directly or indirectly" shall include, without
30 limitation thereto, all indebtedness owing to any stockholder or shareholder
31 and to members of his immediate family where a stockholder and members
32 of his immediate family together or in the aggregate own ten per centum
33 (10%) or more of the aggregate outstanding shares of the taxpayer's capi-
34 tal stock of all classes.

35 (f) "Investment company" shall mean any corporation whose business
36 during the period covered by its report consisted, to the extent of at least
37 ninety per centum (90%) thereof of holding, investing and reinvesting in
38 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
39 other securities for its own account, but this shall not include any corpora-
40 tion which: (1) is a merchant or a dealer of stocks, bonds and other secur-
41 ities, regularly engaged in buying the same and selling the same to cus-
42 tomers; or (2) had less than ninety per centum (90%) of its average gross
43 assets in New Jersey, at cost, invested in stocks, bonds, debentures, mort-
44 gages, notes, patents, patent rights or other securities or consisting of cash
45 on deposit during the period covered by its report; or (3) owned more than
46 ten per centum (10%) of either the aggregate outstanding shares of capi-

47 tal stock of all classes entitled to vote, or of the aggregate outstanding shares
47A of nonvoting capital stock, of any other corporation, during the period cov-
47B ered by its report.

48 (g) "Taxpayer" shall mean any corporation required to report or to
49 pay taxes, interest or penalties under this act.

50 (h) "Fiscal year" shall mean an accounting period ending on any day
51 other than the last day of December.

52 (i) "Privilege year" shall mean the calendar year in and for which a
53 tax is payable under this act.

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

3 5. The franchise tax to be annually assessed to and paid by each tax-
4 payer shall be measured by the greater of:

5 (a) that portion of its entire net worth as may be allocable to this
6 State as provided in section six; or

7 (b) that proportion of its entire net worth as the average value of
8 its total assets in this State during the period covered by its report is to
9 the average value of its total assets everywhere during such period (for
10 the purpose of which there shall be included as within this State all in-
11 tangible personal property of domestic corporations not having a busi-
12 ness situs outside this State, one-half of the value of such property having
13 a business situs outside this State, and the entire amount of the
14 intangible personal property of foreign corporations as would have
15 a business situs within this State for the purpose of a property tax);
16 at the rate of 8/10 of a mill per dollar on the first one hundred million dollars
17 (\$100,000,000.00) of allocated net worth; 4/10 of a mill per dollar on the
18 second hundred million dollars (\$100,000,000.00); 3/10 of a mill per dollar on
19 the third one hundred million dollars (\$100,000,000.00); and 2/10 of a mill
20 per dollar on all amounts of allocated net worth in excess of three hundred
21 million dollars (\$300,000,000.00).

22 (e) *Provided, however,* that the franchise tax to be annually as-
 23 sessed to and paid by any investment company shall be measured by
 24 twenty-five per centum (25%) of its entire net worth, at the rates here-
 25 inabove set forth but in no case less than one hundred dollars (\$100.00),
 26 unless the taxpayer shall elect to remain taxable pursuant to any other
 27-33 subsection of this section.

34 (d) The tax assessed to any taxpayer pursuant to this act, notwith-
 35 standing the provisions of the preceding subsections of this section, shall
 36 not be less than the greater of 2/10 of a mill per dollar of total assets al-
 37 located to this State in accordance with subsection (b) hereof, and
 38 twenty-five dollars (\$25.00) in the case of a domestic corporation, or fifty
 39 dollars (\$50.00) in the case of a foreign corporation.

40 (e) In lieu of the tax imposed by subsections (a), (b), (c) and (d)
 41 of this section, any taxpayer, the value of whose total assets everywhere,
 42 less reasonable reserves for depreciation, as of the close of the period
 43 covered by its report, amounts to less than one hundred thousand dollars
 44 (\$100,000.00), may elect to pay the tax shown in the following table:

	The tax shall be			
	If total assets are at least	But less than	For Domestic Corporations	For Foreign Corporations
45	\$ 0	\$ 45,000	\$ 25.00	\$ 50.00
46	45,000	50,000	28.00	50.00
47	50,000	55,000	32.00	50.00
48	55,000	60,000	35.00	50.00
49	60,000	65,000	38.00	50.00
50	65,000	70,000	41.00	50.00
51	70,000	75,000	45.00	50.00
52	75,000	80,000	48.00	50.00
53	80,000	85,000	51.00	51.00
54	85,000	90,000	54.00	54.00
55	90,000	95,000	58.00	58.00
56	95,000	100,000	61.00	61.00

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

3 10. Whenever it shall appear to the commissioner that any taxpayer con-
4 ducts its business or maintains its records in such manner as either directly
5 or indirectly to distort its true net worth under this act or the proportion
6 thereof properly allocable to this State, or that any taxpayer maintains a
7 place of business outside this State, or that any agreement, understanding
8 or arrangement exists between a taxpayer and any other corporation or any
9 person or firm, for the purpose of evading tax under this act, or whereby the
10 activity, business, receipts or net worth of the taxpayer is improperly or
11 inaccurately reflected, the commissioner is authorized and empowered in his
12 discretion and in such manner as he may determine to adjust and redeter-
13 mine such net worth, and to adjust items of gross receipts, tangible property
14 and payrolls within and without the State and the allocation of net worth,
15 or to make such other adjustments in any tax report or tax returns as may
16 be necessary. The commissioner may require any person or corporation to
17 submit such information under oath, or to permit such examination of its
18 books, papers and documents, as may be necessary to enable him to de-
19 termine the existence, nature or extent of an agreement, understanding or
20 arrangement to which this section relates, whether or not such person or
21 corporation is subject to the tax imposed by this act.

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

3 11. Any receiver, referee, trustee, assignee or other fiduciary, or any
4 officer or agent appointed by any court, to conduct the business or conserve
5 the assets of any corporation shall be subject to the tax imposed by this act
6 in the same manner and to the same extent as a corporation hereunder.

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

3 13. In the case of any corporation which organizes or qualifies on or
4 after January first in any year no tax shall be payable in such privilege

5 year; *provided, however*, that this section shall not apply to a foreign cor-
6 poration, which after January first, one thousand nine hundred and thirty-
7 seven, and prior to the year in which it qualifies, possessed the privilege of
8 exercising its corporate franchise in this State, or did business, or employed
9 or owned capital or property, or maintained an office in this State.

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

3 15. The tax imposed by this act shall be due and payable with respect
4 to the calendar year one thousand nine hundred and forty-six, and each year
5 thereafter, measured by the taxpayer's net worth as of the close of the calen-
6 dar year or of its fiscal year next preceding the privilege year, except that
7 in the case of a taxpayer whose fiscal year ends not later than June thirtieth
8 in the privilege year such measure shall be as of the close of such fiscal year.
9 For the purpose of this section every taxpayer shall use the same calendar
10 or fiscal year upon which it reports to the United States Treasury Depart-
11 ment for Federal income tax purposes.

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

3 17. (a) On or before the fifteenth day of April, in the case of taxpayers
4 reporting on a calendar year basis, and on or before the fifteenth day of
5 April or the fifteenth day of the fourth month following the close of
6 a fiscal year, whichever is later, in the case of taxpayers reporting on a
7 fiscal year basis, each taxpayer shall duly execute and file a tax return with
8 the commissioner, in such form and containing such information as he may
9 prescribe, which return shall truly and accurately, set forth its liability
10 under this act; and the full amount of the tax hereunder shall be due and pay-
11 able to the commissioner on or before the date prescribed herein for the filing
12 of the return; *provided, however*, that for the privilege year one thousand
12A nine hundred and forty-seven any return and tax payment which under the
12B foregoing provisions of this section would be due on or before the fifteenth
12C day of April or on or before the fifteenth day of May shall be due on or be-

12b fore the thirty-first day of May, one thousand nine hundred and forty-seven.

13 (b) Any taxpayer which shall fail to file its return when due shall be
14 liable to a penalty of two dollars (\$2.00) for each day of delinquency, which
15 penalty shall be payable to, and recoverable by, the commissioner as a part
16 of the tax herein imposed. If any tax be not paid when the same becomes
17 due, as herein provided, there shall be added to the amount of the tax a sum
18 equivalent to five per centum (5%) thereof, as a penalty, and, in addition
19 thereto, interest at the rate of one per centum (1%) per month or fraction
20 thereof from the date the tax became due until the same be paid. The com-
21 missioner, if satisfied that the failure to comply with any provision of this
22 section was excusable, may abate or remit the whole or part of any penalty.

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

3 19. The commissioner may grant a reasonable extension of time for the
4 filing of returns or the payment of tax, or both, under such rules and regula-
5 tions as he shall prescribe, which rules and regulations may require the filing
6 of a tentative return and the payment of an estimated tax, but no such ex-
7 tension shall be granted beyond the first day of December of the privilege
8 year. If the time for filing the return shall be extended, the payment of the
9 portion of the tax remaining to be paid, if any, shall be postponed to the date
10 fixed by the extension of the time for the filing of the return, but in every
11 such case the corporation shall pay, in addition to the unpaid portion of the
12 tax, interest thereon at the rate of six per centum (6%) per annum from the
13 time when the return originally was required to be filed to the date of actual
14 payment under the extension; *provided*, that if such unpaid portion of the tax
15 is not paid within the time fixed under the extension, the interest on such un-
16 paid portion shall be computed at the rate of one per centum (1%) per month
17 or fraction thereof to be calculated from the date the tax was originally due to
18 the date of actual payment.

1 9. Section twenty-three of the act of which this act is amendatory is
2 amended to read as follows:

3 23. The administration, collection and enforcement of the tax imposed by
4 this act shall be subject to the provisions of the State tax uniform procedure
5 law as therein provided (chapters forty-eight through fifty-two of Title 54
6 of the Revised Statutes) to the extent that the provisions of such law are
7 not inconsistent with any provision of this act.

1 10. The act of which this act is amendatory and supplementary is
2 amended by adding a new section, numbered 19:1, to read as follows:

3 19:1. (a) After a final return in due form is filed, the commissioner shall
4 cause the same to be examined and may make such further audit or in-
5 vestigation or reaudit as he may deem necessary, and if therefrom he shall
6 determine that there is a deficiency with respect to the payment of any tax
7 due under this act, he shall assess or reassess the additional taxes, penalties
8 and interest due the State, give notice of such assessment or reassessment
9 to the taxpayer, and make demand upon him for payment. There shall be
10 added to the amount of any deficiency assessment or reassessment interest
11 at the rate of one per centum (1%) for each month or fraction thereof to be
12 calculated from the date the tax was originally due and payable until the
13 date of actual payment. If the failure to pay any such tax when due is ex-
14 plained to the satisfaction of the commissioner, he may remit or waive the
15 payment of any interest charge in excess of the rate of one-half of one per
16 centum ($\frac{1}{2}\%$) per month.

17 (b) Except in the case of a willful, false or fraudulent return with in-
18 tent to evade the tax, the amount of tax due under any return duly made
19 under this act shall be finally determined by the commissioner within five
20 years after such return shall have been filed.

1 11. The act of which this act is amendatory and supplementary is
2 amended by adding a new section, numbered 19:2, to read as follows:

3 19:2. (a) Any aggrieved taxpayer may, within three months after any
4 decision, order, finding, assessment or action of the commissioner made pur-

5 suant to the provisions of this act, appeal therefrom to the Division of Tax
6 Appeals, by filing a petition of appeal with said division in the manner and
7 form prescribed by the said division and on giving security, approved by the
8 commissioner, conditioned to pay the tax heretofore levied, if the same re-
9 mains unpaid, with interest and costs.

10 (b) No such appeal shall stay the collection of any tax or the enforce-
11 ment of the same by entry as a judgment, unless by order of such division,
12 and then only after security approved by the commissioner or said division
13 has been furnished to the commissioner. The judgment or order of the Divi-
14 sion of Tax Appeals respecting any matter arising under the provisions of
15 this subtitle may be reviewed by certiorari in the same manner as other judg-
16 ments of said division.

1 12. This act shall take effect immediately, and shall apply to taxes due
2 and payable in the year one thousand nine hundred and forty-seven and
3 thereafter.

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ASSEMBLY, No. 552

STATE OF NEW JERSEY

INTRODUCED AUGUST 23, 1948

By Mr. MACKEY

Referred to Committee on Taxation

AN ACT to amend "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 four of the act of which this act is amendatory is amended
2 to read as follows:

3 4. For the purposes of this act, unless the context requires a different
4 meaning:

5 (a) "Commissioner" shall mean the director of the division of taxation
6 of the State Department of Taxation and Finance.

7 (b) "Allocation factor" shall mean the proportionate part of a tax-
8 payer's net worth used to determine a measure of its tax under this act.

9 (c) "Corporation" shall mean any corporation, joint-stock company or
10 association and any business conducted by a trustee or trustees wherein
11 interest or ownership is evidenced by a certificate of interest or ownership
12 or similar written instrument.

13 (d) "Net worth" shall mean the aggregate of the values disclosed by
14 the books of the corporation for (1) issued and outstanding capital stock,
15 (2) paid-in or capital surplus, (3) earned surplus and undivided profits, (4)
16 surplus reserves which can reasonably be expected to accrue to holders or
17 owners of equitable shares, not including reasonable valuation reserves,
18 such as reserves for depreciation or obsolescence or depletion, and (5) the
19 amount of all indebtedness owing directly or indirectly to holders of ten per
20 centum (10%) or more of the aggregate outstanding shares of the taxpayer's
21 capital stock of all classes, as of the close of a calendar or fiscal year. How-
22 ever, if in the opinion of the commissioner, the corporation's books do not
23 disclose fair valuations the commissioner may make a reasonable determina-
24 tion of the net worth which, in his opinion, would reflect the fair value of the
25 assets carried on the books of the corporation, in accordance with sound
26 accounting principles, and such determination shall be used as net worth for
27 the purpose of this act.

28 (e) "Indebtedness owing directly or indirectly" shall include, without
29 limitation thereto, all indebtedness owing to any stockholder or shareholder
30 and to members of his immediate family where a stockholder and members
31 of his immediate family together or in the aggregate own ten per centum
32 (10%) or more of the aggregate outstanding shares of the taxpayer's capital
33 stock of all classes.

34 (f) "Investment company" shall mean any corporation whose business
35 during the period covered by its report consisted, to the extent of at least
36 ninety per centum (90%) thereof of holding, investing and reinvesting in
37 stocks, bonds, notes, mortgages, debentures, patents, patent rights and other
38 securities for its own account, but this shall not include any corporation
39 which: (1) is a merchant or a dealer of stocks, bonds and other securities,
40 regularly engaged in buying the same and selling the same to customers; or
41 (2) had less than ninety per centum (90%) of its average gross assets in
42 New Jersey, at cost, invested in stocks, bonds, debentures, mortgages, notes,
43 patents, patent rights or other securities or consisting of cash on deposit

44 during the period covered by its report; or (3) owned more than ten per
45 centum (10%) of either the aggregate outstanding shares of capital stock of
46 all classes entitled to vote, or of the aggregate outstanding shares of non-
47 voting capital stock, of any other corporation, during the period covered by
48 its report.

49 (g) "Regulated investment company" shall mean any corporation which,
50 for a period covered by its report, is registered and regulated under the In-
51 vestment Company Act of 1940 (54 Stat. 789), as amended.

52 (h) "Taxpayer" shall mean any corporation required to report
53 or to pay taxes, interest or penalties under this act.

54 (i) "Fiscal year" shall mean an accounting period ending on any
55 day other than the last day of December.

56 (j) "Privilege year" shall mean the calendar year in and for
57 which a tax is payable under this act.

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

3 5. The franchise tax to be annually assessed to and paid by each tax-
4 payer shall be measured by the greater of:

5 (a) that portion of its entire net worth as may be allocable to this State
6 as provided in section six; or

7 (b) that proportion of its entire net worth as the average value of its
8 total assets in this State during the period covered by its report is to the
9 average value of its assets everywhere during such period (for the purpose
10 of which there shall be included as within this State all intangible personal
11 property of domestic corporations not having a business situs outside this
12 State, one-half of the value of such property having a business situs out-
13 side this State, and the entire amount of the intangible personal property
14 of foreign corporations as would have a business situs within this State for
15 the purpose of a property tax); at the rate of 8/10 of a mill per dollar on the

16 first one hundred million dollars (\$100,000,000.00) of allocated net worth;
17 $\frac{4}{10}$ of a mill per dollar on the second hundred million dollars (\$100,000,-
18 000.00); $\frac{3}{10}$ of a mill per dollar on the third one hundred million dollars
19 (\$100,000,000.00); and $\frac{2}{10}$ of a mill per dollar on all amounts of allocated
20 net worth in excess of three hundred million dollars (\$300,000,000.00).

21 (c) *Provided, however,* that the franchise tax to be annually assessed
22 to and paid by any investment company, other than a regulated investment
23 company, shall be measured by twenty-five per centum (25%), and in the
24 case of a regulated investment company by fifteen per centum (15%), of
25 its entire net worth, at the rates hereinabove set forth but in no case less
26 than one hundred dollars (\$100.00), unless the taxpayer shall elect to re-
27 main taxable pursuant to any other subsection of this section.

28 (d) The tax assessed to any taxpayer pursuant to this act, notwithstand-
29 ing the provisions of the preceding subsections of this section, shall not be
30 less than the greater of $\frac{2}{10}$ of a mill per dollar of total assets allocated to
31 this State in accordance with subsection (b) hereof, and twenty-five dollars
32 (\$25.00) in the case of a domestic corporation, or fifty dollars (\$50.00) in
33 the case of a foreign corporation.

34 (e) In lieu of the tax imposed by subsections (a), (b), (c) and (d) of
35 this section, any taxpayer, the value of whose total assets everywhere, less
36 reasonable reserves for depreciation, as of the close of the period covered
37 by its report, amounts to less than one hundred thousand dollars (\$100,-
38 000.00), may elect to pay the tax shown in the following table:

		The tax shall be		
	If total assets are at least	But less than	For Domestic Corporations	For Foreign Corporations
39	\$0	\$45,000	\$25.00	\$50.00
40	45,000	50,000	28.00	50.00
41	50,000	55,000	32.00	50.00
42	55,000	60,000	35.00	50.00
43	60,000	65,000	38.00	50.00
44	65,000	70,000	41.00	50.00
45	70,000	75,000	45.00	50.00
46	75,000	80,000	48.00	50.00
47	80,000	85,000	51.00	51.00
48	85,000	90,000	54.00	54.00
49	90,000	95,000	58.00	58.00
50	95,000	100,000	61.00	61.00

1. 3. This act shall take effect immediately.

ASSEMBLY, No. 11

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1949

By Mr. CAVINATO

Referred to Committee on Veterans Affairs

AN ACT to amend the "Corporation Business Tax Act (1945)," as the same was amended and supplemented by chapter fifty of the laws of one thousand nine hundred and forty-seven.

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

1 1. Section three of chapter one hundred sixty-two of the laws of one
2 thousand nine hundred and forty-five is amended to read as follows:

3 3. The following corporations shall be exempt from the tax imposed by
4 this act:

5 (a) corporations subject to a tax under the provisions of article two
6 of chapter thirteen of Title 54 of the Revised Statutes, or to a tax assessed
7 upon the basis of gross receipts, other than the tax levied by the Veterans
8 Bonus Tax Law, or insurance premiums collected;

9 (b) **[railway]** railroad, canal or banking corporations, savings banks,
10 or building and loan or savings and loan associations;

11 (c) cemetery corporations not conducted for pecuniary profit of any
12 private shareholder or individual;

13 (d) nonprofit corporations, associations or organizations established,
14 organized or chartered, without capital stock, under the provisions of Titles
15 15, 16 or 17 of the Revised Statutes, or under a special charter or under any

16 similar general or special law of this or any other State, and not conducted
17 for pecuniary profit of any private shareholder or individual;

18 (e) corporations subject to a tax under the provisions of chapter four
19 of the laws of one thousand nine hundred and forty, or chapter five of the
20 laws of one thousand nine hundred and forty, or any statute or law im-
21 posing a similar tax or taxes.

1 2. Section six of chapter one hundred sixty-two of the laws of one thou-
2 sand nine hundred and forty-five is amended to read as follows:

3 6. In the case of a taxpayer which maintains a regular place of business
4 outside this State other than a statutory office, the portion of its entire
5 net worth to be used as a measure of the tax imposed by section five (a) of
6 this act shall be determined by multiplying such entire net worth by an al-
7 location factor which shall be the average of the fractions computed in
8 (A), (B) and (C) below, or of so many of them as may be applicable, that
9 is:

10 (A) The average value of the taxpayer's real and tangible personal
11 property within the State during the period covered by its report divided
12 by the average value of all the taxpayer's real and tangible personal prop-
13 erty wherever situated during such period;

14 (B) The receipts of the taxpayer, computed on the cash or accrual
15 basis according to the method of accounting used in the computation of its
16 net income for Federal tax purposes, arising during such period from

17 (1) sales of its tangible personal property located within [the]
18 this State at the time of the receipt of or appropriation to the orders
19 where shipments are made to points within this State,

20 [(2) sales of any such property not located at the time of the re-
21 ceipt of or appropriation to the orders at any permanent or continuous
22 place of business maintained by the taxpayer without the State, where
23 the orders were received or accepted within the State,]

24 (2) sales of tangible personal property located within this State
 25 at the time of the receipt of or appropriation to the orders where
 26 shipment is made to points outside of the State and sales of tangible
 27 personal property located without the State at the time of the receipt of
 28 or appropriation to the orders where shipment is made to points within
 29 the State, but only to the extent of fifty per centum (50%) of the re-
 30 ceipts from the sales referred to in this subsection (2),

31 (3) sales of any such property not located at the time of the re-
 32 ceipt of or appropriation to the orders at any permanent or continuous
 33 place of business maintained by the taxpayer without the State, where
 34 the orders were received or accepted within the State, but only to the
 35 extent of fifty per centum (50%) of the receipts from the sales referred
 36 to in this subsection (3). For the purposes of this subsection (3), an
 37 order shall be deemed received or accepted within the State if it has
 38 been received or accepted by an employee, agent, agency or independ-
 39 ent contractor chiefly situated at, connected with, by contract or other-
 40 wise, or sent out from a permanent or continuous place of business of
 41 the taxpayer within the State,

42 [(3)] (4) services performed within the State,

43 [(4)] (5) rentals from property situated, and royalties from the
 44 use of patents or copyrights, within the State,

45 [(5)] (6) all other business receipts earned within the State,

46 divided by the total amount of the taxpayer's receipts, similarly computed,
 47 arising during such period from all sales of its tangible personal property,
 48 services, rentals, royalties and all other business receipts, whether within
 49 or without the State;

50 (C) The total wages, salaries and other personal service compensation,
 51 similarly computed, during such period of officers and employees within the
 52 State divided by the total wages, salaries and other personal service com-

53 pension, similarly computed, during such period of all the taxpayer's of-
54 ficers and employees within and without the State.

55 In the case of a taxpayer which does not maintain a regular place of
56 business outside this State other than a statutory office, the allocation factor
57 shall be one hundred per centum (100%).

1 3. Section eight of chapter one hundred sixty-two of the laws of one thou-
2 sand nine hundred and forty-five is amended to read as follows:

3 8. If it shall appear to the commissioner that an allocation factor de-
4 termined pursuant to section six does not properly reflect the activity, busi-
5 ness, receipts or capital of a taxpayer reasonably attributable to the State,
6 he may adjust it by:

7 (a) excluding one or more of the factors therein;

8 (b) including one or more other factors, such as expenses, purchases,
9 contract values (minus subcontract values);

10 (c) excluding one or more assets in computing entire net worth; or

11 (d) applying any other similar or different method calculated to affect
12 a fair and proper allocation according to the receipts, activity, business and
13 capital reasonably attributable to the State.

14 [The commissioner shall from time to time publish his rulings with re-
15 spect to any application of the provisions of this section.] Nothing herein
16 shall be construed to require or permit the commissioner to adjust an alloca-
17 tion factor determined pursuant to section five (b).

1 4. Section fourteen of chapter one hundred sixty-two of the laws of one
2 thousand nine hundred and forty-five is amended to read as follows:

3 14. (a) The commissioner may by general rule or by special notice re-
4 quire any taxpayer to submit copies or pertinent extracts of its Federal in-
5 come tax returns, or of any other tax return made to any agency of the Fed-
6 eral Government, or of this or any other State, or of any statement or regis-
7 tration made pursuant to any State or Federal law pertaining to securities
8 or securities exchange regulation.

9 (b) The commissioner may require all taxpayers to keep such records
10 as he may prescribe, and he may require the production of books, papers,
11 documents and other data, to provide or secure information pertinent to the
12 determination of the tax hereunder and the enforcement and collection
13 thereof. The commissioner may, also, by general rule or by special notice
14 require any taxpayer to make and file information returns, under oath, of
15 facts pertinent to the determination of the tax or liability for tax hereunder,
16 pursuant to such regulations, at such times and in such form and manner
17 and to such extent as he may prescribe pursuant to law.

1 5. Section ten of chapter fifty of the laws of one thousand nine hundred
2 and forty-seven is amended to read as follows:

3 19.1. (a) After a final return in due form is filed, the commissioner
4 shall cause the same to be examined and may make such further audit or
5 investigation or reaudit as he may deem necessary, and if therefrom he shall
6 determine that there is a deficiency with respect to the payment of any tax
7 due under this act, he shall assess or reassess the additional taxes, penalties
8 and interest due the State, give notice of such assessment or reassessment to
9 the taxpayer, and make demand upon him for payment. There shall be
10 added to the amount of any deficiency assessment or reassessment interest at
11 the rate of one per centum (1%) for each month or fraction thereof to be
12 calculated from the date the tax was originally due and payable until the
13 date of actual payment. **[If the failure to pay any such tax when due is ex-**
14 **plained to the satisfaction of the commissioner]** If the commissioner is
15 satisfied that the said deficiency was not due to fraud or evasion, he may re-
16 mit or waive the payment of any interest charge in excess of the rate of one-
17 half of one per centum ($\frac{1}{2}$ of 1%) per month.

18 (b) **[Except in the case of a willful, false or fraudulent return with in-**
19 **tent to evade the tax, the amount of tax due under any return duly made**
20 **under this act shall be finally determined by the commissioner within five**
21 **years after such return shall have been filed.]** Except in the case of a will-

22 fully false or fraudulent return with intent to evade the tax, no assessment
23 of additional tax shall be made after the expiration of more than five years
24 from the date of the filing of a return; provided, that where no return has
25 been filed as provided by law, the tax may be assessed at any time. Where,
26 before the expiration of the period prescribed herein for the assessment of
27 an additional tax, a taxpayer has consented in writing that such period may
28 be extended, the amount of such additional tax due may be determined at
29 any time within such extended period. The period so extended may be fur-
30 ther extended by subsequent consents in writing made before the expiration
31 of the extended period.

32 (c) The director is authorized to enter into a written agreement with
33 any taxpayer relating to the liability of such taxpayer in respect of any tax,
34 fee, penalty or interest heretofore or hereafter imposed by this act, which
35 agreement shall be final and conclusive, and except upon a showing of fraud,
36 malfeasance, or misrepresentation of a material fact:

37 (a) the case shall not be reopened as to the matters agreed upon or
38 the agreement modified, by any officer, employee, or agent of this State,
39 and

40 (b) in any suit, action, or proceeding, such agreement, or any de-
41 termination, assessment, collection, payment, cancellation, refund or
42 credit made in accordance therewith, shall not be annulled, modified, set
43 aside or disregarded.

1 6. Sections one, three, four and five of this act shall take effect im-
2 mediately; section two shall take effect with respect to and shall apply to
3 the taxes due and payable in the privilege year one thousand nine hundred
4 and fifty and each year thereafter.

STATEMENT

This bill would conform the Corporation Business Tax Act (1945) to the proposed Veterans Bonus Tax Law (Assembly Bill No. 50).

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ASSEMBLY, No. 11

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1949

By Mr. CAVINATO

Referred to Committee on Veterans Affairs

AN ACT to amend the "Corporation Business Tax Act (1945)," as the same was amended and supplemented by chapter fifty of the laws of one thousand nine hundred and forty-seven.

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

1 1. Section three of chapter one hundred sixty-two of the laws of one
2 thousand nine hundred and forty-five is amended to read as follows:

3 3. The following corporations shall be exempt from the tax imposed by
4 this act:

5 (a) corporations subject to a tax under the provisions of article two
6 of chapter thirteen of Title 54 of the Revised Statutes, or to a tax assessed
7 upon the basis of gross receipts, other than the tax levied by the Veterans
8 Bonus Tax Law, or insurance premiums collected;

9 (b) railroad, canal or banking corporations, savings banks, or
10 building and loan or savings and loan associations;

11 (c) cemetery corporations not conducted for pecuniary profit of any
12 private shareholder or individual;

13 (d) nonprofit corporations, associations or organizations established,
14 organized or chartered, without capital stock, under the provisions of Titles
15 15, 16 or 17 of the Revised Statutes, or under a special charter or under any

16 similar general or special law of this or any other State, and not conducted
17 for pecuniary profit of any private shareholder or individual;

18 (e) corporations subject to a tax under the provisions of chapter four
19 of the laws of one thousand nine hundred and forty, or chapter five of the
20 laws of one thousand nine hundred and forty, or any statute or law im-
21 posing a similar tax or taxes.

1 2. Section six of chapter one hundred sixty-two of the laws of one thou-
2 sand nine hundred and forty-five is amended to read as follows:

3 6. In the case of a taxpayer which maintains a regular place of business
4 outside this State other than a statutory office, the portion of its entire
5 net worth to be used as a measure of the tax imposed by section five (a) of
6 this act shall be determined by multiplying such entire net worth by an al-
7 location factor which shall be the average of the fractions computed in
8 (A), (B) and (C) below, or of so many of them as may be applicable, that
9 is:

10 (A) The average value of the taxpayer's real and tangible personal
11 property within the State during the period covered by its report divided
12 by the average value of all the taxpayer's real and tangible personal prop-
13 erty wherever situated during such period;

14 (B) The receipts of the taxpayer, computed on the cash or accrual
15 basis according to the method of accounting used in the computation of its
16 net income for Federal tax purposes, arising during such period from

17 (1) sales of its tangible personal property located within this
18 State at the time of the receipt of or appropriation to the orders
19-23 where shipments are made to points within this State,

24 (2) sales of tangible personal property located within this State
25 at the time of the receipt of or appropriation to the orders where
26 shipment is made to points outside of the State and sales of tangible
27 personal property located without the State at the time of the receipt of
28 or appropriation to the orders where shipment is made to points within
29 the State, but only to the extent of fifty per centum (50%) of the re-
30 cepts from the sales referred to in this subsection (2),

31 (3) sales of any such property not located at the time of the re-
32 ceipt of or appropriation to the orders at any permanent or continuous
33 place of business maintained by the taxpayer without the State, where
34 the orders were received or accepted within the State, but only to the
35 extent of fifty per centum (50%) of the receipts from the sales referred
36 to in this subsection (3). For the purposes of this subsection (3), an
37 order shall be deemed received or accepted within the State if it has
38 been received or accepted by an employee, agent, agency or independ-
39 ent contractor chiefly situated at, connected with, by contract or other-
40 wise, or sent out from a permanent or continuous place of business of
41 the taxpayer within the State,

42 (4) services performed within the State,

43 (5) rentals from property situated, and royalties from the
44 use of patents or copyrights, within the State,

45 (6) all other business receipts earned within the State,

46 divided by the total amount of the taxpayer's receipts, similarly computed,
47 arising during such period from all sales of its tangible personal property,
48 services, rentals, royalties and all other business receipts, whether within
49 or without the State;

50 (C) The total wages, salaries and other personal service compensation,
51 similarly computed, during such period of officers and employees within the
52 State divided by the total wages, salaries and other personal service com-
53 pensation, similarly computed, during such period of all the taxpayer's of-
54 ficers and employees within and without the State.

55 In the case of a taxpayer which does not maintain a regular place of
56 business outside this State other than a statutory office, the allocation factor
57 shall be one hundred per centum (100%).

1 3. Section eight of chapter one hundred sixty-two of the laws of one thou-
2 sand nine hundred and forty-five is amended to read as follows:

3 8. If it shall appear to the commissioner that an allocation factor de-
4 termined pursuant to section six does not properly reflect the activity, busi-

5 ness, receipts or capital of a taxpayer reasonably attributable to the State,
6 he may adjust it by:

7 (a) excluding one or more of the factors therein;

8 (b) including one or more other factors, such as expenses, purchases,
9 contract values (minus subcontract values);

10 (c) excluding one or more assets in computing entire net worth; or

11 (d) applying any other similar or different method calculated to affect
12 a fair and proper allocation according to the receipts, activity, business and
13 capital reasonably attributable to the State.

14 Nothing herein shall be construed to require or permit the commissioner
15-17 to adjust an allocation factor determined pursuant to section five (b).

1 4. Section fourteen of chapter one hundred sixty-two of the laws of one
2 thousand nine hundred and forty-five is amended to read as follows:

3 14. (a) The commissioner may by general rule or by special notice re-
4 quire any taxpayer to submit copies or pertinent extracts of its Federal in-
5 come tax returns, or of any other tax return made to any agency of the Fed-
6 eral Government, or of this or any other State, or of any statement or regis-
7 tration made pursuant to any State or Federal law pertaining to securities
8 or securities exchange regulation.

9 (b) The commissioner may require all taxpayers to keep such records
10 as he may prescribe, and he may require the production of books, papers,
11 documents and other data, to provide or secure information pertinent to the
12 determination of the tax hereunder and the enforcement and collection
13 thereof. The commissioner may, also, by general rule or by special notice
14 require any taxpayer to make and file information returns, under oath, of
15 facts pertinent to the determination of the tax or liability for tax hereunder,
16 pursuant to such regulations, at such times and in such form and manner
17 and to such extent as he may prescribe pursuant to law.

1 5. Section ten of chapter fifty of the laws of one thousand nine hundred
2 and forty-seven is amended to read as follows:

3 19.1. (a) After a final return in due form is filed, the commissioner
4 shall cause the same to be examined and may make such further audit or
5 investigation or reaudit as he may deem necessary, and if therefrom he shall
6 determine that there is a deficiency with respect to the payment of any tax
7 due under this act, he shall assess or reassess the additional taxes, penalties
8 and interest due the State, give notice of such assessment or reassessment to
9 the taxpayer, and make demand upon him for payment. There shall be
10 added to the amount of any deficiency assessment or reassessment interest at
11 the rate of one per centum (1%) for each month or fraction thereof to be
12 calculated from the date the tax was originally due and payable until the
13 date of actual payment. If the commissioner is satisfied that the said de-
14 ficiency was not due to fraud or evasion, he may remit or waive the pay-
15 ment of any interest charge in excess of the rate of one-half of one per
16 centum ($\frac{1}{2}$ of 1%) per month.

17 (b) Except in the case of a willfully false or fraudulent return
18 with intent to evade the tax, no assessment of additional tax shall
19 be made after the expiration of more than five years from the date
20-24 of the filing of a return; *provided*, that where no return has
25 been filed as provided by law, the tax may be assessed at any time. Where,
26 before the expiration of the period prescribed herein for the assessment of
27 an additional tax, a taxpayer has consented in writing that such period may
28 be extended, the amount of such additional tax due may be determined at
29 any time within such extended period. The period so extended may be fur-
30 ther extended by subsequent consents in writing made before the expiration
31 of the extended period.

32 (c) The director is authorized to enter into a written agreement with
33 any taxpayer relating to the liability of such taxpayer in respect of any tax,
34 fee, penalty or interest heretofore or hereafter imposed by this act, which

35 agreement shall be final and conclusive, and except upon a showing of fraud,
36 malfeasance, or misrepresentation of a material fact:

37 (a) the case shall not be reopened as to the matters agreed upon or
38 the agreement modified, by any officer, employee, or agent of this State,
39 and

40 (b) in any suit, action, or proceeding, such agreement, or any de-
41 termination, assessment, collection, payment, cancellation, refund or
42 credit made in accordance therewith, shall not be annulled, modified, set
43 aside or disregarded.

1 6. Sections one, three, four and five of this act shall take effect im-
2 mediately; section two shall take effect with respect to and shall apply to
3 the taxes due and payable in the privilege year one thousand nine hundred
4 and fifty and each year thereafter.

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ASSEMBLY, No. 535

STATE OF NEW JERSEY

INTRODUCED MARCH 16, 1953

By Messrs. THOMAS and MACKEY

Referred to Committee on Corporations

AN ACT to amend "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 five of the act of which this act is amendatory is amended to
2 read as follows:

3 5. The franchise tax to be annually assessed to and paid by each tax-
4 payer shall be measured by the greater of:

5 (a) that portion of its entire net worth as may be allocable to this State
6 as provided in section six; or

7 (b) that proportion of its entire net worth as the average value of its
8 total assets in this State during the period covered by its report is to the
9 average value of its assets everywhere during such period (for the purpose
10 of which there shall be included as within this State all intangible personal
11 property of domestic corporations not having a business situs outside this
12 State, one-half of the value of such property having a business situs out-
13 side this State, and the entire amount of the intangible personal property

14 of foreign corporations as would have a business situs within this State
 15 for the purpose of a property tax); at the rate of $\frac{3}{100}$ of a mill per dollar on
 16 the first one hundred million dollars (\$100,000,000.00) of allocated net worth;
 17 $\frac{4}{100}$ of a mill per dollar on the second hundred million dollars (\$100,000,-
 18 000.00); $\frac{5}{100}$ of a mill per dollar on the third one hundred million dollars
 19 (\$100,000,000.00); and $\frac{6}{100}$ of a mill per dollar on all amounts of allocated
 20 net worth in excess of three hundred million dollars (\$300,000,000.00).

21 (c) *Provided, however,* that the franchise tax to be annually assessed
 22 to and paid by any investment company, other than a regulated investment
 23 company, shall be measured by twenty-five per centum (25%), and in the
 24 case of a regulated investment company by fifteen per centum (15%) of its
 25 entire net worth, at the rates hereinabove set forth but in no case less than
 26 one hundred dollars (\$100.00), unless the taxpayer shall elect to remain tax-
 27 able pursuant to any other subsection of this section.

28 (d) The tax assessed to any taxpayer pursuant to this act under subsec-
 29 tions (a) and (b) [, notwithstanding the provisions of the preceding sub-
 30 sections] of this section, shall not be less than the greater of $\frac{3}{100}$ of a mill
 31 per dollar of total assets allocated to this State in accordance with subsec-
 32 tion (b) hereof, and twenty-five dollars (\$25.00) in the case of a domestic
 33 corporation, or fifty dollars (\$50.00) in the case of a foreign corporation.

34 (e) In lieu of the tax imposed by subsections (a), (b), (c) and (d) of
 35 this section, any taxpayer, the value of whose total assets everywhere, less
 36 reasonable reserves for depreciation, as of the close of the period covered
 37 by its report, amounts to less than one hundred thousand dollars (\$100,-
 38 000.00), may elect to pay the tax shown in the following table:

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	<i>If total assets are at least</i>	<i>But less than</i>	<i>The tax shall be For Domestic Corporations</i>	<i>For Foreign Corporations</i>
39	\$0	\$45,000	\$25.00	\$50.00
40	45,000	50,000	28.00	50.00
41	50,000	55,000	32.00	50.00
42	55,000	60,000	35.00	50.00
43	60,000	65,000	38.00	50.00
44	65,000	70,000	41.00	50.00
45	70,000	75,000	45.00	50.00
46	75,000	80,000	48.00	50.00
47	80,000	85,000	51.00	51.00
48	85,000	90,000	54.00	54.00
49	90,000	95,000	58.00	58.00
50	95,000	100,000	61.00	61.00

1 2. This act shall take effect immediately.

STATEMENT

Subsection (c) was originally intended to give to an investment company a fixed allocation percentage of twenty-five per centum (25%) of its entire net worth and to a regulated investment company a fixed allocation percentage of fifteen per centum (15%) of its entire net worth regardless of assets or activity of the taxpayer in New Jersey and without requiring taxpayer to allocate such assets and activity under the statutory allocation formulae applicable to ordinary business corporations. However, the practical effect of the present subsection (d) is to subject nearly every investment company to a tax greater than an amount measured by twenty-five per centum (25%) of its net worth and every regulated investment company to a tax not less than an amount measured by twenty-five per centum (25%) of its net worth, unless such investment company or regulated investment company elects not to file under subsection (c) and remain taxable under the other subsections of section 5.

This bill is designed to secure for taxpayers which elect and qualify under the categories enumerated in subsection (c) the fixed respective percentages of allocation of entire net worth therein prescribed.

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ASSEMBLY, No. 535

STATE OF NEW JERSEY

INTRODUCED MARCH 16, 1953

By Messrs. THOMAS and MACKEY

Referred to Committee on Corporations

AN ACT to amend "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 five of the act of which this act is amendatory is amended to
2 read as follows:

3 5. The franchise tax to be annually assessed to and paid by each tax-
4 payer shall be measured by the greater of:

5 (a) that portion of its entire net worth as may be allocable to this State
6 as provided in section six; or

7 (b) that proportion of its entire net worth as the average value of its
8 total assets in this State during the period covered by its report is to the
9 average value of its assets everywhere during such period (for the purpose
10 of which there shall be included as within this State all intangible personal
11 property of domestic corporations not having a business situs outside this
12 State, one-half of the value of such property having a business situs out-
13 side this State, and the entire amount of the intangible personal property

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14 of foreign corporations as would have a business situs within this State
 15 for the purpose of a property tax); at the rate of $\frac{1}{10}$ of a mill per dollar on
 16 the first one hundred million dollars (\$100,000,000.00) of allocated net worth;
 17 $\frac{1}{10}$ of a mill per dollar on the second hundred million dollars (\$100,000,-
 18 000.00); $\frac{1}{10}$ of a mill per dollar on the third one hundred million dollars
 19 (\$100,000,000.00); and $\frac{1}{10}$ of a mill per dollar on all amounts of allocated
 20 net worth in excess of three hundred million dollars (\$300,000,000.00).

21 (c) *Provided, however,* that the franchise tax to be annually assessed
 22 to and paid by any investment company, other than a regulated investment
 23 company, shall be measured by twenty-five per centum (25%), and in the
 24 case of a regulated investment company by fifteen per centum (15%) of its
 25 entire net worth, at the rates hereinabove set forth but in no case less than
 26 one hundred dollars (\$100.00), unless the taxpayer shall elect to remain tax-
 27 able pursuant to any other subsection of this section.

28 (d) The tax assessed to any taxpayer pursuant to this act under subsec-
 29 tions (a) and (b) of this section, shall not be less than the greater of $\frac{1}{10}$ of a
 30-31 mill per dollar of total assets allocated to this State in accordance with subsec-
 32 tion (b) hereof, and twenty-five dollars (\$25.00) in the case of a domestic
 33 corporation, or fifty dollars (\$50.00) in the case of a foreign corporation.

34 (e) In lieu of the tax imposed by subsections (a), (b), (c) and (d) of
 35 this section, any taxpayer, the value of whose total assets everywhere, less
 36 reasonable reserves for depreciation, as of the close of the period covered
 37 by its report, amounts to less than one hundred thousand dollars (\$100,-
 38 000.00), may elect to pay the tax shown in the following table:

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	<i>If total</i>		<i>The tax shall be</i>	
	<i>assets</i>	<i>But less</i>	<i>For Domestic</i>	<i>For Foreign</i>
	<i>are at least</i>	<i>than</i>	<i>Corporations</i>	<i>Corporations</i>
39	\$0	\$45,000	\$25.00	\$50.00
40	45,000	50,000	28.00	50.00
41	50,000	55,000	32.00	50.00
42	55,000	60,000	35.00	50.00
43	60,000	65,000	38.00	50.00
44	65,000	70,000	41.00	50.00
45	70,000	75,000	45.00	50.00
46	75,000	80,000	48.00	50.00
47	80,000	85,000	51.00	51.00
48	85,000	90,000	54.00	54.00
49	90,000	95,000	58.00	58.00
50	95,000	100,000	61.00	61.00

1 2. This act shall take effect immediately.

ASSEMBLY, No. 388

STATE OF NEW JERSEY

INTRODUCED APRIL 5, 1954

By Mr. BARNES

Referred to Committee on Judiciary

AN ACT to amend the "Corporation Business Tax Act (1945)," approved April 13, 1945 (P. L. 1945, c. 162), as amended.

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

1 1. Section 5 of the act of which this act is amendatory is amended to
2 read as follows:

3 5. The franchise tax to be annually assessed to and paid by each tax-
4 payer shall be measured by the greater of:

5 (a) that portion of its entire net worth as may be allocable to this
6 State as provided in section 6; or

7 (b) that proportion of its entire net worth as the average value of
8 its total assets in this State during the period covered by its report is
9 to the average value of its assets everywhere during such period (for
10 the purpose of which there shall be included as within this State all in-
11 tangible personal property of domestic corporations not having a busi-
12 ness situs outside this State, $\frac{1}{2}$ of the value of such property having a
13 business situs outside this State, and the entire amount of the intangible
14 personal property of foreign corporations as would have a business situs
15 within this State for the purpose of a property tax);

16 at the rate of **[8/10 of a mill]** *1 and 6/10 mills* per dollar on the first
17 \$100,000,000.00 of allocated net worth; 4/10 of a mill per dollar on the second
18 \$100,000,000.00; 3/10 of a mill per dollar on the third \$100,000,000.00; and
19 2/10 of a mill per dollar on all amounts of allocated net worth in excess of
20 \$300,000,000.00.

21 (c) Provided, however, that the franchise tax to be annually assessed
22 to and paid by any investment company, other than a regulated invest-
23 ment company, shall be measured by 25%, and in the case of a regulated
24 investment company by 15% of its entire net worth, at the rates herein-
25 above set forth but in no case less than **[\$100.00]** *\$200.00*, unless the
26 taxpayer shall elect to remain taxable pursuant to any other subsection
27 of this section.

28 (d) The tax assessed to any taxpayer pursuant to this act under sub-
29 sections (a) and (b) of this section shall not be less than the greater of
30 **[2/10]** *4/10* of a mill per dollar of total assets allocated to this State in
31 accordance with subsection (b) hereof, and \$25.00 in the case of a domes-
32 tic corporation, or \$50.00 in the case of a foreign corporation.

33 (e) In lieu of the tax imposed by subsections (a), (b), (c) and (d) of
34 this section, any taxpayer, the value of whose total assets everywhere,
35 less reasonable reserves for depreciation, as of the close of the period
36 covered by its report, amounts to less than \$100,000.00, may elect to pay
37 the tax shown in the following table:

	[If total assets are at least]	[But less than]	[The tax shall be For Domestic Corporations For Foreign Corporations]	
38	[\$0	\$45,000	\$25.00	\$50.00]
39	[45,000	50,000	28.00	50.00]
40	[50,000	55,000	32.00	50.00]
41	[55,000	60,000	35.00	50.00]
42	[60,000	65,000	38.00	50.00]
43	[65,000	70,000	41.00	50.00]
44	[70,000	75,000	45.00	50.00]
45	[75,000	80,000	48.00	50.00]
46	[80,000	85,000	51.00	51.00]
47	[85,000	90,000	54.00	54.00]
48	[90,000	95,000	58.00	58.00]
49	[95,000	100,000	61.00	61.00]

	<i>If total assets are at least</i>	<i>But less than</i>	<i>The tax shall be</i>	
			<i>For Domestic Corporations</i>	<i>For Foreign Corporations</i>
50	\$0	\$24,000	\$25.00	\$50.00
51	24,000	28,000	30.00	50.00
52	28,000	32,000	35.00	50.00
53	32,000	36,000	40.00	50.00
54	36,000	40,000	45.00	50.00
55	40,000	44,000	50.00	50.00
56	44,000	48,000	55.00	55.00
57	48,000	52,000	60.00	60.00
58	52,000	56,000	65.00	65.00
59	56,000	60,000	70.00	70.00
60	60,000	64,000	75.00	75.00
61	64,000	68,000	80.00	80.00
62	68,000	72,000	85.00	85.00
63	72,000	76,000	90.00	90.00
64	76,000	80,000	95.00	95.00
65	80,000	84,000	100.00	100.00
66	84,000	88,000	105.00	105.00
67	88,000	92,000	110.00	110.00
68	92,000	96,000	115.00	115.00
69	96,000	100,000	120.00	120.00

1 2. This act shall take effect January 1, 1955, provided that it shall be
2 inoperative unless and until the "State School Aid Act of 1954" as intro-
3 duced in the current session of the Legislature shall be enacted.

STATEMENT

This bill is one of a series intended to carry out the recommendations of the Seventh Report of the Commission on State Tax Policy, submitted March 22, 1954.

COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 388

STATE OF NEW JERSEY

ADOPTED MAY 24, 1954

AN ACT to amend the "Corporation Business Tax Act (1945)," approved April 13, 1945 (P. L. 1945, c. 162), as amended.

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

1 1. Section 5 of the act of which this act is amendatory is amended to
2 read as follows:

3 5. The franchise tax to be annually assessed to and paid by each tax-
4 payer shall be measured by the greater of:

5 (a) that portion of its entire net worth as may be allocable to this
6 State as provided in section 6; or

7 (b) that proportion of its entire net worth as the average value of
8 its total assets in this State during the period covered by its report is
9 to the average value of its assets everywhere during such period (for
10 the purpose of which there shall be included as within this State all in-
11 tangible personal property of domestic corporations not having a busi-
12 ness situs outside this State [~~1/2~~] 40% of the value of such property hav-
13 ing a business situs outside this State, and the entire amount of the in-
14 tangible personal property of foreign corporations as would have a busi-
15 ness situs within this State for the purpose of a property tax); at the
16 rate of [~~8/10~~ of a mill] 2 mills per dollar on the first \$100,000,000.00 of
17 allocated net worth; 4/10 of a mill per dollar on the second \$100,000,-
18 000.00; 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10

19 of a mill per dollar on all amounts of allocated net worth in excess of
20 \$300,000,000.00.

21 (c) Provided, however, that the franchise tax to be annually assessed
22 to and paid by any investment company, other than a regulated invest-
23 ment company, shall be measured by 25%, and in the case of a regulated
24 investment company by 15% of its entire net worth, at the rates herein-
25 above set forth but in no case less than **[\$100.00]** \$250.00, unless the
26 taxpayer shall elect to remain taxable pursuant to any other subsection
27 of this section.

28 (d) The tax assessed to any taxpayer pursuant to this act under sub-
29 sections (a) and (b) of this section shall not be less than the greater of
30 **[2/10]** 5/10 of a mill per dollar *on the first \$100,000,000.00 and 2/10 of*
31 *a mill per dollar on all amounts in excess of \$100,000,000.00* of total as-
32 sets allocated to this State in accordance with subsection (b) hereof, and
32A \$25.00 in the case of a domestic corporation, or \$50.00 in the case of a for-
32B eign corporation.

33 (e) In lieu of the tax imposed by subsections (a), (b), (c) and (d) of
34 this section, any taxpayer, the value of whose total assets everywhere,
35 less reasonable reserves for depreciation, as of the close of the period
36 covered by its report, amounts to less than \$100,000.00, may elect to pay
37 the tax shown in the following table:

	[If total assets are at least]	[But less than]	[The tax shall be	
			For Domestic Corporations	For Foreign Corporations]
38	[\$0	\$45,000	\$25.00	\$50.00]
39	[45,000	50,000	28.00	50.00]
40	[50,000	55,000	32.00	50.00]
41	[55,000	60,000	35.00	50.00]
42	[60,000	65,000	38.00	50.00]
43	[65,000	70,000	41.00	50.00]
44	[70,000	75,000	45.00	50.00]
45	[75,000	80,000	48.00	50.00]
46	[80,000	85,000	51.00	51.00]
47	[85,000	90,000	54.00	54.00]
48	[90,000	95,000	58.00	58.00]
49	[95,000	100,000	61.00	61.00]

	<i>If total assets are at least</i>	<i>But less than</i>	<i>The tax shall be</i>	
			<i>For Domestic Corporations</i>	<i>For Foreign Corporations</i>
50	\$0	\$20,000	\$25.00	\$50.00
50A	20,000	24,000	31.00	50.00
51	24,000	28,000	37.00	50.00
52	28,000	32,000	43.00	50.00
53	32,000	36,000	49.00	50.00
54	36,000	40,000	55.00	55.00
55	40,000	44,000	61.00	61.00
56	44,000	48,000	67.00	67.00
57	48,000	52,000	73.00	73.00
58	52,000	56,000	79.00	79.00
59	56,000	60,000	85.00	85.00
60	60,000	64,000	91.00	91.00
61	64,000	68,000	97.00	97.00
62	68,000	72,000	103.00	103.00
63	72,000	76,000	109.00	109.00
64	76,000	80,000	115.00	115.00
65	80,000	84,000	121.00	121.00
66	84,000	88,000	127.00	127.00
67	88,000	92,000	133.00	133.00
68	92,000	96,000	139.00	139.00
69	96,000	100,000	145.00	145.00

1 2. Section 9 of the act of which this act is amendatory is amended to read
2 as follows:

3 9. Any taxpayer which holds capital stock of a subsidiary during all or
4 part of any year may, for the purposes of the tax imposed by this act, deduct
5 from its net worth such proportion [, not exceeding 50%] of the average
6 value of such holdings less net liabilities (if any) to subsidiaries, as the ratio
7 of the subsidiary's taxable net worth, for the same year under this act, to its
8 entire net worth [; provided, however, that if the subsidiary is subject to a
9 franchise tax measured by gross receipts under any other law of this State,
10 such deductible portion of such holdings shall be determined as the ratio of
11 the subsidiary's business within the State to its business everywhere during
12 its next preceding taxable year under such law, but shall not exceed 75% of
13 the average value of such holdings]. For the purpose of this section, a sub-
14 sidiary shall be deemed to be any corporation in which a taxpayer is the bene-
15 ficial owner of at least 80% of the total combined voting power of all classes
16 of stock entitled to vote and of at least 80% of the total number of shares of
17 all other classes of stock except nonvoting stock which is limited and pre-
18 ferred as to dividends.

1 3. There is hereby appropriated for the expense of administering the act
2 to which this act is an amendment and supplement, during the fiscal year
3 ending June 30, 1955, the sum of \$75,000.00 in addition to such other sums
4 as may have been appropriated for the Division of Taxation.

1 4. This act shall take effect January 1, 1955, provided that it shall be in-
2 operative unless and until the "State School Aid Act of 1954" as introduced
3 in the current session of the Legislature shall be enacted, but if said act shall
4 become operative, the director may prior to January 1, 1955, take such
5 action as he may deem appropriate in anticipation of, and in preparation for,
6 the operations of the provisions thereof.

ASSEMBLY, No. 501

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1958

By Assemblyman KURTZ

Referred to Committee on Appropriations

AN ACT to revise the laws imposing a franchise tax upon certain corporations, and amending and supplementing 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 32-A of Title 54, of the Revised Statutes, and making an appropriation for the administration of such tax," approved April 13, 1945 (P. L. 1945, c. 162), as amended and supplemented.

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

1 1. Section 4 of the act of which this act is amendatory is amended to read
2 as follows:

3 4. For the purposes of this act, unless the context requires a different
4 meaning:

5 (a) "Commissioner" shall mean the Director of the Division of Taxation
6 of the State Department of [Taxation and Finance] *the Treasury.*

7 (b) "Allocation factor" shall mean the proportionate part of a tax-
8 payer's net worth *or entire net income* used to determine a measure of its
9 tax under this act.

10 (c) "Corporation" shall mean any corporation, joint-stock company or
11 association and any business conducted by a trustee or trustees wherein in-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted
and is intended to be omitted in the law.

12 terest or ownership is evidenced by a certificate of interest or ownership
13 or similar written instrument.

14 (d) "Net worth" shall mean the aggregate of the values disclosed by
15 the books of the corporation for (1) issued and outstanding capital stock,
16 (2) paid-in or capital surplus, (3) earned surplus and undivided profits, (4)
17 surplus reserves which can reasonably be expected to accrue to holders or
18 owners of equitable shares, not including reasonable valuation reserves, such
19 as reserves for depreciation or obsolescence or depletion, and (5) the
20 amount of all indebtedness owing directly or indirectly to holders of 10%
21 or more of the aggregate outstanding shares of the taxpayer's capital stock
22 of all classes, as of the close of a calendar or fiscal year. However, if in the
23 opinion of the commissioner, the corporation's books do not disclose fair
24 valuations the commissioner may make a reasonable determination of the net
25 worth which, in his opinion, would reflect the fair value of the assets car-
26 ried on the books of the corporation, in accordance with sound accounting
27 principles, and such determination shall be used as net worth for the pur-
28 pose of this act.

29 (e) "Indebtedness owing directly or indirectly" shall include, without
30 limitation thereto, all indebtedness owing to any stockholder or shareholder
31 and to members of his immediate family where a stockholder and members
32 of his immediate family together or in the aggregate own 10% or more of
33 the aggregate outstanding shares of the taxpayer's capital stock of all classes.

34 (f) "Investment company" shall mean any corporation whose business
35 during the period covered by its report consisted, to the extent of at least
36 90% thereof of holding, investing and reinvesting in stocks, bonds, notes,
37 mortgages, debentures, patents, patent rights and other securities for its own
38 account, but this shall not include any corporation which: (1) is a merchant
39 or a dealer of stocks, bonds and other securities, regularly engaged in buy-
40 ing the same and selling the same to customers; or (2) had less than 90%
41 of its average gross assets in New Jersey, at cost, invested in stocks, bonds,
42 debentures, mortgages, notes, patents, patent rights or other securities or

43 consisting of cash on deposit during the period covered by its report; or
44 (3) owned more than 10% of either the aggregate outstanding shares of
45 capital stock of all classes entitled to vote, or of the aggregate outstanding
46 shares of nonvoting capital stock, of any other corporation, during the
47 period covered by its report.

48 (g) "Regulated investment company" shall mean any corporation which
49 for a period covered by its report, is registered and regulated under the In-
50 vestment Company Act of 1940 (54 Stat. 789), as amended.

51 (h) "Taxpayer" shall mean any corporation required to report or to
52 pay taxes, interest or penalties under this act.

53 (i) "Fiscal year" shall mean an accounting period ending on any day
54 other than the last day of December *on the basis of which the taxpayer is*
55 *required to report for Federal income tax purposes.*

56 (j) "Privilege [year] period" shall mean the calendar [year] or fiscal
57 accounting period [in and] for which a tax is payable under this act.

58 (k) "Entire net income" shall mean total net income from all sources,
59 whether within or without the United States, and shall include the gain de-
60 rived from the employment of capital or labor, or from both combined, as
61 well as profit gained through a sale or conversion of capital assets. For
62 the purpose of this act, the amount of a taxpayer's entire net income shall be
63 deemed prima facie to be equal in amount to the taxable income before net
64 operating loss deduction and special deductions which the taxpayer is re-
65 quired to report to the United States Treasury Department, for the purpose
66 of computing its Federal income tax; provided, however, that in the de-
67 termination of such entire net income,

68 (1) Entire net income shall not include 50% of dividends which were in-
69 cluded in computing such taxable income for Federal income tax purposes;

70 (2) Entire net income shall be determined without the exclusion, deduc-
71 tion or credit of:

72 (A) the amount of any specific exemption or credit allowed in any
73 law of the United States imposing any tax on or measured by the in-
74 come of corporations;

75 (B) any part of any income from dividends or interest on any kind
 76 of stock, securities or indebtedness, except as provided in subsection
 77 (k) (1) of this section;

78 (C) taxes paid or accrued to the United States on or measured by
 79 profits or income, or the tax imposed by this act;

80 (D) net operating losses sustained during any year or period other
 81 than that covered by the report;

82 (E) 90% of interest on indebtedness owing directly or indirectly to
 83 holders of 10% or more of the aggregate outstanding shares of the tax-
 84 payer's capital stock of all classes; except that such interest may, in any
 85 event, be deducted

86 (i) up to an amount not exceeding \$1,000.00,

87 (ii) in full to the extent that it relates to bonds or other evi-
 88 dences of indebtedness issued, with stock, pursuant to a bona fide
 89 plan of reorganization, to persons, who, prior to such reorganization,
 90 were bona fide creditors of the corporation or its predecessors, but
 91 were not stockholders or shareholders thereof;

92 (3) The commissioner may, whenever necessary to properly reflect the
 93 entire net income of any taxpayer, determine the year or period in which any
 94 item of income or deduction shall be included, without being limited to the
 95 method of accounting employed by the taxpayer.

1 2. Section 5 of the act of which this act is amendatory is amended to
 2 read as follows:

3 5. The franchise tax to be annually assessed to and paid by each taxpayer
 4 shall be measured by [the greater of] whichever of the following results in
 5 the greatest amount of tax:

6 (a) that portion of its entire net worth as may be allocable to this State
 7 as provided in section 6 computed at the rates set forth in subsection (b) of
 8 this section; or

9 (b) that proportion of its entire net worth as the average value of its
 10 total assets in this State during the period covered by its report is to the
 11 average value of its assets everywhere during such period (for the purpose

12. of which there shall be included, as within this State, all intangible personal
13. property of domestic corporations not having a business situs outside this
14. State, 40% of the value of such property having a business situs outside this
15. State, and the entire amount of the intangible personal property of foreign
16. corporations as would have a business situs within this State for the purpose
17. of a property tax.); at the rate of 2 mills per dollar on the first \$100,000,000.00
18. of allocated net worth; $\frac{1}{10}$ of a mill per dollar on the second \$100,000,000.00;
19. $\frac{1}{10}$ of a mill per dollar on the third \$100,000,000.00; and $\frac{1}{10}$ of a mill per dollar
20. on all amounts of allocated net worth in excess of \$300,000,000.00 **[.]**; or

21. **[(c) Provided, however, that the franchise tax to be annually assessed to**
22. **and paid by any investment company, other than a regulated investment**
23. **company, shall be measured by 25%, and in the case of a regulated invest-**
24. **ment company by 15% of its entire net worth, at the rates hereinabove set**
25. **forth but in no case less than \$250.00, unless the taxpayer shall elect to remain**
26. **taxable pursuant to any other subsection of this section.]**

27. *(c) a tax measured by its entire net income or such portion thereof as*
28. *may be allocable to this State as provided in section 6, computed at the rate*
29. *of 3 1/2%.*

30. **[(d) The tax assessed to any taxpayer pursuant to this act under sub-**
31. **sections (a) and (b) of this section shall not be less than the greater of $\frac{1}{10}$**
32. **of a mill per dollar on the first \$100,000,000.00 and $\frac{1}{10}$ of a mill per dollar on**
33. **all amounts in excess of \$100,000,000.00 of total assets allocated to this State**
34. **in accordance with subsection (b) hereof, and \$25.00 in the case of a domestic**
35. **corporation, or \$50.00 in the case of a foreign corporation.]**

36. *(d) Provided, however, that the franchise tax to be annually assessed to*
37. *and paid by any investment company or regulated investment company which*
38. *has elected to report as such and has filed its return in the form and within*
39. *the time provided in this act and the rules and regulations promulgated in*
40. *connection therewith, shall, in the case of an investment company, be measured*
41. *by the greater of 25% of its entire net income or 25% of its entire net worth,*
42. *and, in the case of a regulated investment company, by the greater of 15% of*

43 its entire net income or 15% of its entire net worth, at the rates hereinabove
 44 set forth for the computation of tax on net income or net worth, respectively,
 45 but in no case less than \$250.00.

46 [(e) In lieu of the tax imposed by subsections (a), (b), (c) and (d) of
 47 this section, any taxpayer, the value of whose total assets everywhere, less
 48 reasonable reserves for depreciation, as of the close of the period covered by
 49 its report, amounts to less than \$100,000.00, may elect to pay the tax shown
 50 in the following table:

	If Total Assets Are at Least	But Less Than	The Tax Shall Be	
			For Domestic Corporations	For Foreign Corporations
51	\$0 00	\$20,000 00	\$25 00	\$50 00
52	20,000 00	24,000 00	31 00	50 00
53	24,000 00	28,000 00	37 00	50 00
54	28,000 00	32,000 00	43 00	50 00
55	32,000 00	36,000 00	49 00	50 00
56	36,000 00	40,000 00	55 00	55 00
57	40,000 00	44,000 00	61 00	61 00
58	44,000 00	48,000 00	67 00	67 00
59	48,000 00	52,000 00	73 00	73 00
60	52,000 00	56,000 00	79 00	79 00
61	56,000 00	60,000 00	85 00	85 00
62	60,000 00	64,000 00	91 00	91 00
63	64,000 00	68,000 00	97 00	97 00
64	68,000 00	72,000 00	103 00	103 00
65	72,000 00	76,000 00	109 00	109 00
66	76,000 00	80,000 00	115 00	115 00
67	80,000 00	84,000 00	121 00	121 00
68	84,000 00	88,000 00	127 00	127 00
69	88,000 00	92,000 00	133 00	133 00
70	92,000 00	96,000 00	139 00	139 00
71	96,000 00	100,000 00	145 00	145 00]

72 (e) *The tax assessed to any taxpayer pursuant to this act under sub-*
73 *sections (a), (b) and (c) of this section shall not be less than the greater of*
74 *5/10 of a mill per dollar on the first \$100,000,000.00 and 2/10 of a mill per*
75 *dollar on all amounts in excess of \$100,000,000.00 of total assets allocated to*
76 *this State in accordance with subsection (b) hereof, and \$25.00 in the case of*
77 *a domestic corporation, or \$50.00 in the case of a foreign corporation.*

1 3. Section 6 of the act of which this act is amendatory is amended to read
2 as follows:

3 6. In the case of a taxpayer which maintains a regular place of business
4 outside this State other than a statutory office, the portion of its entire net
5 worth to be used as a measure of the tax imposed by section 5(a) of this act,
6 *and the portion of its entire net income to be used as a measure of the tax im-*
7 *posed by section 5(c) of this act, shall be determined by multiplying such en-*
8 *tire net worth and entire net income, respectively, by an allocation factor*
9 *which shall be the average of the fractions computed in (A), (B) and (C)*
10 *below, or of so many of them as may be applicable, that is:*

11 (A) The average value of the taxpayer's real and tangible personal
12 property within the State during the period covered by its report divided by
13 the average value of all the taxpayer's real and tangible personal property
14 wherever situated during such period;

15 (B) The receipts of the taxpayer, computed on the cash or accrual basis
16 according to the method of accounting used in the computation of its net in-
17 come for Federal tax purposes, arising during such period from

18 (1) sales of its tangible personal property located within this State at
19 the time of the receipt of or appropriation to the orders where shipments are
20 made to points within this State,

21 (2) sales of tangible personal property located within this State at the
22 time of the receipt of or appropriation to the orders where shipment is made
23 to points outside of the State and sales of tangible personal property located
24 without the State at the time of the receipt of or appropriation to the orders
25 where shipment is made to points within the State, but only to the extent of
26 50% of the receipts from the sales referred to in this subsection (2),

7 (a) excluding 1 or more of the factors therein;

8 (b) including 1 or more other factors, such as expenses, purchases, con-
9 tract values (minus subcontract values);

10 (c) excluding 1 or more assets in computing entire net worth; or

11 (d) *excluding 1 or more assets in computing an allocation percentage;*

12 *or*

13 **[(d)]** (e) applying any other similar or different method calculated to
14 **[affect]** *effect* a fair and proper allocation **[according to the receipts, activ-**
15 **ity, business and capital]** *of the entire net income and the entire net worth*
16 reasonably attributable to the State.

17 Nothing herein shall be construed to require or permit the commissioner
18 to adjust an allocation factor determined pursuant to section 5(b).

1 5. Section 10 of the act of which this act is amendatory is amended to
2 read as follows:

3 **[10.** Whenever it shall appear to the commissioner that any taxpayer
4 conducts its business or maintains its records in such manner as either di-
5 rectly or indirectly to distort its true net worth under this act or the propor-
6 tion thereof properly allocable to this State, or that any taxpayer maintains
7 a place of business outside this State, or that any agreement, understanding
8 or arrangement exists between a taxpayer and any other corporation or any
9 person or firm, for the purpose of evading tax under this act, or whereby the
10 activity, business, receipts or net worth of the taxpayer is improperly or in-
11 accurately reflected, the commissioner is authorized and empowered in his
12 discretion and in such manner as he may determine to adjust and redeter-
13 mine such net worth, and to adjust items of gross receipts, tangible property
14 and payrolls within and without the State and the allocation of net worth,
15 or to make such other adjustments in any tax report or tax returns as may be
16 necessary. The commissioner may require any person or corporation to submit
17 such information under oath, or to permit such examination of its books,
18 papers and documents, as may be necessary to enable him to determine the
19 existence, nature or extent of an agreement, understanding or arrangement

20 to which this section relates, whether or not such person or corporation is
21 subject to the tax imposed by this act.]

22 10. Whenever it shall appear to the commissioner that any taxpayer fails
23 to maintain its records in accordance with sound accounting principles or
24 conducts its business or maintains its records in such manner as either di-
25 rectly or indirectly to distort its true entire net income or its true entire net
26 worth under this act or the proportion thereof properly allocable to this State,
27 or whenever any taxpayer maintains a place of business outside this State, or
28 whenever any agreement, understanding or arrangement exists between a tax-
29 payer and any other corporation or any person or firm, for the purpose of
30 evading tax under this act, or whereby the activity, business, receipts, ex-
31 penses, assets, liabilities, income or net worth of the taxpayer are improperly
32 or inaccurately reflected, the commissioner is authorized and empowered, in
33 his discretion and in such manner as he may determine, to adjust and rede-
34 termine such items, and to adjust items of gross receipts, tangible or intan-
35 gible property and payrolls within and without the State and the allocation
36 of entire net income or entire net worth or to make any other adjustments in
37 any tax report or tax returns as may be necessary to make a fair and reason-
38 able determination of the amount of tax payable under this act. Where (a)
39 any taxpayer conducts its activity or business under any agreement, arrange-
40 ment or understanding in such manner as either directly or indirectly to bene-
41 fit its members or stockholders, or any of them, or any person or persons di-
42 rectly or indirectly interested in such activity or business, by entering into
43 any transaction at more or less than a fair price which, but for such agree-
44 ment, arrangement or understanding, might have been paid or received
45 therefor, or (b) any taxpayer, a substantial portion of whose capital stock
46 is owned either directly or indirectly by or through another corporation,
47 enters into any transaction with such other corporation on such terms as
48 to create an improper loss or net income, the commissioner may include in
49 the entire net income of the taxpayer the fair profits which, but for such
50 agreement, arrangement or understanding, the taxpayer might have derived

51 from such transaction. The commissioner may require any person or corpora-
52 tion to submit such information under oath or affirmation, or to permit such
53 examination of its books, papers and documents, as may be necessary to
54 enable him to determine the existence, nature or extent of an agreement,
55 understanding or arrangement to which this section relates, whether or not
56 such person or corporation is subject to the tax imposed by this act.

1 6. Section 13 of the act of which this act is amendatory is amended to
2 read as follows:

3 [13. In the case of any corporation which organizes or qualifies on or
4 after January 1 in any year no tax shall be payable in such privilege year;
5 provided, however, that this section shall not apply to a foreign corporation,
6 which after January 1, 1937, and prior to the year in which it qualifies, pos-
7 sessed the privilege of exercising its corporate franchise in this State, or did
8 business, or employed or owned capital or property, or maintained an office
9 in this State.]

10 13. If the amount of the taxable income for any year of any taxpayer as
11 returned to the United States Treasury Department is changed or corrected
12 by the Commissioner of Internal Revenue or other officer of the United States
13 or other competent authority, or where a renegotiation of a contract or sub-
14 contract with the United States results in a change in said taxable income, or
15 where a recovery of a war loss results in a computation or recomputation of
16 any tax imposed by the United States, such taxpayer shall report such
17 changed or corrected taxable income, or the results of such renegotiation, or
18 such computation or recomputation, within 90 days after the final determina-
19 tion of such change or correction or renegotiation, or such computation or
20 recomputation, or as required by the commissioner, and shall concede the
21 accuracy of such determination or state wherein it is erroneous. Any tax-
22 payer filing an amended return with such department shall also file within
23 90 days thereafter an amended report with the commissioner.

1 7. Section 15 of the act of which this act is amendatory is amended to
2 read as follows:

3 [15. The tax imposed by this act shall be due and payable with respect
4 to the calendar year 1946, and each year thereafter, measured by the taxpay-
5 er's net worth as of the close of the calendar year or of its fiscal year next
6 preceding the privilege year, except that in the case of a taxpayer whose
7 fiscal year ends not later than June 30 in the privilege year such measure
8 shall be as of the close of such fiscal year. For the purpose of this section
9 every taxpayer shall use the same calendar or fiscal year upon which it re-
10 ports to the United States Treasury Department for Federal income tax pur-
11 poses.]

12 *15. The tax imposed by this act shall be due and payable annually here-*
13 *after, commencing with the calendar year 1959, in the manner provided under*
14 *either subsection (a) or subsection (b) of this section, whichever shall be ap-*
15 *plicable.*

16 *(a) Every taxpayer shall annually pay a franchise tax, with respect to*
17 *all or any part of each of its fiscal or calendar years, beginning after Jan-*
18 *uary 1, 1959, to be computed upon the basis of its entire net income or upon*
19 *such other basis as may be applicable, as herein provided, for such fiscal or*
20 *calendar year or part thereof, on a report which shall be filed on or before*
21 *April 15 next succeeding the close of each such accounting year, or, if any*
22 *such fiscal year ends after the last day of December and prior to July 1, on*
23 *or before the fifteenth day of the fourth month after the close of such fiscal*
24 *year, and the full amount of the tax hereunder shall be due and payable on*
25 *or before the date prescribed herein for the filing of the return.*

26 *(b) Every taxpayer shall pay a like franchise tax with respect to all or*
27 *any part of the period beginning January 1, 1959, and extending through*
28 *any subsequent part of its first fiscal or calendar year ending after said date.*
29 *Such tax shall be computed upon the basis of its entire net income, or upon*
30 *such other basis as may be applicable, as herein provided, for each and every*
31 *fiscal or calendar year or part thereof begun not earlier than July 2, 1957 and*
32 *ending not later than December 31, 1959 during which such taxpayer has its*
33 *charter or had the privilege of exercising its corporate charter, or did busi-*

34 *ness, employed or owned capital or property or maintained an office, or other-*
35 *wise conducted any activity for profit, in this State and on the basis of which*
36 *a franchise tax has not accrued under this act prior to January 1, 1959. The*
37 *tax imposed pursuant to this subsection shall be deemed a single tax for such*
38 *privilege period but shall be computed separately with respect to each such*
39 *fiscal or calendar year or part thereof on the basis of which a franchise tax*
40 *has not previously accrued as aforesaid, on a report which shall be filed on*
41 *or before April 15 next succeeding the close of each such accounting year, or,*
42 *if any such fiscal year ends after the last day of December and prior to July*
43 *1, on or before the fifteenth day of the fourth month after the close of such*
44 *fiscal year, and the full amount of the tax hereunder shall be due and payable*
45 *on or before the date prescribed herein for the filing of the report.*

46 (c) *For the purpose of this act, every taxpayer shall use the same cal-*
47 *endar or fiscal year upon which it reports to the United States Treasury De-*
48 *partment for Federal income tax purposes.*

49 (d) *Nothing in this section shall operate to relieve any taxpayer from the*
50 *obligation to pay a tax heretofore imposed under this act.*

1 8. Section 16 of the act of which this act is amendatory is amended to
2 read as follows:

3 [16. For the privilege year 1946, the tax imposed by this act shall con-
4 stitute a lien on all of the taxpayer's property and franchises on and after
5 January 1 of such year, and all interest, penalties, and costs of collection
6 which fall due or accrue shall be added to and become a part of such lien.

7 For the privilege year 1947 and thereafter, the tax imposed by this act
8 shall constitute a lien on all of the taxpayer's property and franchises on and
9 after January 1 of the year next succeeding the privilege year in which it is
10 due and payable, and all interest, penalties and costs of collection which fall
11 due or accrue shall be added to and become a part of such lien. Notwithstand-
12 ing the provisions of any other law, all such taxes, interest, penalties and costs
13 heretofore or hereafter imposed or incurred, whether levied or assessed or
14 not, under this act shall, unless sooner paid, continue and remain a lien on all
15 of the taxpayer's property and franchises until January 1, 1956, or until the

16 expiration of 10 years after January 1 of the privilege year in which they
17 became or become due and payable, whichever shall be later, and no longer.]

18 16. *The tax imposed by this act shall constitute a lien on all of the tax-*
19 *payer's property and franchises on and after January 1 of the year next suc-*
20 *ceeding the year in which it is due and payable, and all interest, penalties*
21 *and costs of collection which fall due or accrue shall be added to and become*
22 *a part of such lien. Notwithstanding the provisions of any other law, all such*
23 *taxes, interest, penalties and costs heretofore or hereafter imposed or in-*
24 *curred, whether levied or assessed or not, under this act shall, unless sooner*
25 *paid, continue and remain a lien on all of the taxpayer's property and fran-*
26 *chises until the expiration of 10 years after January 1 of the year in which*
27 *they became or become due and payable.*

1 9. Section 17 of the act of which this act is amendatory is amended to
2 read as follows:

3 17. [(a) on or before April 15, in the case of taxpayers reporting on a
4 calendar year basis, and on or before April 15 or the fifteenth day of the
5 fourth month following the close of a fiscal year, whichever is later, in the
6 case of taxpayers reporting on a fiscal year basis, each taxpayer shall duly
7 execute and file a tax return with the commissioner, in such form and con-
8 taining such information as he may prescribe, which return shall truly and
9 accurately, set forth its liability under this act; and the full amount of the
10 tax hereunder shall be due and payable to the commissioner on or before the
11 date prescribed herein for the filing of the return; provided, however, that
12 for the privilege year 1947 any return and tax payment which under the
13 foregoing provisions of this section would be due on or before April 15 or
14 on or before May 15 shall be due on or before May 31, 1947.] (a) *If the period*
15 *covered by the report under this act is other than the period covered by the*
16 *report to the United States Treasury Department or is a period of less than*
17 *12 calendar months, the commissioner may, under regulations prescribed by*
18 *him, determine the entire net worth and entire net income of the taxpayer in*
19 *such manner as shall properly reflect its entire net worth and entire net in-*
20 *come for the period covered by its report under this act.*

21 (b) Any taxpayer which shall fail to file its return when due shall be
22 liable to a penalty of \$2.00 for each day of delinquency, which penalty shall
23 be payable to, and recoverable by, the commissioner as a part of the tax
24 herein imposed. If any tax be not paid when the same becomes due, as herein
25 provided, there shall be added to the amount of the tax a sum equivalent to
26 5% thereof, as a penalty, and, in addition thereto, interest at the rate of 1%
27 per month or fraction thereof from the date the tax became due until the same
28 be paid. The commissioner, if satisfied that the failure to comply with any
29 provision of this [section] act was excusable, may abate or remit the whole
30 or part of any penalty.

1 10. Section 18 of the act of which this act is amendatory is amended to
2 read as follows:

3 [18. The commissioner shall design a form of return and forms for such
4 additional statements or schedules as he may require to be filed therewith.
5 Such forms shall provide for the setting forth of such facts as the commis-
6 sioner may deem necessary for the proper enforcement of this act. He shall
7 cause a supply thereof to be printed and shall furnish appropriate blank
8 forms to each taxpayer upon application or otherwise as he may deem neces-
9 sary. Failure to receive a form shall not relieve any taxpayer from the ob-
10 ligation to file a return under the provisions of this act. Each such return
11 shall be made upon the oath or affirmation of the president, vice-president,
12 or secretary or treasurer of the taxpayer, and in the case of a corporation in
13 liquidation or in the hands of a receiver or trustee, shall be made on the oath
14 or affirmation of the person responsible for the conduct of the affairs of such
15 corporation.]

16 18. *The commissioner shall design a form of return and forms for such*
17 *additional statements or schedules as he may require to be filed therewith.*
18 *Such forms shall provide for the setting forth of such facts as the commis-*
19 *sioner may deem necessary for the proper enforcement of this act. He shall*
20 *cause a supply thereof to be printed and shall furnish appropriate blank*
21 *forms to each taxpayer upon application or otherwise as he may deem neces-*

22 sary. Failure to receive a form shall not relieve any taxpayer from the ob-
23 ligation to file a return under the provisions of this act. Each such return
24 shall have annexed thereto a certification by the president, vice-president,
25 comptroller, secretary, treasurer, assistant treasurer, accounting officer of the
26 taxpayer or any other officer of the taxpayer duly authorized so to act to the
27 effect that the statements contained therein are true. The fact that an indi-
28 vidual's name is signed on a certification of the report shall be prima facie
29 evidence that such individual is authorized to sign and certify the report on
30 behalf of the corporation. In the case of a corporation in liquidation or in
31 the hands of a receiver or trustee, certification shall be made by the person
32 responsible for the conduct of the affairs of such corporation.

1 11. Section 19 of the act of which this act is amendatory is amended to
2 read as follows:

3 19. The commissioner may grant a reasonable extension of time for the
4 filing of returns or the payment of tax, or both, under such rules and regu-
5 lations as he shall prescribe, which rules and regulations may require the fil-
6 ing of a tentative return and the payment of an estimated tax[, but no such
7 extension shall be granted beyond December 1 of the privilege year.]. If the
8 time for filing the return shall be extended, the payment of the portion of
9 the tax remaining to be paid, if any, shall be postponed to the date fixed by
10 the extension of the time for the filing of the return, but in every such case
11 the corporation shall pay, in addition to the unpaid portion of the tax,
12 interest thereon at the rate of 6% per annum from the time when the return
13 originally was required to be filed to the date of actual payment under the
14 extension; provided, that if such unpaid portion of the tax is not paid within
15 the time fixed under the extension, the interest on such unpaid portion shall
16 be computed at the rate of 1% per month or fraction thereof to be calculated
17 from the date the tax was originally due to the date of actual payment.

1 12. This act shall take effect immediately, except that the amended sub-
2 section (c) of section 5 of the act of which this act is amendatory shall take
3 effect on January 1, 1959.

STATEMENT

This bill is designed to revise the Corporation Business Tax Act (1945) which is the corporation franchise tax law applicable to general business corporations chartered and doing business in this State. The net worth base of the present law would be supplemented by an additional alternative measure of tax computed at the rate of 3½% on the taxpayer's net income allocable to New Jersey. The taxpayer would pay the greater, not both, of the amounts computed separately on the basis of each of these 2 alternative measures. New York and Connecticut are among other States using this alternative measure method.

The proposed amendment would adjust the corporate tax burden in this State more nearly to the ability-to-pay principle. Thirty-three States, including the 4 States adjoining New Jersey, now impose corporate net income taxes. State franchise taxes are deductible by a corporation in computing its liability for Federal income taxes.


Comm
SENATE AMENDMENT TO

ASSEMBLY, No. 501

STATE OF NEW JERSEY

ADOPTED MAY 5, 1958

Amend page 5, section 5, line 29, delete "3½" and insert "1½".


SENATE AMENDMENTS TO
ASSEMBLY, No. 501

STATE OF NEW JERSEY

ADOPTED MAY 26, 1958

Amend page 3, section 1, line 56, after "(j)" insert "Except as herein otherwise provided,".

Amend page 3, section 1, line 63, after the word "income" insert a comma.

Amend page 3, section 1, line 64, after the words "special deductions" insert a comma.

Amend page 3, section 1, line 65, after the word "Department" delete the comma.

Amend page 4, section 2, lines 4 and 5, delete the words "measured by whichever of the following results in the greatest amount of tax" and insert in lieu thereof "the sum of the amount computed under subsection (a) or (b) hereof, whichever is greater, and the amount computed under subsection (c) hereof".

Amend page 4, section 2, line 7, delete "computed at" and insert in lieu thereof "multiplied by".

Amend page 5, section 2, line 17, delete "; at the rate of" and insert in lieu thereof "multiplied by the following rates:".

Amend page 5, section 2, line 20, delete "or".

Amend page 5, section 2, line 27, delete "a tax measured by" and insert in lieu thereof "1 $\frac{3}{4}$ % of".

Amend page 5, section 2, lines 28 and 29, delete the words: ", computed at the rate of 3 $\frac{1}{2}$ %".

Amend page 5, section 2, line 41, delete the words "the greater of".

Amend page 5, section 2, line 41, delete the word "or" and insert in lieu thereof "and".

Amend page 5, section 2, line 42, delete the words "the greater of".

Amend page 6, section 2, line 43, delete the word "or" and insert in lieu thereof "and".

Amend page 6, section 2, line 44, delete the word "or" and insert in lieu thereof "and".

Amend page 7, section 2, line 72, delete the words "this act under".

Amend page 7, section 2, line 73, after "(a)" delete the comma and insert in lieu thereof "and".

Amend page 7, section 2, line 73, after "(b)" delete "and (c)".

Amend page 12, section 7, line 17, after the word "calendar" insert "accounting".

Amend page 12, section 7, line 17, after the word "years" delete the comma.

Amend page 12, section 7, lines 18 and 19, delete "upon the basis of its entire net income or upon such other basis as may be applicable,".

Amend page 12, section 7, line 20, after the word "calendar" insert "accounting".

Amend page 12, section 7, line 27, after the words "January 1, 1959" delete the comma.

Amend page 12, section 7, line 28, after the word "calendar" insert "accounting".

Amend page 12, section 7, lines 29 and 30, delete "upon the basis of its entire net income, or upon such other basis as may be applicable,".

Amend page 12, section 7, line 31, after the word "calendar" insert "accounting".

Amend page 12, section 7, lines 32 to 35, delete all the words after "1959" in line 32 through the words "in this State and" on line 35.

Amend page 13, section 7, line 39, after the word "calendar" insert "accounting".

Amend page 13, section 7, lines 49 and 50, delete in their entirety.

Amend page 16, section 12, delete in its entirety, and insert:

“12. The provisions of this act shall be effective with respect to the tax payable in the year 1959 and thereafter and, with respect to the tax payable in 1958 and prior years, shall not affect the provisions of, or any obligations heretofore incurred under, the Corporation Business Tax Act (1945).

“13. This act shall be effective immediately.”

(CORRECTED COPY)
SENATE AMENDMENT TO
ASSEMBLY, No. 501

STATE OF NEW JERSEY

ADOPTED MAY 5, 1958

Amend page 5, section 2, line 29, delete "3½" and insert "1½".

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 501

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1958

By Assemblyman KURTZ

Referred to Committee on Appropriations

AN ACT to revise the laws imposing a franchise tax upon certain corporations, and amending and supplementing 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 32-A of Title 54, of the Revised Statutes, and making an appropriation for the administration of such tax," approved April 13, 1945 (P. L. 1945, c. 162), as amended and supplemented.

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

1 1. Section 4 of the act of which this act is amendatory is amended to read
2 as follows:

3 4. For the purposes of this act, unless the context requires a different
4 meaning:

5 (a) "Commissioner" shall mean the Director of the Division of Taxation
6 of the State Department of **[Taxation and Finance]** *the Treasury.*

7 (b) "Allocation factor" shall mean the proportionate part of a tax-
8 payer's net worth *or entire net income* used to determine a measure of its
9 tax under this act.

10 (c) "Corporation" shall mean any corporation, joint-stock company or
11 association and any business conducted by a trustee or trustees wherein in-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

12 terest or ownership is evidenced by a certificate of interest or ownership
13 or similar written instrument.

14 (d) "Net worth" shall mean the aggregate of the values disclosed by
15 the books of the corporation for (1) issued and outstanding capital stock,
16 (2) paid-in or capital surplus, (3) earned surplus and undivided profits, (4)
17 surplus reserves which can reasonably be expected to accrue to holders or
18 owners of equitable shares, not including reasonable valuation reserves, such
19 as reserves for depreciation or obsolescence or depletion, and (5) the
20 amount of all indebtedness owing directly or indirectly to holders of 10%
21 or more of the aggregate outstanding shares of the taxpayer's capital stock
22 of all classes, as of the close of a calendar or fiscal year. However, if in the
23 opinion of the commissioner, the corporation's books do not disclose fair
24 valuations the commissioner may make a reasonable determination of the net
25 worth which, in his opinion, would reflect the fair value of the assets car-
26 ried on the books of the corporation, in accordance with sound accounting
27 principles, and such determination shall be used as net worth for the pur-
28 pose of this act.

29 (e) "Indebtedness owing directly or indirectly" shall include, without
30 limitation thereto, all indebtedness owing to any stockholder or shareholder
31 and to members of his immediate family where a stockholder and members
32 of his immediate family together or in the aggregate own 10% or more of
33 the aggregate outstanding shares of the taxpayer's capital stock of all classes.

34 (f) "Investment company" shall mean any corporation whose business
35 during the period covered by its report consisted, to the extent of at least
36 90% thereof of holding, investing and reinvesting in stocks, bonds, notes,
37 mortgages, debentures, patents, patent rights and other securities for its own
38 account, but this shall not include any corporation which: (1) is a merchant
39 or a dealer of stocks, bonds and other securities, regularly engaged in buy-
40 ing the same and selling the same to customers; or (2) had less than 90%
41 of its average gross assets in New Jersey, at cost, invested in stocks, bonds,
42 debentures, mortgages, notes, patents, patent rights or other securities or

43 consisting of cash on deposit during the period covered by its report; or
44 (3) owned more than 10% of either the aggregate outstanding shares of
45 capital stock of all classes entitled to vote, or of the aggregate outstanding
46 shares of nonvoting capital stock, of any other corporation, during the
47 period covered by its report.

48 (g) "Regulated investment company" shall mean any corporation which
49 for a period covered by its report, is registered and regulated under the In-
50 vestment Company Act of 1940 (54 Stat. 789), as amended.

51 (h) "Taxpayer" shall mean any corporation required to report or to
52 pay taxes, interest or penalties under this act.

53 (i) "Fiscal year" shall mean an accounting period ending on any day
54 other than the last day of December *on the basis of which the taxpayer is*
55 *required to report for Federal income tax purposes.*

56 (j) *Except as herein otherwise provided, "privilege [year] period" shall*
57 *mean the calendar [year] or fiscal accounting period [in and] for which a*
57A *tax is payable under this act.*

58 (k) *"Entire net income" shall mean total net income from all sources,*
59 *whether within or without the United States, and shall include the gain de-*
60 *rived from the employment of capital or labor, or from both combined, as*
61 *well as profit gained through a sale or conversion of capital assets. For*
62 *the purpose of this act, the amount of a taxpayer's entire net income, shall be*
63 *deemed prima facie to be equal in amount to the taxable income before net*
64 *operating loss deduction and special deductions, which the taxpayer is re-*
65 *quired to report to the United States Treasury Department [.] for the pur-*
66 *pose of computing its Federal income tax; provided, however, that in the de-*
67 *termination of such entire net income,*

68 (1) *Entire net income shall not include 50% of dividends which were in-*
69 *cluded in computing such taxable income for Federal income tax purposes;*

70 (2) *Entire net income shall be determined without the exclusion, deduc-*
71 *tion or credit of:*

72 (A) the amount of any specific exemption or credit allowed in any
 73 law of the United States imposing any tax on or measured by the in-
 74 come of corporations;

75 (B) any part of any income from dividends or interest on any kind
 76 of stock, securities or indebtedness, except as provided in subsection
 77 (k) (1) of this section;

78 (C) taxes paid or accrued to the United States on or measured by
 79 profits or income, or the tax imposed by this act;

80 (D) net operating losses sustained during any year or period other
 81 than that covered by the report;

82 (E) 90% of interest on indebtedness owing directly or indirectly to
 83 holders of 10% or more of the aggregate outstanding shares of the tax-
 84 payer's capital stock of all classes; except that such interest may, in any
 85 event, be deducted

86 (i) up to an amount not exceeding \$1,000.00,

87 (ii) in full to the extent that it relates to bonds or other evi-
 88 dences of indebtedness issued, with stock, pursuant to a bona fide
 89 plan of reorganization, to persons, who, prior to such reorganization,
 90 were bona fide creditors of the corporation or its predecessors, but
 91 were not stockholders or shareholders thereof;

92 (3) The commissioner may, whenever necessary to properly reflect the
 93 entire net income of any taxpayer, determine the year or period in which any
 94 item of income or deduction shall be included, without being limited to the
 95 method of accounting employed by the taxpayer.

1 2. Section 5 of the act of which this act is amendatory is amended to
 2 read as follows:

3 5. The franchise tax to be annually assessed to and paid by each taxpayer
 4 shall be [measured by [the greater of] whichever of the following results in
 5 the greatest amount of tax] the sum of the amount computed under subsection
 5A (a) or (b) hereof, whichever is greater, and the amount computed under sub-
 5B section (c) hereof:

6 (a) that portion of its entire net worth as may be allocable to this State

7 as provided in section 6 **[computed at]** multiplied by the rates set forth in
8 subsection (b) of this section; or

9 (b) that proportion of its entire net worth as the average value of its
10 total assets in this State during the period covered by its report is to the
11 average value of its assets everywhere during such period (for the purpose
12 of which there shall be included as within this State all intangible personal
13 property of domestic corporations not having a business situs outside this
14 State, 40% of the value of such property having a business situs outside this
15 State, and the entire amount of the intangible personal property of foreign
16 corporations as would have a business situs within this State for the purpose
17 of a property tax) **;** at the rate of **]** multiplied by the following rates: 2 mills
18 per dollar on the first \$100,000,000.00 of allocated net worth; $\frac{1}{10}$ of a mill per
19 dollar on the second \$100,000,000.00; $\frac{3}{10}$ of a mill per dollar on the third
20 \$100,000,000.00; and $\frac{2}{10}$ of a mill per dollar on all amounts of allocated net
20A worth in excess of \$300,000,000.00 **[.] ; [or]**

21 **[(c) Provided, however, that the franchise tax to be annually assessed to**
22 and paid by any investment company, other than a regulated investment
23 company, shall be measured by 25%, and in the case of a regulated invest-
24 ment company by 15% of its entire net worth, at the rates hereinabove set
25 forth but in no case less than \$250.00, unless the taxpayer shall elect to remain
26 taxable pursuant to any other subsection of this section.]

27 (c) **[a tax measured by]** 1 3/4% of its entire net income or such portion
28 thereof as may be allocable to this State as provided in section 6 **[, computed**
29 at the rate of 3 1/2%].

30 **[(d) The tax assessed to any taxpayer pursuant to this act under sub-**
31 sections (a) and (b) of this section shall not be less than the greater of $\frac{5}{10}$
32 of a mill per dollar on the first \$100,000,000.00 and $\frac{2}{10}$ of a mill per dollar on
33 all amounts in excess of \$100,000,000.00 of total assets allocated to this State
34 in accordance with subsection (b) hereof, and \$25.00 in the case of a domestic
35 corporation, or \$50.00 in the case of a foreign corporation.]

36 (d) *Provided, however, that the franchise tax to be annually assessed to*
37 *and paid by any investment company or regulated investment company which*

38 has elected to report as such and has filed its return in the form and within
 39 the time provided in this act and the rules and regulations promulgated in
 40 connection therewith, shall, in the case of an investment company, be measured
 41 by [the greater of] 25% of its entire net income [or] and 25% of its entire
 42 net worth, and, in the case of a regulated investment company, by [the
 43 greater of] 15% of its entire net income [or] and 15% of its entire net
 44 worth, at the rates hereinabove set forth for the computation of tax on net in-
 45 come [or] and net worth, respectively, but in no case less than \$250.00.

46 [(e) In lieu of the tax imposed by subsections (a), (b), (c) and (d) of
 47 this section, any taxpayer, the value of whose total assets everywhere, less
 48 reasonable reserves for depreciation, as of the close of the period covered by
 49 its report, amounts to less than \$100,000.00, may elect to pay the tax shown
 50 in the following table:

	If Total Assets Are at Least	But Less Than	The Tax Shall Be	
			For Domestic Corporations	For Foreign Corporations
51	\$0 00	\$20,000 00	\$25 00	\$50 00
52	20,000 00	24,000 00	31 00	50 00
53	24,000 00	28,000 00	37 00	50 00
54	28,000 00	32,000 00	43 00	50 00
55	32,000 00	36,000 00	49 00	50 00
56	36,000 00	40,000 00	55 00	55 00
57	40,000 00	44,000 00	61 00	61 00
58	44,000 00	48,000 00	67 00	67 00
59	48,000 00	52,000 00	73 00	73 00
60	52,000 00	56,000 00	79 00	79 00
61	56,000 00	60,000 00	85 00	85 00
62	60,000 00	64,000 00	91 00	91 00
63	64,000 00	68,000 00	97 00	97 00
64	68,000 00	72,000 00	103 00	103 00
65	72,000 00	76,000 00	109 00	109 00

66	76,000 00	80,000 00	115 00	115 00
67	80,000 00	84,000 00	121 00	121 00
68	84,000 00	88,000 00	127 00	127 00
69	88,000 00	92,000 00	133 00	133 00
70	92,000 00	96,000 00	139 00	139 00
71	96,000 00	100,000 00	145 00	145 00]

72 (e) *The tax assessed to any taxpayer pursuant to [this act under] sub-*
73 *sections (a) [,] and (b) [and (c)] of this section shall not be less than the*
74 *greater of 5/10 of a mill per dollar on the first \$100,000,000.00 and 2/10 of a*
75 *mill per dollar on all amounts in excess of \$100,000,000.00 of total assets al-*
76 *located to this State in accordance with subsection (b) hereof, and \$25.00 in the*
77 *case of a domestic corporation, or \$50.00 in the case of a foreign corporation.*

1 3. Section 6 of the act of which this act is amendatory is amended to read
2 as follows:

3 6. In the case of a taxpayer which maintains a regular place of business
4 outside this State other than a statutory office, the portion of its entire net
5 worth to be used as a measure of the tax imposed by section 5(a) of this act,
6 and the portion of its entire net income to be used as a measure of the tax im-
7 posed by section 5(c) of this act, shall be determined by multiplying such en-
8 tire net worth and entire net income, respectively, by an allocation factor
9 which shall be the average of the fractions computed in (A), (B) and (C)
10 below, or of so many of them as may be applicable, that is:

11 (A) The average value of the taxpayer's real and tangible personal
12 property within the State during the period covered by its report divided by
13 the average value of all the taxpayer's real and tangible personal property
14 wherever situated during such period;

15 (B) The receipts of the taxpayer, computed on the cash or accrual basis
16 according to the method of accounting used in the computation of its net in-
17 come for Federal tax purposes, arising during such period from

18 (1) sales of its tangible personal property located within this State at
19 the time of the receipt of or appropriation to the orders where shipments are
20 made to points within this State,

21 (2) sales of tangible personal property located within this State at the
22 time of the receipt of or appropriation to the orders where shipment is made
23 to points outside of the State and sales of tangible personal property located
24 without the State at the time of the receipt of or appropriation to the orders
25 where shipment is made to points within the State, but only to the extent of
26 50% of the receipts from the sales referred to in this subsection (2),

27 (3) sales of any such property not located at the time of the receipt of or
28 appropriation to the orders at any permanent or continuous place of business
29 maintained by the taxpayer without the State, where the orders were received
30 or accepted within the State, but only to the extent of 50% of the receipts
31 from the sales referred to in this subsection (3). For the purposes of this
32 subsection (3), an order shall be deemed received or accepted within the
33 State if it has been received or accepted by an employee, agent, agency or in-
34 dependent contractor chiefly situated at, connected with, by contract or other-
35 wise, or sent out from a permanent or continuous place of business of the tax-
36 payer within the State,

37 (4) services performed within the State,

38 (5) rentals from property situated, and royalties from the use of patents
39 or copyrights, within the State,

40 (6) all other business receipts earned within the State, divided by the
41 total amount of the taxpayer's receipts, similarly computed, arising during
42 such period from all sales of its tangible personal property, services, rentals,
43 royalties and all other business receipts, whether within or without the State;

44 (C) The total wages, salaries and other personal service compensation,
45 similarly computed, during such period of officers and employees within the
46 State divided by the total wages, salaries and other personal service compen-
47 sation, similarly computed, during such period of all the taxpayer's officers
48 and employees within and without the State.

49 In the case of a taxpayer which does not maintain a regular place of busi-
50 ness outside this State other than a statutory office, the allocation factor shall
51 be 100%.

1 4. Section 8 of the act of which this act is amendatory is amended to read
2 as follows:

3 8. If it shall appear to the commissioner that an allocation factor deter-
4 mined pursuant to section 6 does not properly reflect the activity, business,
5 receipts, [or] capital, *entire net worth* or *entire net income* of a taxpayer rea-
6 sonably attributable to the State, he may adjust it by:

7 (a) excluding 1 or more of the factors therein;

8 (b) including 1 or more other factors, such as expenses, purchases, con-
9 tract values (minus subcontract values);

10 (c) excluding 1 or more assets in computing entire net worth; or

11 (d) *excluding 1 or more assets in computing an allocation percentage;*

12 *or*

13 [(d)] (e) applying any other similar or different method calculated to
14 [affect] *effect* a fair and proper allocation [according to the receipts, activ-
15 ity, business and capital] *of the entire net income and the entire net worth*
16 reasonably attributable to the State.

17 Nothing herein shall be construed to require or permit the commissioner
18 to adjust an allocation factor determined pursuant to section 5(b).

1 5. Section 10 of the act of which this act is amendatory is amended to
2 read as follows:

3 [10. Whenever it shall appear to the commissioner that any taxpayer
4 conducts its business or maintains its records in such manner as either di-
5 rectly or indirectly to distort its true net worth under this act or the propor-
6 tion thereof properly allocable to this State, or that any taxpayer maintains
7 a place of business outside this State, or that any agreement, understanding
8 or arrangement exists between a taxpayer and any other corporation or any
9 person or firm, for the purpose of evading tax under this act, or whereby the
10 activity, business, receipts or net worth of the taxpayer is improperly or in-
11 accurately reflected, the commissioner is authorized and empowered in his
12 discretion and in such manner as he may determine to adjust and redeter-
13 mine such net worth, and to adjust items of gross receipts, tangible property

14 and payrolls within and without the State and the allocation of net worth,
15 or to make such other adjustments in any tax report or tax returns as may be
16 necessary. The commissioner may require any person or corporation to submit
17 such information under oath, or to permit such examination of its books,
18 papers and documents, as may be necessary to enable him to determine the
19 existence, nature or extent of an agreement, understanding or arrangement
20 to which this section relates, whether or not such person or corporation is
21 subject to the tax imposed by this act.]

22 10. *Whenever it shall appear to the commissioner that any taxpayer fails*
23 *to maintain its records in accordance with sound accounting principles or*
24 *conducts its business or maintains its records in such manner as either di-*
25 *rectly or indirectly to distort its true entire net income or its true entire net*
26 *worth under this act or the proportion thereof properly allocable to this State,*
27 *or whenever any taxpayer maintains a place of business outside this State, or*
28 *whenever any agreement, understanding or arrangement exists between a tax-*
29 *payer and any other corporation or any person or firm, for the purpose of*
30 *evading tax under this act, or whereby the activity, business, receipts, ex-*
31 *penses, assets, liabilities, income or net worth of the taxpayer are improperly*
32 *or inaccurately reflected, the commissioner is authorized and empowered, in*
33 *his discretion and in such manner as he may determine, to adjust and rede-*
34 *termine such items, and to adjust items of gross receipts, tangible or intan-*
35 *gible property and payrolls within and without the State and the allocation*
36 *of entire net income or entire net worth or to make any other adjustments in*
37 *any tax report or tax returns as may be necessary to make a fair and reason-*
38 *able determination of the amount of tax payable under this act. Where (a)*
39 *any taxpayer conducts its activity or business under any agreement, arrange-*
40 *ment or understanding in such manner as either directly or indirectly to bene-*
41 *fit its members or stockholders, or any of them, or any person or persons di-*
42 *rectly or indirectly interested in such activity or business, by entering into*
43 *any transaction at more or less than a fair price which, but for such agree-*
44 *ment, arrangement or understanding, might have been paid or received*

45 therefor, or (b) any taxpayer, a substantial portion of whose capital stock
46 is owned either directly or indirectly by or through another corporation,
47 enters into any transaction with such other corporation on such terms as
48 to create an improper loss or net income, the commissioner may include in
49 the entire net income of the taxpayer the fair profits which, but for such
50 agreement, arrangement or understanding, the taxpayer might have derived
51 from such transaction. The commissioner may require any person or corpora-
52 tion to submit such information under oath or affirmation, or to permit such
53 examination of its books, papers and documents, as may be necessary to
54 enable him to determine the existence, nature or extent of an agreement,
55 understanding or arrangement to which this section relates, whether or not
56 such person or corporation is subject to the tax imposed by this act.

1 6. Section 13 of the act of which this act is amendatory is amended to
2 read as follows:

3 [13. In the case of any corporation which organizes or qualifies on or
4 after January 1 in any year no tax shall be payable in such privilege year;
5 provided, however, that this section shall not apply to a foreign corporation,
6 which after January 1, 1937, and prior to the year in which it qualifies, pos-
7 sessed the privilege of exercising its corporate franchise in this State, or did
8 business, or employed or owned capital or property, or maintained an office
9 in this State.]

10 13. If the amount of the taxable income for any year of any taxpayer as
11 returned to the United States Treasury Department is changed or corrected
12 by the Commissioner of Internal Revenue or other officer of the United States
13 or other competent authority, or where a renegotiation of a contract or sub-
14 contract with the United States results in a change in said taxable income, or
15 where a recovery of a war loss results in a computation or recomputation of
16 any tax imposed by the United States, such taxpayer shall report such
17 changed or corrected taxable income, or the results of such renegotiation, or
18 such computation or recomputation, within 90 days after the final determina-
19 tion of such change or correction or renegotiation, or such computation or

20 recomputation, or as required by the commissioner, and shall concede the
21 accuracy of such determination or state wherein it is erroneous. Any tax-
22 payer filing an amended return with such department shall also file within
23 90 days thereafter an amended report with the commissioner.

1 7. Section 15 of the act of which this act is amendatory is amended to
2 read as follows:

3 [15. The tax imposed by this act shall be due and payable with respect
4 to the calendar year 1946, and each year thereafter, measured by the taxpay-
5 er's net worth as of the close of the calendar year or of its fiscal year next
6 preceding the privilege year, except that in the case of a taxpayer whose
7 fiscal year ends not later than June 30 in the privilege year such measure
8 shall be as of the close of such fiscal year. For the purpose of this section
9 every taxpayer shall use the same calendar or fiscal year upon which it re-
10 ports to the United States Treasury Department for Federal income tax pur-
11 poses.]

12 15. The tax imposed by this act shall be due and payable annually here-
13 after, commencing with the calendar year 1959, in the manner provided under
14 either subsection (a) or subsection (b) of this section, whichever shall be ap-
15 plicable.

16 (a) Every taxpayer shall annually pay a franchise tax, with respect to
17 all or any part of each of its fiscal or calendar accounting years [.] beginning
18 after January 1, 1959, to be computed [upon the basis of its entire net income
19 or upon such other basis as may be applicable,] as herein provided, for such
20 fiscal or calendar accounting year or part thereof, on a report which shall be
21 filed on or before April 15 next succeeding the close of each such accounting
22 year, or, if any such fiscal year ends after the last day of December and prior
23 to July 1, on or before the fifteenth day of the fourth month after the close of
24 such fiscal year, and the full amount of the tax hereunder shall be due and pay-
25 able on or before the date prescribed herein for the filing of the return.

26 (b) Every taxpayer shall pay a like franchise tax with respect to all or
27 any part of the period beginning January 1, 1959 [.] and extending through

28 any subsequent part of its first fiscal or calendar accounting year ending after
 29 said date. Such tax shall be computed [upon the basis of its entire net in-
 30 come, or upon such other basis as may be applicable,] as herein provided, for
 31 each and every fiscal or calendar accounting year or part thereof begun not
 32 earlier than July 2, 1957 and ending not later than December 31, 1959 [during
 33 which such taxpayer has its charter or had the privilege of exercising its cor-
 34 porate charter, or did business, employed or owned capital or property or
 35 maintained an office, or otherwise conducted any activity for profit, in this
 36 State and] on the basis of which a franchise tax has not accrued under this
 37 act prior to January 1, 1959. The tax imposed pursuant to this subsection
 38 shall be deemed a single tax for such privilege period but shall be computed
 39 separately with respect to each such fiscal or calendar accounting year or
 40 part thereof on the basis of which a franchise tax has not previously
 41 accrued as aforesaid, on a report which shall be filed on or before April
 42 15 next succeeding the close of each such accounting year, or, if any
 42A such fiscal year ends after the last day of December and prior to July
 43 1, on or before the fifteenth day of the fourth month after the close of such
 44 fiscal year, and the full amount of the tax hereunder shall be due and payable
 45 on or before the date prescribed herein for the filing of the report.

46 (c) For the purpose of this act, every taxpayer shall use the same cal-
 47 endar or fiscal year upon which it reports to the United States Treasury De-
 48 partment for Federal income tax purposes.

49 [(d) Nothing in this section shall operate to relieve any taxpayer from
 50 the obligation to pay a tax heretofore imposed under this act.]

1 8. Section 16 of the act of which this act is amendatory is amended to
 2 read as follows:

3 [16. For the privilege year 1946, the tax imposed by this act shall con-
 4 stitute a lien on all of the taxpayer's property and franchises on and after
 5 January 1 of such year, and all interest, penalties, and costs of collection
 6 which fall due or accrue shall be added to and become a part of such lien.

7 For the privilege year 1947 and thereafter, the tax imposed by this act
 8 shall constitute a lien on all of the taxpayer's property and franchises on and

9 after January 1 of the year next succeeding the privilege year in which it is
10 due and payable, and all interest, penalties and costs of collection which fall
11 due or accrue shall be added to and become a part of such lien. Notwithstand-
12 ing the provisions of any other law, all such taxes, interest, penalties and costs
13 heretofore or hereafter imposed or incurred, whether levied or assessed or
14 not, under this act shall, unless sooner paid, continue and remain a lien on all
15 of the taxpayer's property and franchises until January 1, 1956, or until the
16 expiration of 10 years after January 1 of the privilege year in which they
17 became or become due and payable, whichever shall be later, and no longer.]

18 16. *The tax imposed by this act shall constitute a lien on all of the tax-*
19 *payer's property and franchises on and after January 1 of the year next suc-*
20 *ceeding the year in which it is due and payable, and all interest, penalties*
21 *and costs of collection which fall due or accrue shall be added to and become*
22 *a part of such lien. Notwithstanding the provisions of any other law, all such*
23 *taxes, interest, penalties and costs heretofore or hereafter imposed or in-*
24 *curred, whether levied or assessed or not, under this act shall, unless sooner*
25 *paid, continue and remain a lien on all of the taxpayer's property and fran-*
26 *chises until the expiration of 10 years after January 1 of the year in which*
27 *they became or become due and payable.*

1 9. Section 17 of the act of which this act is amendatory is amended to
2 read as follows:

3 17. [(a) on or before April 15, in the case of taxpayers reporting on a
4 calendar year basis, and on or before April 15 or the fifteenth day of the
5 fourth month following the close of a fiscal year, whichever is later, in the
6 case of taxpayers reporting on a fiscal year basis, each taxpayer shall duly
7 execute and file a tax return with the commissioner, in such form and con-
8 taining such information as he may prescribe, which return shall truly and
9 accurately, set forth its liability under this act; and the full amount of the
10 tax hereunder shall be due and payable to the commissioner on or before the
11 date prescribed herein for the filing of the return; provided, however, that
12 for the privilege year 1947 any return and tax payment which under the
13 foregoing provisions of this section would be due on or before April 15 or

14 on or before May 15 shall be due on or before May 31, 1947.] (a) *If the period*
15 *covered by the report under this act is other than the period covered by the*
16 *report to the United States Treasury Department or is a period of less than*
17 *12 calendar months, the commissioner may, under regulations prescribed by*
18 *him, determine the entire net worth and entire net income of the taxpayer in*
19 *such manner as shall properly reflect its entire net worth and entire net in-*
20 *come for the period covered by its report under this act.*

21 (b) Any taxpayer which shall fail to file its return when due shall be
22 liable to a penalty of \$2.00 for each day of delinquency, which penalty shall
23 be payable to, and recoverable by, the commissioner as a part of the tax
24 herein imposed. If any tax be not paid when the same becomes due, as herein
25 provided, there shall be added to the amount of the tax a sum equivalent to
26 5% thereof, as a penalty, and, in addition thereto, interest at the rate of 1%
27 per month or fraction thereof from the date the tax became due until the same
28 be paid. The commissioner, if satisfied that the failure to comply with any
29 provision of this [section] act was excusable, may abate or remit the whole
30 or part of any penalty.

1 10. Section 18 of the act of which this act is amendatory is amended to
2 read as follows:

3 [18. The commissioner shall design a form of return and forms for such
4 additional statements or schedules as he may require to be filed therewith.
5 Such forms shall provide for the setting forth of such facts as the commis-
6 sioner may deem necessary for the proper enforcement of this act. He shall
7 cause a supply thereof to be printed and shall furnish appropriate blank
8 forms to each taxpayer upon application or otherwise as he may deem neces-
9 sary. Failure to receive a form shall not relieve any taxpayer from the ob-
10 ligation to file a return under the provisions of this act. Each such return
11 shall be made upon the oath or affirmation of the president, vice-president,
12 or secretary or treasurer of the taxpayer, and in the case of a corporation in
13 liquidation or in the hands of a receiver or trustee, shall be made on the oath
14 or affirmation of the person responsible for the conduct of the affairs of such
15 corporation.]

16 18. *The commissioner shall design a form of return and forms for such*
17 *additional statements or schedules as he may require to be filed therewith.*
18 *Such forms shall provide for the setting forth of such facts as the commis-*
19 *sioner may deem necessary for the proper enforcement of this act. He shall*
20 *cause a supply thereof to be printed and shall furnish appropriate blank*
21 *forms to each taxpayer upon application or otherwise as he may deem neces-*
22 *sary. Failure to receive a form shall not relieve any taxpayer from the ob-*
23 *ligation to file a return under the provisions of this act. Each such return*
24 *shall have annexed thereto a certification by the president, vice-president,*
25 *comptroller, secretary, treasurer, assistant treasurer, accounting officer of the*
26 *taxpayer or any other officer of the taxpayer duly authorized so to act to the*
27 *effect that the statements contained therein are true. The fact that an indi-*
28 *vidual's name is signed on a certification of the report shall be prima facie*
29 *evidence that such individual is authorized to sign and certify the report on*
30 *behalf of the corporation. In the case of a corporation in liquidation or in*
31 *the hands of a receiver or trustee, certification shall be made by the person*
32 *responsible for the conduct of the affairs of such corporation.*

1 11. Section 19 of the act of which this act is amendatory is amended to
2 read as follows :

3 19. The commissioner may grant a reasonable extension of time for the
4 filing of returns or the payment of tax, or both, under such rules and regu-
5 lations as he shall prescribe, which rules and regulations may require the fil-
6 ing of a tentative return and the payment of an estimated tax[, but no such
7 extension shall be granted beyond December 1 of the privilege year.]. If the
8 time for filing the return shall be extended, the payment of the portion of
9 the tax remaining to be paid, if any, shall be postponed to the date fixed by
10 the extension of the time for the filing of the return, but in every such case
11 the corporation shall pay, in addition to the unpaid portion of the tax,
12 interest thereon at the rate of 6% per annum from the time when the return
13 originally was required to be filed to the date of actual payment under the
14 extension; provided, that if such unpaid portion of the tax is not paid within

15 the time fixed under the extension, the interest on such unpaid portion shall
16 be computed at the rate of 1% per month or fraction thereof to be calculated
17 from the date the tax was originally due to the date of actual payment.

1 [12. This act shall take effect immediately, except that the amended sub-
2 section (c) of section 5 of the act of which this act is amendatory shall take
3 effect on January 1, 1959.]

4 12. *The provisions of this act shall be effective with respect to the tax*
5 *payable in the year 1959 and thereafter and, with respect to the tax payable*
6 *in 1958 and prior years, shall not affect the provisions of, or any obligations*
7 *heretofore incurred under, the Corporation Business Tax Act (1945).*

1 13. *This act shall be effective immediately.*

ASSEMBLY, No. 501

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1958

By Assemblyman KURTZ

Referred to Committee on Appropriations

AN ACT to revise the laws imposing a franchise tax upon certain corporations, and amending and supplementing 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 32-A of Title 54, of the Revised Statutes, and making an appropriation for the administration of such tax," approved April 13, 1945 (P. L. 1945, c. 162), as amended and supplemented.

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

1 1. Section 4 of the act of which this act is amendatory is amended to read
2 as follows:

3 4. For the purposes of this act, unless the context requires a different
4 meaning:

5 (a) "Commissioner" shall mean the Director of the Division of Taxation
6 of the State Department of [Taxation and Finance] *the Treasury.*

7 (b) "Allocation factor" shall mean the proportionate part of a tax-
8 payer's net worth *or entire net income* used to determine a measure of its
9 tax under this act.

10 (c) "Corporation" shall mean any corporation, joint-stock company or
11 association and any business conducted by a trustee or trustees wherein in-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

12 terest or ownership is evidenced by a certificate of interest or ownership
13 or similar written instrument.

14 (d) "Net worth" shall mean the aggregate of the values disclosed by
15 the books of the corporation for (1) issued and outstanding capital stock,
16 (2) paid-in or capital surplus, (3) earned surplus and undivided profits, (4)
17 surplus reserves which can reasonably be expected to accrue to holders or
18 owners of equitable shares, not including reasonable valuation reserves, such
19 as reserves for depreciation or obsolescence or depletion, and (5) the
20 amount of all indebtedness owing directly or indirectly to holders of 10%
21 or more of the aggregate outstanding shares of the taxpayer's capital stock
22 of all classes, as of the close of a calendar or fiscal year. However, if in the
23 opinion of the commissioner, the corporation's books do not disclose fair
24 valuations the commissioner may make a reasonable determination of the net
25 worth which, in his opinion, would reflect the fair value of the assets car-
26 ried on the books of the corporation, in accordance with sound accounting
27 principles, and such determination shall be used as net worth for the pur-
28 pose of this act.

29 (e) "Indebtedness owing directly or indirectly" shall include, without
30 limitation thereto, all indebtedness owing to any stockholder or shareholder
31 and to members of his immediate family where a stockholder and members
32 of his immediate family together or in the aggregate own 10% or more of
33 the aggregate outstanding shares of the taxpayer's capital stock of all classes.

34 (f) "Investment company" shall mean any corporation whose business
35 during the period covered by its report consisted, to the extent of at least
36 90% thereof of holding, investing and reinvesting in stocks, bonds, notes,
37 mortgages, debentures, patents, patent rights and other securities for its own
38 account, but this shall not include any corporation which: (1) is a merchant
39 or a dealer of stocks, bonds and other securities, regularly engaged in buy-
40 ing the same and selling the same to customers; or (2) had less than 90%
41 of its average gross assets in New Jersey, at cost, invested in stocks, bonds,
42 debentures, mortgages, notes, patents, patent rights or other securities or

43 consisting of cash on deposit during the period covered by its report; or
44 (3) owned more than 10% of either the aggregate outstanding shares of
45 capital stock of all classes entitled to vote, or of the aggregate outstanding
46 shares of nonvoting capital stock, of any other corporation, during the
47 period covered by its report.

48 (g) "Regulated investment company" shall mean any corporation which
49 for a period covered by its report, is registered and regulated under the In-
50 vestment Company Act of 1940 (54 Stat. 789), as amended.

51 (h) "Taxpayer" shall mean any corporation required to report or to
52 pay taxes, interest or penalties under this act.

53 (i) "Fiscal year" shall mean an accounting period ending on any day
54 other than the last day of December *on the basis of which the taxpayer is*
55 *required to report for Federal income tax purposes.*

56 (j) *Except as herein otherwise provided, "privilege [year] period" shall*
57 *mean the calendar [year] or fiscal accounting period [in and] for which a*
57A *tax is payable under this act.*

58 (k) *"Entire net income" shall mean total net income from all sources,*
59 *whether within or without the United States, and shall include the gain de-*
60 *rived from the employment of capital or labor, or from both combined, as*
61 *well as profit gained through a sale or conversion of capital assets. For*
62 *the purpose of this act, the amount of a taxpayer's entire net income shall be*
63 *deemed prima facie to be equal in amount to the taxable income, before net*
64 *operating loss deduction and special deductions, which the taxpayer is re-*
65 *quired to report to the United States Treasury Department [.] for the pur-*
66 *pose of computing its Federal income tax; provided, however, that in the de-*
67 *termination of such entire net income,*

68 (1) *Entire net income shall not include 50% of dividends which were in-*
69 *cluded in computing such taxable income for Federal income tax purposes;*

70 (2) *Entire net income shall be determined without the exclusion, deduc-*
71 *tion or credit of:*

72 (A) the amount of any specific exemption or credit allowed in any
 73 law of the United States imposing any tax on or measured by the in-
 74 come of corporations;

75 (B) any part of any income from dividends or interest on any kind
 76 of stock, securities or indebtedness, except as provided in subsection
 77 (k) (1) of this section;

78 (C) taxes paid or accrued to the United States on or measured by
 79 profits or income, or the tax imposed by this act;

80 (D) net operating losses sustained during any year or period other
 81 than that covered by the report;

82 (E) 90% of interest on indebtedness owing directly or indirectly to
 83 holders of 10% or more of the aggregate outstanding shares of the tax-
 84 payer's capital stock of all classes; except that such interest may, in any
 85 event, be deducted

86 (i) up to an amount not exceeding \$1,000.00,

87 (ii) in full to the extent that it relates to bonds or other evi-
 88 dences of indebtedness issued, with stock, pursuant to a bona fide
 89 plan of reorganization, to persons, who, prior to such reorganization,
 90 were bona fide creditors of the corporation or its predecessors, but
 91 were not stockholders or shareholders thereof;

92 (3) The commissioner may, whenever necessary to properly reflect the
 93 entire net income of any taxpayer, determine the year or period in which any
 94 item of income or deduction shall be included, without being limited to the
 95 method of accounting employed by the taxpayer.

1 2. Section 5 of the act of which this act is amendatory is amended to
 2 read as follows:

3 5. The franchise tax to be annually assessed to and paid by each taxpayer
 4 shall be [measured by [the greater of] whichever of the following results in
 5 the greatest amount of tax] the sum of the amount computed under subsection
 5A (a) or (b) hereof, whichever is greater, and the amount computed under sub-
 5B section (c) hereof:

6 (a) that portion of its entire net worth as may be allocable to this State

7 as provided in section 6 **[computed at]** multiplied by the rates set forth in
8 subsection (b) of this section; or

9 (b) that proportion of its entire net worth as the average value of its
10 total assets in this State during the period covered by its report is to the
11 average value of its assets everywhere during such period (for the purpose
12 of which there shall be included as within this State all intangible personal
13 property of domestic corporations not having a business situs outside this
14 State, 40% of the value of such property having a business situs outside this
15 State, and the entire amount of the intangible personal property of foreign
16 corporations as would have a business situs within this State for the purpose
17 of a property tax) **;** at the rate of **]** multiplied by the following rates: 2 mills
18 per dollar on the first \$100,000,000.00 of allocated net worth; $\frac{4}{10}$ of a mill per
19 dollar on the second \$100,000,000.00; $\frac{3}{10}$ of a mill per dollar on the third
20 \$100,000,000.00; and $\frac{2}{10}$ of a mill per dollar on all amounts of allocated net
20A worth in excess of \$300,000,000.00 **[.] ; [or]**

21 **[(c) Provided, however, that the franchise tax to be annually assessed to**
22 and paid by any investment company, other than a regulated investment
23 company, shall be measured by 25%, and in the case of a regulated invest-
24 ment company by 15% of its entire net worth, at the rates hereinabove set
25 forth but in no case less than \$250.00, unless the taxpayer shall elect to remain
26 taxable pursuant to any other subsection of this section.]

27 (c) **[a tax measured by]** 1 3/4% of its entire net income or such portion
28 thereof as may be allocable to this State as provided in section 6 **[, computed**
29 **at the rate of 3 1/2%].**

30 **[(d) The tax assessed to any taxpayer pursuant to this act under sub-**
31 sections (a) and (b) of this section shall not be less than the greater of $\frac{5}{10}$
32 of a mill per dollar on the first \$100,000,000.00 and $\frac{2}{10}$ of a mill per dollar on
33 all amounts in excess of \$100,000,000.00 of total assets allocated to this State
34 in accordance with subsection (b) hereof, and \$25.00 in the case of a domestic
35 corporation, or \$50.00 in the case of a foreign corporation.]

36 (d) *Provided, however, that the franchise tax to be annually assessed to*
37 *and paid by any investment company or regulated investment company which*

38 has elected to report as such and has filed its return in the form and within
 39 the time provided in this act and the rules and regulations promulgated in
 40 connection therewith, shall, in the case of an investment company, be measured
 41 by [the greater of] 25% of its entire net income [or] and 25% of its entire
 42 net worth, and, in the case of a regulated investment company, by [the
 43 greater of] 15% of its entire net income [or] and 15% of its entire net
 44 worth, at the rates hereinabove set forth for the computation of tax on net in-
 45 come [or] and net worth, respectively, but in no case less than \$250.00.

46 [(e) In lieu of the tax imposed by subsections (a), (b), (c) and (d) of
 47 this section, any taxpayer, the value of whose total assets everywhere, less
 48 reasonable reserves for depreciation, as of the close of the period covered by
 49 its report, amounts to less than \$100,000.00, may elect to pay the tax shown
 50 in the following table:

	If Total Assets Are at Least	But Less Than	The Tax Shall Be	
			For Domestic Corporations	For Foreign Corporations
51	\$0 00	\$20,000 00	\$25 00	\$50 00
52	20,000 00	24,000 00	31 00	50 00
53	24,000 00	28,000 00	37 00	50 00
54	28,000 00	32,000 00	43 00	50 00
55	32,000 00	36,000 00	49 00	50 00
56	36,000 00	40,000 00	55 00	55 00
57	40,000 00	44,000 00	61 00	61 00
58	44,000 00	48,000 00	67 00	67 00
59	48,000 00	52,000 00	73 00	73 00
60	52,000 00	56,000 00	79 00	79 00
61	56,000 00	60,000 00	85 00	85 00
62	60,000 00	64,000 00	91 00	91 00
63	64,000 00	68,000 00	97 00	97 00
64	68,000 00	72,000 00	103 00	103 00
65	72,000 00	76,000 00	109 00	109 00

66,	76,000 00	80,000 00	115 00	115 00
67	80,000 00	84,000 00	121 00	121 00
68	84,000 00	88,000 00	127 00	127 00
69	88,000 00	92,000 00	133 00	133 00
70	92,000 00	96,000 00	139 00	139 00
71	96,000 00	100,000 00	145 00	145 00】

72 (e) *The tax assessed to any taxpayer pursuant to [this act under] sub-*
73 *sections (a) [,] and (b) [and (c)] of this section shall not be less than the*
74 *greater of 5/10 of a mill per dollar on the first \$100,000,000.00 and 2/10 of a*
75 *mill per dollar on all amounts in excess of \$100,000,000.00 of total assets al-*
76 *located to this State in accordance with subsection (b) hereof, and \$25.00 in the*
77 *case of a domestic corporation, or \$50.00 in the case of a foreign corporation.*

1 3. Section 6 of the act of which this act is amendatory is amended to read
2 as follows:

3 6. In the case of a taxpayer which maintains a regular place of business
4 outside this State other than a statutory office, the portion of its entire net
5 worth to be used as a measure of the tax imposed by section 5(a) of this act,
6 and the portion of its entire net income to be used as a measure of the tax im-
7 posed by section 5(c) of this act, shall be determined by multiplying such en-
8 tire net worth and entire net income, respectively, by an allocation factor
9 which shall be the average of the fractions computed in (A), (B) and (C)
10 below, or of so many of them as may be applicable, that is:

11 (A) The average value of the taxpayer's real and tangible personal
12 property within the State during the period covered by its report divided by
13 the average value of all the taxpayer's real and tangible personal property
14 wherever situated during such period;

15 (B) The receipts of the taxpayer, computed on the cash or accrual basis
16 according to the method of accounting used in the computation of its net in-
17 come for Federal tax purposes, arising during such period from

18 (1) sales of its tangible personal property located within this State at
19 the time of the receipt of or appropriation to the orders where shipments are
20 made to points within this State,

21 (2) sales of tangible personal property located within this State at the
22 time of the receipt of or appropriation to the orders where shipment is made
23 to points outside of the State and sales of tangible personal property located
24 without the State at the time of the receipt of or appropriation to the orders
25 where shipment is made to points within the State, but only to the extent of
26 50% of the receipts from the sales referred to in this subsection (2),

27 (3) sales of any such property not located at the time of the receipt of or
28 appropriation to the orders at any permanent or continuous place of business
29 maintained by the taxpayer without the State, where the orders were received
30 or accepted within the State, but only to the extent of 50% of the receipts
31 from the sales referred to in this subsection (3). For the purposes of this
32 subsection (3), an order shall be deemed received or accepted within the
33 State if it has been received or accepted by an employee, agent, agency or in-
34 dependent contractor chiefly situated at, connected with, by contract or other-
35 wise, or sent out from a permanent or continuous place of business of the tax-
36 payer within the State,

37 (4) services performed within the State,

38 (5) rentals from property situated, and royalties from the use of patents
39 or copyrights, within the State,

40 (6) all other business receipts earned within the State, divided by the
41 total amount of the taxpayer's receipts, similarly computed, arising during
42 such period from all sales of its tangible personal property, services, rentals,
43 royalties and all other business receipts, whether within or without the State;

44 (C) The total wages, salaries and other personal service compensation,
45 similarly computed, during such period of officers and employees within the
46 State divided by the total wages, salaries and other personal service compen-
47 sation, similarly computed, during such period of all the taxpayer's officers
48 and employees within and without the State.

49 In the case of a taxpayer which does not maintain a regular place of busi-
50 ness outside this State other than a statutory office, the allocation factor shall
51 be 100%.

1 4. Section 8 of the act of which this act is amendatory is amended to read
2 as follows:

3 8. If it shall appear to the commissioner that an allocation factor deter-
4 mined pursuant to section 6 does not properly reflect the activity, business,
5 receipts, [or] capital, *entire net worth or entire net income* of a taxpayer rea-
6 sonably attributable to the State, he may adjust it by:

7 (a) excluding 1 or more of the factors therein;

8 (b) including 1 or more other factors, such as expenses, purchases, con-
9 tract values (minus subcontract values);

10 (c) excluding 1 or more assets in computing entire net worth; or

11 (d) *excluding 1 or more assets in computing an allocation percentage;*

12 *or*

13 **[(d)] (e)** applying any other similar or different method calculated to
14 **[affect] effect** a fair and proper allocation **[according to the receipts, activ-**
15 **ity, business and capital] of the entire net income and the entire net worth**
16 reasonably attributable to the State.

17 Nothing herein shall be construed to require or permit the commissioner
18 to adjust an allocation factor determined pursuant to section 5(b).

1 5. Section 10 of the act of which this act is amendatory is amended to
2 read as follows:

3 **[10.** Whenever it shall appear to the commissioner that any taxpayer
4 conducts its business or maintains its records in such manner as either di-
5 rectly or indirectly to distort its true net worth under this act or the propor-
6 tion thereof properly allocable to this State, or that any taxpayer maintains
7 a place of business outside this State, or that any agreement, understanding
8 or arrangement exists between a taxpayer and any other corporation or any
9 person or firm, for the purpose of evading tax under this act, or whereby the
10 activity, business, receipts or net worth of the taxpayer is improperly or in-
11 accurately reflected, the commissioner is authorized and empowered in his
12 discretion and in such manner as he may determine to adjust and redeter-
13 mine such net worth, and to adjust items of gross receipts, tangible property

14 and payrolls within and without the State and the allocation of net worth,
15 or to make such other adjustments in any tax report or tax returns as may be
16 necessary. The commissioner may require any person or corporation to submit
17 such information under oath, or to permit such examination of its books,
18 papers and documents, as may be necessary to enable him to determine the
19 existence, nature or extent of an agreement, understanding or arrangement
20 to which this section relates, whether or not such person or corporation is
21 subject to the tax imposed by this act.]

22 10. *Whenever it shall appear to the commissioner that any taxpayer fails*
23 *to maintain its records in accordance with sound accounting principles or*
24 *conducts its business or maintains its records in such manner as either di-*
25 *rectly or indirectly to distort its true entire net income or its true entire net*
26 *worth under this act or the proportion thereof properly allocable to this State,*
27 *or whenever any taxpayer maintains a place of business outside this State, or*
28 *whenever any agreement, understanding or arrangement exists between a tax-*
29 *payer and any other corporation or any person or firm, for the purpose of*
30 *evading tax under this act, or whereby the activity, business, receipts, ex-*
31 *penses, assets, liabilities, income or net worth of the taxpayer are improperly*
32 *or inaccurately reflected, the commissioner is authorized and empowered, in*
33 *his discretion and in such manner as he may determine, to adjust and rede-*
34 *termine such items, and to adjust items of gross receipts, tangible or intan-*
35 *gible property and payrolls within and without the State and the allocation*
36 *of entire net income or entire net worth or to make any other adjustments in*
37 *any tax report or tax returns as may be necessary to make a fair and reason-*
38 *able determination of the amount of tax payable under this act. Where (a)*
39 *any taxpayer conducts its activity or business under any agreement, arrange-*
40 *ment or understanding in such manner as either directly or indirectly to bene-*
41 *fit its members or stockholders, or any of them, or any person or persons di-*
42 *rectly or indirectly interested in such activity or business, by entering into*
43 *any transaction at more or less than a fair price which, but for such agree-*
44 *ment, arrangement or understanding, might have been paid or received*

45 therefor, or (b) any taxpayer, a substantial portion of whose capital stock
46 is owned either directly or indirectly by or through another corporation,
47 enters into any transaction with such other corporation on such terms as
48 to create an improper loss or net income, the commissioner may include in
49 the entire net income of the taxpayer the fair profits which, but for such
50 agreement, arrangement or understanding, the taxpayer might have derived
51 from such transaction. The commissioner may require any person or corpora-
52 tion to submit such information under oath or affirmation, or to permit such
53 examination of its books, papers and documents, as may be necessary to
54 enable him to determine the existence, nature or extent of an agreement,
55 understanding or arrangement to which this section relates, whether or not
56 such person or corporation is subject to the tax imposed by this act.

1 6. Section 13 of the act of which this act is amendatory is amended to
2 read as follows:

3 [13. In the case of any corporation which organizes or qualifies on or
4 after January 1 in any year no tax shall be payable in such privilege year;
5 provided, however, that this section shall not apply to a foreign corporation,
6 which after January 1, 1937, and prior to the year in which it qualifies, pos-
7 sessed the privilege of exercising its corporate franchise in this State, or did
8 business, or employed or owned capital or property, or maintained an office
9 in this State.]

10 15. If the amount of the taxable income for any year of any taxpayer as
11 returned to the United States Treasury Department is changed or corrected
12 by the Commissioner of Internal Revenue or other officer of the United States
13 or other competent authority, or where a renegotiation of a contract or sub-
14 contract with the United States results in a change in said taxable income, or
15 where a recovery of a war loss results in a computation or recomputation of
16 any tax imposed by the United States, such taxpayer shall report such
17 changed or corrected taxable income, or the results of such renegotiation, or
18 such computation or recomputation, within 90 days after the final determina-
19 tion of such change or correction or renegotiation, or such computation or

20 recomputation, or as required by the commissioner, and shall concede the
 21 accuracy of such determination or state wherein it is erroneous. Any tax-
 22 payer filing an amended return with such department shall also file within
 23 90 days thereafter an amended report with the commissioner.

1 7. Section 15 of the act of which this act is amendatory is amended to
 2 read as follows:

3 [15. The tax imposed by this act shall be due and payable with respect
 4 to the calendar year 1946, and each year thereafter, measured by the taxpay-
 5 er's net worth as of the close of the calendar year or of its fiscal year next
 6 preceding the privilege year, except that in the case of a taxpayer whose
 7 fiscal year ends not later than June 30 in the privilege year such measure
 8 shall be as of the close of such fiscal year. For the purpose of this section
 9 every taxpayer shall use the same calendar or fiscal year upon which it re-
 10 ports to the United States Treasury Department for Federal income tax pur-
 11 poses.]

12 15. The tax imposed by this act shall be due and payable annually here-
 13 after, commencing with the calendar year 1959, in the manner provided under
 14 either subsection (a) or subsection (b) of this section, whichever shall be ap-
 15 plicable.

16 (a) Every taxpayer shall annually pay a franchise tax, with respect to
 17 all or any part of each of its fiscal or calendar accounting years [.] beginning
 18 after January 1, 1959, to be computed [upon the basis of its entire net income
 19 or upon such other basis as may be applicable,] as herein provided, for such
 20 fiscal or calendar accounting year or part thereof, on a report which shall be
 21 filed on or before April 15 next succeeding the close of each such accounting
 22 year, or, if any such fiscal year ends after the last day of December and prior
 23 to July 1, on or before the fifteenth day of the fourth month after the close of
 24 such fiscal year, and the full amount of the tax hereunder shall be due and pay-
 25 able on or before the date prescribed herein for the filing of the return.

26 (b) Every taxpayer shall pay a like franchise tax with respect to all or
 27 any part of the period beginning January 1, 1959 [.] and extending through

28 any subsequent part of its first fiscal or calendar accounting year ending after
 29 said date. Such tax shall be computed [upon the basis of its entire net in-
 30 come, or upon such other basis as may be applicable,] as herein provided, for
 31 each and every fiscal or calendar accounting year or part thereof begun not
 32 earlier than July 2, 1957 and ending not later than December 31, 1959 [during
 33 which such taxpayer has its charter or had the privilege of exercising its cor-
 34 porate charter, or did business, employed or owned capital or property or
 35 maintained an office, or otherwise conducted any activity for profit, in this
 36 State and] on the basis of which a franchise tax has not accrued under this
 37 act prior to January 1, 1959. The tax imposed pursuant to this subsection
 38 shall be deemed a single tax for such [privilege] period but shall be computed
 39 separately with respect to each such fiscal or calendar accounting year or
 40 part thereof on the basis of which a franchise tax has not previously
 41 accrued as aforesaid, on a report which shall be filed on or before April
 42 15 next succeeding the close of each such accounting year, or, if any
 42A such fiscal year ends after the last day of December and prior to July
 43 1, on or before the fifteenth day of the fourth month after the close of such
 44 fiscal year, and the full amount of the tax hereunder shall be due and payable
 45 on or before the date prescribed herein for the filing of the report.

46 (c) For the purpose of this act, every taxpayer shall use the same cal-
 47 endar or fiscal year upon which it reports to the United States Treasury De-
 48 partment for Federal income tax purposes.

49 [(d) Nothing in this section shall operate to relieve any taxpayer from
 50 the obligation to pay a tax heretofore imposed under this act.]

1 8. Section 16 of the act of which this act is amendatory is amended to
 2 read as follows:

3 [16. For the privilege year 1946, the tax imposed by this act shall con-
 4 stitute a lien on all of the taxpayer's property and franchises on and after
 5 January 1 of such year, and all interest, penalties, and costs of collection
 6 which fall due or accrue shall be added to and become a part of such lien.

7 For the privilege year 1947 and thereafter, the tax imposed by this act
 8 shall constitute a lien on all of the taxpayer's property and franchises on and

9 after January 1 of the year next succeeding the privilege year in which it is
10 due and payable, and all interest, penalties and costs of collection which fall
11 due or accrue shall be added to and become a part of such lien. Notwithstand-
12 ing the provisions of any other law, all such taxes, interest, penalties and costs
13 heretofore or hereafter imposed or incurred, whether levied or assessed or
14 not, under this act shall, unless sooner paid, continue and remain a lien on all
15 of the taxpayer's property and franchises until January 1, 1956, or until the
16 expiration of 10 years after January 1 of the privilege year in which they
17 became or become due and payable, whichever shall be later, and no longer.]

18 *16. The tax imposed by this act shall constitute a lien on all of the tax-*
19 *payer's property and franchises on and after January 1 of the year next suc-*
20 *ceeding the year in which it is due and payable, and all interest, penalties*
21 *and costs of collection which fall due or accrue shall be added to and become*
22 *a part of such lien. Notwithstanding the provisions of any other law, all such*
23 *taxes, interest, penalties and costs heretofore or hereafter imposed or in-*
24 *curred, whether levied or assessed or not, under this act shall, unless sooner*
25 *paid, continue and remain a lien on all of the taxpayer's property and fran-*
26 *chises until the expiration of 10 years after January 1 of the year in which*
27 *they became or become due and payable.*

1 9. Section 17 of the act of which this act is amendatory is amended to
2 read as follows:

3 17. [(a) on or before April 15, in the case of taxpayers reporting on a
4 calendar year basis, and on or before April 15 or the fifteenth day of the
5 fourth month following the close of a fiscal year, whichever is later, in the
6 case of taxpayers reporting on a fiscal year basis, each taxpayer shall duly
7 execute and file a tax return with the commissioner, in such form and con-
8 taining such information as he may prescribe, which return shall truly and
9 accurately, set forth its liability under this act; and the full amount of the
10 tax hereunder shall be due and payable to the commissioner on or before the
11 date prescribed herein for the filing of the return; provided, however, that
12 for the privilege year 1947 any return and tax payment which under the
13 foregoing provisions of this section would be due on or before April 15 or

14 on or before May 15 shall be due on or before May 31, 1947.] (a) If the period
15 covered by the report under this act is other than the period covered by the
16 report to the United States Treasury Department or is a period of less than
17 12 calendar months, the commissioner may, under regulations prescribed by
18 him, determine the entire net worth and entire net income of the taxpayer in
19 such manner as shall properly reflect its entire net worth and entire net in-
20 come for the period covered by its report under this act.

21 (b) Any taxpayer which shall fail to file its return when due shall be
22 liable to a penalty of \$2.00 for each day of delinquency, which penalty shall
23 be payable to, and recoverable by, the commissioner as a part of the tax
24 herein imposed. If any tax be not paid when the same becomes due, as herein
25 provided, there shall be added to the amount of the tax a sum equivalent to
26 5% thereof, as a penalty, and, in addition thereto, interest at the rate of 1%
27 per month or fraction thereof from the date the tax became due until the same
28 be paid. The commissioner, if satisfied that the failure to comply with any
29 provision of this [section] act was excusable, may abate or remit the whole
30 or part of any penalty.

1 10. Section 18 of the act of which this act is amendatory is amended to
2 read as follows:

3 [18. The commissioner shall design a form of return and forms for such
4 additional statements or schedules as he may require to be filed therewith.
5 Such forms shall provide for the setting forth of such facts as the commis-
6 sioner may deem necessary for the proper enforcement of this act. He shall
7 cause a supply thereof to be printed and shall furnish appropriate blank
8 forms to each taxpayer upon application or otherwise as he may deem neces-
9 sary. Failure to receive a form shall not relieve any taxpayer from the ob-
10 ligation to file a return under the provisions of this act. Each such return
11 shall be made upon the oath or affirmation of the president, vice-president,
12 or secretary or treasurer of the taxpayer, and in the case of a corporation in
13 liquidation or in the hands of a receiver or trustee, shall be made on the oath
14 or affirmation of the person responsible for the conduct of the affairs of such
15 corporation.]

16 18. *The commissioner shall design a form of return and forms for such*
17 *additional statements or schedules as he may require to be filed therewith.*
18 *Such forms shall provide for the setting forth of such facts as the commis-*
19 *sioner may deem necessary for the proper enforcement of this act. He shall*
20 *cause a supply thereof to be printed and shall furnish appropriate blank*
21 *forms to each taxpayer upon application or otherwise as he may deem neces-*
22 *sary. Failure to receive a form shall not relieve any taxpayer from the ob-*
23 *ligation to file a return under the provisions of this act. Each such return*
24 *shall have annexed thereto a certification by the president, vice-president,*
25 *comptroller, secretary, treasurer, assistant treasurer, accounting officer of the*
26 *taxpayer or any other officer of the taxpayer duly authorized so to act to the*
27 *effect that the statements contained therein are true. The fact that an indi-*
28 *vidual's name is signed on a certification of the report shall be prima facie*
29 *evidence that such individual is authorized to sign and certify the report on*
30 *behalf of the corporation. In the case of a corporation in liquidation or in*
31 *the hands of a receiver or trustee, certification shall be made by the person*
32 *responsible for the conduct of the affairs of such corporation.*

1 11. Section 19 of the act of which this act is amendatory is amended to
2 read as follows:

3 19. The commissioner may grant a reasonable extension of time for the
4 filing of returns or the payment of tax, or both, under such rules and regu-
5 lations as he shall prescribe, which rules and regulations may require the fil-
6 ing of a tentative return and the payment of an estimated tax[, but no such
7 extension shall be granted beyond December 1 of the privilege year.]. If the
8 time for filing the return shall be extended, the payment of the portion of
9 the tax remaining to be paid, if any, shall be postponed to the date fixed by
10 the extension of the time for the filing of the return, but in every such case
11 the corporation shall pay, in addition to the unpaid portion of the tax,
12 interest thereon at the rate of 6% per annum from the time when the return
13 originally was required to be filed to the date of actual payment under the
14 extension; provided, that if such unpaid portion of the tax is not paid within.

15 the time fixed under the extension, the interest on such unpaid portion shall
16 be computed at the rate of 1% per month or fraction thereof to be calculated
17 from the date the tax was originally due to the date of actual payment.

1 [12. This act shall take effect immediately, except that the amended sub-
2 section (c) of section 5 of the act of which this act is amendatory shall take
3 effect on January 1, 1959.]

4 12. *The provisions of this act shall be effective with respect to the tax*
5 *payable in the year 1959 and thereafter and, with respect to the tax payable*
6 *in 1958 and prior years, shall not affect the provisions of, or any obligations*
7 *heretofore incurred under, the Corporation Business Tax Act (1945).*

1 13. *This act shall be effective immediately.*

CHAPTER 190 LAWS OF N. J. 1959

APPROVED 12-9-59

ASSEMBLY, No. 715

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 16, 1959

By Assemblymen PANARO, MARUT, KAY and MARRYATT

(Without Reference)

AN ACT to amend the "Corporation Business Tax Act (1945)," approved April 13, 1945 (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 5 of the act of which this act is amendatory is amended to
2 read as follows:

3 5. The franchise tax to be annually assessed to and paid by each tax-
4 payer shall be the sum of the amount computed under subsection (a) or (b)
5 hereof, whichever is greater, *or, in the alternative to the amounts computed*
6 *under subsection (a) or (b) hereof, the amount computed under subsection*
7 *(f) hereof, and the amount computed under subsection (c) hereof:*

8 (a) that proportion of its entire net worth as may be allocable to this
9 State as provided in section 6 multiplied by the rates set forth in subsection
10 (b) of this section; or

11 (b) that portion of its entire net worth as the average value of its total
12 assets in this State during the period covered by its report is to the average
13 value of its assets everywhere during such period (for the purpose of which
14 there shall be included as within this State all intangible personal property
15 of domestic corporations not having a business situs outside this State, 40%
16 of the value of such property having a business situs outside this State, and

17 the entire amount of the intangible personal property of foreign corpora-
 18 tions as would have a business situs within this State for the purpose of a
 19 property tax) multiplied by the following rates: 2 mills per dollar on the 47
 20 first \$100,000,000.00 of allocated net worth; $\frac{1}{10}$ of a mill per dollar on the 48
 21 second \$100,000,000.00; $\frac{3}{10}$ of a mill per dollar on the third \$100,000,000.00; 49
 22 and $\frac{2}{10}$ of a mill per dollar on all amounts of allocated net worth in excess of 50
 23 \$300,000,000.00; 51

24 (c) $1\frac{3}{4}\%$ of its entire net income or such portion thereof as may be 52
 25 allocable to this State as provided in section 6. 53

26 (d) Provided, however, that the franchise tax to be annually assessed 54
 27 to and paid by any investment company or regulated investment company 55
 28 which has elected to report as such and has filed its return in the form and 56
 29 within the time provided in this act and the rules and regulations promul- 57
 30 gated in connection therewith, shall, in the case of an investment company, 58
 31 be measured by 25% of its entire net income and 25% of its entire net worth, 59
 32 and, in the case of a regulated investment company, by 4% of its entire net 60
 33 income and 15% of its entire net worth, at the rates hereinbefore set forth 61
 34 for the computation of tax on net income and net worth, respectively, but in 62
 35 no case less than \$250.00. 63

36 (e) The tax assessed to any taxpayer pursuant to subsections (a) and 64
 37 (b) of this section shall not be less than the greater of $\frac{5}{10}$ of a mill per dol- 65
 38 lar on the first \$100,000,000.00 and $\frac{2}{10}$ of a mill per dollar on all amounts 66
 39 in excess of \$100,000,000.00 of total assets allocated to this State in accord- 67
 40 ance with subsection (b) hereof, and \$25.00 in the case of a domestic corpo- 68
 41 ration, or \$50.00 in the case of a foreign corporation. 69

42 (f) *In lieu of the portion of the tax based on net worth and to be com- 70
 43 puted under subsections (a) and (b) of this section, any taxpayer, the value 71
 44 of whose total assets everywhere, less reasonable reserves for depreciation, 72
 45 as of the close of the period covered by its report, amounts to less than 73
 46 \$150,000.00, may elect to pay the tax shown in the following table: 74
 75*

		<i>If total assets are at least</i>	<i>But less than</i>	<i>The tax shall be</i>	
				<i>For Domestic Corporations</i>	<i>For Foreign Corporations</i>
corporation		\$0	\$18,000	\$25.00	\$50.00
of a	47				
in the		18,000	22,000	31.00	50.00
in the	48				
00.00;		22,000	26,000	37.00	50.00
less of	49				
		26,000	30,000	43.00	50.00
	50				
		30,000	34,000	49.00	50.00
	51				
may be		34,000	38,000	55.00	55.00
	52				
		38,000	42,000	61.00	61.00
	53				
essed		42,000	46,000	67.00	67.00
pany	54				
and		46,000	50,000	73.00	73.00
omul-	55				
pany,		50,000	54,000	79.00	79.00
worth,	56				
the net		54,000	58,000	85.00	85.00
forth	57				
ut in		58,000	62,000	91.00	91.00
	58				
and		62,000	66,000	97.00	97.00
r dol-	59				
ounts		66,000	70,000	103.00	103.00
cord-	60				
orpo-		70,000	74,000	109.00	109.00
	61				
com-		74,000	78,000	115.00	115.00
value	62				
tion,		78,000	82,000	121.00	121.00
than	63				
		82,000	86,000	127.00	127.00
	64				
		86,000	90,000	133.00	133.00
	65				
		90,000	94,000	139.00	139.00
	66				
		94,000	98,000	145.00	145.00
	67				
		98,000	102,000	151.00	151.00
	68				
		102,000	106,000	157.00	157.00
	69				
		106,000	110,000	163.00	163.00
	70				
		110,000	114,000	169.00	169.00
	71				
		114,000	118,000	175.00	175.00
	72				
		118,000	122,000	181.00	181.00
	73				
		122,000	126,000	187.00	187.00
	74				
		126,000	130,000	193.00	193.00
	75				

	<i>If total assets are at least</i>	<i>But less than</i>	<i>The tax shall be</i>	
			<i>For Domestic Corporations</i>	<i>For Foreign Corporations</i>
76	\$130,000	\$134,000	\$199.00	\$199.00
77	134,000	138,000	205.00	205.00
78	138,000	142,000	211.00	211.00
79	142,000	146,000	217.00	217.00
80	146,000	150,000	223.00	223.00

1 2. This act shall take effect immediately and shall be effective with re-
2 spect to the tax payable in the year 1960 and thereafter.

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