

54:10A-2

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2002 **CHAPTER:** 40
NJSA: 54:10A-2 (Corporation Business Tax Reform Act)
BILL NO: A2501 (Substituted for S1556)

SPONSOR(S): Sires and Roberts

DATE INTRODUCED: June 6, 2002

COMMITTEE: **ASSEMBLY:** Budget

SENATE: ----

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 30, 2002

SENATE: July 2, 2002

DATE OF APPROVAL: July 2, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)
(Amendments during passage denoted by superscript numbers)

A2501

[SPONSORS STATEMENT:](#) (Begins on page 50 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

S1556

[SPONSORS STATEMENT:](#) (Begins on page 51 of original bill) [Yes](#)

Bill and Sponsors Statement identical to A2501

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103

<mailto:refdesk@njstatelib.org> **REPORTS:**

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Corporate tax hike approved," 7-3-2002 Burlington County Times, p.A1

"Senate Oks corporate tax hike," 7-3-2002 The Press, p.A1

"Business tax hike ok's" 7-3-2002 The Times, p A1

"Senate OKS business-tax package," 7-3-2002 Home News, p.A3

"McGreevey gets \$1 billion plan for business tax Okd," 7-3-2002 The Inquirer, p.A1

§5,27 -
C.54:10A-4.4 &
54:10A-4.5
§§7,29 -
C.54:10A-5a &
54:10A-5b
§12 -
C.54:10A-15.11
§16,17, 24,25,28 -
T&E
§23 - Repealer
§26 - C.54:10A-6.2
§30 - C.54:10A-18.1
§31 - C.54:10A-41
§32 - C.52:9H-38
§33 - Note to §§1-32

P.L. 2002, CHAPTER 40, *approved July 2, 2002*
Assembly, No. 2501 (*First Reprint*)

1 AN ACT revising and updating the corporation business tax and
2 concerning filing fees for certain returns and designated the
3 Business Tax Reform Act, amending and supplementing P.L.1945,
4 c.162, amending P.L.1947, c.50, P.L.1993, c.170, P.L.1993, c.173,
5 P.L.1997, c.350, and N.J.S.54A:8-6, and repealing various parts
6 of the statutory law.

7

8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10

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

13 2. Every domestic or foreign corporation which is not hereinafter
14 exempted shall pay an annual franchise tax for [the year 1946 and]
15 each year [thereafter], as hereinafter provided, for the privilege of
16 having or exercising its corporate franchise in this State, or for the
17 privilege of deriving receipts from sources within this State, or for the
18 privilege of engaging in contacts within this State, or for the privilege
19 of doing business, employing or owning capital or property, or
20 maintaining an office, in this State. And such franchise tax shall be in
21 lieu of all other State, county or local taxation upon or measured by
22 intangible personal property used in business by corporations liable to
23 taxation under this act [but, whenever such corporation holds shares
24 of stock in a bank as defined in R.S. 54:9-1, and such bank has not
25 elected to have the taxable value of such shares assessed to it and to
26 pay the tax levied against such shares as provided in R.S. 54:9-14, or,
27 having made such election, such bank subsequently revokes it, the

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ABU committee amendments adopted June 28, 2002.

1 provisions of this section shall not exempt such shares of stock from
2 the tax imposed by chapter 9 of Title 54 of the Revised Statutes].

3 A foreign corporation shall not be deemed to be deriving receipts,
4 engaging in contacts, doing business, employing or owning capital or
5 property in the State, for the purposes of this act, by reason of (1) the
6 maintenance of cash balances with banks or trust companies in this
7 State, or (2) the ownership of shares of stock or securities in this State
8 if such shares or securities are pledged as collateral security, or
9 deposited with one or more banks or trust companies or brokers who
10 are members of a recognized security exchange, in safekeeping or
11 custody accounts, or (3) the taking of any action by any such bank or
12 trust company or broker, which is incidental to the rendering of
13 safekeeping or custodian service to such corporation.

14 A taxpayer's exercise of its franchise in this State is subject to
15 taxation in this State if the taxpayer's business activity in this State is
16 sufficient to give this State jurisdiction to impose the tax under the
17 Constitution and statutes of the United States.

18 (cf: P.L.1973, c.95, s.1)

19

20 2. Section 3 of P.L.1945, c.162 (C.54:10A-3) is amended to read
21 as follows:

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

24 (a) Corporations subject to a tax assessed upon the basis of gross
25 receipts, other than the alternative minimum assessment determined
26 pursuant to section 7 of P.L. , c. (C.)(now pending before the
27 Legislature as this bill) [or] , and corporations subject to a tax
28 assessed upon the basis of insurance premiums collected;

29 (b) Corporations which operate regular route autobus service
30 within this State under operating authority conferred pursuant to
31 R.S.48:4-3, provided, however, that such corporations shall not be
32 exempt from the tax on net income imposed by section 5(c) of
33 P.L.1945, c.162 (C.54:10A-5);

34 (c) Railroad, canal corporations, [savings banks,] production
35 credit associations organized under the Farm Credit Act of 1933, or
36 agricultural cooperative associations incorporated or domesticated
37 under or subject to chapter 13 of Title 4 of the Revised Statutes and
38 exempt under Subtitle A, Chapter 1F, Part IV, Section 521 of the
39 federal Internal Revenue Code (26 U.S.C. s.521)[, or building and
40 loan or savings and loan associations];

41 (d) Cemetery corporations not conducted for pecuniary profit or
42 any private shareholder or individual;

43 (e) Nonprofit corporations, associations or organizations
44 established, organized or chartered, without capital stock, under the
45 provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of
46 the New Jersey Statutes or under a special charter or under any similar

1 general or special law of this or any other state, and not conducted for
2 pecuniary profit of any private shareholders or individual;

3 (f) Sewerage and water corporations subject to a tax under the
4 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) or any statute or
5 law imposing a similar tax or taxes;

6 (g) Nonstock corporations organized under the laws of this State
7 or of any other state of the United States to provide mutual ownership
8 housing under federal law by tenants, provided, however, that the
9 exemption hereunder shall continue only so long as the corporations
10 remain subject to rules and regulations of the Federal Housing
11 Authority and the Commissioner of the Federal Housing Authority
12 holds membership certificates in the corporations and the corporate
13 property is encumbered by a mortgage deed or deed of trust insured
14 under the National Housing Act (48 Stat.1246) as amended by
15 subsequent Acts of Congress. In order to be exempted under this
16 subsection, corporations shall annually file a report on or before
17 August 15 with the commissioner, in the form required by the
18 commissioner, to claim such exemption, and shall pay a filing fee of
19 \$25.00;

20 (h) Corporations not for profit organized under any law of this
21 State where the primary purpose thereof is to provide for its
22 shareholders or members housing in a retirement community as the
23 same is defined under the provisions of the "Retirement Community
24 Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.);

25 (i) Corporations which are licensed as insurance companies under
26 the laws of another state, including corporations which are surplus
27 lines insurers declared eligible by the Commissioner of Banking and
28 Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to
29 insure risks within this State; and

30 (j) (1) Municipal electric corporations that were in existence as of
31 January 1, 1995 provided that all of their income is from sales,
32 exchanges or deliveries of electricity derived from customers using
33 electricity within their municipal boundaries; and (2) Municipal electric
34 utilities that were in existence as of January 1, 1995 provided that all
35 of their income is from sales, exchanges or deliveries of electricity
36 derived from customers using electricity within their franchise area
37 existing as of January 1, 1995. If a municipal electric corporation
38 derives income from sales, exchanges or deliveries of electricity from
39 customers using the electricity outside its municipal boundaries, such
40 municipal electric corporation shall be subject to the tax imposed by
41 this act on all income. If a municipal electric utility derives income
42 from sales, exchanges or deliveries of electricity from customers using
43 electricity outside its franchise area existing as of January 1, 1995,
44 such municipal electric utility shall be subject to the tax imposed by the
45 act on all income.

46 (cf: P.L.1998, c.114, s.1)

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

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

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

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

10 (c) "Corporation" shall mean any corporation, joint-stock company
11 or association and any business conducted by a trustee or trustees
12 wherein interest or ownership is evidenced by a certificate of interest
13 or ownership or similar written instrument ¹, any other entity classified
14 as a corporation for federal income tax purposes,¹ and any state or
15 federally chartered building and loan association or savings and loan
16 association.

17 (d) "Net worth" shall mean the aggregate of the values disclosed
18 by the books of the corporation for (1) issued and outstanding capital
19 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
20 profits, and (4) surplus reserves which can reasonably be expected to
21 accrue to holders or owners of equitable shares, not including
22 reasonable valuation reserves, such as reserves for depreciation or
23 obsolescence or depletion. Notwithstanding the foregoing, net worth
24 shall not include any deduction for the amount of the excess
25 depreciation described in paragraph (2)(F) of subsection (k) of this
26 section. The foregoing aggregate of values shall be reduced by 50%
27 of the amount disclosed by the books of the corporation for investment
28 in the capital stock of one or more subsidiaries, which investment is
29 defined as ownership (1) of at least 80% of the total combined voting
30 power of all classes of stock of the subsidiary entitled to vote and (2)
31 of at least 80% of the total number of shares of all other classes of
32 stock except nonvoting stock which is limited and preferred as to
33 dividends. In the case of investment in an entity organized under the
34 laws of a foreign country, the foregoing requisite degree of ownership
35 shall effect a like reduction of such investment from the net worth of
36 the taxpayer, if the foreign entity is considered a corporation for any
37 purpose under the United States federal income tax laws, such as (but
38 not by way of sole examples) for the purpose of supplying deemed
39 paid foreign tax credits or for the purpose of status as a controlled
40 foreign corporation. In calculating the net worth of a taxpayer entitled
41 to reduction for investment in subsidiaries, the amount of liabilities of
42 the taxpayer shall be reduced by such proportion of the liabilities as
43 corresponds to the ratio which the excluded portion of the subsidiary
44 values bears to the total assets of the taxpayer.

45 In the case of banking corporations which have international
46 banking facilities as defined in subsection (n), the foregoing aggregate

1 of values shall also be reduced by retained earnings of the international
2 banking facility. Retained earnings means the earnings accumulated
3 over the life of such facility and shall not include the distributive share
4 of dividends paid and federal income taxes paid or payable during the
5 tax year.

6 If in the opinion of the commissioner, the corporation's books do
7 not disclose fair valuations the commissioner may make a reasonable
8 determination of the net worth which, in his opinion, would reflect the
9 fair value of the assets, exclusive of subsidiary investments as defined
10 aforesaid, carried on the books of the corporation, in accordance with
11 sound accounting principles, and such determination shall be used as
12 net worth for the purpose of this act.

13 (e) (Deleted by amendment, P.L.1998, c.114.)

14 (f) "Investment company" shall mean any corporation whose
15 business during the period covered by its report consisted, to the
16 extent of at least 90% thereof of holding, investing and reinvesting in
17 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
18 other securities for its own account, but this shall not include any
19 corporation which: (1) is a merchant or a dealer of stocks, bonds and
20 other securities, regularly engaged in buying the same and selling the
21 same to customers; or (2) had less than 90% of its average gross
22 assets in New Jersey, at cost, invested in stocks, bonds, debentures,
23 mortgages, notes, patents, patent rights or other securities or
24 consisting of cash on deposit during the period covered by its report;
25 or (3) is a banking corporation, a savings institution, or a financial
26 business corporation as defined in the Corporation Business Tax Act.

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

31 (h) "Taxpayer" shall mean any corporation, [limited liability
32 company, foreign limited liability company, limited partnership or
33 foreign limited partnership] ¹ [affiliated group of corporations electing
34 to file a consolidated return under section 18 of P.L.1945, c.162
35 (C.54:10A-18).]¹ and any partnership required, or consenting, to
36 report or to pay taxes, interest or penalties under this act. "Taxpayer"
37 shall not include a [limited liability company, foreign limited liability
38 company, limited partnership or foreign limited] partnership that is
39 listed on a United States national stock exchange.

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

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

46 (k) "Entire net income" shall mean total net income from all

1 sources, whether within or without the United States, and shall include
2 the gain derived from the employment of capital or labor, or from both
3 combined, as well as profit gained through a sale or conversion of
4 capital assets.

5 For the purpose of this act, the amount of a taxpayer's entire net
6 income shall be deemed prima facie to be equal in amount to the
7 taxable income, before net operating loss deduction and special
8 deductions, which the taxpayer is required to report, or, if the taxpayer
9 is classified as a partnership for federal tax purposes, would otherwise
10 be required to report, to the United States Treasury Department for
11 the purpose of computing its federal income tax ~~[provided,]~~¹ [. If an
12 affiliated group elects to file a consolidated return under section 18
13 of P.L.1945, c.162 (C.54:10A-18), the group will be considered a
14 single taxpayer and for the purposes of this act the amount of the
15 taxpayer's entire net income shall be deemed prima facie to be equal in
16 amount to the taxable income, before net operating loss deduction and
17 special deductions, that the taxpayer is required to report, or, if the
18 taxpayer is classified as a partnership for federal tax purposes, would
19 otherwise be required to report, to the United States Treasury
20 Department for the purpose of computing its consolidated federal
21 income tax.

22 ~~Provided]~~ , provided¹ however, that in the determination of such
23 entire net income,

24 (1) Entire net income shall exclude for the periods set forth in
25 paragraph (2)(F)(i) of this subsection, any amount, except with respect
26 to qualified mass commuting vehicles as described in section
27 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
28 prior to January 1, 1984, which is included in a taxpayer's federal
29 taxable income solely as a result of an election made pursuant to the
30 provisions of paragraph (8) of that section.

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

33 (A) The amount of any specific exemption or credit allowed in any
34 law of the United States imposing any tax on or measured by the
35 income of corporations;

36 (B) Any part of any income from dividends or interest on any kind
37 of stock, securities or indebtedness~~], except as provided in paragraph~~
38 ~~(5) of subsection (k) of this section]~~¹ , except as provided in
39 paragraph (5) of subsection (k) of this section¹ ;

40 (C) Taxes paid or accrued to the United States, a possession or
41 territory of the United States, a state, a political subdivision thereof,
42 or the District of Columbia, or to any foreign country, state, province,
43 territory or subdivision thereof, on or measured by profits or income,
44 or business presence or business activity, or the tax imposed by this
45 act~~], or any tax paid or accrued with respect to subsidiary dividends~~
46 excluded from entire net income as provided in paragraph (5) of

1 subsection (k) of this section] ¹, or any tax paid or accrued with
2 respect to subsidiary dividends excluded from entire net income as
3 provided in paragraph (5) of subsection (k) of this section¹ ;

4 (D) (Deleted by amendment, P.L.1985, c.143.)

5 (E) (Deleted by amendment, P.L.1995, c.418.)

6 (F) (i) The amount by which depreciation reported to the United
7 States Treasury Department for property placed in service on and after
8 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
9 years beginning on and after the effective date of P.L.1993, c.172, for
10 purposes of computing federal taxable income in accordance with
11 section 168 of the Internal Revenue Code in effect after December 31,
12 1980, exceeds the amount of depreciation determined in accordance
13 with the Internal Revenue Code provisions in effect prior to January
14 1, 1981, but only with respect to a taxpayer's accounting period ending
15 after December 31, 1981; provided, however, that where a taxpayer's
16 accounting period begins in 1981 and ends in 1982, no modification
17 shall be required with respect to this paragraph (F) for the report filed
18 for such period with respect to property placed in service during that
19 part of the accounting period which occurs in 1981. The provisions
20 of this subparagraph shall not apply to assets placed in service prior to
21 January 1, 1998 of a gas, gas and electric, and electric public utility
22 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
23 seq.) prior to 1998.

24 (ii) For the periods set forth in subparagraph (F)(i) of this
25 subsection, any amount, except with respect to qualified mass
26 commuting vehicles as described in section 168(f)(8)(D)(v) of the
27 Internal Revenue Code as in effect immediately prior to January 1,
28 1984, which the taxpayer claimed as a deduction in computing federal
29 income tax pursuant to a qualified lease agreement under paragraph
30 (8) of that section.

31 The director shall promulgate rules and regulations necessary to
32 carry out the provisions of this section, which rules shall provide,
33 among others, the manner in which the remaining life of property shall
34 be reported.

35 (G) (i) The amount of any civil, civil administrative, or criminal
36 penalty or fine, including a penalty or fine under an administrative
37 consent order, assessed and collected for a violation of a State or
38 federal environmental law, an administrative consent order, or an
39 environmental ordinance or resolution of a local governmental entity,
40 and any interest earned on the penalty or fine, and any economic
41 benefits having accrued to the violator as a result of a violation, which
42 benefits are assessed and recovered in a civil, civil administrative, or
43 criminal action, or pursuant to an administrative consent order. The
44 provisions of this paragraph shall not apply to a penalty or fine
45 assessed or collected for a violation of a State or federal
46 environmental law, or local environmental ordinance or resolution, if

1 the penalty or fine was for a violation that resulted from fire, riot,
2 sabotage, flood, storm event, natural cause, or other act of God
3 beyond the reasonable control of the violator, or caused by an act or
4 omission of a person who was outside the reasonable control of the
5 violator.

6 (ii) The amount of treble damages paid to the Department of
7 Environmental Protection pursuant to subsection a. of section 7 of
8 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
9 department in removing, or arranging for the removal of, an
10 unauthorized discharge upon failure of the discharger to comply with
11 a directive from the department to remove, or arrange for the removal
12 of, the discharge.

13 (H) The amount of any sales and use tax paid by a utility vendor
14 pursuant to section 71 of P.L.1997, c.162.

15 (I) ¹[In the case of a real estate investment trust, the amount of
16 any dividends paid by the real estate investment trust.

17 (J)] ¹ Interest paid ¹, accrued or incurred for the privilege period¹
18 to a related ¹[entity] member¹, as defined in section 5 of P.L. _____,
19 c. _____ (C. _____) (now pending before the Legislature as this bill),
20 except that a deduction shall be permitted to the extent that the
21 ¹taxpayer establishes by clear and convincing evidence, as determined
22 by the director, that: (i) a principal purpose of the transaction giving
23 rise to the payment of the interest was not to avoid taxes otherwise
24 due under Title 54 of the Revised Statutes or Title 54A of the New
25 Jersey Statutes, (ii) the interest is paid pursuant to arm's length
26 contracts at an arm's length rate of interest, and (iii)(aa) the related
27 member was subject to a tax on its net income or receipts in this State
28 or another state or possession of the United States or in a foreign
29 nation, (bb) a measure of the tax includes the interest received from
30 the related member, and (cc) the rate of tax applied to the interest
31 received by the related member is equal to or greater than a rate three
32 percentage points less than the rate of tax applied to taxable interest
33 by this State.

34 A deduction shall also be permitted if the taxpayer establishes by
35 clear and convincing evidence, as determined by the director, that the
36 disallowance of a deduction is unreasonable, or the taxpayer and the
37 director agree in writing to the application or use of an alternative
38 method of apportionment under section 8 of P.L.1945, c.162
39 (C.54:10A-8); nothing in this subsection shall be construed to limit
40 or negate the director's authority to otherwise enter into agreements
41 and compromises otherwise allowed by law.

42 A deduction shall also be permitted to the extent that the taxpayer
43 establishes by a preponderance of the evidence, as determined by the
44 director, that the ¹ interest is directly or indirectly paid ¹, accrued or
45 incurred to (i) a related member in a foreign nation which has in force
46 a comprehensive income tax treaty with the United States, provided

1 however that the taxpayer shall disclose on its return for the privilege
2 period the name of the related member, the amount of the interest, the
3 relevant foreign nation, and such other information as the director may
4 prescribe or (ii)¹ to an independent lender and the taxpayer guarantees
5 the debt on which the interest is required.

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

10 (4) There shall be allowed as a deduction from entire net income
11 of a banking corporation, to the extent not deductible in determining
12 federal taxable income, the eligible net income of an international
13 banking facility determined as follows:

14 (A) The eligible net income of an international banking facility shall
15 be the amount remaining after subtracting from the eligible gross
16 income the applicable expenses;

17 (B) Eligible gross income shall be the gross income derived by an
18 international banking facility, which shall include, but not be limited to,
19 gross income derived from:

20 (i) Making, arranging for, placing or carrying loans to foreign
21 persons, provided, however, that in the case of a foreign person which
22 is an individual, or which is a foreign branch of a domestic corporation
23 (other than a bank), or which is a foreign corporation or foreign
24 partnership which is controlled by one or more domestic corporations
25 (other than banks), domestic partnerships or resident individuals, all
26 the proceeds of the loan are for use outside of the United States;

27 (ii) Making or placing deposits with foreign persons which are
28 banks or foreign branches of banks (including foreign subsidiaries) or
29 foreign branches of the taxpayers or with other international banking
30 facilities;

31 (iii) Entering into foreign exchange trading or hedging transactions
32 related to any of the transactions described in this paragraph; or

33 (iv) Such other activities as an international banking facility may,
34 from time to time, be authorized to engage in;

35 (C) Applicable expenses shall be any expense or other deductions
36 attributable, directly or indirectly, to the eligible gross income
37 described in subparagraph (B) of this paragraph.

38 (5) [Entire net income shall exclude 100% of dividends which were
39 included in computing such taxable income for federal income tax
40 purposes, paid to the taxpayer by one or more subsidiaries owned by
41 the taxpayer to the extent of the 80% or more ownership of investment
42 described in subsection (d) of this section. With respect to other
43 dividends, entire net income shall not include 50% of the total included
44 in computing such taxable income for federal income tax purposes]

45 ¹[(Deleted by amendment, P.L. _____, c. _____)(now pending before the
46 Legislature as this bill)] Entire net income shall exclude 100% of

1 dividends which were included in computing such taxable income for
2 federal income tax purposes, paid to the taxpayer by one or more
3 subsidiaries owned by the taxpayer to the extent of the 80% or more
4 ownership of investment described in subsection (d) of this section and
5 shall exclude 50% of dividends which were included in computing such
6 taxable income for federal income tax purposes, paid to the taxpayer
7 by one or more subsidiaries owned by the taxpayer to the extent of
8 50% or more ownership of investment, such ownership of investment
9 calculated in the same manner as the 80% or more of ownership of
10 investment is calculated as described in subsection (d) of this section¹.

11 (6) (A) Net operating loss deduction. There shall be allowed as
12 a deduction for the [taxable year] privilege period the net operating
13 loss carryover to that [year] period.

14 (B) Net operating loss carryover. A net operating loss for any
15 [taxable year] privilege period ending after June 30, 1984 shall be a
16 net operating loss carryover to each of the seven [years] privilege
17 periods following the [year] period of the loss. The entire amount of
18 the net operating loss for any [taxable year] privilege period (the
19 "loss [year] period") shall be carried to the earliest of the [taxable
20 years] privilege periods to which the loss may be carried. The
21 portion of the loss which shall be carried to each of the other [taxable
22 years] privilege periods shall be the excess, if any, of the amount of
23 the loss over the sum of the entire net income, computed without the
24 exclusions permitted in paragraphs (4) and (5) of this subsection or the
25 net operating loss deduction provided by subparagraph (A) of this
26 paragraph, for each of the prior [taxable years] privilege periods to
27 which the loss may be carried.

28 (C) Net operating loss. For purposes of this paragraph the term
29 "net operating loss" means the excess of the deductions over the gross
30 income used in computing entire net income without the net operating
31 loss deduction provided for in subparagraph (A) of this paragraph and
32 the exclusions in paragraphs (4) and (5) of this subsection.

33 (D) Change in ownership. Where there is a change in 50% or more
34 of the ownership of a corporation because of redemption or sale of
35 stock and the corporation changes the trade or business giving rise to
36 the loss, no net operating loss sustained before the changes may be
37 carried over to be deducted from income earned after such changes.
38 In addition where the facts support the premise that the corporation
39 was acquired under any circumstances for the primary purpose of the
40 use of its net operating loss carryover, the director may disallow the
41 carryover.

42 (E) ¹[Notwithstanding the provisions of this paragraph (6) of
43 subsection (k) of this section to the contrary, if, in a privilege period
44 before the corporation became a member of an affiliated group that has
45 elected to file a consolidated return pursuant to section 18 of

1 P.L.1945, c.162 (C.54:10A-18), the corporation incurred a net
2 operating loss, the deductibility of the loss on that consolidated return
3 shall be limited to only the amount necessary to reduce to zero the
4 entire net income, calculated on a separate return basis, of the
5 corporation that incurred the net operating loss. Except as provided
6 in this subparagraph, the separate return limitation year ("SRLY")
7 rules promulgated pursuant to section 1502 of the federal Internal
8 Revenue Code of 1986, 26 U.S.C. s.1502, shall apply.

9 (F)]¹ Notwithstanding the provisions of this paragraph (6) of
10 subsection (k) of this section to the contrary, for privilege periods
11 beginning during calendar year 2002 and calendar year 2003, no
12 deduction for any net operating loss carryover shall be allowed. If and
13 only to the extent that any net operating loss carryover deduction is
14 disallowed by reason of this subparagraph ¹[(F)] (E)¹, the date on
15 which the amount of the disallowed net operating loss carryover
16 deduction would otherwise expire shall be extended by two years.

17 Provided, that this subparagraph ¹[(F)] (E)¹ shall not restrict the
18 surrender or acquisition of corporation business tax benefit certificates
19 pursuant to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not
20 restrict the application of corporation business tax benefit certificates
21 pursuant to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

22 (7) The entire net income of gas, electric and gas and electric
23 public utilities that were subject to the provisions of P.L.1940, c.5
24 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting
25 the New Jersey depreciation allowance for federal tax depreciation
26 with respect to assets placed in service prior to January 1, 1998. For
27 gas, electric, and gas and electric public utilities that were subject to
28 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,
29 the New Jersey depreciation allowance shall be computed as follows:
30 All depreciable assets placed in service prior to January 1, 1998 shall
31 be considered a single asset account. The New Jersey tax basis of this
32 depreciable asset account shall be an amount equal to the carryover
33 adjusted basis for federal income tax purposes on December 31, 1997
34 of all depreciable assets in service on December 31, 1997, increased
35 by the excess, of the "net carrying value," defined to be adjusted book
36 basis of all assets and liabilities, excluding deferred income taxes,
37 recorded on the public utility's books of account on December 31,
38 1997, over the carryover adjusted basis for federal income tax
39 purposes on December 31, 1997 of all assets and liabilities owned by
40 the gas, electric, or gas and electric public utility as of December 31,
41 1997. "Books of account" for gas, gas and electric, and electric public
42 utilities means the uniform system of accounts as promulgated by the
43 Federal Energy Regulatory Commission and adopted by the Board of
44 Public Utilities. The following adjustments to entire net income shall
45 be made pursuant to this section:

46 (A) Depreciation for property placed in service prior to January 1,

1 1998 shall be adjusted as follows:

2 (i) Depreciation for federal income tax purposes shall be
3 disallowed in full.

4 (ii) A deduction shall be allowed for the New Jersey depreciation
5 allowance. The New Jersey depreciation allowance shall be computed
6 for the single asset account described above based on the New Jersey
7 tax basis as adjusted above as if all assets in the single asset account
8 were first placed in service on January 1, 1998. Depreciation shall be
9 computed using the straight line method over a thirty-year life. A full
10 year's depreciation shall be allowed in the initial tax year. No half-year
11 convention shall apply. The depreciable basis of the single account
12 shall be reduced by the adjusted federal tax basis of assets sold,
13 retired, or otherwise disposed of during any year on which gain or loss
14 is recognized for federal income tax purposes as described in
15 subparagraph (B) of this paragraph.

16 (B) Gains and losses on sales, retirements and other dispositions
17 of assets placed in service prior to January 1, 1998 shall be recognized
18 and reported on the same basis as for federal income tax purposes.

19 (C) The Director of the Division of Taxation shall promulgate
20 regulations describing the methodology for allocating the single asset
21 account in the event that a portion of the utility's operations are
22 separated, spun-off, transferred to a separate company or otherwise
23 desegregated.

24 (8) In the case of taxpayers that are gas, electric, gas and electric,
25 or telecommunication public utilities as defined pursuant to subsection
26 (q) of this section, the director shall have authority to promulgate rules
27 and issue guidance correcting distortions and adjusting timing
28 differences resulting from the adoption of P.L.1997, c.162
29 (C.54:10A-5.25 et al.).

30 (9) Notwithstanding paragraph (1) of this subsection, entire net
31 income shall not include the income derived by a corporation
32 organized in a foreign country from the international operation of a
33 ship or ships, or from the international operation of aircraft, if such
34 income is exempt from federal taxation pursuant to section 883 of the
35 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

36 (10) Entire net income shall exclude all income of an alien
37 corporation the activities of which are limited in this State to investing
38 or trading in stocks and securities for its own account, investing or
39 trading in commodities for its own account, or any combination of
40 those activities, within the meaning of section 864 of the federal
41 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on
42 December 31, 1998. Notwithstanding the previous sentence, if an
43 alien corporation undertakes one or more infrequent, extraordinary or
44 non-recurring activities, including but not limited to the sale of
45 tangible property, only the income from such infrequent, extraordinary
46 or non-recurring activity shall be subject to the tax imposed pursuant

1 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income
2 subject to tax shall be determined without regard to the allocation to
3 that specific transaction of any general business expense of the
4 taxpayer and shall be specifically assigned to this State for taxation by
5 this State without regard to section 6 of P.L.1945, c.162
6 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"
7 means a corporation organized under the laws of a jurisdiction other
8 than the United States or its political subdivisions.

9 (11) No deduction shall be allowed for research and experimental
10 expenditures, to the extent that those research and experimental
11 expenditures are qualified research expenses or basic research
12 payments for which an amount of credit is claimed pursuant to section
13 1 of P.L.1993, c.175 (C.54:10A-5.24) ¹[and] unless¹ those research
14 and experimental expenditures are ¹[not] also¹ used to compute a
15 federal credit claimed pursuant to section 41 of the federal Internal
16 Revenue Code of 1986, 26 U.S.C. s.41.

17 (12) ¹[There shall be added back to entire net income all special
18 depreciation claimed as a federal deduction as a result of the
19 enactment of the federal "Job Creation and Worker Assistance Act of
20 2002," Pub.L.107-147. For the privilege period in which the final year
21 of the recovery period of the property affected by the depreciation
22 rules provided by Pub.L.107-147 ends, or for the privilege period in
23 which the earlier disposition of that property occurs, the amount
24 previously added back to entire net income shall be deducted from
25 entire net income] (A) Notwithstanding the provisions of subsection
26 (k) of section 168 of the federal Internal Revenue Code of 1986, 26
27 U.S.C. s.168, and subsection (b) of section 1400L of the federal
28 Internal Revenue Code of 1986, 26 U.S.C. s.1400L, for property
29 acquired after September 10, 2001 and before September 11, 2004, the
30 depreciation deduction otherwise allowed pursuant to section 167 of
31 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be
32 determined pursuant to the requirements and limitations of section 168
33 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168, and
34 section 280F of the federal Internal Revenue Code of 1986, 26 U.S.C.
35 s.280F, as if that subsection (k) and that section 1400L were not in
36 effect.

37 (B) The director shall prescribe the rules and regulations necessary
38 to carry out the provisions of this paragraph, including, among others,
39 those for determining the adjusted basis of the acquired property for
40 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,
41 c.162.1¹ .

42 ¹[(13) If, in a privilege period preceding the filing of the first New
43 Jersey consolidated return for the affiliated group of which the
44 corporation is a member:

45 (A) the corporation realized a gain or loss on a transaction;

46 (B) the corporation was subject to the tax imposed pursuant to

1 section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period;
2 (C) the transaction was treated as a deferred intercompany
3 transaction for federal income tax purposes; and
4 (D) the transaction was not deferred for New Jersey income tax
5 purposes, then
6 the taxable income of the affiliated group and the adjusted bases of
7 its members shall be adjusted to remove the impacts of a gain or loss
8 from that deferred intercompany transaction reported for federal
9 income tax purposes.]¹

10 (l) "Real estate investment trust" shall mean any corporation, trust
11 or association qualifying and electing to be taxed as a real estate
12 investment trust under federal law.

13 (m) "Financial business corporation" shall mean any corporate
14 enterprise which is (1) in substantial competition with the business of
15 national banks and which (2) employs moneyed capital with the object
16 of making profit by its use as money, through discounting and
17 negotiating promissory notes, drafts, bills of exchange and other
18 evidences of debt; buying and selling exchange; making of or dealing
19 in secured or unsecured loans and discounts; dealing in securities and
20 shares of corporate stock by purchasing and selling such securities and
21 stock without recourse, solely upon the order and for the account of
22 customers; or investing and reinvesting in marketable obligations
23 evidencing indebtedness of any person, copartnership, association or
24 corporation in the form of bonds, notes or debentures commonly
25 known as investment securities; or dealing in or underwriting
26 obligations of the United States, any state or any political subdivision
27 thereof, or of a corporate instrumentality of any of them. This shall
28 include, without limitation of the foregoing, business commonly
29 known as industrial banks, dealers in commercial paper and
30 acceptances, sales finance, personal finance, small loan and mortgage
31 financing businesses, as well as any other enterprise employing
32 moneyed capital coming into competition with the business of national
33 banks; provided that the holding of bonds, notes, or other evidences
34 of indebtedness by individual persons not employed or engaged in the
35 banking or investment business and representing merely personal
36 investments not made in competition with the business of national
37 banks, shall not be deemed financial business. Nor shall "financial
38 business" include national banks, production credit associations
39 organized under the Farm Credit Act of 1933 or the Farm Credit Act
40 of 1971, Pub.L. 92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
41 insurance companies duly authorized to transact business in this State,
42 security brokers or dealers or investment companies or bankers not
43 employing moneyed capital coming into competition with the business
44 of national banks, real estate investment trusts, or any of the following
45 entities organized under the laws of this State: credit unions, savings
46 banks, savings and loan and building and loan associations,

1 pawnbrokers, and State banks and trust companies.

2 (n) "International banking facility" shall mean a set of asset and
3 liability accounts segregated on the books and records of a depository
4 institution, United States branch or agency of a foreign bank, or an
5 Edge or Agreement Corporation that includes only international
6 banking facility time deposits and international banking facility
7 extensions of credit as such terms are defined in section 204.8(a)(2)
8 and section 204.8(a)(3) of Regulation D of the board of governors of
9 the Federal Reserve System, 12 CFR Part 204, effective December 3,
10 1981. In the event that the United States enacts a law, or the board
11 of governors of the Federal Reserve System adopts a regulation which
12 amends the present definition of international banking facility or of
13 such facilities' time deposits or extensions of credit, the Commissioner
14 of Banking and Insurance shall forthwith adopt regulations defining
15 such terms in the same manner as such terms are set forth in the laws
16 of the United States or the regulations of the board of governors of the
17 Federal Reserve System. The regulations of the Commissioner of
18 Banking and Insurance shall thereafter provide the applicable
19 definitions.

20 (o) "S corporation" means a corporation included in the definition
21 of an "S corporation" pursuant to section 1361 of the federal Internal
22 Revenue Code of 1986, 26 U.S.C. s.1361.

23 (p) "New Jersey S corporation" means a corporation that is an S
24 corporation; which has made a valid election pursuant to section 3 of
25 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
26 corporation continuously since the effective date of the valid election
27 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

28 (q) "Public Utility" means "public utility" as defined in
29 R.S.48:2-13.

30 (r) "Qualified investment partnership" means a [limited liability
31 company, foreign limited liability company, limited partnership or
32 foreign limited partnership treated as a] partnership under this act that
33 has more than 10 members or partners with no member or partner
34 owning more than a 50% interest in the entity and that derives at least
35 90% of its gross income from dividends, interest, payments with
36 respect to securities loans, and gains from the sale or other disposition
37 of stocks or securities or foreign currencies or commodities or other
38 similar income (including but not limited to gains from swaps, options,
39 futures or forward contracts) derived with respect to its business of
40 investing or trading in those stocks, securities, currencies or
41 commodities, but "investment partnership" shall not include a "dealer
42 in securities" within the meaning of section 1236 of the federal Internal
43 Revenue Code of 1986, 26 U.S.C. s.1236.

44 (s) "Savings institution" means a state or federally chartered
45 building and loan association, savings and loan association, or savings
46 bank.

1 (t) "Partnership" means an entity classified as a partnership for
2 federal income tax purposes.

3 (cf: P.L.2001, c.136, s.1)

4

5 4. Section 1 of P.L.1997, c.350 (C.54:10A-4.3) is amended to read
6 as follows:

7 1. a. Notwithstanding the provisions of paragraph (6) of
8 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the
9 contrary, a taxpayer that has for the fiscal or calendar accounting
10 period (referred to hereafter as the "tax year"), qualified research
11 expenses as defined in section 41 of the federal Internal Revenue Code
12 of 1986, 26 U.S.C. s.41, as in effect on June 30, 1992, paid or
13 incurred for research conducted in this State, in the fields of advanced
14 computing, advanced materials, biotechnology, electronic device
15 technology, environmental technology, or medical device technology,
16 shall be allowed to carry over a net operating loss for that tax year to
17 each of the 15 tax years following the year of the loss.

18 b. As used in this section:

19 "Advanced computing" means a technology used in the designing
20 and developing of computing hardware and software, including
21 innovations in designing the full spectrum of hardware from hand-held
22 calculators to super computers, and peripheral equipment;

23 "Advanced materials" means materials with engineered properties
24 created through the development of specialized processing and
25 synthesis technology, including ceramics, high value-added metals,
26 electronic materials, composites, polymers, and biomaterials;

27 "Biotechnology" means the continually expanding body of
28 fundamental knowledge about the functioning of biological systems
29 from the macro level to the molecular and sub-atomic levels, as well
30 as novel products, services, technologies and sub-technologies
31 developed as a result of insights gained from research advances which
32 add to that body of fundamental knowledge;

33 "Electronic device technology" means a technology involving
34 microelectronics, semiconductors, electronic equipment, and
35 instrumentation, radio frequency, microwave, and millimeter
36 electronics, and optical and optic-electrical devices, or data and digital
37 communications and imaging devices;

38 "Environmental technology" means assessment and prevention of
39 threats or damage to human health or the environment, environmental
40 cleanup, or the development of alternative energy sources; and

41 "Medical device technology" means a technology involving any
42 medical equipment or product (other than a pharmaceutical product)
43 that has therapeutic value, diagnostic value, or both, and is regulated
44 by the federal Food and Drug Administration.

45 c. Notwithstanding the provisions of subsection a. of this section,
46 for tax years beginning during calendar year 2002 and calendar year

1 2003, no deduction for any net operating loss carryover shall be
2 allowed. If and only to the extent that any net operating loss
3 carryover deduction is disallowed by reason of this subsection, the
4 date on which the amount of the disallowed net operating loss
5 carryover deduction would otherwise expire shall be extended by two
6 years.

7 (cf: P.L.1997, c.350, s.1)

8

9 5. (New section) a. For the purposes of this section:

10 "Intangible expenses and costs" includes (1) expenses, losses and
11 costs for, related to, or in connection directly or indirectly with the
12 direct or indirect acquisition, use, maintenance or management,
13 ownership, sale, exchange, or any other disposition of intangible
14 property to the extent such amounts are allowed as deductions or
15 costs in determining taxable income before operating loss deduction
16 and special deductions for the taxable year under the federal Internal
17 Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses related to, or
18 incurred in connection directly or indirectly with, factoring
19 transactions or discounting transactions; (3) royalty, patent, technical
20 and copyright fees; (4) licensing fees; and (5) other similar expenses
21 and costs.

22 "Intangible property" means patents, patent applications, trade
23 names, trademarks, service marks, copyrights, mask works, trade
24 secrets and similar types of intangible assets.

25 "Interest expenses and costs" means amounts directly or indirectly
26 allowed as deductions under section 163 of the federal Internal
27 Revenue Code of 1986, 26 U.S.C. s.163, for purposes of determining
28 taxable income under the code to the extent such expenses and costs
29 are directly or indirectly for, related to, or in connection with the
30 direct or indirect acquisition, maintenance, management, ownership,
31 sale, exchange or disposition of intangible property.

32 "Related member" means a person that, with respect to the taxpayer
33 during all or any portion of the privilege period, is ¹: (1)¹ a related
34 entity, ¹(2)¹ a component member as defined in subsection (b) of
35 section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
36 s.1563, ¹[or] (3)¹ is a person to or from whom there is attribution of
37 stock ownership in accordance with subsection (e) of section 1563 of
38 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563 ¹, or (4)
39 is a person that, notwithstanding its form of organization, bears the
40 same relationship to the taxpayer as a person described in (1) through
41 (3) of this definition¹.

42 "Related entity" means (1) a stockholder who is an individual, or
43 a member of the stockholder's family enumerated in section 318 of the
44 federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
45 stockholder and the members of the stockholder's family own, directly,
46 indirectly, beneficially or constructively, in the aggregate, at least 50%

1 of the value of the taxpayer's outstanding stock; (2) a stockholder, or
2 a stockholder's partnership, limited liability company, estate, trust or
3 corporation, if the stockholder and the stockholder's partnerships,
4 limited liability companies, estates, trusts and corporations own
5 directly, indirectly, beneficially or constructively, in the aggregate, at
6 least 50% per cent of the value of the taxpayer's outstanding stock; or
7 (3) a corporation, or a party related to the corporation in a manner
8 that would require an attribution of stock from the corporation to the
9 party or from the party to the corporation under the attribution rules
10 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
11 taxpayer owns, directly, indirectly, beneficially or constructively, at
12 least 50% percent of the value of the corporation's outstanding stock.
13 The attribution rules of the federal Internal Revenue Code of 1986, 26
14 U.S.C. s.318, shall apply for purposes of determining whether the
15 ownership requirements of this definition have been met.

16 b. For purposes of computing its entire net income under section
17 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add back
18 otherwise deductible interest expenses and costs and intangible
19 expenses and costs directly or indirectly paid, accrued or incurred to,
20 or in connection directly or indirectly with one or more direct or
21 indirect transactions with, one or more related members.

22 c. (1) The adjustments required in subsection b. of this section
23 shall not apply if ¹: (a) the interest expenses and costs and intangible
24 expenses and costs are directly or indirectly paid, accrued or incurred
25 to a related member in a foreign nation which has in force a
26 comprehensive income tax treaty with the United States; or (b)¹ the
27 taxpayer establishes by clear and convincing evidence¹ , as determined
28 by the director,¹ that the adjustments are unreasonable¹ [,]¹ or¹ (c)¹
29 the taxpayer and the director agree in writing to the application or use
30 of an alternative method of apportionment under section 8 of
31 P.L.1945, c.162 (C.54:10A-8). Nothing in this subsection shall be
32 construed to limit or negate the director's authority to otherwise enter
33 into agreements and compromises otherwise allowed by law.
34 ¹[Provided further, the adjustments required in subsection b. of this
35 section shall not apply to payments between members of an affiliated
36 group that have elected to file a consolidated return pursuant to
37 section 18 of P.L.1945, c.162 (C.54:10A-18).]¹

38 (2) ¹For the purposes of qualifying for the exception provided by
39 subparagraph (a) of paragraph (1) of this subsection, the taxpayer
40 shall disclose on its return for the privilege period the name of the
41 related member, the amount of the interest expenses and costs and
42 intangible expenses and costs deducted, the relevant foreign nation,
43 and such other information as the director may prescribe.

44 (3)¹The adjustments required in subsection b. of this section shall
45 not apply to the portion of interest expenses and costs and intangible
46 expenses and costs that the taxpayer establishes by a preponderance

1 of the evidence meets both of the following: (a) the related member
 2 during the same income year directly or indirectly paid, received,
 3 accrued or incurred the portion to or from a person that is not a
 4 related member, and (b) the transaction giving rise to the interest
 5 expenses and costs or the intangible expenses and costs between the
 6 taxpayer and the related member did not have as a principal purpose
 7 the avoidance of any portion of the tax due under Title 54 of the
 8 Revised Statutes or Title 54A of the New Jersey Statutes.

9 d. Nothing in this section shall require a taxpayer to add to its net
 10 income more than once any amount of interest expenses and costs
 11 ¹and intangible expenses and costs¹ that the taxpayer pays, accrues or
 12 incurs to a related member described in subsection b. of this section.

13 e. Nothing in this section shall be construed to limit or negate the
 14 director's authority to make adjustments under paragraph (3) of
 15 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section
 16 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
 17 (C.54:10A-10).

18

19 6. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read
 20 as follows:

21 5. The franchise tax to be annually assessed to and paid by each
 22 taxpayer shall be the greater of the amount computed pursuant to this
 23 section or the alternative minimum assessment computed pursuant to
 24 section 7 of P.L. , c. (C.)(now pending before the Legislature as
 25 this bill); provided however, that in the case of a taxpayer that is a
 26 New Jersey S corporation, an investment company, ¹[or]¹ a
 27 professional corporation ¹organized pursuant to P.L.1969, c. 232
 28 (C.14A:17-1 et seq.)¹ or a similar corporation for profit organized
 29 for the purpose of rendering professional services under the laws of
 30 another state, ¹or a person operating on a cooperative basis under
 31 Part I of Subchapter T of the federal Internal Revenue Code of 1986,
 32 26 U.S.C. s.1381 et seq.,¹ there shall be no alternative minimum
 33 assessment computed pursuant to section 7 of P.L. , c. (C.).

34 The amount computed pursuant to this section shall be sum of the
 35 amount computed under subsection (a) hereof, or in the alternative to
 36 the amount computed under subsection (a) hereof, the amount
 37 computed under subsection (f) hereof, and the amount computed
 38 under subsection (c) hereof:

39 (a) That portion of its entire net worth as may be allocable to this
 40 State as provided in section 6, multiplied by the following rates: 2
 41 mills per dollar on the first \$100,000,000.00 of allocated net worth;
 42 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill
 43 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar
 44 on all amounts of allocated net worth in excess of \$300,000,000.00;
 45 provided, however, that with respect to reports covering accounting
 46 or privilege periods set forth below, the rate shall be that percentage

1 of the rate set forth in this subsection for the appropriate year:

2

3 Accounting or Privilege

4 Periods Beginning on or The Percentage of the Rate

5 after: to be Imposed Shall be:

6

7 April 1, 1983 75%

8 July 1, 1984 50%

9 July 1, 1985 25%

10 July 1, 1986 0

11

12 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

13 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3

14 1/4% of its entire net income or such portion thereof as may be

15 allocable to this State as provided in section 6 of P.L.1945, c.162

16 (C.54:10A-6) plus such portion thereof as is specifically assigned to

17 this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1);

18 provided, however, that with respect to reports covering accounting

19 or privilege periods or parts thereof ending after December 31, 1967,

20 the rate shall be 4 1/4%; and that with respect to reports covering

21 accounting or privilege periods or parts thereof ending after December

22 31, 1971, the rate shall be 5 1/2%; and that with respect to reports

23 covering accounting or privilege periods or parts thereof ending after

24 December 31, 1974, the rate shall be 7 1/2%; and that with respect to

25 reports covering privilege periods or parts thereof ending after

26 December 31, 1979, the rate shall be 9%; provided however, that for

27 a taxpayer that has entire net income of \$100,000 or less for a

28 privilege period and is not a [limited liability company, foreign limited

29 liability company, limited partnership or foreign limited] partnership

30 the rate for that privilege period shall be 7 1/2% and provided further

31 that for a taxpayer that has entire net income of \$50,000 or less for a

32 privilege period and is not a partnership the rate for that privilege

33 period shall be 6 1/2%.

34 (2) For a taxpayer that is a New Jersey S corporation:

35 (i) for privilege periods ending on or before June 30, 1998 the rate

36 determined by subtracting the maximum tax bracket rate provided

37 under N.J.S.54A:2-1 for the privilege period from the tax rate that

38 would otherwise be applicable to the taxpayer's entire net income for

39 the privilege period if the taxpayer were not an S corporation provided

40 under paragraph (1) of this subsection for the privilege period; and

41 (ii) For a taxpayer that has entire net income in excess of \$100,000

42 for the privilege period, for privilege periods ending on or after July

43 1, 1998, but on or before June 30, 2001, the rate shall be 2%,

44 for privilege periods ending on or after July 1, 2001, but on or

45 before [June 30, 2002] June 30, 2006 , the rate shall be 1.33%,

46 for privilege periods ending on or after [July 1, 2002] July 1, 2006,

1 but on or before ~~[June 30, 2003]~~ June 30, 2007, the rate shall be
2 0.67%, and
3 for privilege periods ending on or after ~~[July 1, 2003]~~ July 1, 2007
4 there shall be no rate of tax imposed under this paragraph, and
5 (iii) For a taxpayer that has entire net income of \$100,000 or less
6 for privilege periods ending on or after July 1, 1998, but on or before
7 June 30, 2001 the rate for that privilege period shall be 0.5%, and for
8 privilege periods ending on or after July 1, 2001 there shall be no rate
9 of tax imposed under this paragraph.
10 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or
11 (iii) of this paragraph shall be multiplied by its entire net income that
12 is not subject to federal income taxation or such portion thereof as
13 may be allocable to this State pursuant to sections 6 through 10 of
14 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such portion
15 thereof as is specifically assigned to this State as provided in section
16 5 of P.L.1993, c.173 (C.54:10A-6.1).
17 (3) For a taxpayer that is a New Jersey S corporation, in addition
18 to the amount, if any, determined under paragraph (2) of this
19 subsection, the tax rate that would otherwise be applicable to the
20 taxpayer's entire net income for the privilege period if the taxpayer
21 were not an S corporation provided under paragraph (1) of this
22 subsection for the privilege period multiplied by its entire net income
23 that is subject to federal income taxation or such portion thereof as
24 may be allocable to this State pursuant to sections 6 through 10 of
25 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).
26 (d) Provided, however, that the franchise tax to be annually
27 assessed to and paid by any investment company or real estate
28 investment trust, which has elected to report as such and has filed its
29 return in the form and within the time provided in this act and the rules
30 and regulations promulgated in connection therewith, shall, in the case
31 of an investment company, be measured by ~~[25%]~~ ¹~~[60%]~~ 40%¹ of
32 its entire net income and ~~[25%]~~ ¹~~[60%]~~ 40%¹ of its entire net worth,
33 and in the case of a real estate investment trust, by 4% of its entire net
34 income and 15% of its entire net worth, at the rates hereinbefore set
35 forth for the computation of tax on net income and net worth,
36 respectively, but in no case less than \$250, and further provided,
37 however, that the franchise tax to be annually assessed to and paid by
38 a regulated investment company which for a period covered by its
39 report satisfies the requirements of Chapter 1, Subchapter M, Part I,
40 Section 852(a) of the federal Internal Revenue Code shall be \$250.
41 (e) The tax assessed to any taxpayer pursuant to this section shall
42 not be less than \$25 in the case of a domestic corporation, \$50 in the
43 case of a foreign corporation, or \$250 in the case of an investment
44 company or regulated investment company. Provided however, that
45 for ¹~~[accounting or]~~¹ privilege periods beginning in calendar year
46 1994 and thereafter the minimum taxes for taxpayers other than an
47 investment company or a regulated investment company shall be as

1 provided in the following schedule:

2	3	4	5
6	7	8	9
10	11	12	13
14	15	16	17
18	19	20	21
22	23	24	25
26	27	28	29
30	31	32	33
34	35	36	37
38	39	40	41
42	43	44	45
46			

14 and for calendar year 2002 and thereafter the minimum tax for all
 15 taxpayers shall be \$500; provided however, that for a taxpayer that is
 16 a member of an affiliated group or a controlled group pursuant to
 17 sections 1504 or 1563 of the federal Internal Revenue Code of 1986,
 18 26 U.S.C. ss.1504 or 1563, and whose group has total payroll of
 19 \$5,000,000 or more for the privilege period, the minimum tax shall be
 20 \$2,000 for the privilege period;¹ and provided further that the director
 21 shall adjust the minimum tax ¹amounts¹ for ¹[accounting or]¹
 22 privilege periods beginning in each fifth year following calendar year
 23 ¹[1997] 2002¹ and each fifth year thereafter by multiplying the
 24 minimum tax for periods beginning in ¹[1997] 2002¹ by an amount
 25 equal to one plus 75% of the increase, if any, in the annual average
 26 total producer price index for finished goods published by the federal
 27 Department of Labor, Bureau of Labor Statistics, for the year
 28 preceding the determination year over such index for calendar year
 29 ¹[1996] 2001¹,¹ which adjusted minimum tax amount shall be rounded
 30 to the next highest multiple of \$10.

31 (f) In lieu of the portion of the tax based on net worth and to be
 32 computed under subsection (a) of this section, any taxpayer, the value
 33 of whose total assets everywhere, less reasonable reserves for
 34 depreciation, as of the close of the period covered by its report,
 35 amounts to less than \$150,000, may elect to pay the tax shown in a
 36 table which shall be promulgated by the director.

37 (g) Provided however, that for privilege periods beginning on or
 38 after January 1, 2001 but before January 1, 2002 the franchise tax
 39 annually assessed to and paid by a taxpayer:

40 (1) that is a limited liability company or foreign limited liability
 41 company classified as a partnership for federal income tax purposes
 42 shall be the amount determined pursuant to the provisions of section
 43 3 of P.L.2001, c.136 (C.54:10A-15.6); or

44 (2) that is a limited partnership or foreign limited partnership
 45 classified as a partnership for federal income tax purposes shall be the
 46 amount determined pursuant to the provisions of section 4 of

1 P.L.2001, c.136 (C.54:10A-15.7).

2 (h) Provided however, that for privilege periods beginning on or
3 after January 1, 2002 the franchise tax annually assessed to and paid
4 by a taxpayer that is a partnership shall be the amount determined
5 pursuant to the provisions of section 12 of P.L. , c. (C.)(now
6 pending before the Legislature as this bill).

7 ¹(i) Notwithstanding the provisions of subsection c. of this section
8 to the contrary, and notwithstanding the provisions of subsection (B)
9 of section 6 of P.L.1945, c.162 (C.54:10A-6) to the contrary, the
10 amount by which the exclusion of receipts from the denominator of the
11 sales fraction pursuant to subsection (B) of section 6 of P.L.1945,
12 c.162 (C.54:10A-6) increases the liability of all of the members of an
13 affiliated group or a controlled group pursuant to sections 1504 or
14 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. ss.1504
15 or 1563, over that liability calculated without application of the
16 exclusion for a privilege period shall not exceed \$5,000,000. If the
17 exclusion of receipts from the denominator of the sales fraction
18 pursuant to subsection (B) would otherwise increase the liability of all
19 of the members of an affiliated group or a controlled group by more
20 than \$5,000,000 for a privilege period, then the amount of liability in
21 excess of \$5,000,000 due to the exclusion of receipts from the
22 denominator shall be abated, and the abated liability shall be allocated
23 among the members of the affiliated group or the controlled group in
24 proportion to each member's increase in liability due to the exclusion
25 of such receipts; provided however, that the director may allow a
26 single corporation within the affiliated group or controlled group to
27 act as the key corporation for the abatement, in such manner as the
28 director may prescribe.¹

29 (cf: P.L.2001, c.136, s.2)

30

31 7. (New section) a. For the purposes of this section:

32 "Affiliated group" means a group of corporations defined as an
33 affiliated group by section 1504 of the federal Internal Revenue Code
34 of 1986, 26 U.S.C. s.1504, or any successor federal law, that files a
35 consolidated federal income tax return for the privilege period
36 pursuant to sections 1501 through 1504 of the federal Internal
37 Revenue Code of 1986, 26 U.S.C. ss.1501-1504 or any successor
38 federal law.

39 "Cost of goods sold" means the cost of goods sold calculated
40 pursuant to the same method used by the taxpayer for the purpose of
41 computing its federal income tax ¹, or other input or expenditure, as
42 determined by the director, as may be necessary to equitably measure
43 the business activity of the taxpayer¹, multiplied by the allocation
44 factor computed as set forth in section 6 of P.L.1945, c.162
45 (C.54:10A-6).

46 "Member of an affiliated group" means a taxpayer that is part of an

1 affiliated group.

2 "New Jersey gross profits" means New Jersey gross receipts
3 reduced by returns and allowances attributable to New Jersey gross
4 receipts, less the cost of goods sold.

5 "New Jersey gross receipts" means the receipts of the taxpayer for
6 the privilege period, computed on the cash or accrual basis according
7 to the method of accounting used in the computation of its net income
8 for federal tax purposes arising during the privilege period from:

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

12 (2) sales of tangible personal property located without the State at
13 the time of the receipt of or appropriation to the orders where
14 shipment is made to points within the State,

15 (3) services performed within the State,

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

18 (5) all other business receipts earned within the State.

19 b. For privilege periods beginning on or after January 1, 2002, the
20 alternative minimum assessment shall be equal to the amount
21 computed under paragraphs (1) or (2) of this subsection pursuant to
22 the election made pursuant to subsection c. of this section:

23 (1) ¹[New Jersey gross profits, reduced by \$500,000, multiplied
24 by .006]

25 If New Jersey gross profits are: the assessment is:

26
27 Not more than \$1,000,000 No amount is assessed

28
29 More than \$1,000,000 but not
30 over \$10,000,000 .0025 times the gross profits in
31 excess of \$1,000,000 multiplied
32 by 1.11111

33
34 More than \$10,000,000 but not
35 over \$15,000,000 .0035 times the gross profits

36
37 More than \$15,000,000 but not
38 over \$25,000,000 .006 times the gross profits

39
40 More than \$25,000,000 but not
41 over \$37,500,000 .007 times the gross profits

42
43 More than \$37,500,000 .008 times the gross profits ¹; or

44
45 (2) ¹[New Jersey gross receipts, reduced by \$1,000,000,
46 multiplied by .003]

1	<u>If New Jersey gross receipts are:</u>	<u>the assessment is:</u>
2		
3	<u>Not more than \$2,000,000</u>	<u>No amount is assessed</u>
4		
5	<u>More than \$2,000,000 but not</u>	
6	<u>over \$20,000,000</u>	<u>.00125 times the gross receipts in</u>
7		<u>excess of \$2,000,000 multiplied</u>
8		<u>by 1.11111</u>
9		
10	<u>More than \$20,000,000 but not</u>	
11	<u>over \$30,000,000</u>	<u>.00175 times the gross receipts</u>
12		
13	<u>More than \$30,000,000 but not</u>	
14	<u>over \$50,000,000</u>	<u>.003 times the gross receipts</u>
15		
16	<u>More than \$50,000,000 but not</u>	
17	<u>over \$75,000,000</u>	<u>.0035 times the gross receipts</u>
18		
19	<u>More than \$75,000,000</u>	<u>.004 times the gross receipts</u>
20		

21 (3) The sum of the amounts untaxed for all of the members of an
 22 affiliated group or a controlled group pursuant to sections 1504 or
 23 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. ss.1504
 24 or 1563, shall not exceed \$5,000,000 of gross profits, or shall not
 25 exceed \$10,000,000 of gross receipts, or, for a group whose members
 26 have not all elected the same computation method under this
 27 subsection, shall not exceed five times the applicable amounts not
 28 subject to assessment of the individual members¹.

29 c. A taxpayer shall, for the first privilege period for which it is
 30 required to compute the alternative minimum assessment pursuant to
 31 this section, elect to employ the computation method set forth in
 32 paragraph (1) or the computation method set forth in paragraph (2) of
 33 subsection b. of this section, which computation method shall be
 34 employed by the taxpayer for the computation of the alternative
 35 minimum assessment for that privilege period and for the next
 36 succeeding four privilege periods, pursuant to regulations and forms
 37 as the director may prescribe. The taxpayer may change its election
 38 at any time after the initial five privilege periods; provided however,
 39 that any change in the method of computation of the alternative
 40 minimum assessment which the taxpayer elects shall be employed by
 41 the taxpayer for the privilege period for which the change is effective
 42 and for the next four succeeding privilege periods.

43 d. (1) Notwithstanding the provisions of subsection b. of this
 44 section, the alternative minimum assessment for a taxpayer for a
 45 privilege period, ¹[other than a taxpayer electing to file a consolidated
 46 return for the privilege period pursuant to section 18 of P.L.1945,

1 c.162 (C.54:10A-18),] ¹ shall not exceed \$5,000,000. ¹[For a
2 taxpayer electing to file a consolidated return for the privilege period
3 pursuant to section 18 of P.L.1945, c.162 (C.54:10A-18), the
4 alternative minimum assessment shall not exceed \$5,000,000 for each
5 member of the affiliated group, except as provided in paragraph (2) or
6 (3) of this subsection] ¹.

7 (2) If ¹[four] five ¹ or more taxpayers are members of an affiliated
8 group, the sum of the alternative minimum assessments of each of the
9 members of the affiliated group for a privilege period shall not exceed
10 ¹[\$15,000,000] \$20,000,000 ¹. If the sum of the alternative minimum
11 assessment for all members of the affiliated group computed as set
12 forth in subsection b. after application of the maximum set by
13 paragraph (1) of this subsection would otherwise exceed
14 ¹[\$15,000,000] \$20,000,000 ¹, the alternative minimum assessment for
15 a member of the affiliated group shall equal the alternative minimum
16 assessment for that member of the affiliated group computed as set
17 forth in subsection b. after application of the maximum set by
18 paragraph (1) of this subsection multiplied by a fraction, the
19 numerator of which is ¹[\$15,000,000] \$20,000,000 ¹ and the
20 denominator of which is the sum of the alternative minimum
21 assessments for all members of the affiliated group computed as set
22 forth in subsection b. after application of the maximum set by
23 paragraph (1) of this subsection.

24 (3) For the purpose of calculating the alternative minimum
25 assessment, the amount of the sum of the alternative minimum
26 assessments of the members of an affiliated group shall not, when
27 added to the amounts of the members' tax computed pursuant to
28 section 5 of P.L.1945, c.162 (C.54:10A-5), exceed ¹[\$15,000,000]
29 \$20,000,000 ¹.

30 e. The alternative minimum assessment computed pursuant to this
31 section for privilege periods commencing after ¹[December 31, 2006]
32 June 30, 2006 ¹ shall be \$0.00, except that for taxpayers exempt from
33 corporation net income taxation pursuant to 15 U.S.C. s.381 et seq.
34 (Pub.L.86-272), 73 Stat. 555, such assessment shall continue to be
35 computed as otherwise provided herein ¹; provided however, that for
36 privilege periods commencing after December 31, 2006, a taxpayer
37 exempt from corporation net income taxation pursuant to 15 U.S.C.
38 s.381 et seq. that has filed a consent, in the form as shall be prescribed
39 by the director, to the jurisdiction of this State to impose and the duty
40 of the taxpayer to pay the tax imposed pursuant to section 5 of
41 P.L.1945, c.165 (C.54:10A-5) for the privilege period shall have an
42 alternative minimum assessment for that period of \$0.00 ¹.

43 f. (1) If the alternative minimum assessment for a taxpayer
44 computed pursuant to this section exceeds the tax computed pursuant
45 to section 5 of P.L.1945, c.165 (C.54:10A-5) for a privilege period,
46 the taxpayer shall be allowed an amount of credit equal to the amount

1 by which the alternative minimum assessment computed pursuant to
2 this section for the privilege period exceeds the tax computed pursuant
3 to section 5 of P.L.1945, c.165 (C.54:10A-5) for that privilege period
4 1; provided however, that a taxpayer shall not be allowed a credit for
5 any amount of alternative minimum assessment for a privilege period
6 for which a credit is allowed pursuant to section 29 of P.L. , c.
7 (C.)(now pending before the Legislature as this bill)¹ . The amount
8 of credit may be carried forward for application in subsequent
9 privilege periods subject to the limitations of paragraph (2) of this
10 subsection.

11 (2) A taxpayer may apply all or a portion of the credits allowed by
12 paragraph (1) of this subsection against the tax computed pursuant to
13 section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period for
14 which the tax pursuant to that section exceeds the alternative minimum
15 assessment computed for the privilege period pursuant to this section;
16 provided however, that the amount of credit applied shall not reduce
17 the amount of tax otherwise due to less than the alternative minimum
18 assessment as computed pursuant to this section for the privilege
19 period 1, shall not reduce the amount of tax otherwise due by more
20 than 50%, and shall not reduce the amount of tax otherwise due
21 below the statutory minimum provided in subsection (e) of section 5
22 of P.L.1945, c.162 (C.54:10A-5)¹ .

23

24 8. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read
25 as follows:

26 6. In the case of a taxpayer which maintains a regular place of
27 business outside this State other than a statutory office, the portion of
28 its entire net worth to be used as a measure of the tax imposed by
29 subsection (a) of section [5(a)] 5 of [this act] P.L.1945, c.162
30 (C.54:10A-5), and the portion of its entire net income to be used as a
31 measure of the tax imposed by subsection (c) of section [5(a)] 5 of
32 [this act] P.L.1945, c.162 (C.54:10A-5), shall be determined by
33 multiplying such entire net worth and entire net income, respectively,
34 by an allocation factor which is the property fraction, plus twice the
35 sales fraction plus the payroll fraction and the denominator of which
36 is four, except as the director may determine pursuant to section 8 of
37 P.L.1945, c.162 (C.54:10A-8), that is:

38 (A) The property fraction is the average value of the taxpayer's real
39 and tangible personal property within the State during the period
40 covered by its report divided by the average value of all the taxpayer's
41 real and tangible personal property wherever situated during such
42 period; provided, however, that for the purpose of determining
43 average value, the provisions with respect to depreciation as set forth
44 in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of
45 P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving
46 at such value.

1 (B) The sales fraction is the receipts of the taxpayer, computed on
2 the cash or accrual basis according to the method of accounting used
3 in the computation of its net income for federal tax purposes, arising
4 during such period from

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

8 (2) sales of tangible personal property located without the State at
9 the time of the receipt of or appropriation to the orders where
10 shipment is made to points within the State,

11 (3) (Deleted by amendment.)

12 (4) services performed within the State,

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

15 (6) all other business receipts [(excluding dividends excluded from
16 entire net income by paragraph (1) of subsection (k) of section 4 of
17 P.L.1945, c.162 (C.54:10A-4))] ¹(excluding dividends excluded from
18 entire net income by paragraph (1) of subsection (k) of section 4 of
19 P.L.1945, c.162 (C.54:10A-4))¹ earned within the State,

20 divided by the total amount of the taxpayer's receipts, similarly
21 computed, arising during such period from all sales of its tangible
22 personal property, services, rentals, royalties and all other business
23 receipts, whether within or without the State; provided however, that
24 if receipts would be assigned to a state, a possession or territory of the
25 United States or the District of Columbia or to any foreign country
26 in which the taxpayer is not subject to a tax on or measured by profits
27 or income ¹, or business presence or business activity.¹ then the
28 receipts shall be excluded from the denominator of the sales fraction.

29 [For the purposes of this section, receipts shall not include any sum
30 or sums of money received in payment for gas or electric energy sold
31 to a public utility subject to taxation pursuant to P.L.1940, c.5
32 (C.54:30A-49 et seq.) for resale to ratepayers of the public utility.]

33 (C) The payroll fraction is the total wages, salaries and other
34 personal service compensation, similarly computed, during such period
35 of officers and employees within the State divided by the total wages,
36 salaries and other personal service compensation, similarly computed,
37 during such period of all the taxpayer's officers and employees within
38 and without the State.

39 In the case of a taxpayer which does not maintain a regular place of
40 business outside this State other than a statutory office, the allocation
41 factor shall be 100%.

42 In the case of a banking corporation which maintains a regular place
43 of business outside this State other than a statutory office, and which
44 elects to take the exclusion from net worth provided in subsection (d)
45 of section 4 of P.L.1945, c.162 (C.54:10A-4) or the deduction from
46 entire net income provided in paragraph (4) of subsection (k) of

1 section 4 of P.L.1945, c.162 (C.54:10A-4), the allocation factor shall
2 be computed and applied in accordance with section 6 of P.L.1945,
3 c.162 (C.54:10A-6); provided, however, that the numerators and the
4 denominators of the fractions described in (A), (B) or (C) above shall
5 include all amounts attributable, directly or indirectly, to the
6 production of the eligible net income of an international banking
7 facility as defined in paragraph (4) of subsection (k) of section 4 of
8 P.L.1945, c.162 (C.54:10A-4), whether or not such amounts are
9 otherwise attributable to this State.

10 (cf: P.L.1995, c.245, s.1)

11

12 9. Section 5 of P.L.1993, c.173 (C.54:10A-6.1) is amended to read
13 as follows:

14 5. a. "Operational income" subject to allocation to New Jersey
15 means income from tangible and intangible property if the acquisition,
16 management, and disposition of the property constitute integral parts
17 of the taxpayer's regular trade or business operations and includes
18 investment income serving an operational function. Income that a
19 taxpayer demonstrates with clear and [cogent] convincing evidence
20 is not operational income is classified as nonoperational income, and
21 the nonoperational income of taxpayers[, other than those that have
22 their principal place from which the trade or business of the taxpayer
23 is directed or managed in this State,] is not subject to allocation but
24 shall be specifically assigned; provided, that 100% of the
25 nonoperational income of a taxpayer that has its principal place from
26 which the trade or business of the taxpayer is directed or managed in
27 this State shall be specifically assigned to this State to the extent
28 permitted under the Constitution and statutes of the United States.

29 b. Corporate expenses related to nonoperational income are not
30 deductible in determining entire net income. Notwithstanding the
31 provisions of R.S.54:49-6 or any other law to the contrary:

32 (1) if in prior privilege periods property had been classified as
33 operational property, and later is demonstrated to have been
34 nonoperational property and is subsequently disposed of, all expenses,
35 without limitation, deducted for prior privilege periods related to such
36 nonoperational property shall be added back and recaptured as income
37 in the period of disposition of such property;

38 (2) if in prior privilege periods income had been classified as
39 serving an operational function, and later is demonstrated not to have
40 been serving an operational function, all expenses, without limitation,
41 deducted in prior privilege periods related to such income not serving
42 an operational function shall be added back and recaptured as income;
43 and

44 (3) the denominators of the fractions used to determine the
45 allocation factor pursuant to section 6 of P.L.1945, c.162
46 (C.54:10A-6), for privilege periods for which redeterminations are

1 required pursuant to paragraphs (1) and (2) of this subsection shall be
2 redetermined to exclude the amounts, if any, relating to the
3 nonoperational property or the nonoperational income.

4 c. The Director of the Division of Taxation shall prescribe such
5 forms for administration and adopt such administrative rules as the
6 director deems necessary for the implementation of this section.

7 (cf: P.L.1993, c.173, s.5)

8

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

11 10. a. Whenever it shall appear to the [commissioner] director
12 that any taxpayer fails to maintain its records in accordance with sound
13 accounting principles or conducts its business or maintains its records
14 in such manner as either directly or indirectly to distort its true entire
15 net income or its true entire net worth under this act or the proportion
16 thereof properly allocable to this State, or whenever any taxpayer
17 maintains a place of business outside this State, or whenever any
18 agreement, understanding or arrangement exists between a taxpayer
19 and any other corporation or any person or firm, for the purpose of
20 evading tax under this act, or whereby the activity, business, receipts,
21 expenses, assets, liabilities, income or net worth of the taxpayer are
22 improperly or inaccurately reflected, the [commissioner] director is
23 authorized and empowered, in [his] the director's discretion and in
24 such manner as [he] the director may determine, to adjust and
25 redetermine such items, and to adjust items of gross receipts, tangible
26 or intangible property and payrolls within and without the State and
27 the allocation of entire net income or entire net worth or to make any
28 other adjustments in any tax report or tax returns as may be necessary
29 to make a fair and reasonable determination of the amount of tax
30 payable under this act.

31 b. Where [(a)] (1) any taxpayer conducts its activity or business
32 under any agreement, arrangement or understanding in such manner as
33 either directly or indirectly to benefit its members or stockholders, or
34 any of them, or any person or persons directly or indirectly interested
35 in such activity or business, by entering into any transaction at more
36 or less than a fair price which, but for such agreement, arrangement or
37 understanding, might have been paid or received therefor, or [(b)] (2)
38 any taxpayer, a substantial portion of whose capital stock is owned
39 either directly or indirectly by or through another corporation, enters
40 into any transaction with such other corporation on such terms as to
41 create an improper loss or net income, the [commissioner] director
42 may include in the entire net income of the taxpayer the fair profits
43 which, but for such agreement, arrangement or understanding, the
44 taxpayer might have derived from such transaction. The
45 [commissioner] director may require any person or corporation to
46 submit such information under oath or affirmation, or to permit such

1 examination of its books, papers and documents, as may be necessary
2 to enable ~~him~~ the director to determine the existence, nature or
3 extent of an agreement, understanding or arrangement to which this
4 section relates, whether or not such person or corporation is subject
5 to the tax imposed by this act.

6 c. The entire net income of a taxpayer exercising its franchise in
7 this State that is a member of an affiliated group or a controlled group
8 pursuant to sections 1504 or 1563 of the federal Internal Revenue
9 Code of 1986, 26 U.S.C. ss.1504 or 1563, shall be determined by
10 eliminating all payments to, or charges by, other members of the
11 affiliated or controlled group in excess of fair compensation in all
12 inter-group transactions of any kind. ¹[If] Notwithstanding the
13 elimination of all inter-group transactions in excess of fair
14 compensation, if¹ the taxpayer cannot demonstrate ¹[as a fact]¹ by
15 clear and convincing evidence that a report by a taxpayer discloses the
16 true earnings of the taxpayer on its business carried on in this State,
17 the director may, at the director's discretion, require the taxpayer to
18 file a consolidated return of the entire operations of the affiliated
19 group or controlled group, including its own operations and income
20 ¹to the extent permitted under the Constitution and statutes of the
21 United States¹ . The director shall determine the true amount of entire
22 net income earned by the taxpayer in this State. The consolidated
23 entire net income of the taxpayer and of the other members of its
24 affiliated group or controlled group shall be allocated to this State by
25 use of the applicable allocation formula that the director requires
26 pursuant to P.L.1945, c.162 (C.54A:10A-1 et seq.) be used by the
27 taxpayer. The return shall include in the allocation formula the
28 property, payrolls, and sales of all corporations for which the return
29 is made. The director may require a consolidated return under this
30 section without regard to whether the other members of the affiliated
31 or controlled group, other than the taxpayer, are or are not exercising
32 their franchises in this State.

33 A consolidated return required by this section shall be filed within
34 60 days after it is demanded, subject to the penalties of the State
35 Uniform Tax Procedure Law, R.S.54:48-1 et seq.

36 The member of an affiliated group or a controlled group shall
37 incorporate in its return required under this section information needed
38 to determine under this section its taxable entire net income, and shall
39 furnish any additional information the director requires, subject to the
40 penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et
41 seq. A taxpayer shall furnish any additional information requested
42 within 30 days after it is demanded, subject to the penalties of the
43 State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

44 (cf: P.L.1958, c.63, s.5)

45
46 11. Section 14 of P.L.1945, c.162 (C.54:10A-14) is amended to

1 read as follows:

2 14. (a) The [commissioner] director may by general rule or by
3 special notice require any taxpayer to submit copies or pertinent
4 extracts of its federal income tax returns, or of any other tax return
5 made to any agency of the federal government, or of this or any other
6 state, or of any statement or registration made pursuant to any state
7 or federal law pertaining to securities or securities exchange
8 regulation.

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

20 (c) Each taxpayer filing a return that is a member of an affiliated
21 group or a controlled group pursuant to sections 1504 or 1563 of the
22 federal Internal Revenue Code of 1986, 26 U.S.C. ss.1504 or 1563
23 shall¹, upon the request of the director and 90 days notice thereof,¹
24 disclose in its return for the privilege period the amount of all
25 inter-member costs or expenses, including but not limited to
26 management fees, rents, and other services, for the privilege period.
27 If the taxpayer acquires products or services from another member of
28 its affiliated group or controlled group, which it re-sells or otherwise
29 uses to generate revenue, the taxpayer shall¹, upon the request of the
30 director and 90 days notice thereof,¹ disclose the amount of revenue
31 generated from those products or services. The director shall
32 promulgate rules and procedures for the manner of disclosure. A
33 failure to file such a disclosure shall be deemed the filing of an
34 incomplete tax return, subject to the penalties of the State Uniform
35 Tax Procedure Law, R.S.54:48-1 et seq.

36 (cf: P.L.1949, c.236, s. 4)

37

38 12. (New section) a. A partnership that is not a qualified
39 investment partnership¹ and that is not listed on a United States
40 national stock exchange¹ shall, on or before the 15th day of the fourth
41 month succeeding the close of each privilege period, remit a payment
42 of tax. The amount of tax shall be equal to the sum of: all of the
43 share of the entire net income of the partnership for that privilege
44 period of all nonresident noncorporate partners, multiplied by an
45 allocation factor determined, pursuant to section 6 of P.L.1945, c.162
46 (C.54:10A-6), based on the allocation fractions of the partnership for

1 that privilege period, and multiplied by .0637 plus all of the share of
2 the entire net income of the partnership for that privilege period of all
3 nonresident corporate partners, multiplied by an allocation factor
4 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
5 based on the allocation fractions of the partnership for that privilege
6 period, and multiplied by .09.

7 b. An amount of tax paid by a partnership pursuant to subsection
8 a. of this section shall be credited to accounts of its nonresident
9 partners in proportion to each nonresident partner's share of allocated
10 entire net income ¹and the multiplier rate for that partner class under
11 subsection a. of this section¹ as of the date of its receipt by the
12 director, and each amount of tax so credited shall be deemed to have
13 been paid by the respective partner in respect of the privilege period
14 or taxable year of the partner.

15 c. For the purposes of this section:

16 "Nonresident noncorporate partner" means, an individual, an estate
17 or a trust subject to taxation pursuant to the "New Jersey Gross
18 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
19 taxpayer or a resident estate or trust under that act;

20 "Nonresident corporate partner" means a partner that is not an
21 individual, an estate or a trust subject to taxation pursuant to the "New
22 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
23 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
24 (C.54:10A-3), and that does not maintain a regular place of business
25 in this State other than a statutory office; and

26 "Partner" means an owner of an interest in the partnership, in
27 whatever manner that owner and ownership interest are designated.

28

29 ¹13. Section 15 of P.L.1945, c.162 (C.54:10A-15) is amended to
30 read as follows:

31 15. The tax imposed by this act shall be due and payable annually
32 hereafter, commencing with the calendar year 1959, in the manner
33 provided under subsection (a), (b) or (c) of this section, whichever
34 shall be applicable.

35 (a) Every taxpayer shall annually pay a franchise tax, with respect
36 to all or any part of each of its fiscal or calendar accounting years
37 beginning after January 1, 1959, to be computed as herein provided,
38 for such fiscal or calendar accounting year or part thereof, on a report
39 which shall be filed on or before April 15 next succeeding the close
40 of each such accounting year, or, if any such fiscal year ends after the
41 last day of December and prior to July 1, on or before the fifteenth
42 day of the fourth month after the close of such fiscal year, and the full
43 amount of the tax hereunder shall be due and payable on or before the
44 date prescribed herein for the filing of the return.

45 (b) Every taxpayer shall pay a like franchise tax with respect to all
46 or any part of the period beginning January 1, 1959 and extending

1 through any subsequent part of its first fiscal or calendar accounting
2 year ending after said date. Such tax shall be computed as herein
3 provided, for each and every fiscal or calendar accounting year or part
4 thereof begun not earlier than July 2, 1957 and ending not later than
5 December 31, 1959 on the basis of which a franchise tax has not
6 accrued under this act prior to January 1, 1959. The tax imposed
7 pursuant to this subsection shall be deemed a single tax for such period
8 but shall be computed separately with respect to each such fiscal or
9 calendar accounting year or part thereof on the basis of which a
10 franchise tax has not previously accrued as aforesaid, on a report
11 which shall be filed on or before April 15, next succeeding the close
12 of each such accounting year, or, if any such fiscal year ends after the
13 last day of December and prior to July 1, on or before the fifteenth
14 day of the fourth month after the close of such fiscal year, and the full
15 amount of the tax hereunder shall be due and payable on or before the
16 date prescribed herein for the filing of the report.

17 (c) With respect to all or any part of each of its [fiscal or calendar
18 accounting years] privilege periods ending after June 30, 1967, every
19 taxpayer shall annually pay a franchise tax on a report which shall be
20 filed on or before the fifteenth day of the fourth month after the close
21 of such [fiscal or calendar accounting year] privilege period, or part
22 thereof, and the full amount of the tax hereunder shall be due and
23 payable on or before the date prescribed herein for the filing of the
24 return.

25 (d) With respect to its fiscal or calendar accounting years ending
26 after February 29, 1968 and prior to March 1, 1969, every taxpayer
27 shall pay as a partial payment of franchise tax in addition to the tax
28 payable under subsection (c) of this section, an amount equal to
29 one-quarter of the tax payable under said subsection (c). With respect
30 to each of its fiscal or calendar accounting years ending after February
31 28, 1969, every taxpayer shall annually pay as a partial payment of
32 franchise tax in addition to the tax payable under subsection (c) of this
33 section, an amount equal to one-half of the tax payable under said
34 subsection (c). In the calculation of the tax pertaining to each
35 succeeding accounting period, due in accordance with subsection (c)
36 hereof, every taxpayer shall be entitled to a credit in the amount of the
37 tax paid under this subsection (d) as a partial payment and shall be
38 entitled to the return of any amount so paid which shall be found in
39 excess of the total amount payable in accordance with said subsection
40 (c) and this subsection (d).

41 (e) With respect to its fiscal or calendar accounting years ending on
42 or after June 30, 1974, every taxpayer shall annually pay as a partial
43 payment of franchise tax in addition to the tax payable under
44 subsection (c) of this section, an amount equal to 60% of the tax
45 payable under said subsection (c). In the calculation of the tax
46 pertaining to each succeeding accounting period, due in accordance

1 with subsection (c) hereof, every taxpayer shall be entitled to a credit
2 in the amount of the tax paid under this subsection (e) as a partial
3 payment and shall be entitled to the return of any amount so paid
4 which shall be found to be in excess of the total amount payable in
5 accordance with said subsection (c) and this subsection (e).

6 (f) With respect to its ~~[fiscal or calendar accounting years]~~
7 privilege periods ending on or after December 31, 1984 ~~[and~~
8 ~~thereafter]~~, in addition to the tax payable under subsection (c) of this
9 section, every taxpayer, ~~except a taxpayer with gross receipts of~~
10 \$50,000,000 or more for the prior privilege period, which shall make
11 installment payments pursuant to subsection (g) of this section, shall
12 make installment payments of its franchise tax at the following times
13 and in the following amounts of its estimated tax for its current fiscal
14 or calendar accounting year:

15 (1) 25% thereof paid on or before the fifteenth day of the fourth
16 month thereof;

17 (2) 25% thereof paid on or before the fifteenth day of the sixth
18 month thereof;

19 (3) 25% thereof paid on or before the fifteenth day of the ninth
20 month thereof; and

21 (4) the balance thereof paid on or before the fifteenth day of the
22 twelfth month thereof.

23 (g) With respect to its privilege periods beginning on or after
24 January 1, 2003, in addition to the tax payable under subsection (c) of
25 this section, every taxpayer with gross receipts of \$50,000,000 or
26 more for the prior privilege period shall make installment payments of
27 its franchise tax at the following times and in the following amounts of
28 its estimated tax for its current privilege period:

29 (1) 25% thereof paid on or before the fifteenth day of the fourth
30 month thereof;

31 (2) 50% thereof paid on or before the fifteenth day of the sixth
32 month thereof; and

33 (3) the balance thereof paid on or before the fifteenth day of the
34 twelfth month thereof.

35 (h) In the calculation of the tax due in accordance with subsection
36 (c) hereof, a taxpayer shall be entitled to a credit in the amount of the
37 tax paid under subsection (f) or subsection (g) of this [subsection]
38 section as a partial payment and shall be entitled to the return of any
39 amount so paid which is in excess of the total amount payable in
40 accordance with subsection (c) and this subsection.

41 [(g)] (i) For the purpose of this act, every taxpayer shall use the
42 same calendar or fiscal year upon which it reports to the United States
43 Treasury Department for Federal Income Tax purposes.¹

44 (cf: P.L.1981, c.184, s.1)

45

46 ¹[13.] 14.¹ Section 18 of P.L.1945, c.162 (C.54:10A-18) is

1 amended to read as follows:

2 18. a. The [commissioner] director shall design a form of return
3 and forms for such additional statements or schedules as [he] the
4 director may require to be filed therewith. Such forms shall provide for
5 the setting forth of such facts as the [commissioner] director may
6 deem necessary for the proper enforcement of this act. [He] The
7 director shall cause a supply thereof to be printed and shall furnish
8 appropriate blank forms to each taxpayer upon application or
9 otherwise as he may deem necessary. Failure to receive a form shall
10 not relieve any taxpayer from the obligation to file a return under the
11 provisions of this act. Each such return shall have annexed thereto a
12 certification by the president, vice-president, comptroller, secretary,
13 treasurer, assistant treasurer, accounting officer of the taxpayer or any
14 other officer of the taxpayer duly authorized so to act to the effect that
15 the statements contained therein are true. The fact that an individual's
16 name is signed on a certification of the report shall be prima facie
17 evidence that such individual is authorized to sign and certify the
18 report on behalf of the corporation. In the case of a corporation in
19 liquidation or in the hands of a receiver or trustee, certification shall
20 be made by the person responsible for the conduct of the affairs of
21 such corporation.

22 b. The return of an S corporation shall, in addition to any
23 information set forth pursuant to subsection a. of this section, set forth
24 with respect to each shareholder: the shareholder's name, address and
25 federal taxpayer identification number (social security number or
26 employer identification number); whether the shareholder is a resident
27 of this State; whether the shareholder has filed a consent to
28 jurisdictional requirements pursuant to section 3 or section 4 of
29 P.L.1993, c.173 (C.54:10A-5.22 or C.54:10A-5.23); the allocation
30 factor determined pursuant to sections 6 through 10 of P.L.1945,
31 c.162 (C.54:10A-6 through 54:10A-10); the amount of any
32 distribution made to the shareholder, including any amount paid on
33 behalf of the shareholder pursuant to subsection c. or d. of section 4
34 of P.L.1993, c.173 (C.54:10A-5.23); the balance of the accumulated
35 earnings and profits account; the balance of the accumulated
36 adjustments account described in section 16 of P.L.1993, c.173
37 (C.54A:5-14), which account the corporation shall maintain; and such
38 other information as the director may prescribe by regulation. The S
39 corporation shall, on or before the day on which such return is
40 required to be filed, furnish to each person who was a shareholder
41 during the [accounting or] privilege period a copy of such information
42 shown on the return as the director may by regulation prescribe.

43 c. (1) The return of a taxpayer that is a professional corporation
44 organized pursuant to P.L.1969, c. 232 (C.14A:17-1 et seq.)¹ or a
45 similar corporation for profit organized for the purpose of rendering
46 professional services under the laws of another state, shall in addition

1 to any information set forth pursuant to subsection a. of this section,
2 set forth the name, address and federal taxpayer identification number
3 (social security number or employer identification number) of each
4 licensed professional of the corporation.

5 (2) Each professional corporation¹ organized pursuant to
6 P.L.1969, c. 232 (C.14A:17-1 et seq.)¹ or similar corporation for
7 profit organized for the purpose of rendering professional services
8 under the laws of another state that has more than two licensed
9 professionals shall at the time such return is required to be filed make
10 a payment of a filing fee of \$150 for each licensed professional of the
11 corporation, up to a maximum of \$250,000.

12 (3) Each professional corporation¹ or similar corporation for profit
13 organized under the laws of another state¹ required to make a
14 payment pursuant to paragraph (2) of this subsection shall also make,
15 at the same time as making its payment pursuant to paragraph (2) of
16 this subsection, an installment payment of its filing fee for the
17 succeeding return period in an amount equal to 50% of the amount
18 required to be paid pursuant to paragraph (2). The amount of the
19 installment payment shall be credited against the amount of the filing
20 fee due for the succeeding return period, or, if the amount of the
21 installment payment exceeds the amount of the filing fee due for the
22 succeeding return period, successive return periods.

23 ¹(4) Notwithstanding the provisions of R.S.54:48-2 and R.S.54:48-
24 4 to the contrary, the fee required pursuant to paragraph (2) of this
25 subsection and the installment payment required pursuant to paragraph
26 (3) of this subsection shall, for purposes of administration, be
27 payments to which the provisions of the State Uniform Tax Procedure
28 Law, R.S.54:28-1 et seq., shall be applicable and the collection thereof
29 may be enforced by the director in the manner therein provided.¹

30 ¹[d. (1) An affiliated group of C corporations, as defined in section
31 1504 of the Internal Revenue Code of 1986, 26 U.S.C. s.1504, may
32 elect in accordance with the provisions of this subsection to make a
33 single, consolidated return with respect to the corporate income tax
34 imposed by section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege
35 period in lieu of separate returns. The making of a consolidated return
36 is a privilege and shall be upon the condition that all C corporations,
37 which at any time during the privilege period have been members of
38 the affiliated group, consent to be included in such return. The making
39 of a consolidated return shall be considered as such consent. The
40 privilege of filing of a consolidated return shall not be permitted if less
41 than all the members of the affiliated group consent to be included in
42 such return. Such election may, upon two years notice of the
43 revocation to the director, be revoked after five or more privilege
44 periods for which it has been in effect.

45 (2) Each corporation included as part of an affiliated group filing
46 a consolidated return shall be jointly and severally liable for the tax

1 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) of the
2 affiliated group with respect to the privilege period, except that any
3 corporation which was not a member of the affiliated group for the
4 entire taxable year shall be jointly and severally liable only for the
5 portion of the consolidated tax liability attributable to that portion of
6 the year during which the corporation was a member of the affiliated
7 group, prorated on a daily basis

8 (3) Nothing in this subsection shall be construed as requiring the
9 filing of a combined income tax return under the unitary business
10 concept.

11 (4) The director shall promulgate regulations interpreting the
12 provisions of this section that are consistent, to the maximum extent
13 possible, with applicable federal Treasury regulations.]¹

14 (cf: P.L.1993, c.173, s.6)

15
16 ¹[14.] 15.¹ Section 10 of P.L.1947, c.50 (C.54:10A-19.1) is
17 amended to read as follows:

18 10. (a) (Deleted by amendment, P.L.1992, c.175).

19 (b) (Deleted by amendment, P.L.1992, c.175).

20 (c) (Deleted by amendment, P.L.1992, c.175).

21 (d) The examination of returns and the assessment of additional
22 taxes, penalties and interest shall be as provided by the State Uniform
23 Tax [Uniform] Procedure Law, R.S.54:48-1 et seq., except as
24 otherwise provided.

25 (e) The filing of a complaint by a taxpayer in the tax court shall
26 suspend the running of the statute of limitations for the contested issue
27 or issues for all subsequent privilege periods.

28 (cf: P.L.1992, c.175, s.21)

29
30 ¹[15.] 16.¹ (New section) Notwithstanding any other provision
31 of law, no interest or penalty shall be assessed against any taxpayer for
32 underpayment of installment payments of its estimated tax due and
33 payable after December 31, 2001 and before June 16, 2002, if, and
34 only to the extent, the underpayment of estimated tax is the result of
35 the temporary suspension of the deduction for net operating loss
36 carryovers provided in section 4 of P.L.1945, c.162 (C.54:10A-4) as
37 amended in section 3 of P.L.2002, c. (now pending before the
38 Legislature as this bill) or subsection c. of section 1 of P.L.1997, c.350
39 (C.54:10A-4.3).

40
41 ¹[16.] 17.¹ (New section) a. Notwithstanding the limitation of the
42 application of subsection (g) of section 5 of P.L.1945, c.162
43 (C.54:10A-5) made pursuant to section 6 of P.L. , c. (now pending
44 before the Legislature as this bill), that limitation shall not affect any
45 obligation, lien or duty to make installment payments and pay interest
46 or penalties which have accrued or may accrue by virtue of any duty

1 to make installment payments pursuant to the provisions of section 5
2 of P.L.2001, c.136 (C.54:10A-15.8) prior to the limitation of the
3 application of subsection (g) of section 5 of P.L.1945, c.162
4 (C.54:10A-5) made pursuant to section 6 of P.L. , c. ; and
5 provided that all estimated payments which would have been due and
6 payable prior to the enactment of P.L. , c. shall be due and payable
7 as if the limitation were not in effect; and provided that this limitation
8 shall not affect the legal authority of the State to audit records and
9 assess and collect installment payments which may be due, together
10 with such interest and penalties as have accrued or would have
11 accrued thereon and shall not affect any determination of, or affect any
12 proceeding for, the enforcement thereof.

13 b. Notwithstanding the provisions of section 5 of P.L.2001, c.136
14 (C.54:10A-15.8) to the contrary, any amount of tax paid pursuant to
15 subsection a. of that section for privilege periods beginning on or after
16 January 1, 2002 shall be credited against the tax paid pursuant to
17 section 12 of P.L. , c. (C.) (now pending before the
18 Legislature as this bill).

19

20 ¹[17.] 18. ¹ Section 2 of P.L.1993, c.170 (C.54:10A-5.5) is
21 amended to read as follows:

22 2. As used in this act:

23 "Business relocation or expansion or investment" means capital
24 investment in a new or expanded business facility in this State

25 "Business facility" means any factory, mill, plant, refinery,
26 warehouse, building, complex of buildings or structural components
27 of buildings, and all machinery, equipment and personal property
28 located within this State, used in connection with the operation of the
29 business of a corporation that is subject to the tax imposed pursuant
30 to section 5 of P.L.1945, c.162 (C.54:10A-5), and all facility
31 preparation and start-up costs of the taxpayer for the business facility
32 which it capitalizes for federal income tax purposes.

33 "Compensation" means wages, salaries, commissions or any other
34 form of remuneration paid to employees for personal services.

35 "Controlled group" means one or more chains of corporations
36 connected through stock ownership with a common parent corporation
37 if stock possessing at least 50% of the voting power of all classes of
38 stock of each of the corporations is owned directly or indirectly by one
39 or more of the corporations; and the common parent owns directly
40 stock possessing at least 50% of the voting power of all classes of
41 stock of at least one of the other corporations.

42 "Director" means the Director of the Division of Taxation in the
43 Department of the Treasury.

44 "Expanded business facility" means any business facility, other than
45 a new business facility, resulting from acquisition, construction,
46 reconstruction, installation or erection of improvements or additions

1 to existing property if such improvements or additions are purchased
2 on or after the operative date of this act, but only to the extent of a
3 taxpayer's qualified investment in such improvements or additions.

4 "New business facility" means a business facility which:

5 a. is employed by a taxpayer in the conduct of a business which is
6 or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.). Such
7 facility shall not be considered a new business facility in the hands of
8 a taxpayer if the taxpayer's only activity with respect to such facility
9 is to lease it to another person;

10 b. is purchased by a taxpayer and is placed in service or use on or
11 after the operative date of this act;

12 c. was not purchased by a taxpayer from a related person. The
13 director may waive this requirement if the facility was acquired from
14 a related person for its fair market value and the acquisition was not
15 tax motivated;

16 d. was not in service or use during the 90 day period immediately
17 prior to transfer of the title to the facility, provided that this restriction
18 for the 90 day period may be waived by the director if the director
19 determines that individuals employed at the facility may be considered
20 as "new employees" as defined in this section.

21 "New employee" means an individual residing and domiciled in this
22 State, hired by a taxpayer to fill a position or a job in this State which
23 previously did not exist in the taxpayer's business enterprise in this
24 State prior to the date on which the taxpayer's qualified investment is
25 placed in service or use in this State provided that:

26 a. the individual's duties in connection with the operation of the
27 business facility are on a regular, full-time and permanent basis or
28 regular part-time and permanent basis;

29 b. the individual is not a related individual as defined in subsection
30 (i) of section 51 of the federal Internal Revenue Code of 1986, 26
31 U.S.C. s.51, or does not own 10% or more of the business with such
32 ownership interest to be determined under the rules set forth in section
33 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267;

34 c. the individual is not an individual who worked for the taxpayer
35 during the six month period ending on the date the taxpayer's qualified
36 investment is placed in service or use and is rehired by the taxpayer
37 during the six month period beginning on the date the taxpayer's
38 qualified investment is placed in service or use in this State; and

39 d. the individual is not an employee for whom the taxpayer is
40 allowed a credit pursuant to section 19 of P.L.1983, c.303
41 (C.52:27H-78) or section 12 of P.L.1985, c.227 (C.55:19-13).

42 As used in this definition: "full-time" means employment for at least
43 140 hours per month at a wage not less than the State or federal
44 minimum wage, if either minimum wage provision is applicable to the
45 business and "permanent basis" does not include employment that is
46 temporary or seasonal and therefore the compensation paid to

1 temporary or seasonal employees will not be considered for purposes
2 of sections 4 and 6 of this act; and "part-time" means customarily
3 performing such duties at least 20 hours per week for at least six
4 months during the tax year. In no event shall the number of new
5 employees directly attributable to the qualified investment for the
6 purpose of the credit allowed pursuant to this act exceed the total
7 increase in the taxpayer's average employment in this State for the tax
8 year over the average employment in this State for the previous tax
9 year and in no event shall the number of new employees directly
10 attributable to the qualified investment for the purpose of the credit
11 allowed pursuant to this act exceed one half of the average
12 employment in this State for the tax year; and provided, that the
13 director may require that the net increase in the taxpayer's employment
14 in this State be determined and certified for the taxpayer's controlled
15 group.

16 Provided further, however, that individuals filling jobs saved as a
17 direct result of the taxpayer's qualified investment in property
18 purchased for business relocation or expansion on or after the
19 operative date of this act may be treated as new employees filling new
20 jobs if the taxpayer certifies the material facts to the director and the
21 director expressly finds that: but for the new employer purchasing the
22 assets of a business in bankruptcy under chapter 7 or 11 of the United
23 States Bankruptcy Code and such new employer making qualified
24 investment in property purchased for business relocation or expansion,
25 the assets would have been sold by the United States bankruptcy court
26 in a liquidation sale and the jobs so saved would have been lost; or but
27 for the taxpayer's qualified investment in property purchased for
28 business relocation or expansion in this State, the business facility in
29 this State would have closed and the employees located at the facility
30 would have lost their jobs; provided that the director shall not make
31 this certification unless the director finds that the business is insolvent
32 as defined in paragraph (32) of 11 U.S.C. s.101 or that the business
33 facility was destroyed in whole or in significant part by fire, flood or
34 act of God.

35 "New job" means a job which did not exist in the business of the
36 taxpayer in this State prior to the taxpayer's qualified investment being
37 made, and which is filled by a new employee.

38 "Partnership" means a syndicate, group, pool, joint venture or other
39 unincorporated organization through or by means of which any
40 business, financial operation or venture is carried on, and which is not
41 a trust or estate, a corporation or a sole proprietorship. The term
42 "partner" includes a member in such a syndicate, group, pool, joint
43 venture or organization.

44 "Property purchased for business relocation or expansion" means
45 improvements to real property and tangible personal property, but only
46 if that improvement or personal property was constructed or

1 purchased and placed in service or use by the taxpayer, for use as a
2 component part of a new or expanded business facility located in this
3 State.

4 a. Property purchased for business relocation or expansion shall
5 include only:

6 (1) improvements to real property placed in service or use on or
7 after the operative date of this act by the taxpayer;

8 (2) tangible personal property placed in service or use by the
9 taxpayer on or after the operative date of this act, with respect to
10 which depreciation, or amortization in lieu of depreciation, is
11 allowable in determining the corporation business tax liability of the
12 taxpayer under P.L.1945, c.162, and which has a remaining recovery
13 period of three or more years at the time the property is placed in
14 service or use in this State; or

15 (3) tangible personal property owned and used by the taxpayer at
16 a business location outside this State which is moved into this State on
17 or after the operative date of this act, for use as a component part of
18 a new or expanded business facility located in this State; provided that
19 the property is depreciable or amortizable personal property for
20 income tax purposes, and has a remaining recovery period of three or
21 more years at the time the property is placed in service or use in this
22 State.

23 b. Property purchased for business relocation or expansion shall
24 not include:

25 (1) Repair costs, including materials used in the repair, unless for
26 federal income tax purposes, the cost of the repair must be capitalized
27 and not expensed;

28 (2) Airplanes;

29 (3) Property which is primarily used outside this State with that use
30 being determined based upon the amount of time the property is
31 actually used both within and without this State;

32 (4) Property which is acquired incident to the purchase of the stock
33 or assets of the seller unless for good cause shown, the director
34 consents to waiving this disqualification; or

35 (5) Property purchased on or after the operative date of this act,
36 unless pursuant to a written contract to purchase executed prior to the
37 operative date of this act, the cost or consideration for which cannot
38 be quantified with any reasonable degree of accuracy at the time such
39 property is placed in service or use; provided that if the contract of
40 purchase specifies a minimum purchase price the amount thereof shall
41 be used to determine the qualified investment in such property under
42 section 5 of this act if the property otherwise qualifies as property
43 purchased for business relocation or expansion.

44 c. Property shall be deemed to have been purchased prior to a
45 specified date only if:

46 (1) the physical construction, reconstruction or erection of the

1 property was begun prior to the specified date, or such property was
2 constructed, reconstructed, erected or acquired pursuant to a written
3 contract as existing and binding on the purchase prior to the specified
4 date; or

5 (2) the machinery or equipment was owned by the taxpayer prior
6 to the specified date, or was acquired by the taxpayer pursuant to a
7 binding purchase contract which was in effect prior to the specified
8 date.

9 "Purchase" means any acquisition of property, including an
10 acquisition pursuant to a lease, but only if:

11 a. the property is not acquired from a person whose relationship to
12 the person acquiring it would result in the disallowance of deductions
13 under section 267 or subsection (b) of section 707 of the federal
14 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

15 b. the property is not acquired by one member of a controlled
16 group from another member of the same controlled group. The
17 director may waive this requirement if the property was acquired from
18 a related party for its then fair market value; and

19 c. the basis of the property for federal income tax purposes, in the
20 hands of the person acquiring it, is not determined:

21 (1) in whole or in part by reference to the federal adjusted basis of
22 such property in the hands of the person from whom it was acquired;
23 or

24 (2) under subsection (e) of section 1014 of the federal Internal
25 Revenue Code of 1986, 26 U.S.C. s.1014.

26 "Related person" means:

27 a. a corporation, partnership, association or trust controlled by the
28 taxpayer;

29 b. an individual, corporation, partnership, association or trust that
30 is in control of the taxpayer;

31 c. a corporation, partnership, association or trust controlled by an
32 individual, corporation, partnership, association or trust that is in
33 control of the taxpayer; or

34 d. a member of the same controlled group as the taxpayer.

35 As used in the definition of related person and as is applicable to
36 the definitions of purchase and small or mid-size business taxpayer,
37 "control," with respect to a corporation, means ownership, directly or
38 indirectly, of stock possessing 50% or more of the total combined
39 voting power of all classes of the stock of the corporation entitled to
40 vote; "control," with respect to a trust, means ownership, directly or
41 indirectly, of 50% or more of the beneficial interest in the principal or
42 income of the trust. The ownership of stock in a corporation, of a
43 capital or profits interest in a partnership or association or of a
44 beneficial interest in a trust shall be determined in accordance with the
45 rules for constructive ownership of stock provided in subsection (c) of
46 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.

1 s.267, other than paragraph (3) of subsection (c) of that section.

2 "Small or mid-size business taxpayer" means a taxpayer that has an
3 annual payroll, as calculated pursuant to section 6 of P.L.1945, c.162
4 (C.54:10A-6), of ~~[\$2,000,000]~~ \$5,000,000 or less and annual gross
5 receipts, as calculated pursuant to section 6 of P.L.1945, c.162
6 (C.54:10A-6), of not more than ~~[\$6,000,000]~~ \$10,000,000 for the tax
7 year in which property purchased for business relocation or expansion
8 is placed in service or use by the taxpayer; provided that beginning
9 with tax years commencing on and after January 1 next following the
10 operative date of ~~[this act]~~ P.L.2002, c. (now pending before the
11 Legislature as this bill) the director shall prescribe the amount of
12 annual payroll and annual gross receipts which shall apply by
13 increasing each such amount hereinabove by an annual inflation
14 adjustment factor, which prescribed amount shall be rounded to the
15 next lowest multiple of \$50. "Annual inflation adjustment factor"
16 means the factor calculated by dividing the consumer price index for
17 urban wage earners and clerical workers for the nation, as prepared by
18 the United States Department of Labor for September of the calendar
19 year prior to the calendar year in which the tax year begins, by that
20 index for September of the calendar year two years prior to the
21 calendar year in which the tax year begins. The annual payroll of a
22 taxpayer shall include the employees of its domestic and foreign
23 affiliates, whether employed on a full-time, part-time, temporary, or
24 other basis, during the preceding 12 months. If a taxpayer has not
25 been in existence for 12 months, the payroll of the taxpayer shall be
26 divided by the number of weeks, including fractions of a week, that it
27 has been in business, and the result multiplied by 52. That amount
28 shall then be added to the 12 month payrolls of its domestic and
29 foreign affiliates to determine the annual payroll of the taxpayer for
30 purposes of this definition. The annual gross receipts of a taxpayer
31 shall include the annual gross receipts of its foreign and domestic
32 affiliates. The annual gross receipts of a taxpayer which has been in
33 business for three or more complete tax years means the average of the
34 annual gross receipts of the business for the last three tax years. For
35 purposes of this definition, the gross receipts of the taxpayer includes
36 receipts from sales of tangible personal property and services,
37 interests, rents, royalties, fees, commissions and receipts from any
38 other source, but less returns and allowances, sales of fixed assets,
39 interaffiliated transactions between a business and its domestic and
40 foreign affiliates, and taxes collected for remittance to a third party, as
41 shown on its books for federal income tax purposes. The annual
42 receipts of a taxpayer that has been in business for less than three
43 complete tax years means its total receipts for the period it has been
44 in business, divided by the number of weeks including fractions of a
45 week that it has been in business, and multiplied by 52. "Affiliates"
46 includes all concerns that are affiliates of each other when either

1 directly or indirectly one concern controls the other or a third party or
2 parties controls both. In determining whether concerns are
3 independently owned and operated and whether or not affiliation
4 exists, the director shall consider all appropriate factors, including
5 common ownership, common management and contractual
6 relationships. "Concern" means any business entity organized for
7 profit (even if its ownership is in the hands of a nonprofit entity),
8 having a place of business located in this State, and which makes a
9 contribution to the economy of this State through payment of taxes,
10 or the sale or use in this State of tangible personal property, or the
11 procurement or providing of services in this State, or the hiring of
12 employees who work in this State. "Concern" includes but is not
13 limited to any person as defined in R.S.1:1-2.

14 "Tax year" means the fiscal or calendar accounting year of a
15 taxpayer.

16 (cf: P.L.1993, c.170, s.2)

17

18 ¹[18.] 19.¹ Section 3 of P.L.1993, c.170 (C.54:10A-5.6) is
19 amended to read as follows:

20 3. a. A taxpayer shall be allowed a credit against the portion of the
21 tax imposed in section 5 of P.L.1945, c.162 (C.54:10A-5), that is
22 attributable to and the direct consequence of the taxpayer's qualified
23 investment in a new or expanded business facility in this State which
24 results in the creation of at least five new jobs in the case of a small or
25 mid-size business taxpayer, or at least 50 new jobs in the case of any
26 other taxpayer, provided that the median compensation of all new jobs
27 included in the taxpayer's determination of the new jobs factor shall
28 not be less than \$27,000 per year, provided that beginning with tax
29 years commencing on and after January 1 next following the operative
30 date of this act the director shall adjust the median annual
31 compensation which shall apply as provided in subsection e. of this
32 section. The amount of this credit shall be determined and applied as
33 hereinafter provided.

34 b. The amount of the credit allowed shall be determined by
35 multiplying the amount of the taxpayer's "qualified investment,"
36 determined under section 5 of this act, in "property purchased for
37 business relocation or expansion" by the taxpayer's new jobs factor
38 determined under section 6 of this act. The product of this calculation
39 shall establish the maximum amount of credit allowed under this act
40 due to the qualified investment.

41 c. The amount of credit allowed shall be taken over a five year
42 period, at the rate of one-fifth of the amount thereof per tax year,
43 beginning with the tax year in which the taxpayer places the qualified
44 investment in service or use in this State.

45 d. For purposes of the credit allowed by this section, property shall
46 be considered placed in service or use in the earlier of the following

1 tax years:

2 (1) The tax year in which, under the taxpayer's depreciation
3 practice, the period for depreciation with respect to such property
4 begins; or

5 (2) The taxable year in which the property is placed in a condition
6 or state of readiness and availability for a specifically assigned
7 function.

8 e. Beginning with tax years commencing on and after January 1
9 next following the operative date of this act the director shall prescribe
10 the annual median compensation of all new jobs included in the
11 taxpayer's determination of new jobs factor by increasing the amount
12 of median compensation set forth in subsection a. of this section by an
13 annual inflation adjustment factor, which prescribed amount shall be
14 rounded to the next lowest multiple of \$50. "Annual inflation
15 adjustment factor" means the factor calculated by dividing the
16 consumer price index for urban wage earners and clerical workers for
17 the nation, as prepared by the United States Department of Labor for
18 September of the calendar year prior to the calendar year in which the
19 tax year begins, by that index for September of the calendar year two
20 years prior to the calendar year in which the tax year begins.

21 (cf: P.L.1993, c.170, s.3)

22

23 ¹[19.] 20.¹ Section 6 of P.L.1993, c.170 (C.54:10A-5.9) is
24 amended to read as follows:

25 6. a. The new jobs factor used to determine the amount of credit
26 allowed under this act shall be based on the number of new jobs
27 created in this State that are directly attributable to the qualified
28 investment of the taxpayer.

29 b. (1) (a) For a taxpayer that is not a small or mid-size business
30 taxpayer, if 50 new jobs are created and filled during the tax year in
31 which the qualified investment is placed in service or use in this State,
32 the applicable new jobs factor shall be 0.005. For each 50 additional
33 new jobs over the initial 50, up to 1000 total new jobs, the applicable
34 new jobs factor of 0.005 shall be increased by adding thereto 0.005,
35 up to a maximum new jobs factor of 0.10.

36 (b) During each of the remaining four years of the five year credit
37 period, the taxpayer shall redetermine the new jobs factor for the tax
38 year on the annual return based on the average number of new
39 employees employed in new jobs during that tax year (determined on
40 a monthly basis) created as the direct result of the taxpayer's qualified
41 investment.

42 (2) (a) For a taxpayer that is a small or mid-size business taxpayer,
43 if five new jobs are created and filled during the tax year in which the
44 qualified investment is placed in service or use in this State, the
45 applicable new jobs factor shall be ~~[0.005]~~ 0.01. For each five
46 additional new jobs over the initial five, up to 100 total new jobs, the

1 applicable new jobs factor of ~~[0.005]~~ 0.01 shall be increased by
2 adding thereto ~~[0.005]~~ 0.01, up to a maximum new jobs factor of
3 ~~[0.10]~~ 0.20.

4 (b) During each of the remaining four years of the five year credit
5 period, the taxpayer shall redetermine the new jobs factor for the tax
6 year on the annual return based on the average number of new
7 employees employed in new jobs during that tax year (determined on
8 a monthly basis) created as the direct result of the taxpayer's qualified
9 investment.

10 c. An employee's position shall be directly attributable to the
11 qualified investment if:

12 (1) the employee's service is performed or the employee's base of
13 operations is at the new or expanded business facility;

14 (2) the position did not exist prior to the construction, renovation,
15 expansion or acquisition of the business facility and the making of the
16 qualified investment; and

17 (3) but for the qualified investment, the position would not have
18 existed.

19 d. With the annual corporation business tax return filed under
20 P.L.1945, c.162, for each tax year during the five year credit period
21 for a qualified investment, the taxpayer shall certify:

22 (1) the new jobs factor for that tax year for the qualified
23 investment;

24 (2) the amount of the credit allowed for that year for the qualified
25 investment;

26 (3) that the qualified investment property continued to be used in
27 the business, or if any of it was disposed of during the year, the date
28 of disposition, and that such property was not disposed of prior to
29 expiration of its recovery period, as determined under section 5 of this
30 act; and

31 (4) that the new jobs are directly attributable to the qualified
32 investment, are filled by individuals who meet the definition of new
33 employee, and the median annual compensation of all new employees
34 is equal to or greater than the minimum median annual compensation
35 required by section 3 of this act.

36 e. With the annual return for the corporation business tax imposed
37 under P.L.1945, c.162, filed for the tax year in which the qualified
38 investment is first placed in service or use in this State, the taxpayer
39 shall estimate and certify the number of new jobs reasonably projected
40 to be created by it in this State within the period prescribed in
41 subsection g. of this section, that are, or will be directly attributable to
42 the qualified investment of the taxpayer.

43 f. The hours of part-time employees shall be aggregated to
44 determine the number of equivalent full-time employees for the
45 purpose of determining the new jobs factor pursuant to subsection b.
46 of this section but shall not be so aggregated for the purposes of

1 subsection c. of this section.

2 g. With the annual return for the tax imposed under P.L.1945,
3 c.162, filed for the third tax year in which the qualified investment is
4 in service or use in this State, the taxpayer shall certify the actual
5 number of new jobs created by it in this State, that are directly
6 attributable to the qualified investment of the taxpayer.

7 (1) If the actual number of jobs created would result in a higher
8 new jobs factor, the credit allowed under this act shall be redetermined
9 and amended returns filed for the first and second tax years that the
10 qualified investment was in service or use in this State.

11 (2) If the actual number of jobs created would result in a lower
12 new jobs factor, the credit previously allowed under this act shall be
13 redetermined and amended returns filed for the first and second tax
14 years. Any additional taxes due under P.L.1945, c.162, shall be
15 remitted with the amended returns filed with the director, together
16 with any penalty and interest, for failure to pay any such tax when due
17 as provided in the State Uniform Tax [Uniform] Procedure Law,
18 R.S.54:48-1 et seq.

19 (cf: P.L.1993, c.170, s.6)

20

21 ¹[20.] 21.¹ Section 8 of P.L.1993, c.170 (C.54:10A-5.11) is
22 amended to read as follows:

23 8. a. (1) Property of a small or mid-size business taxpayer shall
24 not be treated as disposed of under section 7 of this act by reason of
25 a mere change in the form of conducting the business as long as the
26 property is retained in a business of a small or mid-size business
27 taxpayer in this State, and the taxpayer retains a controlling interest in
28 the successor business. In this event, the successor business shall be
29 allowed to claim the amount of credit still available with respect to the
30 new or expanded business facility or facilities transferred, and the
31 small or mid-size business taxpayer-transferor shall not be required to
32 redetermine the amount of credit allowed in earlier tax years.

33 (2) Property of a taxpayer that is not a small or mid-size business
34 taxpayer shall not be treated as disposed of under section 7 of this act
35 by reason of a mere change in the form of conducting the business as
36 long as the property is retained in a business of a taxpayer in this
37 State, and the taxpayer retains a controlling interest in the successor
38 business. In this event, the successor business shall be allowed to
39 claim the amount of credit still available with respect to the new or
40 expanded business facility or facilities transferred, and the
41 taxpayer-transferor shall not be required to redetermine the amount of
42 credit allowed in earlier tax years.

43 b. (1) Property of a small or mid-size business taxpayer shall be
44 treated as disposed of under section 7 of this act by reason of a change
45 in the form of conducting the business if the property is not retained
46 in a business of a small or mid-size business taxpayer in this State in

1 which the small or mid-size business taxpayer retains a controlling
2 interest.

3 (2) Property of a small or mid-size business taxpayer shall not be
4 treated as disposed of under section 7 of this act by reason of any
5 transfer or sale to a successor small or mid-size business taxpayer
6 which continues to operate the new or expanded business facility in
7 this State. Upon transfer or sale, the successor shall acquire the
8 amount of credit that remains available under this act for each
9 subsequent tax year and the taxpayer-transferor shall not be required
10 to redetermine the amount of credit allowed in earlier years.

11 (3) Property of a business that is not a small or mid-size business
12 taxpayer shall not be treated as disposed of under section 7 of this act
13 by reason of any transfer or sale to a successor taxpayer which
14 continues to operate the new or expanded business facility in this
15 State. Upon transfer or sale, the successor shall acquire the amount
16 of credit that remains available under this act for each subsequent tax
17 year and the taxpayer-transferor shall not be required to redetermine
18 the amount of credit allowed in earlier years.

19 (4) Property of a small or mid-size business taxpayer shall be
20 treated as disposed of under section 7 by reason of any transfer or sale
21 to a successor that is not a small or mid-size business taxpayer,
22 whether or not the successor continues to operate the business in this
23 State. Upon such transfer or sale, the successor shall not acquire any
24 amount of credit under this act and the taxpayer-transferor shall
25 redetermine, as required by this act, the amount of credit allowed in
26 earlier years.

27 (cf: P.L.1993, c.170, s.8)

28

29 ¹[21.] 22.¹ N.J.S.54A:8-6 is amended to read as follows:

30 54A:8-6. Requirements concerning returns, notices, records and
31 statements. (a) General. The director may prescribe regulations as
32 to the keeping of records, the content and form of returns and
33 statements, and the filing of copies of federal income tax returns and
34 determinations. The director may require any person, by regulation or
35 notice served upon such person, to make such returns, render such
36 statements, or keep such records, as the director may deem sufficient
37 to show whether or not such person is liable under this act for tax or
38 for collection of tax.

39 (b) Partnerships. **[Every]** (1) Each entity classified as a
40 partnership for federal income tax purposes, including but not limited
41 to a partnership [or], a limited liability partnership, or a limited
42 liability company, having a resident **[partner]** owner of an interest in
43 the entity or having any income derived from New Jersey sources,
44 shall make a return for the taxable year setting forth all items of
45 income, gain, loss and deduction and such other pertinent information
46 as the director may by regulations and instructions prescribe. The

1 director shall prescribe a State return form that, at a minimum,
2 includes the name and address of each partner, member, or other
3 owner of an interest in the entity however designated, of the
4 **[partnership] entity** for taxable years ending on or after December 31,
5 1994. Such return shall be filed on or before the fifteenth day of the
6 fourth month following the close of each taxable year.

7 (2) (A) Each entity classified as a partnership for federal income
8 tax purposes ¹having any income derived from New Jersey sources ¹
9 , including but not limited to a partnership, a limited liability
10 partnership, or a limited liability company, that has more than two
11 owners shall at the prescribed time for making the return required
12 under this subsection make a payment of a filing fee of \$150 for each
13 owner of an interest in the entity, up to a maximum of \$250,000.

14 (B) Each entity required to make a payment pursuant to
15 subparagraph (A) of this paragraph shall also make, at the same time
16 as making its payment pursuant to subparagraph (A) of this paragraph,
17 an installment payment of its filing fee for the succeeding return period
18 in an amount equal to 50% of the amount required to be paid pursuant
19 to subparagraph (A). The amount of the installment payment shall be
20 credited against the amount of the filing fee due for the succeeding
21 return period, or, if the amount of the installment payment exceeds the
22 amount of the filing fee due for the succeeding return period,
23 successive return periods.

24 ¹(C) Notwithstanding the provisions of R.S.54:48-2 and
25 R.S.54:48-4 to the contrary, the fee required pursuant to
26 subparagraph (A) of this paragraph and the installment payment
27 required pursuant to subparagraph (B) of this paragraph shall, for
28 purposes of administration, be payments to which the provisions of the
29 State Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be
30 applicable and the collection thereof may be enforced by the director
31 in the manner therein provided.¹

32 (3) Each **[partnership or limited liability partnership] entity**
33 required to file a return under this subsection for any taxable year
34 shall, on or before the day on which the return for the taxable year is
35 required to be filed, furnish to each person who is a partner or other
36 owner of an interest in the entity however designated, or who holds an
37 interest in such **[partnership] entity** as a nominee for another person
38 at any time during that taxable year a copy of such information
39 required to be shown on such return as the director may prescribe.

40 (4) For the purposes of this subsection, "taxable year" means a year
41 or period which would be a taxable year of the partnership if it were
42 subject to tax under this act.

43 (c) Information at source. The director may prescribe regulations
44 and instructions requiring returns of information to be made and filed
45 on or before February 15 of each year as to the payment or crediting
46 in any calendar year of amounts of \$100.00 or more to any taxpayer

1 under this act. Such returns may be required of any person, including
2 lessees or mortgagors of real or personal property, fiduciaries,
3 employers, and all officers and employees of this State, or of any
4 municipal corporation or political subdivision of this State, having the
5 control, receipt, custody, disposal or payment of interest, rents,
6 salaries, wages, premiums, annuities, compensations, remunerations,
7 emoluments or other fixed or determinable gains, profits or income,
8 except interest coupons payable to bearer. A duplicate of the
9 statement as to tax withheld on wages, required to be furnished by an
10 employer to an employee, shall constitute the return of information
11 required to be made under this section with respect to such wages.

12 (d) Notice of qualification as receiver, et cetera. Every receiver,
13 trustee in bankruptcy, assignee for benefit of creditors, or other like
14 fiduciary shall give notice of his qualification as such to the director,
15 as may be required by regulation.

16 (cf: P.L.1995, c.96, s.14)

17

18 ¹[22.] 23.¹ The following are repealed:

19 Sections 1 through 16, 18 and 19 of P.L.1973, c.31 (C.54:10D-1
20 et seq.); and

21 Sections 1 through 19 and 21 through 24 of P.L.1973, c.170
22 (C.54:10E-1 through 54:10E-19 and C.54:10E-21 through 54:10E-
23 24).

24

25 ¹[23.] 24.¹ (New section) a. Notwithstanding the repeal of the
26 "Savings Institutions Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.),
27 and the Corporation Income Tax Act (1972), P.L.1973, c.170
28 (C.54:10E-1 et seq.), pursuant to section 22 of P.L. , c. (now
29 pending before the Legislature as this bill), their repeal shall not affect
30 any obligation, lien or duty to pay taxes, interest or penalties which
31 have accrued or may accrue by virtue of any taxes imposed pursuant
32 to the provisions of the laws repealed by section 22 of P.L. , c. ,
33 or which may be imposed with respect to any redetermination,
34 correction, recomputation or deficiency assessment; and provided that
35 all taxes and returns which would have been due and payable for the
36 tax period ending prior to the enactment of P.L. , c. (now pending
37 before the Legislature as this bill) shall be due and payable as if the
38 laws were in effect; and provided that these repeals shall not affect the
39 legal authority of the State to audit records and assess and collect
40 taxes due or which may be due, together with such interest and
41 penalties as have accrued or would have accrued thereon under the
42 provisions of the law repealed; and provided that the repeal by section
43 22 of P.L. , c. , shall not affect any determination of, or affect any
44 proceeding for, the enforcement thereof.

45 b. In the case of a taxpayer that was taxpayer as defined pursuant
46 to P.L.1973, c.170 (C.54:10E-1 et seq.), for the fiscal or calendar

1 accounting period next ending after the effective date of this section,
2 "basis of the facts shown on the return of the taxpayer for, and the law
3 applicable to, the preceding fiscal or calendar accounting year" shall,
4 for the purposes of paragraph (1) of subsection d. of section 5 of
5 P.L.1981, c.184 (C.54:10A-15.4), for the fiscal or calendar year next
6 beginning after the effective date of this act, be deemed to be the basis
7 of the facts shown on the return of the taxpayer for, and the law
8 applicable to, the preceding fiscal or calendar accounting year pursuant
9 to P.L.1973, c.170 (C.54:10E-1 et seq.).

10 c. In the case of a taxpayer that was a taxpayer as defined pursuant
11 to P.L.1973, c.31 (C.54:10D-1 et seq.), for the fiscal or calendar
12 accounting period next ending after the effective date of this section,
13 "basis of the facts shown on the return of the taxpayer for, and the law
14 applicable to, the preceding fiscal or calendar accounting year" shall,
15 for the purposes of paragraph (1) of subsection d. of section 5 of
16 P.L.1981, c.184 (C.54:10A-15.4), for the fiscal or calendar year next
17 beginning after the effective date of this act, be deemed to be the basis
18 of the facts shown on the return of the taxpayer for, and the law
19 applicable to, the preceding fiscal or calendar accounting year pursuant
20 to P.L.1973, c.31 (C.54:10D-1 et seq.).

21

22 ¹[24.] 25.¹ (New section) a. The director shall adopt regulations
23 in accordance with the "Administrative Procedure Act," P.L.1968,
24 c.410 (C.52:14B-1 et seq.), and prescribe forms to administer the
25 provisions of this act.

26 b. Notwithstanding the provisions of P.L.1968, c.410 to the
27 contrary, the director may adopt immediately upon filing with the
28 Office of Administrative Law, such regulations as the director deems
29 necessary to implement the provisions of this act, which regulations
30 shall be effective for a period not to exceed 180 days from the date of
31 the filing. The regulations may thereafter be amended, adopted or
32 readopted by the director as the director deems necessary in
33 accordance with the requirements of P.L.1968, c.410.

34

35 ¹[25.] 26.¹ (New section) a. (1) For the purposes of determining
36 ¹[the sales fraction pursuant to] the receipts from services performed
37 within the State under paragraph (4) of subsection (B) of¹ section 6 of
38 P.L.1945, c.162 (C.54:10A-6), and for the purposes of ¹paragraph (3)
39 of¹ the definition of New Jersey gross receipts pursuant to section 7
40 of P.L. , c. (C.)(now pending before the Legislature as this bill),
41 the ¹[portion of receipts received from an investment company arising
42 from the sale of management, administrative or distribution services to
43 that investment company shall be deemed to arise from services
44 performed within the State equal to the product of:

- 45 (a) the total of the receipts from the sale of those services; and
46 (b) a fraction, the numerator of which is the sum of the monthly

1 percentages determined for each month of the investment company's
2 taxable year for federal income tax purposes which taxable year ends
3 within the privilege period of the taxpayer (excluding any month
4 during which the investment company had no outstanding shares) and
5 the denominator of which is the number of those monthly percentages.

6 (2) For the purposes of this subsection:

7 "Monthly percentage" for each month shall be determined by
8 dividing the number of shares in the investment company that are
9 owned on the last day of the month by the number of shareholders that
10 are residents of this State by the total number of shares in the
11 investment company outstanding on that date;

12 "Resident" means, in the case of an individual, "resident taxpayer"
13 pursuant to N.J.S.54A:1-2, in the case of an estate or trust "resident
14 estate or trust" pursuant to N.J.S.54A:1-2; a business entity is resident
15 in this State if the location of the actual seat of management or control
16 is in this State. It shall be presumed that the residence of a
17 shareholder, with respect to any month, is the shareholder's mailing
18 address on the records of the investment company as of the last day of
19 the month;

20 "Investment company" means a regulated investment company, as
21 defined in section 851 of the federal Internal Revenue Code of 1986,
22 26 U.S.C. s.851, and a partnership to which subsection (a) of section
23 7704 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.7704
24 applies by virtue of paragraph (3) of that section and that meets the
25 requirements of subsection (b) of section 851 of the federal Internal
26 Revenue Code of 1986, 26 U.S.C. s.851. This definition shall be
27 applied to the taxable year for federal income tax purposes of the
28 business entity that is asserted to constitute an investment company
29 that ends within the privilege period of the taxpayer;

30 "Receipts from an investment company" include amounts received
31 directly from an investment company as well as amounts received from
32 the shareholders in that investment company, in their capacity as
33 shareholders.

34 "Management services" means the rendering of investment advice
35 to an investment company, making determinations as to when sales
36 and purchases of securities are to be made on behalf of an investment
37 company, or the selling or purchasing of securities constituting assets
38 of an investment company, and related activities, but only if the
39 activity is performed pursuant to a contract with the investment
40 company entered into pursuant to section 15(a) of the federal
41 Investment Company Act of 1940 (54 Stat. 789), as amended;

42 "Distribution services" means the services of advertising, servicing
43 investor accounts including redemptions, marketing shares or selling
44 shares of an investment company; provided however, that in the case
45 of advertising, servicing investor accounts including redemptions, or
46 marketing shares, only if that service is performed by a person who is,

1 or was in the case of a closed end company, also engaged in the
2 service of selling those shares. In the case of an open end company,
3 the service of selling shares shall be performed pursuant to a contract
4 entered into pursuant to section 15(b) of the federal Investment
5 Company Act of 1940 (54 Stat. 789), as amended;

6 "Administration services" includes clerical, accounting,
7 bookkeeping, data processing, internal auditing, legal and tax services
8 performed for an investment company but only if the provider of the
9 service, during the privilege period in which the service is sold, also
10 sells management or distribution services to the investment company.

11 b. (1) For the purpose of determining the sales fraction pursuant
12 to section 6 of P.L.1945, c.162 (C.54:10A-6), and for the purposes of
13 the definition of New Jersey gross receipts pursuant to section 7 of
14 P.L. , c. (C.)(now pending before the Legislature as this bill)
15 for a taxpayer that is a registered securities or commodities broker or
16 dealer, the following receipts shall be deemed to arise from services
17 performed within this State:

18 (a) Receipts constituting brokerage commissions derived from the
19 execution of securities or commodities purchase or sales orders for the
20 accounts of customers shall be deemed to arise from services
21 performed at the mailing address in the records of the taxpayer of the
22 customer who is responsible for paying the commissions.

23 (b) Receipts constituting margin interest earned on behalf of
24 brokerage accounts shall be deemed to arise from services performed
25 at the mailing address in the records of the taxpayer of the customer
26 who is responsible for paying the margin interest.

27 (c) Gross income, including any accrued interest or dividends,
28 from principal transactions for the purchase or sale of stocks, bonds,
29 foreign exchange and other securities or commodities (including
30 futures and forward contracts, options and other types of securities or
31 commodities derivatives contracts) shall be deemed to arise from
32 services performed within this State to the extent that production
33 credits are awarded to branches, offices or employees of the taxpayer
34 within this State as a result of those principal transactions. For
35 purposes of this subsection, gross income from principal transactions
36 shall be determined after the deduction of any cost incurred by the
37 taxpayer to acquire the securities or commodities. For purposes of
38 this subsection, "production credits" means credits granted pursuant
39 to the internal accounting system used by the taxpayer to measure the
40 amount of revenue that should be awarded to a particular branch or
41 office or employee of the taxpayer which is based, at least in part, on
42 the branch's, the office's or the employees' particular activities. Upon
43 request, the taxpayer shall be required to furnish a detailed explanation
44 of such internal accounting system to the director.

45 (d) Receipts constituting fees earned by the taxpayer for advisory
46 services to a customer in connection with the underwriting of

1 securities for such customer (such customer being the entity which is
2 contemplating issuing or is issuing securities) or fees earned by the
3 taxpayer for managing an underwriting shall be deemed to arise from
4 services performed at the mailing address in the records of the
5 taxpayer of the customer who is responsible for paying the fees.

6 (e) Receipts constituting the primary spread or selling concession
7 from underwritten securities shall be deemed to arise from services
8 performed within this State to the extent that production credits are
9 awarded to branches, offices or employees of the taxpayer within the
10 State as a result of the sale of the underwritten securities. For the
11 purposes of this subsection, "primary spread" means the difference
12 between the price paid by the taxpayer to the issuer for the securities
13 being marketed and the price received from the subsequent sale of the
14 underwritten securities at the initial public offering price, less any
15 selling concession and any fees paid to the taxpayer for advisory
16 services or any manager's fees, if the fees are not paid by the customer
17 to the taxpayer separately; "public offering price" means the price
18 agreed upon by the taxpayer and the issuer at which the securities are
19 to be offered to the public; and "selling concession" means the amount
20 paid to the taxpayer for participating in the underwriting of a security
21 if the taxpayer is not the lead underwriter.

22 (f) Receipts constituting interest earned by the taxpayer on loans
23 and advances made by the taxpayer to a corporation affiliated with the
24 taxpayer but with which the taxpayer is not permitted or required to
25 file a combined report pursuant to the "Corporation Business Tax Act
26 (1945)" shall be deemed to arise from services performed at the
27 principal place of business of the affiliated corporation.

28 (g) Receipts constituting account maintenance fees shall be deemed
29 to arise from services performed at the mailing address in the records
30 of the taxpayer of the customer who is responsible for paying the
31 account maintenance fees.

32 (h) Receipts constituting fees for management or advisory services,
33 including fees for advisory services in relation to a merger or
34 acquisition activities but excluding fees paid for services described in
35 subsection a. of this section, shall be deemed to arise from services
36 performed at the mailing address in the records of the taxpayer of the
37 customer who is responsible for paying the fees.

38 (2) receipts from the services of a registered securities or
39 commodities broker or dealer and the receipts from asset management
40 services shall be from services performed within the State if the
41 customer is located within this State.

42 b.¹ For purposes of this subsection:

43 ¹"Asset management services" means the rendering of investment
44 advice, making determinations as to when sales and purchases are to
45 be made, or the selling or purchasing of assets, and related activities;¹

46 "Securities" has the meaning provided by paragraph (2) of

1 subsection (c) of section 475 of the federal Internal Revenue Code of
2 1986, 26 U.S.C. s.475;

3 "Commodities" has the meaning provided by paragraph (2) of
4 subsection (e) of section 475 of the federal Internal Revenue Code of
5 1986, 26 U.S.C. s.475; and

6 "Registered securities or commodities broker or dealer" means a
7 broker or dealer registered as such by the federal Securities and
8 Exchange Commission or the federal Commodities Futures Trading
9 Commission.

10 ¹[(3) If a taxpayer receives any of the receipts enumerated in
11 paragraph (1) of this subsection as a result of a securities
12 correspondent relationship that the taxpayer has with another
13 registered securities or commodities broker or dealer and the taxpayer
14 acted in this relationship as the clearing firm, those receipts shall be
15 deemed to arise from services performed within this State to the extent
16 set forth in paragraph (1) of this subsection. The amount of those
17 receipts shall exclude the amount the taxpayer is required to pay to the
18 correspondent firm for the correspondent relationship. If the taxpayer
19 receives any of the receipts enumerated in paragraph (1) of this
20 subsection as a result of a securities correspondent relationship the
21 taxpayer has with another registered securities or commodities broker
22 or dealer and the taxpayer acted in this relationship as the introducing
23 firm, those receipts shall be deemed to arise from services performed
24 within this State to the extent set forth in paragraph (1) of this
25 subsection.

26 (4) If, for purposes of paragraph (1) of this subsection, the
27 taxpayer is unable from its records to determine the mailing address of
28 the customer, the receipts enumerated in subsection (1) shall be
29 deemed to arise from services performed at the branch or office of the
30 taxpayer that generates the transaction for the customer that generated
31 the receipts.]¹

32

33 ¹[26.] 27.¹ (New section) Notwithstanding any provision of
34 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) or of the
35 federal Internal Revenue Code, including but not limited to 26 U.S.C.
36 s.381 or any successor or equivalent provision, that permits a
37 corporation to use the net operating losses of another for federal
38 income tax purposes following certain transactions, including but not
39 limited to those qualifying as reorganizations under the provisions of
40 subparagraphs (A), (C), (D), (F) or (G) of paragraph (1) of subsection
41 (a) of section 368 of the federal Internal Revenue Code, 26 U.S.C.
42 s.368, a net operating loss for a privilege period ending after June 30,
43 1984, may be carried over and allowed as a deduction only by the
44 corporation that sustained the loss; provided however, that in the case
45 of a merger of two or more corporations pursuant to statute of this
46 State or any other jurisdiction ¹[, including a merger that has the

1 effect of changing the jurisdiction of incorporation] ¹, the net operating
2 loss may be carried over ¹only¹ by the corporation that sustained the
3 loss and that is also the surviving corporation following the merger.
4 ¹The net operating loss may not be carried over by a taxpayer that
5 changes its state of incorporation.¹ No net operating loss shall be
6 allowed as a deduction by a corporation resulting from a consolidation
7 pursuant to statute of this State or of any other jurisdiction.

8
9 ¹28. (New section) Notwithstanding the provisions of section 3 of
10 P.L.1981, c.184 (C.54:10A-15.2) and subsections b. and d. of section
11 5 of P.L.1981, c.184 (C.54:10A-15.4) to the contrary, the amount of
12 underpayment of the installment payment by the taxpayer for the
13 payment required pursuant to paragraph (4) of subsection (f) of
14 section 15 of P.L.1945, c.162 (C.54:10A-15) for the privilege period
15 of the taxpayer beginning in calendar year 2002 shall be equal to the
16 excess of the amount of the installment payment which would be
17 required to be paid if the installment payment were to equal 25% of
18 the tax computed at the rates applicable to the current privilege period
19 on the basis of the facts to be shown on the return of the taxpayer for,
20 and the law applicable to, the current privilege period over the
21 amount, if any, of the installment paid on or before the last date
22 prescribed for that payment.¹

23
24 ¹29. (New section) An air carrier, within the meaning given that
25 term pursuant to 49 U.S.C. s.40102, that contributes more than 25%
26 of the total amortization for capital improvement projects at Newark
27 International Airport paid by air carriers to the Port Authority of New
28 York and New Jersey through rates and charges for a privilege period
29 shall be allowed a credit against the alternative minimum assessment
30 imposed pursuant to section 7 of P.L. , c. (C.) for the privilege
31 period in an amount equal to 50% of the portion of the total
32 amortization for capital improvement projects at Newark International
33 Airport paid by the air carrier to the Port Authority of New York and
34 New Jersey through rates and charges for the privilege period;
35 provided however, that the amount of the credit applied under this
36 section against the alternative minimum assessment for a privilege
37 period shall not exceed 50% of the alternative minimum assessment
38 otherwise due and shall not reduce the alternative minimum assessment
39 to an amount less than the statutory minimum provided in subsection
40 (e) of section 5 of P.L.1945, c.162.¹

41
42 ¹30. (New section) An air carrier, within the meaning given that
43 term pursuant to 49 U.S.C. s.40102, may elect to file a consolidated
44 return with respect to the corporate income tax imposed pursuant to
45 section 5 of P.L.1945, c.162 (C.54:10A-5) of the entire operation of
46 the affiliated group, including its own operations and income. If such

1 election is made, the group will be considered a single taxpayer and,
2 for the purposes of section 5 of P.L.1945, c.162 (C.54:10A-5), the
3 amount of the taxpayer's entire net income shall be deemed prima facie
4 to be equal in amount to the taxable income, before net operating loss
5 deduction and special deductions, that the taxpayer is required to
6 report or, if the taxpayer is classified as a partnership for federal tax
7 purposes, would otherwise be required to report, to the United States
8 Treasury Department for the purpose of computing its consolidated
9 federal taxable income.¹

10
11 ¹31. (New section) a. There is established the Corporation
12 Business Tax Study Commission, in but not of the Department of the
13 Treasury, which shall conduct a continuous study and evaluation of the
14 corporate tax law reforms adopted pursuant to P.L. _____ c. (now
15 pending before the Legislature as this bill), with specific reference to:

16 (1) whether the corporation business tax burden is fairly and
17 equitably borne and distributed among corporations that are subject to
18 the tax;

19 (2) whether profitable corporations doing business in New Jersey
20 can avoid paying their fair share of taxes by using tax minimization or
21 avoidance strategies that may include cross-border tax avoidance such
22 as isolation of nexus-creating activities or the transfer of certain
23 income to holding companies in low tax or tax haven jurisdictions,
24 intragroup corporate transfer pricing techniques, use of special
25 deductions or exclusions that manipulate income and costs between
26 parent-subsidiary or affiliated companies that benefit large or
27 multinational or multistate corporations over smaller businesses
28 operating wholly within New Jersey;

29 (3) whether, without reducing anticipated revenues from that tax,
30 the tax burden could be more fairly and equitably borne and
31 distributed;

32 (4) whether the revenue and distributional impacts of the changes
33 to the Corporation Business Tax Act (1945) enacted pursuant to
34 P.L. _____ c. (now pending before the Legislature as this bill) yield the
35 recurring revenue goals that New Jersey must achieve to bring
36 long-term structural balance to State finances; and

37 (5) whether New Jersey and its corporation business taxpayers
38 would be better served by the use of a combined taxation under the
39 unitary business concept.

40 b. The commission shall be composed of nine members as follows:

41 (1) two members, one appointed by each of the Senate Presidents;

42 (2) two members appointed by the Speaker of the General
43 Assembly; and

44 (3) five members appointed by the Governor.

45 Each member shall be a resident of the State who has knowledge and
46 expertise in the area of corporation income tax. Of the members

1 appointed by the Governor, one shall be a member of the academic
2 community, one shall be a certified public accountant, one shall be a
3 member of the State tax bar, one shall represent large businesses, and
4 one shall represent small businesses. The members appointed by the
5 Speaker of the General Assembly shall not be members of the same
6 political party, the members appointed by the Presidents of the Senate
7 shall not be members of the same political party, and no more than
8 three of the members appointed by the Governor shall be of the same
9 political party.

10 c. Vacancies in the membership of the commission shall be filled in
11 the same manner as the original appointments were made.

12 d. The members of the commission shall be appointed and shall hold
13 their initial organizational meeting within 60 days after the enactment
14 of this act. The members shall elect one of the members to serve as
15 chair and the chair may appoint a secretary, who need not be a member
16 of the commission. The members of the commission shall serve
17 without compensation, but shall be eligible for reimbursement for
18 necessary and reasonable expenses incurred in the performance of
19 their official duties within the limits of funds made available to the
20 commission for its purposes.

21 e. The commission shall meet at the call of the chair. The
22 commission shall hold at least three public hearings and elicit
23 testimony from the public at such times and places as the chair shall
24 designate. A meeting of the commission shall be called upon the
25 request of five of the commission's members and five members of the
26 commission shall constitute a quorum at any meeting thereof.

27 f. The commission may employ and fix the compensation of an
28 executive director, whose employment shall be in the unclassified
29 service of the State. The executive director shall serve as secretary to
30 the commission and carry out its policies under the direction of the
31 chair.

32 g. The commission shall be entitled to call to its assistance and
33 avail itself of the services of any State, county, or municipal
34 department, board, bureau, commission or agency, as it may require
35 and as may be available for its purposes, including the Director of the
36 Division of Taxation, in the Department of the Treasury, who shall
37 publish to the commission to the fullest extent possible under the
38 confidentiality restrictions of R.S.54:50-9 such statistics, so classified
39 as to prevent the identification of a particular report and the items
40 thereof, as the commission may request, and the commission may
41 employ stenographic and clerical assistance and incur traveling and
42 other miscellaneous expenses as may be necessary in order to perform
43 its duties, within the limits of funds appropriated or otherwise made
44 available to it for its purposes.

45 h. The commission may meet and hold hearings at the places it
46 designates during the sessions or recesses of the Legislature. The

1 commission may issue interim reports and shall produce and provide
2 a final report with findings and recommendations to the Governor and
3 the Legislature , along with any legislative bills it desires to
4 recommend for adoption by the Legislature, no later than December
5 30, 2003

6 i. If the Director of the Division of Taxation determines that the
7 final report of the commission has not been produced and provided by
8 June 30, 2004, the director shall suspend the alternative minimum
9 assessment determined pursuant to section 7 of P.L. , c. (C.)
10 (now pending before the Legislature as this bill) for all privilege
11 periods commencing after December 31, 2004. If, as a
12 recommendation of its final report, the commission recommends the
13 termination of the alternative minimum assessment imposed pursuant
14 to section 7 of P.L. , c. (C.)(now pending before the
15 Legislature as this bill), the assessment shall not be imposed for
16 privilege periods beginning on or after January 1, 2005 ¹

17
18 ¹32. (New Section) a. There is hereby created within the General
19 Fund a restricted reserve fund to be known as the "Corporation
20 Business Tax Excess Revenue Fund." The State Treasurer shall credit
21 to the "Corporation Business Tax Excess Revenue Fund," on or before
22 December 31 annually in 2003, 2004 and 2005, the amounts, if any, by
23 which the State revenues derived from the corporation business tax in
24 the prior fiscal year exceeded the target amount for that fiscal year;
25 provided however, that if the total General Fund revenue for State
26 Fiscal Year 2003 is less than the amount ceertified for that year, then
27 the amount credited to the fund shall be reduced by tht difference.
28 Moneys credited to the "Corporation Business Tax Excess Revenue
29 Fund" may be invested in the same manner as assets of the General
30 Fund and any investment earnings on the "Corporation Business Tax
31 Excess Revenue Fund" shall accrue to the "Corporation Business Tax
32 Excess Revenue Fund." For the purposes of section 3 of P.L.1990,
33 c.44 (C.52:9H-16), amounts credited to the "Corporation Business
34 Tax Excess Revenue Fund" shall not be included in the determination
35 of funds deposited in the General Fund.

36 b. Balances in the "Corporation Business Tax Excess Revenue
37 Fund" may be appropriated by the Legislature during State fiscal year
38 2004 or 2005 in the event that the revenue collections from the
39 corporation business tax are less than the target amount for that fiscal
40 year.

41 c. If balances remain in the Corporation Business Tax Excess
42 Revenue Fund on December 30, 2005, the Director of the Division of
43 Taxation shall adjust proportionately the tax rates in section 5 of
44 P.L.1945, c.162 (C.54:10A-5) as it applies to privilege periods
45 commencing during calendar year 2006 so as to reduce the expected
46 revenue thereunder by an amount equal to the balance in the fund.

1 d. As used in this section, "target amount" means \$1,823,000,000
2 for State fiscal year 2003, and for each State fiscal year thereafter
3 means the target amount for the prior fiscal year multiplied by the
4 weighted average rate of growth of the rate of growth of the State
5 revenue collections pursuant to the "New Jersey Gross Income Tax
6 Act," N.J.S.54A:1-1 et seq. and the State revenue collections
7 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1
8 et seq.), which weighted average rate of growth shall be measured by
9 the amount of anticipated revenue from those two sources certified by
10 the Governor upon approval of the annual appropriation act for the
11 current fiscal year over both the amount of revenue from the "Sales
12 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) actually
13 deposited in the General Fund in the immediately preceding fiscal year
14 and the amount of revenue from the "New Jersey Gross Income Tax
15 Act," N.J.S.54A:1-1 et seq., actually deposited in the Property Tax
16 Relief Fund in the immediately preceding fiscal year, as determined
17 from the annual financial report of the State for the fiscal year
18 immediately preceding.¹

19

20 ¹[27.] 33.¹ This act shall take effect immediately and apply to
21 privilege periods and taxable years beginning on or after January 1,
22 2002, provided however that section 26 shall apply to privilege
23 periods ending after June 30, 1984.

24

25

26

27

28 Business Tax Reform Act; revises and updates the corporation
29 business tax and establishes filing fees for certain returns.

ASSEMBLY, No. 2501

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 6, 2002

Sponsored by:

Assemblyman ALBIO SIRES

District 33 (Hudson)

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

SYNOPSIS

Business Tax Reform Act; revises and updates the corporation business tax and establishes filing fees for certain returns.

CURRENT VERSION OF TEXT

As introduced.



A2501 SIRES, ROBERTS

2

1 AN ACT revising and updating the corporation business tax and
2 concerning filing fees for certain returns and designated the
3 Business Tax Reform Act, amending and supplementing P.L.1945,
4 c.162, amending P.L.1947, c.50, P.L.1993, c.170, P.L.1993, c.173,
5 P.L.1997, c.350, and N.J.S.54A:8-6, and repealing various parts
6 of the statutory law.

7

8 **BE IT ENACTED** *by the Senate and General Assembly of the State*
9 *of New Jersey:*

10

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

13 2. Every domestic or foreign corporation which is not hereinafter
14 exempted shall pay an annual franchise tax for **[the year 1946 and]**
15 each year **[thereafter]**, as hereinafter provided, for the privilege of
16 having or exercising its corporate franchise in this State, or for the
17 privilege of deriving receipts from sources within this State, or for the
18 privilege of engaging in contacts within this State, or for the privilege
19 of doing business, employing or owning capital or property, or
20 maintaining an office, in this State. And such franchise tax shall be in
21 lieu of all other State, county or local taxation upon or measured by
22 intangible personal property used in business by corporations liable to
23 taxation under this act **[but, whenever such corporation holds shares**
24 **of stock in a bank as defined in R.S. 54:9-1, and such bank has not**
25 **elected to have the taxable value of such shares assessed to it and to**
26 **pay the tax levied against such shares as provided in R.S. 54:9-14, or,**
27 **having made such election, such bank subsequently revokes it, the**
28 **provisions of this section shall not exempt such shares of stock from**
29 **the tax imposed by chapter 9 of Title 54 of the Revised Statutes]**.

30 A foreign corporation shall not be deemed to be deriving receipts,
31 engaging in contacts, doing business, employing or owning capital or
32 property in the State, for the purposes of this act, by reason of (1) the
33 maintenance of cash balances with banks or trust companies in this
34 State, or (2) the ownership of shares of stock or securities in this State
35 if such shares or securities are pledged as collateral security, or
36 deposited with one or more banks or trust companies or brokers who
37 are members of a recognized security exchange, in safekeeping or
38 custody accounts, or (3) the taking of any action by any such bank or
39 trust company or broker, which is incidental to the rendering of
40 safekeeping or custodian service to such corporation.

41 A taxpayer's exercise of its franchise in this State is subject to
42 taxation in this State if the taxpayer's business activity in this State is

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

Matter underlined thus is new matter.

A2501 SIRES, ROBERTS

1 sufficient to give this State jurisdiction to impose the tax under the
2 Constitution and statutes of the United States.

3 (cf: P.L.1973, c.95, s.1)

4

5 2. Section 3 of P.L.1945, c.162 (C.54:10A-3) is amended to read
6 as follows:

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

9 (a) Corporations subject to a tax assessed upon the basis of gross
10 receipts, other than the alternative minimum assessment determined
11 pursuant to section 7 of P.L. , c. (C.)(now pending before the
12 Legislature as this bill) [or] , and corporations subject to a tax
13 assessed upon the basis of insurance premiums collected;

14 (b) Corporations which operate regular route autobus service
15 within this State under operating authority conferred pursuant to
16 R.S.48:4-3, provided, however, that such corporations shall not be
17 exempt from the tax on net income imposed by section 5(c) of
18 P.L.1945, c.162 (C.54:10A-5);

19 (c) Railroad, canal corporations, [savings banks,] production
20 credit associations organized under the Farm Credit Act of 1933, or
21 agricultural cooperative associations incorporated or domesticated
22 under or subject to chapter 13 of Title 4 of the Revised Statutes and
23 exempt under Subtitle A, Chapter 1F, Part IV, Section 521 of the
24 federal Internal Revenue Code (26 U.S.C. s.521)[, or building and
25 loan or savings and loan associations];

26 (d) Cemetery corporations not conducted for pecuniary profit or
27 any private shareholder or individual;

28 (e) Nonprofit corporations, associations or organizations
29 established, organized or chartered, without capital stock, under the
30 provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of
31 the New Jersey Statutes or under a special charter or under any similar
32 general or special law of this or any other state, and not conducted for
33 pecuniary profit of any private shareholders or individual;

34 (f) Sewerage and water corporations subject to a tax under the
35 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) or any statute or
36 law imposing a similar tax or taxes;

37 (g) Nonstock corporations organized under the laws of this State
38 or of any other state of the United States to provide mutual ownership
39 housing under federal law by tenants, provided, however, that the
40 exemption hereunder shall continue only so long as the corporations
41 remain subject to rules and regulations of the Federal Housing
42 Authority and the Commissioner of the Federal Housing Authority
43 holds membership certificates in the corporations and the corporate
44 property is encumbered by a mortgage deed or deed of trust insured
45 under the National Housing Act (48 Stat.1246) as amended by
46 subsequent Acts of Congress. In order to be exempted under this

A2501 SIRES, ROBERTS

1 subsection, corporations shall annually file a report on or before
2 August 15 with the commissioner, in the form required by the
3 commissioner, to claim such exemption, and shall pay a filing fee of
4 \$25.00;

5 (h) Corporations not for profit organized under any law of this
6 State where the primary purpose thereof is to provide for its
7 shareholders or members housing in a retirement community as the
8 same is defined under the provisions of the "Retirement Community
9 Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.);

10 (i) Corporations which are licensed as insurance companies under
11 the laws of another state, including corporations which are surplus
12 lines insurers declared eligible by the Commissioner of Banking and
13 Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to
14 insure risks within this State; and

15 (j) (1) Municipal electric corporations that were in existence as of
16 January 1, 1995 provided that all of their income is from sales,
17 exchanges or deliveries of electricity derived from customers using
18 electricity within their municipal boundaries; and (2) Municipal electric
19 utilities that were in existence as of January 1, 1995 provided that all
20 of their income is from sales, exchanges or deliveries of electricity
21 derived from customers using electricity within their franchise area
22 existing as of January 1, 1995. If a municipal electric corporation
23 derives income from sales, exchanges or deliveries of electricity from
24 customers using the electricity outside its municipal boundaries, such
25 municipal electric corporation shall be subject to the tax imposed by
26 this act on all income. If a municipal electric utility derives income
27 from sales, exchanges or deliveries of electricity from customers using
28 electricity outside its franchise area existing as of January 1, 1995,
29 such municipal electric utility shall be subject to the tax imposed by the
30 act on all income.

31 (cf: P.L.1998, c.114, s.1)

32

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

35 For the purposes of this act, unless the context requires a different
36 meaning:

37 (a) "Commissioner" or "director" shall mean the Director of the
38 Division of Taxation of the State Department of the Treasury.

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

42 (c) "Corporation" shall mean any corporation, joint-stock company
43 or association and any business conducted by a trustee or trustees
44 wherein interest or ownership is evidenced by a certificate of interest
45 or ownership or similar written instrument and any state or federally
46 chartered building and loan association or savings and loan
47 association.

A2501 SIRES, ROBERTS

1 (d) "Net worth" shall mean the aggregate of the values disclosed
2 by the books of the corporation for (1) issued and outstanding capital
3 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
4 profits, and (4) surplus reserves which can reasonably be expected to
5 accrue to holders or owners of equitable shares, not including
6 reasonable valuation reserves, such as reserves for depreciation or
7 obsolescence or depletion. Notwithstanding the foregoing, net worth
8 shall not include any deduction for the amount of the excess
9 depreciation described in paragraph (2)(F) of subsection (k) of this
10 section. The foregoing aggregate of values shall be reduced by 50%
11 of the amount disclosed by the books of the corporation for investment
12 in the capital stock of one or more subsidiaries, which investment is
13 defined as ownership (1) of at least 80% of the total combined voting
14 power of all classes of stock of the subsidiary entitled to vote and (2)
15 of at least 80% of the total number of shares of all other classes of
16 stock except nonvoting stock which is limited and preferred as to
17 dividends. In the case of investment in an entity organized under the
18 laws of a foreign country, the foregoing requisite degree of ownership
19 shall effect a like reduction of such investment from the net worth of
20 the taxpayer, if the foreign entity is considered a corporation for any
21 purpose under the United States federal income tax laws, such as (but
22 not by way of sole examples) for the purpose of supplying deemed
23 paid foreign tax credits or for the purpose of status as a controlled
24 foreign corporation. In calculating the net worth of a taxpayer entitled
25 to reduction for investment in subsidiaries, the amount of liabilities of
26 the taxpayer shall be reduced by such proportion of the liabilities as
27 corresponds to the ratio which the excluded portion of the subsidiary
28 values bears to the total assets of the taxpayer.

29 In the case of banking corporations which have international
30 banking facilities as defined in subsection (n), the foregoing aggregate
31 of values shall also be reduced by retained earnings of the international
32 banking facility. Retained earnings means the earnings accumulated
33 over the life of such facility and shall not include the distributive share
34 of dividends paid and federal income taxes paid or payable during the
35 tax year.

36 If in the opinion of the commissioner, the corporation's books do
37 not disclose fair valuations the commissioner may make a reasonable
38 determination of the net worth which, in his opinion, would reflect the
39 fair value of the assets, exclusive of subsidiary investments as defined
40 aforesaid, carried on the books of the corporation, in accordance with
41 sound accounting principles, and such determination shall be used as
42 net worth for the purpose of this act.

43 (e) (Deleted by amendment, P.L.1998, c.114.)

44 (f) "Investment company" shall mean any corporation whose
45 business during the period covered by its report consisted, to the
46 extent of at least 90% thereof of holding, investing and reinvesting in

1 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
2 other securities for its own account, but this shall not include any
3 corporation which: (1) is a merchant or a dealer of stocks, bonds and
4 other securities, regularly engaged in buying the same and selling the
5 same to customers; or (2) had less than 90% of its average gross
6 assets in New Jersey, at cost, invested in stocks, bonds, debentures,
7 mortgages, notes, patents, patent rights or other securities or
8 consisting of cash on deposit during the period covered by its report;
9 or (3) is a banking corporation, a savings institution, or a financial
10 business corporation as defined in the Corporation Business Tax Act.

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

15 (h) "Taxpayer" shall mean any corporation, [limited liability
16 company, foreign limited liability company, limited partnership or
17 foreign limited partnership] affiliated group of corporations electing
18 to file a consolidated return under section 18 of P.L.1945, c.162
19 (C.54:10A-18), and any partnership required, or consenting, to report
20 or to pay taxes, interest or penalties under this act. "Taxpayer" shall
21 not include a [limited liability company, foreign limited liability
22 company, limited partnership or foreign limited] partnership that is
23 listed on a United States national stock exchange.

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

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

30 (k) "Entire net income" shall mean total net income from all
31 sources, whether within or without the United States, and shall include
32 the gain derived from the employment of capital or labor, or from both
33 combined, as well as profit gained through a sale or conversion of
34 capital assets.

35 For the purpose of this act, the amount of a taxpayer's entire net
36 income shall be deemed prima facie to be equal in amount to the
37 taxable income, before net operating loss deduction and special
38 deductions, which the taxpayer is required to report, or, if the taxpayer
39 is classified as a partnership for federal tax purposes, would otherwise
40 be required to report, to the United States Treasury Department for
41 the purpose of computing its federal income tax [provided,]. If an
42 affiliated group elects to file a consolidated return under section 18 of
43 P.L.1945, c.162 (C.54:10A-18), the group will be considered a single
44 taxpayer and for the purposes of this act the amount of the taxpayer's
45 entire net income shall be deemed prima facie to be equal in amount to
46 the taxable income, before net operating loss deduction and special

1 deductions, that the taxpayer is required to report, or, if the taxpayer
2 is classified as a partnership for federal tax purposes, would otherwise
3 be required to report, to the United States Treasury Department for
4 the purpose of computing its consolidated federal income tax.

5 Provided however, that in the determination of such entire net
6 income,

7 (1) Entire net income shall exclude for the periods set forth in
8 paragraph (2)(F)(i) of this subsection, any amount, except with respect
9 to qualified mass commuting vehicles as described in section
10 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
11 prior to January 1, 1984, which is included in a taxpayer's federal
12 taxable income solely as a result of an election made pursuant to the
13 provisions of paragraph (8) of that section.

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

16 (A) The amount of any specific exemption or credit allowed in any
17 law of the United States imposing any tax on or measured by the
18 income of corporations;

19 (B) Any part of any income from dividends or interest on any kind
20 of stock, securities or indebtedness[, except as provided in paragraph
21 (5) of subsection (k) of this section];

22 (C) Taxes paid or accrued to the United States, a possession or
23 territory of the United States, a state, a political subdivision thereof,
24 or the District of Columbia, or to any foreign country, state, province,
25 territory or subdivision thereof, on or measured by profits or income,
26 or business presence or business activity, or the tax imposed by this
27 act[, or any tax paid or accrued with respect to subsidiary dividends
28 excluded from entire net income as provided in paragraph (5) of
29 subsection (k) of this section];

30 (D) (Deleted by amendment, P.L.1985, c.143.)

31 (E) (Deleted by amendment, P.L.1995, c.418.)

32 (F) (i) The amount by which depreciation reported to the United
33 States Treasury Department for property placed in service on and after
34 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
35 years beginning on and after the effective date of P.L.1993, c.172, for
36 purposes of computing federal taxable income in accordance with
37 section 168 of the Internal Revenue Code in effect after December 31,
38 1980, exceeds the amount of depreciation determined in accordance
39 with the Internal Revenue Code provisions in effect prior to
40 January 1, 1981, but only with respect to a taxpayer's accounting
41 period ending after December 31, 1981; provided, however, that
42 where a taxpayer's accounting period begins in 1981 and ends in 1982,
43 no modification shall be required with respect to this paragraph (F) for
44 the report filed for such period with respect to property placed in
45 service during that part of the accounting period which occurs in 1981.
46 The provisions of this subparagraph shall not apply to assets placed in

A2501 SIRES, ROBERTS

1 service prior to January 1, 1998 of a gas, gas and electric, and electric
2 public utility that was subject to the provisions of P.L.1940, c.5
3 (C.54:30A-49 et seq.) prior to 1998.

4 (ii) For the periods set forth in subparagraph (F)(i) of this
5 subsection, any amount, except with respect to qualified mass
6 commuting vehicles as described in section 168(f)(8)(D)(v) of the
7 Internal Revenue Code as in effect immediately prior to January 1,
8 1984, which the taxpayer claimed as a deduction in computing federal
9 income tax pursuant to a qualified lease agreement under paragraph
10 (8) of that section.

11 The director shall promulgate rules and regulations necessary to
12 carry out the provisions of this section, which rules shall provide,
13 among others, the manner in which the remaining life of property shall
14 be reported.

15 (G) (i) The amount of any civil, civil administrative, or criminal
16 penalty or fine, including a penalty or fine under an administrative
17 consent order, assessed and collected for a violation of a State or
18 federal environmental law, an administrative consent order, or an
19 environmental ordinance or resolution of a local governmental entity,
20 and any interest earned on the penalty or fine, and any economic
21 benefits having accrued to the violator as a result of a violation, which
22 benefits are assessed and recovered in a civil, civil administrative, or
23 criminal action, or pursuant to an administrative consent order. The
24 provisions of this paragraph shall not apply to a penalty or fine
25 assessed or collected for a violation of a State or federal
26 environmental law, or local environmental ordinance or resolution, if
27 the penalty or fine was for a violation that resulted from fire, riot,
28 sabotage, flood, storm event, natural cause, or other act of God
29 beyond the reasonable control of the violator, or caused by an act or
30 omission of a person who was outside the reasonable control of the
31 violator.

32 (ii) The amount of treble damages paid to the Department of
33 Environmental Protection pursuant to subsection a. of section 7 of
34 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
35 department in removing, or arranging for the removal of, an
36 unauthorized discharge upon failure of the discharger to comply with
37 a directive from the department to remove, or arrange for the removal
38 of, the discharge.

39 (H) The amount of any sales and use tax paid by a utility vendor
40 pursuant to section 71 of P.L.1997, c.162.

41 (I) In the case of a real estate investment trust, the amount of any
42 dividends paid by the real estate investment trust.

43 (J) Interest paid to a related entity, as defined in section 5 of
44 P.L. , c. (C.) (now pending before the Legislature as this
45 bill), except that a deduction shall be permitted to the extent that the
46 interest is directly or indirectly paid to an independent lender and the

1 taxpayer guarantees the debt on which the interest is required.

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

6 (4) There shall be allowed as a deduction from entire net income
7 of a banking corporation, to the extent not deductible in determining
8 federal taxable income, the eligible net income of an international
9 banking facility determined as follows:

10 (A) The eligible net income of an international banking facility shall
11 be the amount remaining after subtracting from the eligible gross
12 income the applicable expenses;

13 (B) Eligible gross income shall be the gross income derived by an
14 international banking facility, which shall include, but not be limited to,
15 gross income derived from:

16 (i) Making, arranging for, placing or carrying loans to foreign
17 persons, provided, however, that in the case of a foreign person which
18 is an individual, or which is a foreign branch of a domestic corporation
19 (other than a bank), or which is a foreign corporation or foreign
20 partnership which is controlled by one or more domestic corporations
21 (other than banks), domestic partnerships or resident individuals, all
22 the proceeds of the loan are for use outside of the United States;

23 (ii) Making or placing deposits with foreign persons which are
24 banks or foreign branches of banks (including foreign subsidiaries) or
25 foreign branches of the taxpayers or with other international banking
26 facilities;

27 (iii) Entering into foreign exchange trading or hedging transactions
28 related to any of the transactions described in this paragraph; or

29 (iv) Such other activities as an international banking facility may,
30 from time to time, be authorized to engage in;

31 (C) Applicable expenses shall be any expense or other deductions
32 attributable, directly or indirectly, to the eligible gross income
33 described in subparagraph (B) of this paragraph.

34 (5) [Entire net income shall exclude 100% of dividends which were
35 included in computing such taxable income for federal income tax
36 purposes, paid to the taxpayer by one or more subsidiaries owned by
37 the taxpayer to the extent of the 80% or more ownership of investment
38 described in subsection (d) of this section. With respect to other
39 dividends, entire net income shall not include 50% of the total included
40 in computing such taxable income for federal income tax purposes]
41 (Deleted by amendment, P.L. _____, c. _____)(now pending before the
42 Legislature as this bill).

43 (6) (A) Net operating loss deduction. There shall be allowed as
44 a deduction for the [taxable year] privilege period the net operating
45 loss carryover to that [year] period.

1 (B) Net operating loss carryover. A net operating loss for any
2 [taxable year] privilege period ending after June 30, 1984 shall be a
3 net operating loss carryover to each of the seven [years] privilege
4 periods following the [year] period of the loss. The entire amount of
5 the net operating loss for any [taxable year] privilege period (the
6 "loss [year] period") shall be carried to the earliest of the [taxable
7 years] privilege periods to which the loss may be carried. The
8 portion of the loss which shall be carried to each of the other [taxable
9 years] privilege periods shall be the excess, if any, of the amount of
10 the loss over the sum of the entire net income, computed without the
11 exclusions permitted in paragraphs (4) and (5) of this subsection or the
12 net operating loss deduction provided by subparagraph (A) of this
13 paragraph, for each of the prior [taxable years] privilege periods to
14 which the loss may be carried.

15 (C) Net operating loss. For purposes of this paragraph the term
16 "net operating loss" means the excess of the deductions over the gross
17 income used in computing entire net income without the net operating
18 loss deduction provided for in subparagraph (A) of this paragraph and
19 the exclusions in paragraphs (4) and (5) of this subsection.

20 (D) Change in ownership. Where there is a change in 50% or more
21 of the ownership of a corporation because of redemption or sale of
22 stock and the corporation changes the trade or business giving rise to
23 the loss, no net operating loss sustained before the changes may be
24 carried over to be deducted from income earned after such changes.
25 In addition where the facts support the premise that the corporation
26 was acquired under any circumstances for the primary purpose of the
27 use of its net operating loss carryover, the director may disallow the
28 carryover.

29 (E) Notwithstanding the provisions of this paragraph (6) of
30 subsection (k) of this section to the contrary, if, in a privilege period
31 before the corporation became a member of an affiliated group that has
32 elected to file a consolidated return pursuant to section 18 of
33 P.L.1945, c.162 (C.54:10A-18), the corporation incurred a net
34 operating loss, the deductibility of the loss on that consolidated return
35 shall be limited to only the amount necessary to reduce to zero the
36 entire net income, calculated on a separate return basis, of the
37 corporation that incurred the net operating loss. Except as provided
38 in this subparagraph, the separate return limitation year ("SRLY")
39 rules promulgated pursuant to section 1502 of the federal Internal
40 Revenue Code of 1986, 26 U.S.C. s.1502, shall apply.

41 (F) Notwithstanding the provisions of this paragraph (6) of
42 subsection (k) of this section to the contrary, for privilege periods
43 beginning during calendar year 2002 and calendar year 2003, no
44 deduction for any net operating loss carryover shall be allowed. If and
45 only to the extent that any net operating loss carryover deduction is

1 disallowed by reason of this subparagraph (F), the date on which the
2 amount of the disallowed net operating loss carryover deduction
3 would otherwise expire shall be extended by two years.

4 Provided, that this subparagraph (F) shall not restrict the surrender
5 or acquisition of corporation business tax benefit certificates pursuant
6 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict
7 the application of corporation business tax benefit certificates pursuant
8 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

9 (7) The entire net income of gas, electric and gas and electric
10 public utilities that were subject to the provisions of P.L.1940, c.5
11 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting
12 the New Jersey depreciation allowance for federal tax depreciation
13 with respect to assets placed in service prior to January 1, 1998. For
14 gas, electric, and gas and electric public utilities that were subject to
15 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,
16 the New Jersey depreciation allowance shall be computed as follows:
17 All depreciable assets placed in service prior to January 1, 1998 shall
18 be considered a single asset account. The New Jersey tax basis of this
19 depreciable asset account shall be an amount equal to the carryover
20 adjusted basis for federal income tax purposes on December 31, 1997
21 of all depreciable assets in service on December 31, 1997, increased
22 by the excess, of the "net carrying value," defined to be adjusted book
23 basis of all assets and liabilities, excluding deferred income taxes,
24 recorded on the public utility's books of account on December 31,
25 1997, over the carryover adjusted basis for federal income tax
26 purposes on December 31, 1997 of all assets and liabilities owned by
27 the gas, electric, or gas and electric public utility as of December 31,
28 1997. "Books of account" for gas, gas and electric, and electric public
29 utilities means the uniform system of accounts as promulgated by the
30 Federal Energy Regulatory Commission and adopted by the Board of
31 Public Utilities. The following adjustments to entire net income shall
32 be made pursuant to this section:

33 (A) Depreciation for property placed in service prior to January 1,
34 1998 shall be adjusted as follows:

35 (i) Depreciation for federal income tax purposes shall be
36 disallowed in full.

37 (ii) A deduction shall be allowed for the New Jersey depreciation
38 allowance. The New Jersey depreciation allowance shall be computed
39 for the single asset account described above based on the New Jersey
40 tax basis as adjusted above as if all assets in the single asset account
41 were first placed in service on January 1, 1998. Depreciation shall be
42 computed using the straight line method over a thirty-year life. A full
43 year's depreciation shall be allowed in the initial tax year. No half-year
44 convention shall apply. The depreciable basis of the single account
45 shall be reduced by the adjusted federal tax basis of assets sold,
46 retired, or otherwise disposed of during any year on which gain or loss

1 is recognized for federal income tax purposes as described in
2 subparagraph (B) of this paragraph.

3 (B) Gains and losses on sales, retirements and other dispositions
4 of assets placed in service prior to January 1, 1998 shall be recognized
5 and reported on the same basis as for federal income tax purposes.

6 (C) The Director of the Division of Taxation shall promulgate
7 regulations describing the methodology for allocating the single asset
8 account in the event that a portion of the utility's operations are
9 separated, spun-off, transferred to a separate company or otherwise
10 desegregated.

11 (8) In the case of taxpayers that are gas, electric, gas and electric,
12 or telecommunication public utilities as defined pursuant to subsection
13 (q) of this section, the director shall have authority to promulgate rules
14 and issue guidance correcting distortions and adjusting timing
15 differences resulting from the adoption of P.L.1997, c.162
16 (C.54:10A-5.25 et al.).

17 (9) Notwithstanding paragraph (1) of this subsection, entire net
18 income shall not include the income derived by a corporation
19 organized in a foreign country from the international operation of a
20 ship or ships, or from the international operation of aircraft, if such
21 income is exempt from federal taxation pursuant to section 883 of the
22 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

23 (10) Entire net income shall exclude all income of an alien
24 corporation the activities of which are limited in this State to investing
25 or trading in stocks and securities for its own account, investing or
26 trading in commodities for its own account, or any combination of
27 those activities, within the meaning of section 864 of the federal
28 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on
29 December 31, 1998. Notwithstanding the previous sentence, if an
30 alien corporation undertakes one or more infrequent, extraordinary or
31 non-recurring activities, including but not limited to the sale of
32 tangible property, only the income from such infrequent, extraordinary
33 or non-recurring activity shall be subject to the tax imposed pursuant
34 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income
35 subject to tax shall be determined without regard to the allocation to
36 that specific transaction of any general business expense of the
37 taxpayer and shall be specifically assigned to this State for taxation by
38 this State without regard to section 6 of P.L.1945, c.162
39 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"
40 means a corporation organized under the laws of a jurisdiction other
41 than the United States or its political subdivisions.

42 (11) No deduction shall be allowed for research and experimental
43 expenditures, to the extent that those research and experimental
44 expenditures are qualified research expenses or basic research
45 payments for which an amount of credit is claimed pursuant to section
46 1 of P.L.1993, c.175 (C.54:10A-5.24) and those research and

1 experimental expenditures are not used to compute a federal credit
2 claimed pursuant to section 41 of the federal Internal Revenue Code
3 of 1986, 26 U.S.C. s.41.

4 (12) There shall be added back to entire net income all special
5 depreciation claimed as a federal deduction as a result of the
6 enactment of the federal "Job Creation and Worker Assistance Act of
7 2002," Pub.L.107-147. For the privilege period in which the final year
8 of the recovery period of the property affected by the depreciation
9 rules provided by Pub.L.107-147 ends, or for the privilege period in
10 which the earlier disposition of that property occurs, the amount
11 previously added back to entire net income shall be deducted from
12 entire net income.

13 (13) If, in a privilege period preceding the filing of the first New
14 Jersey consolidated return for the affiliated group of which the
15 corporation is a member:

16 (A) the corporation realized a gain or loss on a transaction;

17 (B) the corporation was subject to the tax imposed pursuant to
18 section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period;

19 (C) the transaction was treated as a deferred intercompany
20 transaction for federal income tax purposes; and

21 (D) the transaction was not deferred for New Jersey income tax
22 purposes, then

23 the taxable income of the affiliated group and the adjusted bases of
24 its members shall be adjusted to remove the impacts of a gain or loss
25 from that deferred intercompany transaction reported for federal
26 income tax purposes.

27 (l) "Real estate investment trust" shall mean any corporation, trust
28 or association qualifying and electing to be taxed as a real estate
29 investment trust under federal law.

30 (m) "Financial business corporation" shall mean any corporate
31 enterprise which is (1) in substantial competition with the business of
32 national banks and which (2) employs moneyed capital with the object
33 of making profit by its use as money, through discounting and
34 negotiating promissory notes, drafts, bills of exchange and other
35 evidences of debt; buying and selling exchange; making of or dealing
36 in secured or unsecured loans and discounts; dealing in securities and
37 shares of corporate stock by purchasing and selling such securities and
38 stock without recourse, solely upon the order and for the account of
39 customers; or investing and reinvesting in marketable obligations
40 evidencing indebtedness of any person, copartnership, association or
41 corporation in the form of bonds, notes or debentures commonly
42 known as investment securities; or dealing in or underwriting
43 obligations of the United States, any state or any political subdivision
44 thereof, or of a corporate instrumentality of any of them. This shall
45 include, without limitation of the foregoing, business commonly
46 known as industrial banks, dealers in commercial paper and

1 acceptances, sales finance, personal finance, small loan and mortgage
2 financing businesses, as well as any other enterprise employing
3 moneyed capital coming into competition with the business of national
4 banks; provided that the holding of bonds, notes, or other evidences
5 of indebtedness by individual persons not employed or engaged in the
6 banking or investment business and representing merely personal
7 investments not made in competition with the business of national
8 banks, shall not be deemed financial business. Nor shall "financial
9 business" include national banks, production credit associations
10 organized under the Farm Credit Act of 1933 or the Farm Credit Act
11 of 1971, Pub.L. 92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
12 insurance companies duly authorized to transact business in this State,
13 security brokers or dealers or investment companies or bankers not
14 employing moneyed capital coming into competition with the business
15 of national banks, real estate investment trusts, or any of the following
16 entities organized under the laws of this State: credit unions, savings
17 banks, savings and loan and building and loan associations,
18 pawnbrokers, and State banks and trust companies.

19 (n) "International banking facility" shall mean a set of asset and
20 liability accounts segregated on the books and records of a depository
21 institution, United States branch or agency of a foreign bank, or an
22 Edge or Agreement Corporation that includes only international
23 banking facility time deposits and international banking facility
24 extensions of credit as such terms are defined in section 204.8(a)(2)
25 and section 204.8(a)(3) of Regulation D of the board of governors of
26 the Federal Reserve System, 12 CFR Part 204, effective December 3,
27 1981. In the event that the United States enacts a law, or the board
28 of governors of the Federal Reserve System adopts a regulation which
29 amends the present definition of international banking facility or of
30 such facilities' time deposits or extensions of credit, the Commissioner
31 of Banking and Insurance shall forthwith adopt regulations defining
32 such terms in the same manner as such terms are set forth in the laws
33 of the United States or the regulations of the board of governors of the
34 Federal Reserve System. The regulations of the Commissioner of
35 Banking and Insurance shall thereafter provide the applicable
36 definitions.

37 (o) "S corporation" means a corporation included in the definition
38 of an "S corporation" pursuant to section 1361 of the federal Internal
39 Revenue Code of 1986, 26 U.S.C. s.1361.

40 (p) "New Jersey S corporation" means a corporation that is an S
41 corporation; which has made a valid election pursuant to section 3 of
42 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
43 corporation continuously since the effective date of the valid election
44 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

45 (q) "Public Utility" means "public utility" as defined in R.S.48:2-13.

46 (r) "Qualified investment partnership" means a [limited liability

1 company, foreign limited liability company, limited partnership or
2 foreign limited partnership treated as a] partnership under this act that
3 has more than 10 members or partners with no member or partner
4 owning more than a 50% interest in the entity and that derives at least
5 90% of its gross income from dividends, interest, payments with
6 respect to securities loans, and gains from the sale or other disposition
7 of stocks or securities or foreign currencies or commodities or other
8 similar income (including but not limited to gains from swaps, options,
9 futures or forward contracts) derived with respect to its business of
10 investing or trading in those stocks, securities, currencies or
11 commodities, but "investment partnership" shall not include a "dealer
12 in securities" within the meaning of section 1236 of the federal Internal
13 Revenue Code of 1986, 26 U.S.C. s.1236.

14 (s) "Savings institution" means a state or federally chartered
15 building and loan association, savings and loan association, or savings
16 bank.

17 (t) "Partnership" means an entity classified as a partnership for
18 federal income tax purposes.

19 (cf: P.L.2001, c.136, s.1)

20

21 4. Section 1 of P.L.1997, c.350 (C.54:10A-4.3) is amended to read
22 as follows:

23 1. a. Notwithstanding the provisions of paragraph (6) of
24 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the
25 contrary, a taxpayer that has for the fiscal or calendar accounting
26 period (referred to hereafter as the "tax year"), qualified research
27 expenses as defined in section 41 of the federal Internal Revenue Code
28 of 1986, 26 U.S.C. s.41, as in effect on June 30, 1992, paid or
29 incurred for research conducted in this State, in the fields of advanced
30 computing, advanced materials, biotechnology, electronic device
31 technology, environmental technology, or medical device technology,
32 shall be allowed to carry over a net operating loss for that tax year to
33 each of the 15 tax years following the year of the loss.

34 b. As used in this section:

35 "Advanced computing" means a technology used in the designing
36 and developing of computing hardware and software, including
37 innovations in designing the full spectrum of hardware from hand-held
38 calculators to super computers, and peripheral equipment;

39 "Advanced materials" means materials with engineered properties
40 created through the development of specialized processing and
41 synthesis technology, including ceramics, high value-added metals,
42 electronic materials, composites, polymers, and biomaterials;

43 "Biotechnology" means the continually expanding body of
44 fundamental knowledge about the functioning of biological systems
45 from the macro level to the molecular and sub-atomic levels, as well
46 as novel products, services, technologies and sub-technologies

1 developed as a result of insights gained from research advances which
2 add to that body of fundamental knowledge;

3 "Electronic device technology" means a technology involving
4 microelectronics, semiconductors, electronic equipment, and
5 instrumentation, radio frequency, microwave, and millimeter
6 electronics, and optical and optic-electrical devices, or data and digital
7 communications and imaging devices;

8 "Environmental technology" means assessment and prevention of
9 threats or damage to human health or the environment, environmental
10 cleanup, or the development of alternative energy sources; and

11 "Medical device technology" means a technology involving any
12 medical equipment or product (other than a pharmaceutical product)
13 that has therapeutic value, diagnostic value, or both, and is regulated
14 by the federal Food and Drug Administration.

15 c. Notwithstanding the provisions of subsection a. of this section,
16 for tax years beginning during calendar year 2002 and calendar year
17 2003, no deduction for any net operating loss carryover shall be
18 allowed. If and only to the extent that any net operating loss
19 carryover deduction is disallowed by reason of this subsection, the
20 date on which the amount of the disallowed net operating loss
21 carryover deduction would otherwise expire shall be extended by two
22 years.

23 (cf: P.L.1997, c.350, s.1)

24

25 5. (New section) a. For the purposes of this section:

26 "Intangible expenses and costs" includes (1) expenses, losses and
27 costs for, related to, or in connection directly or indirectly with the
28 direct or indirect acquisition, use, maintenance or management,
29 ownership, sale, exchange, or any other disposition of intangible
30 property to the extent such amounts are allowed as deductions or
31 costs in determining taxable income before operating loss deduction
32 and special deductions for the taxable year under the federal Internal
33 Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses related to, or
34 incurred in connection directly or indirectly with, factoring
35 transactions or discounting transactions; (3) royalty, patent, technical
36 and copyright fees; (4) licensing fees; and (5) other similar expenses
37 and costs.

38 "Intangible property" means patents, patent applications, trade
39 names, trademarks, service marks, copyrights, mask works, trade
40 secrets and similar types of intangible assets.

41 "Interest expenses and costs" means amounts directly or indirectly
42 allowed as deductions under section 163 of the federal Internal
43 Revenue Code of 1986, 26 U.S.C. s.163, for purposes of determining
44 taxable income under the code to the extent such expenses and costs
45 are directly or indirectly for, related to, or in connection with the
46 direct or indirect acquisition, maintenance, management, ownership,

1 sale, exchange or disposition of intangible property.

2 "Related member" means a person that, with respect to the taxpayer
3 during all or any portion of the privilege period, is a related entity, a
4 component member as defined in subsection (b) of section 1563 of the
5 federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, or is a
6 person to or from whom there is attribution of stock ownership in
7 accordance with subsection (e) of section 1563 of the federal Internal
8 Revenue Code of 1986, 26 U.S.C. s.1563.

9 "Related entity" means (1) a stockholder who is an individual, or a
10 member of the stockholder's family enumerated in section 318 of the
11 federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
12 stockholder and the members of the stockholder's family own, directly,
13 indirectly, beneficially or constructively, in the aggregate, at least 50%
14 of the value of the taxpayer's outstanding stock; (2) a stockholder, or
15 a stockholder's partnership, limited liability company, estate, trust or
16 corporation, if the stockholder and the stockholder's partnerships,
17 limited liability companies, estates, trusts and corporations own
18 directly, indirectly, beneficially or constructively, in the aggregate, at
19 least 50% per cent of the value of the taxpayer's outstanding stock; or
20 (3) a corporation, or a party related to the corporation in a manner
21 that would require an attribution of stock from the corporation to the
22 party or from the party to the corporation under the attribution rules
23 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
24 taxpayer owns, directly, indirectly, beneficially or constructively, at
25 least 50% percent of the value of the corporation's outstanding stock.
26 The attribution rules of the federal Internal Revenue Code of 1986, 26
27 U.S.C. s.318, shall apply for purposes of determining whether the
28 ownership requirements of this definition have been met.

29 b. For purposes of computing its entire net income under section
30 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add back
31 otherwise deductible interest expenses and costs and intangible
32 expenses and costs directly or indirectly paid, accrued or incurred to,
33 or in connection directly or indirectly with one or more direct or
34 indirect transactions with, one or more related members.

35 c. (1) The adjustments required in subsection b. of this section
36 shall not apply if the taxpayer establishes by clear and convincing
37 evidence that the adjustments are unreasonable, or the taxpayer and
38 the director agree in writing to the application or use of an alternative
39 method of apportionment under section 8 of P.L.1945, c.162
40 (C.54:10A-8). Nothing in this subsection shall be construed to limit
41 or negate the director's authority to otherwise enter into agreements
42 and compromises otherwise allowed by law. Provided further, the
43 adjustments required in subsection b. of this section shall not apply to
44 payments between members of an affiliated group that have elected to
45 file a consolidated return pursuant to section 18 of P.L.1945, c.162
46 (C.54:10A-18).

1 (2) The adjustments required in subsection b. of this section shall
2 not apply to the portion of interest expenses and costs and intangible
3 expenses and costs that the taxpayer establishes by a preponderance
4 of the evidence meets both of the following: (a) the related member
5 during the same income year directly or indirectly paid, received,
6 accrued or incurred the portion to or from a person that is not a
7 related member, and (b) the transaction giving rise to the interest
8 expenses and costs or the intangible expenses and costs between the
9 taxpayer and the related member did not have as a principal purpose
10 the avoidance of any portion of the tax due under Title 54 of the
11 Revised Statutes or Title 54A of the New Jersey Statutes.

12 d. Nothing in this section shall require a taxpayer to add to its net
13 income more than once any amount of interest expenses and costs that
14 the taxpayer pays, accrues or incurs to a related member described in
15 subsection b. of this section.

16 e. Nothing in this section shall be construed to limit or negate the
17 director's authority to make adjustments under paragraph (3) of
18 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section
19 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
20 (C.54:10A-10).

21
22 6. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read
23 as follows:

24 5. The franchise tax to be annually assessed to and paid by each
25 taxpayer shall be the greater of the amount computed pursuant to this
26 section or the alternative minimum assessment computed pursuant to
27 section 7 of P.L. , c. (C.) (now pending before the Legislature
28 as this bill); provided however, that in the case of a taxpayer that is a
29 New Jersey S corporation, an investment company, or a professional
30 corporation or a similar corporation for profit organized for the
31 purpose of rendering professional services under the laws of another
32 state, there shall be no alternative minimum assessment computed
33 pursuant to section 7 of P.L. , c. (C.).

34 The amount computed pursuant to this section shall be sum of the
35 amount computed under subsection (a) hereof, or in the alternative to
36 the amount computed under subsection (a) hereof, the amount
37 computed under subsection (f) hereof, and the amount computed
38 under subsection (c) hereof:

39 (a) That portion of its entire net worth as may be allocable to this
40 State as provided in section 6, multiplied by the following rates:
41 2 mills per dollar on the first \$100,000,000.00 of allocated net worth;
42 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill
43 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar
44 on all amounts of allocated net worth in excess of \$300,000,000.00;
45 provided, however, that with respect to reports covering accounting
46 or privilege periods set forth below, the rate shall be that percentage

A2501 SIRES, ROBERTS

19

1 of the rate set forth in this subsection for the appropriate year:

2 Accounting or Privilege

3 Periods Beginning on or The Percentage of the Rate

4 after: to be Imposed Shall be:

5

6 April 1, 1983 75%

7 July 1, 1984 50%

8 July 1, 1985 25%

9 July 1, 1986 0

10

11 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

12 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3

13 1/4% of its entire net income or such portion thereof as may be

14 allocable to this State as provided in section 6 of P.L.1945, c.162

15 (C.54:10A-6) plus such portion thereof as is specifically assigned to

16 this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1);

17 provided, however, that with respect to reports covering accounting

18 or privilege periods or parts thereof ending after December 31, 1967,

19 the rate shall be 4 1/4%; and that with respect to reports covering

20 accounting or privilege periods or parts thereof ending after

21 December 31, 1971, the rate shall be 5 1/2%; and that with respect to

22 reports covering accounting or privilege periods or parts thereof

23 ending after December 31, 1974, the rate shall be 7 1/2%; and that

24 with respect to reports covering privilege periods or parts thereof

25 ending after December 31, 1979, the rate shall be 9%; provided

26 however, that for a taxpayer that has entire net income of \$100,000 or

27 less for a privilege period and is not a [limited liability company,

28 foreign limited liability company, limited partnership or foreign

29 limited] partnership the rate for that privilege period shall be 7 1/2%

30 and provided further that for a taxpayer that has entire net income of

31 \$50,000 or less for a privilege period and is not a partnership the rate

32 for that privilege period shall be 6 1/2%.

33 (2) For a taxpayer that is a New Jersey S corporation:

34 (i) for privilege periods ending on or before June 30, 1998 the rate

35 determined by subtracting the maximum tax bracket rate provided

36 under N.J.S.54A:2-1 for the privilege period from the tax rate that

37 would otherwise be applicable to the taxpayer's entire net income for

38 the privilege period if the taxpayer were not an S corporation provided

39 under paragraph (1) of this subsection for the privilege period; and

40 (ii) For a taxpayer that has entire net income in excess of \$100,000

41 for the privilege period, for privilege periods ending on or after

42 July 1, 1998, but on or before June 30, 2001, the rate shall be 2%,

43 for privilege periods ending on or after July 1, 2001, but on or

44 before [June 30, 2002] June 30, 2006 , the rate shall be 1.33%,

45 for privilege periods ending on or after [July 1, 2002] July 1, 2006,

46 but on or before [June 30, 2003] June 30, 2007, the rate shall be

1 0.67%, and

2 for privilege periods ending on or after ~~July 1, 2003~~ July 1, 2007
3 there shall be no rate of tax imposed under this paragraph, and

4 (iii) For a taxpayer that has entire net income of \$100,000 or less
5 for privilege periods ending on or after July 1, 1998, but on or before
6 June 30, 2001 the rate for that privilege period shall be 0.5%, and for
7 privilege periods ending on or after July 1, 2001 there shall be no rate
8 of tax imposed under this paragraph.

9 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or
10 (iii) of this paragraph shall be multiplied by its entire net income that
11 is not subject to federal income taxation or such portion thereof as
12 may be allocable to this State pursuant to sections 6 through 10 of
13 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such portion
14 thereof as is specifically assigned to this State as provided in section
15 5 of P.L.1993, c.173 (C.54:10A-6.1).

16 (3) For a taxpayer that is a New Jersey S corporation, in addition
17 to the amount, if any, determined under paragraph (2) of this
18 subsection, the tax rate that would otherwise be applicable to the
19 taxpayer's entire net income for the privilege period if the taxpayer
20 were not an S corporation provided under paragraph (1) of this
21 subsection for the privilege period multiplied by its entire net income
22 that is subject to federal income taxation or such portion thereof as
23 may be allocable to this State pursuant to sections 6 through 10 of
24 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

25 (d) Provided, however, that the franchise tax to be annually
26 assessed to and paid by any investment company or real estate
27 investment trust, which has elected to report as such and has filed its
28 return in the form and within the time provided in this act and the rules
29 and regulations promulgated in connection therewith, shall, in the case
30 of an investment company, be measured by ~~[25%]~~ 60% of its entire
31 net income and ~~[25%]~~ 60% of its entire net worth, and in the case of
32 a real estate investment trust, by 4% of its entire net income and 15%
33 of its entire net worth, at the rates hereinbefore set forth for the
34 computation of tax on net income and net worth, respectively, but in
35 no case less than \$250, and further provided, however, that the
36 franchise tax to be annually assessed to and paid by a regulated
37 investment company which for a period covered by its report satisfies
38 the requirements of Chapter 1, Subchapter M, Part I, Section 852(a)
39 of the federal Internal Revenue Code shall be \$250.

40 (e) The tax assessed to any taxpayer pursuant to this section shall
41 not be less than \$25 in the case of a domestic corporation, \$50 in the
42 case of a foreign corporation, or \$250 in the case of an investment
43 company or regulated investment company. Provided however, that
44 for accounting or privilege periods beginning in calendar year 1994
45 and thereafter the minimum taxes for taxpayers other than an
46 investment company or a regulated investment company shall be as

A2501 SIRES, ROBERTS

1 provided in the following schedule:

2

3	Period Beginning	Domestic	Foreign
4	In Calendar Year	Corporation	Corporation
5		Minimum Tax	Minimum Tax
6	1994	\$ 50	\$100
7	1995	\$100	\$200
8	1996	\$150	\$200
9	1997	\$200	\$200

10

11 and provided further that the director shall adjust the minimum tax for
12 accounting or privilege periods beginning in each fifth year following
13 calendar year 1997 and each fifth year thereafter by multiplying the
14 minimum tax for periods beginning in 1997 by an amount equal to one
15 plus 75% of the increase, if any, in the annual average total producer
16 price index for finished goods published by the federal Department of
17 Labor, Bureau of Labor Statistics, for the year preceding the
18 determination year over such index for calendar year 1996 which
19 adjusted minimum tax amount shall be rounded to the next highest
20 multiple of \$10.

21 (f) In lieu of the portion of the tax based on net worth and to be
22 computed under subsection (a) of this section, any taxpayer, the value
23 of whose total assets everywhere, less reasonable reserves for
24 depreciation, as of the close of the period covered by its report,
25 amounts to less than \$150,000, may elect to pay the tax shown in a
26 table which shall be promulgated by the director.

27 (g) Provided however, that for privilege periods beginning on or
28 after January 1, 2001 but before January 1, 2002 the franchise tax
29 annually assessed to and paid by a taxpayer:

30 (1) that is a limited liability company or foreign limited liability
31 company classified as a partnership for federal income tax purposes
32 shall be the amount determined pursuant to the provisions of section
33 3 of P.L.2001, c.136 (C.54:10A-15.6); or

34 (2) that is a limited partnership or foreign limited partnership
35 classified as a partnership for federal income tax purposes shall be the
36 amount determined pursuant to the provisions of section 4 of
37 P.L.2001, c.136 (C.54:10A-15.7).

38 (h) Provided however, that for privilege periods beginning on or
39 after January 1, 2002 the franchise tax annually assessed to and paid
40 by a taxpayer that is a partnership shall be the amount determined
41 pursuant to the provisions of section 12 of P.L. , c. (C.)(now
42 pending before the Legislature as this bill).

43 (cf: P.L.2001, c.136, s.2)

44

45 7. (New section) a. For the purposes of this section:

46 "Affiliated group" means a group of corporations defined as an

1 affiliated group by section 1504 of the federal Internal Revenue Code
2 of 1986, 26 U.S.C. s.1504, or any successor federal law, that files a
3 consolidated federal income tax return for the privilege period
4 pursuant to sections 1501 through 1504 of the federal Internal
5 Revenue Code of 1986, 26 U.S.C. ss.1501-1504 or any successor
6 federal law.

7 "Cost of goods sold" means the cost of goods sold calculated
8 pursuant to the same method used by the taxpayer for the purpose of
9 computing its federal income tax, multiplied by the allocation factor
10 computed as set forth in section 6 of P.L.1945, c.162 (C.54:10A-6).

11 "Member of an affiliated group" means a taxpayer that is part of an
12 affiliated group.

13 "New Jersey gross profits" means New Jersey gross receipts
14 reduced by returns and allowances attributable to New Jersey gross
15 receipts, less the cost of goods sold.

16 "New Jersey gross receipts" means the receipts of the taxpayer for
17 the privilege period, computed on the cash or accrual basis according
18 to the method of accounting used in the computation of its net income
19 for federal tax purposes arising during the privilege period from:

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

23 (2) sales of tangible personal property located without the State at
24 the time of the receipt of or appropriation to the orders where
25 shipment is made to points within the State,

26 (3) services performed within the State,

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

29 (5) all other business receipts earned within the State.

30 b. For privilege periods beginning on or after January 1, 2002, the
31 alternative minimum assessment shall be equal to the amount
32 computed under paragraphs (1) or (2) of this subsection pursuant to
33 the election made pursuant to subsection c. of this section:

34 (1) New Jersey gross profits, reduced by \$500,000, multiplied by
35 .006; or

36 (2) New Jersey gross receipts, reduced by \$1,000,000, multiplied
37 by .003.

38 c. A taxpayer shall, for the first privilege period for which it is
39 required to compute the alternative minimum assessment pursuant to
40 this section, elect to employ the computation method set forth in
41 paragraph (1) or the computation method set forth in paragraph (2) of
42 subsection b. of this section, which computation method shall be
43 employed by the taxpayer for the computation of the alternative
44 minimum assessment for that privilege period and for the next
45 succeeding four privilege periods, pursuant to regulations and forms
46 as the director may prescribe. The taxpayer may change its election

1 at any time after the initial five privilege periods; provided however,
2 that any change in the method of computation of the alternative
3 minimum assessment which the taxpayer elects shall be employed by
4 the taxpayer for the privilege period for which the change is effective
5 and for the next four succeeding privilege periods.

6 d. (1) Notwithstanding the provisions of subsection b. of this
7 section, the alternative minimum assessment for a taxpayer for a
8 privilege period, other than a taxpayer electing to file a consolidated
9 return for the privilege period pursuant to section 18 of P.L.1945,
10 c.162 (C.54:10A-18), shall not exceed \$5,000,000. For a taxpayer
11 electing to file a consolidated return for the privilege period pursuant
12 to section 18 of P.L.1945, c.162 (C.54:10A-18), the alternative
13 minimum assessment shall not exceed \$5,000,000 for each member of
14 the affiliated group, except as provided in paragraph (2) or (3) of this
15 subsection.

16 (2) If four or more taxpayers are members of an affiliated group,
17 the sum of the alternative minimum assessments of each of the
18 members of the affiliated group for a privilege period shall not exceed
19 \$15,000,000. If the sum of the alternative minimum assessment for all
20 members of the affiliated group computed as set forth in subsection b.
21 after application of the maximum set by paragraph (1) of this
22 subsection would otherwise exceed \$15,000,000, the alternative
23 minimum assessment for a member of the affiliated group shall equal
24 the alternative minimum assessment for that member of the affiliated
25 group computed as set forth in subsection b. after application of the
26 maximum set by paragraph (1) of this subsection
27 multiplied by a fraction, the numerator of which is \$15,000,000 and
28 the denominator of which is the sum of the alternative minimum
29 assessments for all members of the affiliated group computed as set
30 forth in subsection b. after application of the maximum set by
31 paragraph (1) of this subsection.

32 (3) For the purpose of calculating the alternative minimum
33 assessment, the amount of the sum of the alternative minimum
34 assessments of the members of an affiliated group shall not, when
35 added to the amounts of the members' tax computed pursuant to
36 section 5 of P.L.1945, c.162 (C.54:10A-5), exceed \$15,000,000.

37 e. The alternative minimum assessment computed pursuant to this
38 section for privilege periods commencing after December 31, 2006
39 shall be \$0.00, except that for taxpayers exempt from corporation net
40 income taxation pursuant to 15 U.S.C. s.381 et seq. (Pub.L.86-272),
41 73 Stat. 555, such assessment shall continue to be computed as
42 otherwise provided herein.

43 f. (1) If the alternative minimum assessment for a taxpayer
44 computed pursuant to this section exceeds the tax computed pursuant
45 to section 5 of P.L.1945, c.165 (C.54:10A-5) for a privilege period,
46 the taxpayer shall be allowed an amount of credit equal to the amount

1 by which the alternative minimum assessment computed pursuant to
2 this section for the privilege period exceeds the tax computed pursuant
3 to section 5 of P.L.1945, c.165 (C.54:10A-5) for that privilege period.
4 The amount of credit may be carried forward for application in
5 subsequent privilege periods subject to the limitations of paragraph (2)
6 of this subsection.

7 (2) A taxpayer may apply all or a portion of the credits allowed by
8 paragraph (1) of this subsection against the tax computed pursuant to
9 section 5 of P.L. 1945, c. 162 (C. 54:10A-5), for a privilege period for
10 which the tax pursuant to that section exceeds the alternative minimum
11 assessment computed for the privilege period pursuant to this section;
12 provided however, that the amount of credit applied shall not reduce
13 the amount of tax otherwise due to less than the alternative minimum
14 assessment as computed pursuant to this section for the privilege
15 period.

16

17 8. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read
18 as follows:

19 6. In the case of a taxpayer which maintains a regular place of
20 business outside this State other than a statutory office, the portion of
21 its entire net worth to be used as a measure of the tax imposed by
22 subsection (a) of section [5(a)] 5 of [this act] P.L.1945, c.162
23 (C.54:10A-5), and the portion of its entire net income to be used as a
24 measure of the tax imposed by subsection (c) of section [5(a)] 5 of
25 [this act] P.L.1945, c.162 (C.54:10A-5), shall be determined by
26 multiplying such entire net worth and entire net income, respectively,
27 by an allocation factor which is the property fraction, plus twice the
28 sales fraction plus the payroll fraction and the denominator of which
29 is four, except as the director may determine pursuant to section 8 of
30 P.L.1945, c.162 (C.54:10A-8), that is:

31 (A) The property fraction is the average value of the taxpayer's real
32 and tangible personal property within the State during the period
33 covered by its report divided by the average value of all the taxpayer's
34 real and tangible personal property wherever situated during such
35 period; provided, however, that for the purpose of determining
36 average value, the provisions with respect to depreciation as set forth
37 in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of
38 P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving
39 at such value.

40 (B) The sales fraction is the receipts of the taxpayer, computed on
41 the cash or accrual basis according to the method of accounting used
42 in the computation of its net income for federal tax purposes, arising
43 during such period from

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

1 (2) sales of tangible personal property located without the State at
2 the time of the receipt of or appropriation to the orders where
3 shipment is made to points within the State,

4 (3) (Deleted by amendment.)

5 (4) services performed within the State,

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

8 (6) all other business receipts [(excluding dividends excluded from
9 entire net income by paragraph (1) of subsection (k) of section 4 of
10 P.L.1945, c.162 (C.54:10A-4))] earned within the State,

11 divided by the total amount of the taxpayer's receipts, similarly
12 computed, arising during such period from all sales of its tangible
13 personal property, services, rentals, royalties and all other business
14 receipts, whether within or without the State; provided however, that
15 if receipts would be assigned to a state, a possession or territory of the
16 United States or the District of Columbia or to any foreign country
17 in which the taxpayer is not subject to a tax on or measured by profits
18 or income then the receipts shall be excluded from the denominator
19 of the sales fraction.

20 [For the purposes of this section, receipts shall not include any sum
21 or sums of money received in payment for gas or electric energy sold
22 to a public utility subject to taxation pursuant to P.L.1940, c.5
23 (C.54:30A-49 et seq.) for resale to ratepayers of the public utility.]

24 (C) The payroll fraction is the total wages, salaries and other
25 personal service compensation, similarly computed, during such period
26 of officers and employees within the State divided by the total wages,
27 salaries and other personal service compensation, similarly computed,
28 during such period of all the taxpayer's officers and employees within
29 and without the State.

30 In the case of a taxpayer which does not maintain a regular place of
31 business outside this State other than a statutory office, the allocation
32 factor shall be 100%.

33 In the case of a banking corporation which maintains a regular place
34 of business outside this State other than a statutory office, and which
35 elects to take the exclusion from net worth provided in subsection (d)
36 of section 4 of P.L.1945, c.162 (C.54:10A-4) or the deduction from
37 entire net income provided in paragraph (4) of subsection (k) of
38 section 4 of P.L.1945, c.162 (C.54:10A-4), the allocation factor shall
39 be computed and applied in accordance with section 6 of P.L.1945,
40 c.162 (C.54:10A-6); provided, however, that the numerators and the
41 denominators of the fractions described in (A), (B) or (C) above shall
42 include all amounts attributable, directly or indirectly, to the
43 production of the eligible net income of an international banking
44 facility as defined in paragraph (4) of subsection (k) of section 4 of
45 P.L.1945, c.162 (C.54:10A-4), whether or not such amounts are
46 otherwise attributable to this State.

47 (cf: P.L.1995, c.245, s.1)

1 9. Section 5 of P.L.1993, c.173 (C.54:10A-6.1) is amended to read
2 as follows:

3 5. a. "Operational income" subject to allocation to New Jersey
4 means income from tangible and intangible property if the acquisition,
5 management, and disposition of the property constitute integral parts
6 of the taxpayer's regular trade or business operations and includes
7 investment income serving an operational function. Income that a
8 taxpayer demonstrates with clear and [cogent] convincing evidence
9 is not operational income is classified as nonoperational income, and
10 the nonoperational income of taxpayers[, other than those that have
11 their principal place from which the trade or business of the taxpayer
12 is directed or managed in this State,] is not subject to allocation but
13 shall be specifically assigned; provided, that 100% of the
14 nonoperational income of a taxpayer that has its principal place from
15 which the trade or business of the taxpayer is directed or managed in
16 this State shall be specifically assigned to this State to the extent
17 permitted under the Constitution and statutes of the United States.

18 b. Corporate expenses related to nonoperational income are not
19 deductible in determining entire net income. Notwithstanding the
20 provisions of R.S.54:49-6 or any other law to the contrary:

21 (1) if in prior privilege periods property had been classified as
22 operational property, and later is demonstrated to have been
23 nonoperational property and is subsequently disposed of, all expenses,
24 without limitation, deducted for prior privilege periods related to such
25 nonoperational property shall be added back and recaptured as income
26 in the period of disposition of such property;

27 (2) if in prior privilege periods income had been classified as
28 serving an operational function, and later is demonstrated not to have
29 been serving an operational function, all expenses, without limitation,
30 deducted in prior privilege periods related to such income not serving
31 an operational function shall be added back and recaptured as income;
32 and

33 (3) the denominators of the fractions used to determine the
34 allocation factor pursuant to section 6 of P.L.1945, c.162
35 (C.54:10A-6), for privilege periods for which redeterminations are
36 required pursuant to paragraphs (1) and (2) of this subsection shall be
37 redetermined to exclude the amounts, if any, relating to the
38 nonoperational property or the nonoperational income.

39 c. The Director of the Division of Taxation shall prescribe such
40 forms for administration and adopt such administrative rules as the
41 director deems necessary for the implementation of this section.

42 (cf: P.L.1993, c.173, s.5)

43

44 10. Section 10 of P.L.1945, c.162 (C.54:10A-10) is amended to
45 read as follows:

46 10. a. Whenever it shall appear to the [commissioner] director

1 that any taxpayer fails to maintain its records in accordance with sound
2 accounting principles or conducts its business or maintains its records
3 in such manner as either directly or indirectly to distort its true entire
4 net income or its true entire net worth under this act or the proportion
5 thereof properly allocable to this State, or whenever any taxpayer
6 maintains a place of business outside this State, or whenever any
7 agreement, understanding or arrangement exists between a taxpayer
8 and any other corporation or any person or firm, for the purpose of
9 evading tax under this act, or whereby the activity, business, receipts,
10 expenses, assets, liabilities, income or net worth of the taxpayer are
11 improperly or inaccurately reflected, the [commissioner] director is
12 authorized and empowered, in [his] the director's discretion and in
13 such manner as [he] the director may determine, to adjust and
14 redetermine such items, and to adjust items of gross receipts, tangible
15 or intangible property and payrolls within and without the State and
16 the allocation of entire net income or entire net worth or to make any
17 other adjustments in any tax report or tax returns as may be necessary
18 to make a fair and reasonable determination of the amount of tax
19 payable under this act.

20 b. Where [(a)] (1) any taxpayer conducts its activity or business
21 under any agreement, arrangement or understanding in such manner as
22 either directly or indirectly to benefit its members or stockholders, or
23 any of them, or any person or persons directly or indirectly interested
24 in such activity or business, by entering into any transaction at more
25 or less than a fair price which, but for such agreement, arrangement or
26 understanding, might have been paid or received therefor, or [(b)] (2)
27 any taxpayer, a substantial portion of whose capital stock is owned
28 either directly or indirectly by or through another corporation, enters
29 into any transaction with such other corporation on such terms as to
30 create an improper loss or net income, the [commissioner] director
31 may include in the entire net income of the taxpayer the fair profits
32 which, but for such agreement, arrangement or understanding, the
33 taxpayer might have derived from such transaction. The
34 [commissioner] director may require any person or corporation to
35 submit such information under oath or affirmation, or to permit such
36 examination of its books, papers and documents, as may be necessary
37 to enable [him] the director to determine the existence, nature or
38 extent of an agreement, understanding or arrangement to which this
39 section relates, whether or not such person or corporation is subject
40 to the tax imposed by this act.

41 c. The entire net income of a taxpayer exercising its franchise in
42 this State that is a member of an affiliated group or a controlled group
43 pursuant to sections 1504 or 1563 of the federal Internal Revenue
44 Code of 1986, 26 U.S.C. ss.1504 or 1563, shall be determined by
45 eliminating all payments to, or charges by, other members of the
46 affiliated or controlled group in excess of fair compensation in all

1 inter-group transactions of any kind. If the taxpayer cannot
2 demonstrate as a fact by clear and convincing evidence that a report
3 by a taxpayer discloses the true earnings of the taxpayer on its
4 business carried on in this State, the director may, at the director's
5 discretion, require the taxpayer to file a consolidated return of the
6 entire operations of the affiliated group or controlled group, including
7 its own operations and income. The director shall determine the true
8 amount of entire net income earned by the taxpayer in this State. The
9 consolidated entire net income of the taxpayer and of the other
10 members of its affiliated group or controlled group shall be allocated
11 to this State by use of the applicable allocation formula that the
12 director requires pursuant to P.L.1945, c.162 (C.54A:10A-1 et seq.)
13 be used by the taxpayer. The return shall include in the allocation
14 formula the property, payrolls, and sales of all corporations for which
15 the return is made. The director may require a consolidated return
16 under this section without regard to whether the other members of the
17 affiliated or controlled group, other than the taxpayer, are or are not
18 exercising their franchises in this State.

19 A consolidated return required by this section shall be filed within
20 60 days after it is demanded, subject to the penalties of the State
21 Uniform Tax Procedure Law, R.S.54:48-1 et seq.

22 The member of an affiliated group or a controlled group shall
23 incorporate in its return required under this section information needed
24 to determine under this section its taxable entire net income, and shall
25 furnish any additional information the director requires, subject to the
26 penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et
27 seq. A taxpayer shall furnish any additional information requested
28 within 30 days after it is demanded, subject to the penalties of the
29 State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

30 (cf: P.L.1958, c.63, s.5)

31

32 11. Section 14 of P.L.1945, c.162 (C.54:10A-14) is amended to
33 read as follows:

34 14. (a) The [commissioner] director may by general rule or by
35 special notice require any taxpayer to submit copies or pertinent
36 extracts of its federal income tax returns, or of any other tax return
37 made to any agency of the federal government, or of this or any other
38 state, or of any statement or registration made pursuant to any state
39 or federal law pertaining to securities or securities exchange
40 regulation.

41 (b) The [commissioner] director may require all taxpayers to keep
42 such records as [he] the director may prescribe, and [he] the director
43 may require the production of books, papers, documents and other
44 data, to provide or secure information pertinent to the determination
45 of the tax hereunder and the enforcement and collection thereof. The
46 [commissioner] director may, also, by general rule or by special notice

1 require any taxpayer to make and file information returns, under oath,
2 of facts pertinent to the determination of the tax or liability for tax
3 hereunder, pursuant to such regulations, at such times and in such
4 form and manner and to such extent as [he] the director may prescribe
5 pursuant to law.

6 (c) Each taxpayer filing a return that is a member of an affiliated
7 group or a controlled group pursuant to sections 1504 or 1563 of the
8 federal Internal Revenue Code of 1986, 26 U.S.C. ss.1504 or 1563
9 shall disclose in its return for the privilege period the amount of all
10 inter-member costs or expenses, including but not limited to
11 management fees, rents, and other services, for the privilege period.
12 If the taxpayer acquires products or services from another member of
13 its affiliated group or controlled group, which it re-sells or otherwise
14 uses to generate revenue, the taxpayer shall disclose the amount of
15 revenue generated from those products or services. The director shall
16 promulgate rules and procedures for the manner of disclosure. A
17 failure to file such a disclosure shall be deemed the filing of an
18 incomplete tax return, subject to the penalties of the State Uniform
19 Tax Procedure Law, R.S.54:48-1 et seq.

20 (cf: P.L.1949, c.236, s. 4)

21
22 12. (New section) a. A partnership that is not a qualified
23 investment partnership shall, on or before the 15th day of the fourth
24 month succeeding the close of each privilege period, remit a payment
25 of tax. The amount of tax shall be equal to the sum of: all of the
26 share of the entire net income of the partnership for that privilege
27 period of all nonresident noncorporate partners, multiplied by an
28 allocation factor determined, pursuant to section 6 of P.L.1945, c.162
29 (C.54:10A-6), based on the allocation fractions of the partnership for
30 that privilege period, and multiplied by .0637 plus all of the share of
31 the entire net income of the partnership for that privilege period of all
32 nonresident corporate partners, multiplied by an allocation factor
33 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
34 based on the allocation fractions of the partnership for that privilege
35 period, and multiplied by .09.

36 b. An amount of tax paid by a partnership pursuant to subsection
37 a. of this section shall be credited to accounts of its nonresident
38 partners in proportion to each nonresident partner's share of allocated
39 entire net income as of the date of its receipt by the director, and each
40 amount of tax so credited shall be deemed to have been paid by the
41 respective partner in respect of the privilege period or taxable year of
42 the partner.

43 c. For the purposes of this section:

44 "Nonresident noncorporate partner" means, an individual, an estate
45 or a trust subject to taxation pursuant to the "New Jersey Gross
46 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident

1 taxpayer or a resident estate or trust under that act;

2 "Nonresident corporate partner" means a partner that is not an
3 individual, an estate or a trust subject to taxation pursuant to the "New
4 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
5 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
6 (C.54:10A-3), and that does not maintain a regular place of business
7 in this State other than a statutory office; and

8 "Partner" means an owner of an interest in the partnership, in
9 whatever manner that owner and ownership interest are designated.

10

11 13. Section 18 of P.L.1945, c.162 (C.54:10A-18) is amended to
12 read as follows:

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

33 b. The return of an S corporation shall, in addition to any
34 information set forth pursuant to subsection a. of this section, set forth
35 with respect to each shareholder: the shareholder's name, address and
36 federal taxpayer identification number (social security number or
37 employer identification number); whether the shareholder is a resident
38 of this State; whether the shareholder has filed a consent to
39 jurisdictional requirements pursuant to section 3 or section 4 of
40 P.L.1993, c.173 (C.54:10A-5.22 or C.54:10A-5.23); the allocation
41 factor determined pursuant to sections 6 through 10 of P.L.1945,
42 c.162 (C.54:10A-6 through 54:10A-10); the amount of any
43 distribution made to the shareholder, including any amount paid on
44 behalf of the shareholder pursuant to subsection c. or d. of section 4
45 of P.L.1993, c.173 (C.54:10A-5.23); the balance of the accumulated
46 earnings and profits account; the balance of the accumulated

1 adjustments account described in section 16 of P.L.1993, c.173
2 (C.54A:5-14), which account the corporation shall maintain; and such
3 other information as the director may prescribe by regulation. The S
4 corporation shall, on or before the day on which such return is
5 required to be filed, furnish to each person who was a shareholder
6 during the [accounting or] privilege period a copy of such information
7 shown on the return as the director may by regulation prescribe.

8 c. (1) The return of a taxpayer that is a professional corporation
9 or a similar corporation for profit organized for the purpose of
10 rendering professional services under the laws of another state, shall
11 in addition to any information set forth pursuant to subsection a. of
12 this section, set forth the name, address and federal taxpayer
13 identification number (social security number or employer
14 identification number) of each licensed professional of the corporation.

15 (2) Each professional corporation or similar corporation for profit
16 organized for the purpose of rendering professional services under the
17 laws of another state that has more than two licensed professionals
18 shall at the time such return is required to be filed make a payment of
19 a filing fee of \$150 for each licensed professional of the corporation,
20 up to a maximum of \$250,000.

21 (3) Each professional corporation required to make a payment
22 pursuant to paragraph (2) of this subsection shall also make, at the
23 same time as making its payment pursuant to paragraph (2) of this
24 subsection, an installment payment of its filing fee for the succeeding
25 return period in an amount equal to 50% of the amount required to be
26 paid pursuant to paragraph (2). The amount of the installment
27 payment shall be credited against the amount of the filing fee due for
28 the succeeding return period, or, if the amount of the installment
29 payment exceeds the amount of the filing fee due for the succeeding
30 return period, successive return periods.

31 d. (1) An affiliated group of C corporations, as defined in section
32 1504 of the Internal Revenue Code of 1986, 26 U.S.C. s.1504, may
33 elect in accordance with the provisions of this subsection to make a
34 single, consolidated return with respect to the corporate income tax
35 imposed by section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege
36 period in lieu of separate returns. The making of a consolidated return
37 is a privilege and shall be upon the condition that all C corporations,
38 which at any time during the privilege period have been members of
39 the affiliated group, consent to be included in such return. The making
40 of a consolidated return shall be considered as such consent. The
41 privilege of filing of a consolidated return shall not be permitted if less
42 than all the members of the affiliated group consent to be included in
43 such return. Such election may, upon two years notice of the
44 revocation to the director, be revoked after five or more privilege
45 periods for which it has been in effect.

46 (2) Each corporation included as part of an affiliated group filing

1 a consolidated return shall be jointly and severally liable for the tax
2 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) of the
3 affiliated group with respect to the privilege period, except that any
4 corporation which was not a member of the affiliated group for the
5 entire taxable year shall be jointly and severally liable only for the
6 portion of the consolidated tax liability attributable to that portion of
7 the year during which the corporation was a member of the affiliated
8 group, prorated on a daily basis

9 (3) Nothing in this subsection shall be construed as requiring the
10 filing of a combined income tax return under the unitary business
11 concept.

12 (4) The director shall promulgate regulations interpreting the
13 provisions of this section that are consistent, to the maximum extent
14 possible, with applicable federal Treasury regulations.

15 (cf: P.L.1993, c.173, s.6)

16
17 14. Section 10 of P.L.1947, c.50 (C.54:10A-19.1) is amended to
18 read as follows:

19 10. (a) (Deleted by amendment, P.L.1992, c.175).

20 (b) (Deleted by amendment, P.L.1992, c.175).

21 (c) (Deleted by amendment, P.L.1992, c.175).

22 (d) The examination of returns and the assessment of additional
23 taxes, penalties and interest shall be as provided by the State Uniform
24 Tax [Uniform] Procedure Law, R.S.54:48-1 et seq., except as
25 otherwise provided.

26 (e) The filing of a complaint by a taxpayer in the tax court shall
27 suspend the running of the statute of limitations for the contested issue
28 or issues for all subsequent privilege periods.

29 (cf: P.L.1992, c.175, s.21)

30
31 15. (New section) Notwithstanding any other provision of law, no
32 interest or penalty shall be assessed against any taxpayer for
33 underpayment of installment payments of its estimated tax due and
34 payable after December 31, 2001 and before June 16, 2002, if, and
35 only to the extent, the underpayment of estimated tax is the result of
36 the temporary suspension of the deduction for net operating loss
37 carryovers provided in section 4 of P.L.1945, c.162 (C.54:10A-4) as
38 amended in section 3 of P.L.2002, c. (now pending before the
39 Legislature as this bill) or subsection c. of section 1 of P.L.1997, c.350
40 (C.54:10A-4.3).

41
42 16. (New section) a. Notwithstanding the limitation of the
43 application of subsection (g) of section 5 of P.L.1945, c.162
44 (C.54:10A-5) made pursuant to section 6 of P.L. , c. (now pending
45 before the Legislature as this bill), that limitation shall not affect any
46 obligation, lien or duty to make installment payments and pay interest

1 or penalties which have accrued or may accrue by virtue of any duty
2 to make installment payments pursuant to the provisions of section 5
3 of P.L.2001, c.136 (C.54:10A-15.8) prior to the limitation of the
4 application of subsection (g) of section 5 of P.L.1945, c.162
5 (C.54:10A-5) made pursuant to section 6 of P.L. , c. ; and
6 provided that all estimated payments which would have been due and
7 payable prior to the enactment of P.L. , c. shall be due and payable
8 as if the limitation were not in effect; and provided that this limitation
9 shall not affect the legal authority of the State to audit records and
10 assess and collect installment payments which may be due, together
11 with such interest and penalties as have accrued or would have
12 accrued thereon and shall not affect any determination of, or affect any
13 proceeding for, the enforcement thereof.

14 b. Notwithstanding the provisions of section 5 of P.L.2001, c.136
15 (C.54:10A-15.8) to the contrary, any amount of tax paid pursuant to
16 subsection a. of that section for privilege periods beginning on or after
17 January 1, 2002 shall be credited against the tax paid pursuant to
18 section 12 of P.L. , c. (C.) (now pending before the
19 Legislature as this bill).

20

21 17. Section 2 of P.L.1993, c.170 (C.54:10A-5.5) is amended to
22 read as follows:

23 2. As used in this act:

24 "Business relocation or expansion or investment" means capital
25 investment in a new or expanded business facility in this State

26 "Business facility" means any factory, mill, plant, refinery,
27 warehouse, building, complex of buildings or structural components
28 of buildings, and all machinery, equipment and personal property
29 located within this State, used in connection with the operation of the
30 business of a corporation that is subject to the tax imposed pursuant
31 to section 5 of P.L.1945, c.162 (C.54:10A-5), and all facility
32 preparation and start-up costs of the taxpayer for the business facility
33 which it capitalizes for federal income tax purposes.

34 "Compensation" means wages, salaries, commissions or any other
35 form of remuneration paid to employees for personal services.

36 "Controlled group" means one or more chains of corporations
37 connected through stock ownership with a common parent corporation
38 if stock possessing at least 50% of the voting power of all classes of
39 stock of each of the corporations is owned directly or indirectly by one
40 or more of the corporations; and the common parent owns directly
41 stock possessing at least 50% of the voting power of all classes of
42 stock of at least one of the other corporations.

43 "Director" means the Director of the Division of Taxation in the
44 Department of the Treasury.

45 "Expanded business facility" means any business facility, other than
46 a new business facility, resulting from acquisition, construction,

1 reconstruction, installation or erection of improvements or additions
2 to existing property if such improvements or additions are purchased
3 on or after the operative date of this act, but only to the extent of a
4 taxpayer's qualified investment in such improvements or additions.

5 "New business facility" means a business facility which:

6 a. is employed by a taxpayer in the conduct of a business which is
7 or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.). Such
8 facility shall not be considered a new business facility in the hands of
9 a taxpayer if the taxpayer's only activity with respect to such facility
10 is to lease it to another person;

11 b. is purchased by a taxpayer and is placed in service or use on or
12 after the operative date of this act;

13 c. was not purchased by a taxpayer from a related person. The
14 director may waive this requirement if the facility was acquired from
15 a related person for its fair market value and the acquisition was not
16 tax motivated;

17 d. was not in service or use during the 90 day period immediately
18 prior to transfer of the title to the facility, provided that this restriction
19 for the 90 day period may be waived by the director if the director
20 determines that individuals employed at the facility may be considered
21 as "new employees" as defined in this section.

22 "New employee" means an individual residing and domiciled in this
23 State, hired by a taxpayer to fill a position or a job in this State which
24 previously did not exist in the taxpayer's business enterprise in this
25 State prior to the date on which the taxpayer's qualified investment is
26 placed in service or use in this State provided that:

27 a. the individual's duties in connection with the operation of the
28 business facility are on a regular, full-time and permanent basis or
29 regular part-time and permanent basis;

30 b. the individual is not a related individual as defined in subsection
31 (i) of section 51 of the federal Internal Revenue Code of 1986, 26
32 U.S.C. s.51, or does not own 10% or more of the business with such
33 ownership interest to be determined under the rules set forth in section
34 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267;

35 c. the individual is not an individual who worked for the taxpayer
36 during the six month period ending on the date the taxpayer's qualified
37 investment is placed in service or use and is rehired by the taxpayer
38 during the six month period beginning on the date the taxpayer's
39 qualified investment is placed in service or use in this State; and

40 d. the individual is not an employee for whom the taxpayer is
41 allowed a credit pursuant to section 19 of P.L.1983, c.303
42 (C.52:27H-78) or section 12 of P.L.1985, c.227 (C.55:19-13).

43 As used in this definition: "full-time" means employment for at least
44 140 hours per month at a wage not less than the State or federal
45 minimum wage, if either minimum wage provision is applicable to the
46 business and "permanent basis" does not include employment that is

1 temporary or seasonal and therefore the compensation paid to
2 temporary or seasonal employees will not be considered for purposes
3 of sections 4 and 6 of this act; and "part-time" means customarily
4 performing such duties at least 20 hours per week for at least six
5 months during the tax year. In no event shall the number of new
6 employees directly attributable to the qualified investment for the
7 purpose of the credit allowed pursuant to this act exceed the total
8 increase in the taxpayer's average employment in this State for the tax
9 year over the average employment in this State for the previous tax
10 year and in no event shall the number of new employees directly
11 attributable to the qualified investment for the purpose of the credit
12 allowed pursuant to this act exceed one half of the average
13 employment in this State for the tax year; and provided, that the
14 director may require that the net increase in the taxpayer's employment
15 in this State be determined and certified for the taxpayer's controlled
16 group.

17 Provided further, however, that individuals filling jobs saved as a
18 direct result of the taxpayer's qualified investment in property
19 purchased for business relocation or expansion on or after the
20 operative date of this act may be treated as new employees filling new
21 jobs if the taxpayer certifies the material facts to the director and the
22 director expressly finds that: but for the new employer purchasing the
23 assets of a business in bankruptcy under chapter 7 or 11 of the United
24 States Bankruptcy Code and such new employer making qualified
25 investment in property purchased for business relocation or expansion,
26 the assets would have been sold by the United States bankruptcy court
27 in a liquidation sale and the jobs so saved would have been lost; or but
28 for the taxpayer's qualified investment in property purchased for
29 business relocation or expansion in this State, the business facility in
30 this State would have closed and the employees located at the facility
31 would have lost their jobs; provided that the director shall not make
32 this certification unless the director finds that the business is insolvent
33 as defined in paragraph (32) of 11 U.S.C. s.101 or that the business
34 facility was destroyed in whole or in significant part by fire, flood or
35 act of God.

36 "New job" means a job which did not exist in the business of the
37 taxpayer in this State prior to the taxpayer's qualified investment being
38 made, and which is filled by a new employee.

39 "Partnership" means a syndicate, group, pool, joint venture or other
40 unincorporated organization through or by means of which any
41 business, financial operation or venture is carried on, and which is not
42 a trust or estate, a corporation or a sole proprietorship. The term
43 "partner" includes a member in such a syndicate, group, pool, joint
44 venture or organization.

45 "Property purchased for business relocation or expansion" means
46 improvements to real property and tangible personal property, but only

1 if that improvement or personal property was constructed or
2 purchased and placed in service or use by the taxpayer, for use as a
3 component part of a new or expanded business facility located in this
4 State.

5 a. Property purchased for business relocation or expansion shall
6 include only:

7 (1) improvements to real property placed in service or use on or
8 after the operative date of this act by the taxpayer;

9 (2) tangible personal property placed in service or use by the
10 taxpayer on or after the operative date of this act, with respect to
11 which depreciation, or amortization in lieu of depreciation, is
12 allowable in determining the corporation business tax liability of the
13 taxpayer under P.L.1945, c.162, and which has a remaining recovery
14 period of three or more years at the time the property is placed in
15 service or use in this State; or

16 (3) tangible personal property owned and used by the taxpayer at
17 a business location outside this State which is moved into this State on
18 or after the operative date of this act, for use as a component part of
19 a new or expanded business facility located in this State; provided that
20 the property is depreciable or amortizable personal property for
21 income tax purposes, and has a remaining recovery period of three or
22 more years at the time the property is placed in service or use in this
23 State.

24 b. Property purchased for business relocation or expansion shall
25 not include:

26 (1) Repair costs, including materials used in the repair, unless for
27 federal income tax purposes, the cost of the repair must be capitalized
28 and not expensed;

29 (2) Airplanes;

30 (3) Property which is primarily used outside this State with that use
31 being determined based upon the amount of time the property is
32 actually used both within and without this State;

33 (4) Property which is acquired incident to the purchase of the stock
34 or assets of the seller unless for good cause shown, the director
35 consents to waiving this disqualification; or

36 (5) Property purchased on or after the operative date of this act,
37 unless pursuant to a written contract to purchase executed prior to the
38 operative date of this act, the cost or consideration for which cannot
39 be quantified with any reasonable degree of accuracy at the time such
40 property is placed in service or use; provided that if the contract of
41 purchase specifies a minimum purchase price the amount thereof shall
42 be used to determine the qualified investment in such property under
43 section 5 of this act if the property otherwise qualifies as property
44 purchased for business relocation or expansion.

45 c. Property shall be deemed to have been purchased prior to a
46 specified date only if:

1 (1) the physical construction, reconstruction or erection of the
2 property was begun prior to the specified date, or such property was
3 constructed, reconstructed, erected or acquired pursuant to a written
4 contract as existing and binding on the purchase prior to the specified
5 date; or

6 (2) the machinery or equipment was owned by the taxpayer prior
7 to the specified date, or was acquired by the taxpayer pursuant to a
8 binding purchase contract which was in effect prior to the specified
9 date.

10 "Purchase" means any acquisition of property, including an
11 acquisition pursuant to a lease, but only if:

12 a. the property is not acquired from a person whose relationship to
13 the person acquiring it would result in the disallowance of deductions
14 under section 267 or subsection (b) of section 707 of the federal
15 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

16 b. the property is not acquired by one member of a controlled
17 group from another member of the same controlled group. The
18 director may waive this requirement if the property was acquired from
19 a related party for its then fair market value; and

20 c. the basis of the property for federal income tax purposes, in the
21 hands of the person acquiring it, is not determined:

22 (1) in whole or in part by reference to the federal adjusted basis of
23 such property in the hands of the person from whom it was acquired;
24 or

25 (2) under subsection (e) of section 1014 of the federal Internal
26 Revenue Code of 1986, 26 U.S.C. s.1014.

27 "Related person" means:

28 a. a corporation, partnership, association or trust controlled by the
29 taxpayer;

30 b. an individual, corporation, partnership, association or trust that
31 is in control of the taxpayer;

32 c. a corporation, partnership, association or trust controlled by an
33 individual, corporation, partnership, association or trust that is in
34 control of the taxpayer; or

35 d. a member of the same controlled group as the taxpayer.

36 As used in the definition of related person and as is applicable to
37 the definitions of purchase and small or mid-size business taxpayer,
38 "control," with respect to a corporation, means ownership, directly or
39 indirectly, of stock possessing 50% or more of the total combined
40 voting power of all classes of the stock of the corporation entitled to
41 vote; "control," with respect to a trust, means ownership, directly or
42 indirectly, of 50% or more of the beneficial interest in the principal or
43 income of the trust. The ownership of stock in a corporation, of a
44 capital or profits interest in a partnership or association or of a
45 beneficial interest in a trust shall be determined in accordance with the
46 rules for constructive ownership of stock provided in subsection (c) of

1 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
2 s.267, other than paragraph (3) of subsection (c) of that section.

3 "Small or mid-size business taxpayer" means a taxpayer that has an
4 annual payroll, as calculated pursuant to section 6 of P.L.1945, c.162
5 (C.54:10A-6), of [~~\$2,000,000~~] \$5,000,000 or less and annual gross
6 receipts, as calculated pursuant to section 6 of P.L.1945, c.162
7 (C.54:10A-6), of not more than [~~\$6,000,000~~] \$10,000,000 for the tax
8 year in which property purchased for business relocation or expansion
9 is placed in service or use by the taxpayer; provided that beginning
10 with tax years commencing on and after January 1 next following the
11 operative date of [~~this act~~] P.L.2002, c. (now pending before the
12 Legislature as this bill) the director shall prescribe the amount of
13 annual payroll and annual gross receipts which shall apply by
14 increasing each such amount hereinabove by an annual inflation
15 adjustment factor, which prescribed amount shall be rounded to the
16 next lowest multiple of \$50. "Annual inflation adjustment factor"
17 means the factor calculated by dividing the consumer price index for
18 urban wage earners and clerical workers for the nation, as prepared by
19 the United States Department of Labor for September of the calendar
20 year prior to the calendar year in which the tax year begins, by that
21 index for September of the calendar year two years prior to the
22 calendar year in which the tax year begins. The annual payroll of a
23 taxpayer shall include the employees of its domestic and foreign
24 affiliates, whether employed on a full-time, part-time, temporary, or
25 other basis, during the preceding 12 months. If a taxpayer has not
26 been in existence for 12 months, the payroll of the taxpayer shall be
27 divided by the number of weeks, including fractions of a week, that it
28 has been in business, and the result multiplied by 52. That amount
29 shall then be added to the 12 month payrolls of its domestic and
30 foreign affiliates to determine the annual payroll of the taxpayer for
31 purposes of this definition. The annual gross receipts of a taxpayer
32 shall include the annual gross receipts of its foreign and domestic
33 affiliates. The annual gross receipts of a taxpayer which has been in
34 business for three or more complete tax years means the average of the
35 annual gross receipts of the business for the last three tax years. For
36 purposes of this definition, the gross receipts of the taxpayer includes
37 receipts from sales of tangible personal property and services,
38 interests, rents, royalties, fees, commissions and receipts from any
39 other source, but less returns and allowances, sales of fixed assets,
40 interaffiliated transactions between a business and its domestic and
41 foreign affiliates, and taxes collected for remittance to a third party, as
42 shown on its books for federal income tax purposes. The annual
43 receipts of a taxpayer that has been in business for less than three
44 complete tax years means its total receipts for the period it has been
45 in business, divided by the number of weeks including fractions of a
46 week that it has been in business, and multiplied by 52. "Affiliates"

1 includes all concerns that are affiliates of each other when either
2 directly or indirectly one concern controls the other or a third party or
3 parties controls both. In determining whether concerns are
4 independently owned and operated and whether or not affiliation
5 exists, the director shall consider all appropriate factors, including
6 common ownership, common management and contractual
7 relationships. "Concern" means any business entity organized for
8 profit (even if its ownership is in the hands of a nonprofit entity),
9 having a place of business located in this State, and which makes a
10 contribution to the economy of this State through payment of taxes,
11 or the sale or use in this State of tangible personal property, or the
12 procurement or providing of services in this State, or the hiring of
13 employees who work in this State. "Concern" includes but is not
14 limited to any person as defined in R.S.1:1-2.

15 "Tax year" means the fiscal or calendar accounting year of a
16 taxpayer.

17 (cf: P.L.1993, c.170, s.2)

18

19 18. Section 3 of P.L.1993, c.170 (C.54:10A-5.6) is amended to
20 read as follows:

21 3. a. A taxpayer shall be allowed a credit against the portion of the
22 tax imposed in section 5 of P.L.1945, c.162 (C.54:10A-5), that is
23 attributable to and the direct consequence of the taxpayer's qualified
24 investment in a new or expanded business facility in this State which
25 results in the creation of at least five new jobs in the case of a small or
26 mid-size business taxpayer, or at least 50 new jobs in the case of any
27 other taxpayer, provided that the median compensation of all new jobs
28 included in the taxpayer's determination of the new jobs factor shall
29 not be less than \$27,000 per year, provided that beginning with tax
30 years commencing on and after January 1 next following the operative
31 date of this act the director shall adjust the median annual
32 compensation which shall apply as provided in subsection e. of this
33 section. The amount of this credit shall be determined and applied as
34 hereinafter provided.

35 b. The amount of the credit allowed shall be determined by
36 multiplying the amount of the taxpayer's "qualified investment,"
37 determined under section 5 of this act, in "property purchased for
38 business relocation or expansion" by the taxpayer's new jobs factor
39 determined under section 6 of this act. The product of this calculation
40 shall establish the maximum amount of credit allowed under this act
41 due to the qualified investment.

42 c. The amount of credit allowed shall be taken over a five year
43 period, at the rate of one-fifth of the amount thereof per tax year,
44 beginning with the tax year in which the taxpayer places the qualified
45 investment in service or use in this State.

46 d. For purposes of the credit allowed by this section, property shall

1 be considered placed in service or use in the earlier of the following
2 tax years:

3 (1) The tax year in which, under the taxpayer's depreciation
4 practice, the period for depreciation with respect to such property
5 begins; or

6 (2) The taxable year in which the property is placed in a condition
7 or state of readiness and availability for a specifically assigned
8 function.

9 e. Beginning with tax years commencing on and after January 1
10 next following the operative date of this act the director shall prescribe
11 the annual median compensation of all new jobs included in the
12 taxpayer's determination of new jobs factor by increasing the amount
13 of median compensation set forth in subsection a. of this section by an
14 annual inflation adjustment factor, which prescribed amount shall be
15 rounded to the next lowest multiple of \$50. "Annual inflation
16 adjustment factor" means the factor calculated by dividing the
17 consumer price index for urban wage earners and clerical workers for
18 the nation, as prepared by the United States Department of Labor for
19 September of the calendar year prior to the calendar year in which the
20 tax year begins, by that index for September of the calendar year two
21 years prior to the calendar year in which the tax year begins.

22 (cf: P.L.1993, c.170, s.3)

23

24 19. Section 6 of P.L.1993, c.170 (C.54:10A-5.9) is amended to
25 read as follows:

26 6. a. The new jobs factor used to determine the amount of credit
27 allowed under this act shall be based on the number of new jobs
28 created in this State that are directly attributable to the qualified
29 investment of the taxpayer.

30 b. (1) (a) For a taxpayer that is not a small or mid-size business
31 taxpayer, if 50 new jobs are created and filled during the tax year in
32 which the qualified investment is placed in service or use in this State,
33 the applicable new jobs factor shall be 0.005. For each 50 additional
34 new jobs over the initial 50, up to 1000 total new jobs, the applicable
35 new jobs factor of 0.005 shall be increased by adding thereto 0.005,
36 up to a maximum new jobs factor of 0.10.

37 (b) During each of the remaining four years of the five year credit
38 period, the taxpayer shall redetermine the new jobs factor for the tax
39 year on the annual return based on the average number of new
40 employees employed in new jobs during that tax year (determined on
41 a monthly basis) created as the direct result of the taxpayer's qualified
42 investment.

43 (2) (a) For a taxpayer that is a small or mid-size business taxpayer,
44 if five new jobs are created and filled during the tax year in which the
45 qualified investment is placed in service or use in this State, the
46 applicable new jobs factor shall be ~~[0.005]~~ 0.01. For each five

1 additional new jobs over the initial five, up to 100 total new jobs, the
2 applicable new jobs factor of ~~[0.005]~~ 0.01 shall be increased by
3 adding thereto ~~[0.005]~~ 0.01, up to a maximum new jobs factor of
4 ~~[0.10]~~ 0.20.

5 (b) During each of the remaining four years of the five year credit
6 period, the taxpayer shall redetermine the new jobs factor for the tax
7 year on the annual return based on the average number of new
8 employees employed in new jobs during that tax year (determined on
9 a monthly basis) created as the direct result of the taxpayer's qualified
10 investment.

11 c. An employee's position shall be directly attributable to the
12 qualified investment if:

13 (1) the employee's service is performed or the employee's base of
14 operations is at the new or expanded business facility;

15 (2) the position did not exist prior to the construction, renovation,
16 expansion or acquisition of the business facility and the making of the
17 qualified investment; and

18 (3) but for the qualified investment, the position would not have
19 existed.

20 d. With the annual corporation business tax return filed under
21 P.L.1945, c.162, for each tax year during the five year credit period
22 for a qualified investment, the taxpayer shall certify:

23 (1) the new jobs factor for that tax year for the qualified
24 investment;

25 (2) the amount of the credit allowed for that year for the qualified
26 investment;

27 (3) that the qualified investment property continued to be used in
28 the business, or if any of it was disposed of during the year, the date
29 of disposition, and that such property was not disposed of prior to
30 expiration of its recovery period, as determined under section 5 of this
31 act; and

32 (4) that the new jobs are directly attributable to the qualified
33 investment, are filled by individuals who meet the definition of new
34 employee, and the median annual compensation of all new employees
35 is equal to or greater than the minimum median annual compensation
36 required by section 3 of this act.

37 e. With the annual return for the corporation business tax imposed
38 under P.L.1945, c.162, filed for the tax year in which the qualified
39 investment is first placed in service or use in this State, the taxpayer
40 shall estimate and certify the number of new jobs reasonably projected
41 to be created by it in this State within the period prescribed in
42 subsection g. of this section, that are, or will be directly attributable to
43 the qualified investment of the taxpayer.

44 f. The hours of part-time employees shall be aggregated to
45 determine the number of equivalent full-time employees for the
46 purpose of determining the new jobs factor pursuant to subsection b.

1 of this section but shall not be so aggregated for the purposes of
2 subsection c. of this section.

3 g. With the annual return for the tax imposed under P.L.1945,
4 c.162, filed for the third tax year in which the qualified investment is
5 in service or use in this State, the taxpayer shall certify the actual
6 number of new jobs created by it in this State, that are directly
7 attributable to the qualified investment of the taxpayer.

8 (1) If the actual number of jobs created would result in a higher
9 new jobs factor, the credit allowed under this act shall be redetermined
10 and amended returns filed for the first and second tax years that the
11 qualified investment was in service or use in this State.

12 (2) If the actual number of jobs created would result in a lower
13 new jobs factor, the credit previously allowed under this act shall be
14 redetermined and amended returns filed for the first and second tax
15 years. Any additional taxes due under P.L.1945, c.162, shall be
16 remitted with the amended returns filed with the director, together
17 with any penalty and interest, for failure to pay any such tax when due
18 as provided in the State Uniform Tax [Uniform] Procedure Law,
19 R.S.54:48-1 et seq.

20 (cf: P.L.1993, c.170, s.6)

21

22 20. Section 8 of P.L.1993, c.170 (C.54:10A-5.11) is amended to
23 read as follows:

24 8. a. (1) Property of a small or mid-size business taxpayer shall
25 not be treated as disposed of under section 7 of this act by reason of
26 a mere change in the form of conducting the business as long as the
27 property is retained in a business of a small or mid-size business
28 taxpayer in this State, and the taxpayer retains a controlling interest in
29 the successor business. In this event, the successor business shall be
30 allowed to claim the amount of credit still available with respect to the
31 new or expanded business facility or facilities transferred, and the
32 small or mid-size business taxpayer-transferor shall not be required to
33 redetermine the amount of credit allowed in earlier tax years.

34 (2) Property of a taxpayer that is not a small or mid-size business
35 taxpayer shall not be treated as disposed of under section 7 of this act
36 by reason of a mere change in the form of conducting the business as
37 long as the property is retained in a business of a taxpayer in this
38 State, and the taxpayer retains a controlling interest in the successor
39 business. In this event, the successor business shall be allowed to
40 claim the amount of credit still available with respect to the new or
41 expanded business facility or facilities transferred, and the
42 taxpayer-transferor shall not be required to redetermine the amount of
43 credit allowed in earlier tax years.

44 b. (1) Property of a small or mid-size business taxpayer shall be
45 treated as disposed of under section 7 of this act by reason of a change
46 in the form of conducting the business if the property is not retained

1 in a business of a small or mid-size business taxpayer in this State in
2 which the small or mid-size business taxpayer retains a controlling
3 interest.

4 (2) Property of a small or mid-size business taxpayer shall not be
5 treated as disposed of under section 7 of this act by reason of any
6 transfer or sale to a successor small or mid-size business taxpayer
7 which continues to operate the new or expanded business facility in
8 this State. Upon transfer or sale, the successor shall acquire the
9 amount of credit that remains available under this act for each
10 subsequent tax year and the taxpayer-transferor shall not be required
11 to redetermine the amount of credit allowed in earlier years.

12 (3) Property of a business that is not a small or mid-size business
13 taxpayer shall not be treated as disposed of under section 7 of this act
14 by reason of any transfer or sale to a successor taxpayer which
15 continues to operate the new or expanded business facility in this
16 State. Upon transfer or sale, the successor shall acquire the amount
17 of credit that remains available under this act for each subsequent tax
18 year and the taxpayer-transferor shall not be required to redetermine
19 the amount of credit allowed in earlier years.

20 (4) Property of a small or mid-size business taxpayer shall be
21 treated as disposed of under section 7 by reason of any transfer or sale
22 to a successor that is not a small or mid-size business taxpayer,
23 whether or not the successor continues to operate the business in this
24 State. Upon such transfer or sale, the successor shall not acquire any
25 amount of credit under this act and the taxpayer-transferor shall
26 redetermine, as required by this act, the amount of credit allowed in
27 earlier years.

28 (cf: P.L.1993, c.170, s.8)

29

30 21. N.J.S.54A:8-6 is amended to read as follows:

31 54A:8-6. Requirements concerning returns, notices, records and
32 statements. (a) General. The director may prescribe regulations as
33 to the keeping of records, the content and form of returns and
34 statements, and the filing of copies of federal income tax returns and
35 determinations. The director may require any person, by regulation or
36 notice served upon such person, to make such returns, render such
37 statements, or keep such records, as the director may deem sufficient
38 to show whether or not such person is liable under this act for tax or
39 for collection of tax.

40 (b) Partnerships. **[Every]** (1) Each entity classified as a
41 partnership for federal income tax purposes, including but not limited
42 to a partnership [or], a limited liability partnership, or a limited
43 liability company, having a resident [partner] owner of an interest in
44 the entity or having any income derived from New Jersey sources,
45 shall make a return for the taxable year setting forth all items of
46 income, gain, loss and deduction and such other pertinent information

1 as the director may by regulations and instructions prescribe. The
2 director shall prescribe a State return form that, at a minimum,
3 includes the name and address of each partner, member, or other
4 owner of an interest in the entity however designated, of the
5 [partnership] entity for taxable years ending on or after December 31,
6 1994. Such return shall be filed on or before the fifteenth day of the
7 fourth month following the close of each taxable year.

8 (2) (A) Each entity classified as a partnership for federal income
9 tax purposes, including but not limited to a partnership , a limited
10 liability partnership, or a limited liability company, that has more than
11 two owners shall at the prescribed time for making the return required
12 under this subsection make a payment of a filing fee of \$150 for each
13 owner of an interest in the entity, up to a maximum of \$250,000.

14 (B) Each entity required to make a payment pursuant to
15 subparagraph (A) of this paragraph shall also make, at the same time
16 as making its payment pursuant to subparagraph (A) of this paragraph,
17 an installment payment of its filing fee for the succeeding return period
18 in an amount equal to 50% of the amount required to be paid pursuant
19 to subparagraph (A). The amount of the installment payment shall be
20 credited against the amount of the filing fee due for the succeeding
21 return period, or, if the amount of the installment payment exceeds the
22 amount of the filing fee due for the succeeding return period,
23 successive return periods.

24 (3) Each [partnership or limited liability partnership] entity
25 required to file a return under this subsection for any taxable year
26 shall, on or before the day on which the return for the taxable year is
27 required to be filed, furnish to each person who is a partner or other
28 owner of an interest in the entity however designated, or who holds an
29 interest in such [partnership] entity as a nominee for another person
30 at any time during that taxable year a copy of such information
31 required to be shown on such return as the director may prescribe.

32 (4) For the purposes of this subsection, "taxable year" means a year
33 or period which would be a taxable year of the partnership if it were
34 subject to tax under this act.

35 (c) Information at source. The director may prescribe regulations
36 and instructions requiring returns of information to be made and filed
37 on or before February 15 of each year as to the payment or crediting
38 in any calendar year of amounts of \$100.00 or more to any taxpayer
39 under this act. Such returns may be required of any person, including
40 lessees or mortgagors of real or personal property, fiduciaries,
41 employers, and all officers and employees of this State, or of any
42 municipal corporation or political subdivision of this State, having the
43 control, receipt, custody, disposal or payment of interest, rents,
44 salaries, wages, premiums, annuities, compensations, remunerations,
45 emoluments or other fixed or determinable gains, profits or income,
46 except interest coupons payable to bearer. A duplicate of the

1 statement as to tax withheld on wages, required to be furnished by an
2 employer to an employee, shall constitute the return of information
3 required to be made under this section with respect to such wages.

4 (d) Notice of qualification as receiver, et cetera. Every receiver,
5 trustee in bankruptcy, assignee for benefit of creditors, or other like
6 fiduciary shall give notice of his qualification as such to the director,
7 as may be required by regulation.

8 (cf: P.L.1995, c.96, s.14)

9

10 22. The following are repealed:

11 Sections 1 through 16, 18 and 19 of P.L.1973, c.31 (C.54:10D-1
12 et seq.); and

13 Sections 1 through 19 and 21 through 24 of P.L.1973, c.170
14 (C.54:10E-1 through 54:10E-19 and C.54:10E-21 through 54:10E-
15 24).

16

17 23. (New section) a. Notwithstanding the repeal of the "Savings
18 Institutions Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), and the
19 Corporation Income Tax Act (1972), P.L.1973, c.170 (C.54:10E-1 et
20 seq.), pursuant to section 22 of P.L. , c. (now pending before the
21 Legislature as this bill), their repeal shall not affect any obligation, lien
22 or duty to pay taxes, interest or penalties which have accrued or may
23 accrue by virtue of any taxes imposed pursuant to the provisions of the
24 laws repealed by section 22 of P.L. , c. , or which may be imposed
25 with respect to any redetermination, correction, recomputation or
26 deficiency assessment; and provided that all taxes and returns which
27 would have been due and payable for the tax period ending prior to the
28 enactment of P.L. , c. (now pending before the Legislature as this
29 bill) shall be due and payable as if the laws were in effect; and
30 provided that these repeals shall not affect the legal authority of the
31 State to audit records and assess and collect taxes due or which may
32 be due, together with such interest and penalties as have accrued or
33 would have accrued thereon under the provisions of the law repealed;
34 and provided that the repeal by section 22 of P.L. , c. , shall not
35 affect any determination of, or affect any proceeding for, the
36 enforcement thereof.

37 b. In the case of a taxpayer that was taxpayer as defined pursuant
38 to P.L.1973, c.170 (C.54:10E-1 et seq.), for the fiscal or calendar
39 accounting period next ending after the effective date of this section,
40 "basis of the facts shown on the return of the taxpayer for, and the law
41 applicable to, the preceding fiscal or calendar accounting year" shall,
42 for the purposes of paragraph (1) of subsection d. of section 5 of
43 P.L.1981, c.184 (C.54:10A-15.4), for the fiscal or calendar year next
44 beginning after the effective date of this act, be deemed to be the basis
45 of the facts shown on the return of the taxpayer for, and the law
46 applicable to, the preceding fiscal or calendar accounting year pursuant

1 to P.L.1973, c.170 (C.54:10E-1 et seq.).

2 c. In the case of a taxpayer that was a taxpayer as defined pursuant
3 to P.L.1973, c.31 (C.54:10D-1 et seq.), for the fiscal or calendar
4 accounting period next ending after the effective date of this section,
5 "basis of the facts shown on the return of the taxpayer for, and the law
6 applicable to, the preceding fiscal or calendar accounting year" shall,
7 for the purposes of paragraph (1) of subsection d. of section 5 of
8 P.L.1981, c.184 (C.54:10A-15.4), for the fiscal or calendar year next
9 beginning after the effective date of this act, be deemed to be the basis
10 of the facts shown on the return of the taxpayer for, and the law
11 applicable to, the preceding fiscal or calendar accounting year pursuant
12 to P.L.1973, c.31 (C.54:10D-1 et seq.).

13

14 24. (New section) a. The director shall adopt regulations in
15 accordance with the "Administrative Procedure Act," P.L.1968, c.410
16 (C.52:14B-1 et seq.), and prescribe forms to administer the provisions
17 of this act.

18 b. Notwithstanding the provisions of P.L.1968, c.410 to the
19 contrary, the director may adopt immediately upon filing with the
20 Office of Administrative Law, such regulations as the director deems
21 necessary to implement the provisions of this act, which regulations
22 shall be effective for a period not to exceed 180 days from the date of
23 the filing. The regulations may thereafter be amended, adopted or
24 readopted by the director as the director deems necessary in
25 accordance with the requirements of P.L.1968, c.410.

26

27 25. (New section) a. (1) For the purposes of determining the
28 sales fraction pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
29 and for the purposes of the definition of New Jersey gross receipts
30 pursuant to section 7 of P.L. , c. (C.)(now pending before
31 the Legislature as this bill), the portion of receipts received from an
32 investment company arising from the sale of management,
33 administrative or distribution services to that investment company shall
34 be deemed to arise from services performed within the State equal to
35 the product of:

36 (a) the total of the receipts from the sale of those services; and

37 (b) a fraction, the numerator of which is the sum of the monthly
38 percentages determined for each month of the investment company's
39 taxable year for federal income tax purposes which taxable year ends
40 within the privilege period of the taxpayer (excluding any month
41 during which the investment company had no outstanding shares) and
42 the denominator of which is the number of those monthly percentages.

43 (2) For the purposes of this subsection:

44 "Monthly percentage" for each month shall be determined by
45 dividing the number of shares in the investment company that are
46 owned on the last day of the month by the number of shareholders that

1 are residents of this State by the total number of shares in the
2 investment company outstanding on that date;

3 "Resident" means, in the case of an individual, "resident taxpayer"
4 pursuant to N.J.S.54A:1-2, in the case of an estate or trust "resident
5 estate or trust" pursuant to N.J.S.54A:1-2; a business entity is resident
6 in this State if the location of the actual seat of management or control
7 is in this State. It shall be presumed that the residence of a
8 shareholder, with respect to any month, is the shareholder's mailing
9 address on the records of the investment company as of the last day of
10 the month;

11 "Investment company" means a regulated investment company, as
12 defined in section 851 of the federal Internal Revenue Code of 1986,
13 26 U.S.C. s.851, and a partnership to which subsection (a) of section
14 7704 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.7704
15 applies by virtue of paragraph (3) of that section and that meets the
16 requirements of subsection (b) of section 851 of the federal Internal
17 Revenue Code of 1986, 26 U.S.C. s.851. This definition shall be
18 applied to the taxable year for federal income tax purposes of the
19 business entity that is asserted to constitute an investment company
20 that ends within the privilege period of the taxpayer;

21 "Receipts from an investment company" include amounts received
22 directly from an investment company as well as amounts received from
23 the shareholders in that investment company, in their capacity as
24 shareholders.

25 "Management services" means the rendering of investment advice
26 to an investment company, making determinations as to when sales
27 and purchases of securities are to be made on behalf of an investment
28 company, or the selling or purchasing of securities constituting assets
29 of an investment company, and related activities, but only if the
30 activity is performed pursuant to a contract with the investment
31 company entered into pursuant to section 15(a) of the federal
32 Investment Company Act of 1940 (54 Stat. 789), as amended;

33 "Distribution services" means the services of advertising, servicing
34 investor accounts including redemptions, marketing shares or selling
35 shares of an investment company; provided however, that in the case
36 of advertising, servicing investor accounts including redemptions, or
37 marketing shares, only if that service is performed by a person who is,
38 or was in the case of a closed end company, also engaged in the
39 service of selling those shares. In the case of an open end company,
40 the service of selling shares shall be performed pursuant to a contract
41 entered into pursuant to section 15(b) of the federal Investment
42 Company Act of 1940 (54 Stat. 789), as amended;

43 "Administration services" includes clerical, accounting,
44 bookkeeping, data processing, internal auditing, legal and tax services
45 performed for an investment company but only if the provider of the
46 service, during the privilege period in which the service is sold, also

1 sells management or distribution services to the investment company.

2 b. (1) For the purpose of determining the sales fraction pursuant
3 to section 6 of P.L.1945, c.162 (C.54:10A-6), and for the purposes of
4 the definition of New Jersey gross receipts pursuant to section 7 of
5 P.L. , c. (C.)(now pending before the Legislature as this bill)
6 for a taxpayer that is a registered securities or commodities broker or
7 dealer, the following receipts shall be deemed to arise from services
8 performed within this State:

9 (a) Receipts constituting brokerage commissions derived from the
10 execution of securities or commodities purchase or sales orders for the
11 accounts of customers shall be deemed to arise from services
12 performed at the mailing address in the records of the taxpayer of the
13 customer who is responsible for paying the commissions.

14 (b) Receipts constituting margin interest earned on behalf of
15 brokerage accounts shall be deemed to arise from services performed
16 at the mailing address in the records of the taxpayer of the customer
17 who is responsible for paying the margin interest.

18 (c) Gross income, including any accrued interest or dividends,
19 from principal transactions for the purchase or sale of stocks, bonds,
20 foreign exchange and other securities or commodities (including
21 futures and forward contracts, options and other types of securities or
22 commodities derivatives contracts) shall be deemed to arise from
23 services performed within this State to the extent that production
24 credits are awarded to branches, offices or employees of the taxpayer
25 within this State as a result of those principal transactions. For
26 purposes of this subsection, gross income from principal transactions
27 shall be determined after the deduction of any cost incurred by the
28 taxpayer to acquire the securities or commodities. For purposes of
29 this subsection, "production credits" means credits granted pursuant
30 to the internal accounting system used by the taxpayer to measure the
31 amount of revenue that should be awarded to a particular branch or
32 office or employee of the taxpayer which is based, at least in part, on
33 the branch's, the office's or the employees' particular activities. Upon
34 request, the taxpayer shall be required to furnish a detailed explanation
35 of such internal accounting system to the director.

36 (d) Receipts constituting fees earned by the taxpayer for advisory
37 services to a customer in connection with the underwriting of
38 securities for such customer (such customer being the entity which is
39 contemplating issuing or is issuing securities) or fees earned by the
40 taxpayer for managing an underwriting shall be deemed to arise from
41 services performed at the mailing address in the records of the
42 taxpayer of the customer who is responsible for paying the fees.

43 (e) Receipts constituting the primary spread or selling concession
44 from underwritten securities shall be deemed to arise from services
45 performed within this State to the extent that production credits are
46 awarded to branches, offices or employees of the taxpayer within the

1 State as a result of the sale of the underwritten securities. For the
2 purposes of this subsection, "primary spread" means the difference
3 between the price paid by the taxpayer to the issuer for the securities
4 being marketed and the price received from the subsequent sale of the
5 underwritten securities at the initial public offering price, less any
6 selling concession and any fees paid to the taxpayer for advisory
7 services or any manager's fees, if the fees are not paid by the customer
8 to the taxpayer separately; "public offering price" means the price
9 agreed upon by the taxpayer and the issuer at which the securities are
10 to be offered to the public; and "selling concession" means the amount
11 paid to the taxpayer for participating in the underwriting of a security
12 if the taxpayer is not the lead underwriter.

13 (f) Receipts constituting interest earned by the taxpayer on loans
14 and advances made by the taxpayer to a corporation affiliated with the
15 taxpayer but with which the taxpayer is not permitted or required to
16 file a combined report pursuant to the "Corporation Business Tax Act
17 (1945)" shall be deemed to arise from services performed at the
18 principal place of business of the affiliated corporation.

19 (g) Receipts constituting account maintenance fees shall be deemed
20 to arise from services performed at the mailing address in the records
21 of the taxpayer of the customer who is responsible for paying the
22 account maintenance fees.

23 (h) Receipts constituting fees for management or advisory services,
24 including fees for advisory services in relation to a merger or
25 acquisition activities but excluding fees paid for services described in
26 subsection a. of this section, shall be deemed to arise from services
27 performed at the mailing address in the records of the taxpayer of the
28 customer who is responsible for paying the fees.

29 (2) For purposes of this subsection:

30 "Securities" has the meaning provided by paragraph (2) of
31 subsection (c) of section 475 of the federal Internal Revenue Code of
32 1986, 26 U.S.C. s.475;

33 "Commodities" has the meaning provided by paragraph (2) of
34 subsection (e) of section 475 of the federal Internal Revenue Code of
35 1986, 26 U.S.C. s.475; and

36 "Registered securities or commodities broker or dealer" means a
37 broker or dealer registered as such by the federal Securities and
38 Exchange Commission or the federal Commodities Futures Trading
39 Commission.

40 (3) If a taxpayer receives any of the receipts enumerated in
41 paragraph (1) of this subsection as a result of a securities
42 correspondent relationship that the taxpayer has with another
43 registered securities or commodities broker or dealer and the taxpayer
44 acted in this relationship as the clearing firm, those receipts shall be
45 deemed to arise from services performed within this State to the extent
46 set forth in paragraph (1) of this subsection. The amount of those

1 receipts shall exclude the amount the taxpayer is required to pay to the
2 correspondent firm for the correspondent relationship. If the taxpayer
3 receives any of the receipts enumerated in paragraph (1) of this
4 subsection as a result of a securities correspondent relationship the
5 taxpayer has with another registered securities or commodities broker
6 or dealer and the taxpayer acted in this relationship as the introducing
7 firm, those receipts shall be deemed to arise from services performed
8 within this State to the extent set forth in paragraph (1) of this
9 subsection.

10 (4) If, for purposes of paragraph (1) of this subsection, the
11 taxpayer is unable from its records to determine the mailing address of
12 the customer, the receipts enumerated in subsection (1) shall be
13 deemed to arise from services performed at the branch or office of the
14 taxpayer that generates the transaction for the customer that generated
15 the receipts.

16

17 26. (New section) Notwithstanding any provision of subsection (k)
18 of section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal
19 Revenue Code, including but not limited to 26 U.S.C. s.381 or any
20 successor or equivalent provision, that permits a corporation to use
21 the net operating losses of another for federal income tax purposes
22 following certain transactions, including but not limited to those
23 qualifying as reorganizations under the provisions of subparagraphs
24 (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of section
25 368 of the federal Internal Revenue Code, 26 U.S.C. s.368, a net
26 operating loss for a privilege period ending after June 30, 1984, may
27 be carried over and allowed as a deduction only by the corporation
28 that sustained the loss; provided however, that in the case of a merger
29 of two or more corporations pursuant to statute of this State or any
30 other jurisdiction, including a merger that has the effect of changing
31 the jurisdiction of incorporation, the net operating loss may be carried
32 over by the corporation that sustained the loss and that is also the
33 surviving corporation following the merger. No net operating loss
34 shall be allowed as a deduction by a corporation resulting from a
35 consolidation pursuant to statute of this State or of any other
36 jurisdiction.

37

38 27. This act shall take effect immediately and apply to privilege
39 periods and taxable years beginning on or after January 1, 2002,
40 provided however that section 26 shall apply to privilege periods
41 ending after June 30, 1984.

42

43

STATEMENT

44

45 This bill, designated the Business Tax Reform Act, revises and
46 updates the corporation business tax to close a number of loopholes

1 and limit certain tax benefits. In doing so the bill makes some
2 fundamental reforms to the New Jersey business tax structure.

3 The New Jersey system of taxes on business income is broken.
4 Twenty years ago, the corporation business tax raised \$838 million –
5 about 15 percent of the State’s total tax revenue. Just five years ago,
6 this proportion had dropped to 8 percent and by State Fiscal Year
7 2001, it stood at 6.6 percent.

8 This is largely the result of proliferating loopholes that have
9 permitted many profitable companies to avoid paying virtually any
10 business tax. In 1999, the last tax year for which statistics are
11 available, nearly 77 percent of all companies paid only the statutory
12 minimum tax of \$200. Of the 50 companies with the largest payrolls
13 in New Jersey, 30 paid only the \$200 minimum. That is less tax than
14 would be paid by a single parent who had one child and who earned
15 \$25,000 a year. Ten of these 50 companies, some of which are
16 headquartered here, had an aggregate payroll of \$3.5 billion, told their
17 shareholders they had \$13.3 billion in profits, \$2 billion of which
18 profits would have been attributed to New Jersey profits, and subject
19 to our corporation business tax, based on how they apportion their
20 income among various states. That \$2 billion in New Jersey profits
21 would have generated \$177 million in corporation business tax
22 revenues. But not one of those 10 companies paid more than the \$200
23 minimum in corporate business tax in 2000. That is not fair and that
24 is not equitable.

25 Tax loopholes allow multi-state corporations to transfer their
26 profits to related out-of-State and offshore companies. Many of these
27 companies use these loopholes to reduce their net income to little or
28 nothing, thus avoiding the New Jersey taxation.

29 The corporation business tax does not reach some out-of-state
30 companies that do business here. Instead, these companies are able to
31 take advantage of the state’s lucrative market, extensive infrastructure,
32 and geographic prominence, while paying no corporate taxes to New
33 Jersey. If some companies exploit loopholes and avoid paying their
34 fair share then the corporate citizens who pay their fair share are put
35 at a competitive economic disadvantage with companies that evade or
36 exploit the system. This bill provides a level playing field for all
37 businesses, large and small, that invest in New Jersey, employ our
38 citizens and do business here.

39 This bill corrects these core problems with the tax structure in three
40 ways.

41 First, it closes numerous loopholes that allow profitable companies
42 to reduce their net New Jersey income on paper and avoid their true
43 tax liability and avoid paying their fair share.

44 Second, it provides an alternative minimum assessment to
45 accurately measure a company’s economic presence in New Jersey.
46 The bill allows companies to assess their tax liability with a formula

1 that uses either reported gross receipts or gross profits as a
2 determining factor. Companies will then pay this alternative
3 assessment, instead of the current corporation business tax, if it is
4 larger than the corporation business tax liability.

5 Third, the bill establishes a revenue stream that captures
6 enforcement and processing costs that New Jersey incurs from
7 processing the vast network of limited liability companies and
8 partnerships.

9 At the same time, the bill takes affirmative steps to protect small
10 businesses. The bill reduces by more than 13 percent the rate at which
11 small businesses are taxed under the corporation business tax, resulting
12 in a tax decrease for approximately 20,000 small businesses. Further,
13 the bill includes provisions designed to encourage job creation by
14 doubling the new jobs factor and expanding the eligibility for midsized
15 businesses through an expanded New Jobs Investment Tax Credit
16 program.

[Corrected Copy]

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2501

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2002

The Assembly Budget Committee reports favorably Assembly Bill No. 2501 with committee amendments.

Assembly Bill No. 2501, as amended, is designated the Business Tax Reform Act. The Business Tax Reform Act is intended to reform New Jersey's system of taxation of corporations and other business entities, through revision of the corporation business tax and other changes of law.

The bill updates the law to increase equity among business taxpayers and closes numerous loopholes that allow many profitable companies to reduce their taxable New Jersey income. Second, the bill creates an alternative minimum assessment to measure a company's economic activity in New Jersey in situations where the traditional "taxable income" measure is not a fair measure. Third, the bill affects the tracking of the income of business organizations, like partnerships, that do not themselves pay taxes but that distribute income to their owners, the eventual taxpayers. The bill also provides several new tax advantages to small business.

"LOOPHOLE CLOSERS" AND TAX BASE CHANGES.

Revenues from the corporation business tax (CBT), the State's main income-measured business tax, have been declining in the face of apparent economic expansion; there is evidence that large corporations with apparently substantial economic activity in this State and substantial profit have managed to avoid having any of this income become taxable by New Jersey. Some large and apparently expanding corporations have managed to avoid having any taxable income. New Jersey's experience is part of a national trend, especially in so-called "separate entity" states like New Jersey, where each corporate entity within an affiliated group computes its tax separately, and corporations may structure transactions between affiliates in various states to avoid tax. Effective corporate tax rates in the states fell during and despite the economic expansion of the 1990s.

The "loophole closers" address various ways in which corporations reduce or avoid tax on income, restoring equity between the corporations that can use these methods and those that cannot, or do not. The bill also makes a number of changes to the tax base which increase the taxation equity between corporations that are currently formally different but substantively similar.

Disallowance of deduction of intangibles expenses paid to a related party. The bill limits the ability of a taxpayer to deduct royalties and other intangible expenses and costs and related interest when paid to affiliates. The provision addresses, but does not apply solely to, a tax avoidance device that allows a multicorporate structure to export income from a state where the income is generated as a form of expense (for example, as a royalty payment to an out-of-state affiliate that the paying corporation deducts from its income) and then import the income back (for example as a tax-free dividend or as a loan). The bill continues to allow such deductions in areas that are established as "non-tax avoidance" situations.

The bill gives the Director of the Division of Taxation authority to determine: (1) whether a taxpayer has met its evidentiary burden of establishing by clear and convincing evidence that the add-back of an expense is unreasonable, or (2) that it is appropriate to enter into agreements or compromises with the taxpayer to produce an equitable level of taxation. As the disallowance of the deduction is the general rule, this has the effect of requiring the taxpayer to secure prior approval (through general regulation or case-by-case determination) for the deduction before departing from the general rule.

Another exception provided to the general rule of disallowance is for interest and intangible expenses directly or indirectly paid, accrued or incurred to a related member in a foreign nation with a comprehensive income tax treaty with the United States. The director may require the disclosure of such information as the director deems necessary to determine that the taxpayer's situation falls within the exception.

The deduction may also be permitted upon a showing that the arrangement involves an unrelated third party.

Disallowance of deduction of interest paid to a related party. The bill also restricts deductibility of inter-affiliate interest expenses. However, the bill again continues to such deductions in areas that are established as "non-tax avoidance" situations.

The first exception is intended to avoid unfairly duplicative taxation, and sets the following criteria for determining whether such a situation exists: (1) the principal purpose of the transaction was not to avoid taxes; (2) the interest was paid at an arm's length rate pursuant to an arm's length contract; and (3) the transaction was already subject to tax at levels approximating New Jersey's corporation business tax as determined by (a) the fact that the related member was subject to tax on income or receipts by another state or

national entity, (b) a measure of the tax included the interest received from the related member, and (c) the foreign tax on the interest was within at least three percentage points of the tax rate that would have been applied to the interest income if it were taxable in this State.

The second exception is permitted when the taxpayer establishes that the disallowance of the deduction is unreasonable. As with the similar provision for intangible costs, the disallowance is unreasonable if it would violate the policy goals of the disallowance. For example, the bill permits a taxpayer to keep the deduction if the interest paid is ultimately paid to a third-party unrelated lender, as evidenced by a guarantee provided by the taxpayer to the outside lender. If a taxpayer can demonstrate that, despite the absence of a guarantee, interest is being paid on a loan that was simply “pushed down” from a third party lender, then it would be unreasonable to disallow the interest deduction. As the deduction is retained by exception to a general rule that disallows the deduction, the effect is to require the taxpayer to secure prior approval from the director (through general regulation or case-by-case determination) before departing from the general rule of nondeductibility.

The third exception permits the deduction if the taxpayer establishes, by a preponderance of the evidence as determined by the director, that the interest payment involves a related entity in a foreign nation with a comprehensive income tax treaty with the United States, so long as the taxpayer fully discloses the transaction on its return as prescribed by the director.

A fourth exception, noted above, is intended to cover the situation where debt is “pushed down” from a corporate parent to a subsidiary but involves a regular, market-rate loan from an outside lender. This exception permits the deduction if the transaction involves an independent lender, and the taxpayer taking the deduction guarantees the debt on which the interest is required.

Throwout Rule. Under the apportionment formula that is used for determining the portion of a corporation’s total taxable income that is taxable by New Jersey, the sales fraction is the most heavily weighted factor. The more goods that are shipped out of New Jersey, the lower this factor is. Some of those sales are made in states where the corporation is not subject to tax because the corporation has no operations in those states. These sales are typically referred to as “nowhere sales” because they result in income being assigned so that it is taxed nowhere. The bill closes this loophole by “throwing out” the “nowhere sales” from the denominator of the sales fraction, which causes more of the income of the corporation to be assigned to states where the corporation actually has operations.

The bill limits tax liability related to the throwout rule for affiliated groups to prevent exceptionally large impacts on tax burden. If the calculation of tax liability after the exclusion of certain receipts from the denominator is more than \$5 million higher than the tax liability for

the group calculated without the exclusion of the receipts, then the additional liability for the group is limited to \$5 million, and may be spread proportionately among them. The director is given authority to assign a single corporation within the group to act as key corporation for any adjustment as the director may prescribe.

Extending the reach of the CBT to Constitutional limits. The bill extends the reach of the New Jersey CBT to a corporation that derives any income from New Jersey sources. Under current law, the CBT is imposed upon a corporation "doing business," employing or owning capital property, or maintaining an office in the State. By extending the reach of the CBT to the income of all corporations that derive income from New Jersey, New Jersey extends the reach of the CBT to the full extent permitted under the United States Constitution and federal statute.

Nonoperational income fully taxed. The bill requires that 100 percent assignment of "nonoperational income" (income that is unrelated to the usual operations of the business, usually headquarters-managed investment income) be assigned to the headquarters state to the extent permitted under the Constitution and statutes of the United States. This income usually may only be taxed by the headquarters state, but current law treats it like income from operations and apportions it by formula, which allows a significant part of the nonoperational income of New Jersey headquartered companies to escape taxation. The bill recognizes that income wholly generated by activities in New Jersey should be subject to New Jersey tax.

Disallow deduction for income taxes paid to foreign nations. Like laws enacted in several other states, the bill disallows a deduction for taxes paid to foreign nations. This disallowance parallels that adopted in 1992 for income taxes paid to other states.

Clarification of research and development expense deduction. The bill disallows the deduction of certain research and development expenses that are used to claim the New Jersey research and development credit but are not used to claim a federal research and development credit. (Without this disallowance a taxpayer would sometimes be able to claim both a New Jersey deduction and a New Jersey credit based on the same expenses.)

Investment company income. Investment companies enjoy a preferred tax status under the CBT. New Jersey defines an investment company as a business engaged in managing its own portfolio. The CBT currently defines the taxable income of such companies as 25 percent of their entire net income. The bill raises the proportion of net entire net income subject to tax to 40 percent.

Savings Institutions. In view of federal law changes that modernize the powers and treatment of savings banks, building and loan associations and savings and loan associations, the bill subjects these institutions to the CBT imposed on competing depository and credit institutions.

Deduction for dividends received from another corporation.

Current law excludes 100 percent of dividends received from companies in which the taxpayer has an ownership interest of 80 percent or more; and excludes 50 percent of all other dividends received. The bill disallows the deduction for dividends received from a corporation in which the taxpayer has less than a 50 percent ownership interest.

Locating the receipts from financial services. The bill provides that for the purpose of determining the sales fraction for allocating New Jersey receipts of broker/dealers and asset management firms, the sales occur where the customers receive the services, as opposed to where the services are performed as under current rules. This assures that New Jersey collects a fair share of tax from transactions that have as their practical effect a use of New Jersey economic opportunities and as a side effect removes a barrier to these financial service providers locating in New Jersey.

Codification of Net Operating Loss Rule. The bill codifies the New Jersey regulations governing the use of net operating losses (NOLs) with the goal of foreclosing further challenges to them. The regulations were adopted in 1986 (see N.J.A.C.18:7-5.13), and the New Jersey Supreme Court found them to be validly retroactive to all tax years ending after June 30, 1984, coinciding with the effective date of the 1985 law, P.L.1985, c.143, that first permitted the carry-forward of NOLs. The Supreme Court in that case upheld the validity of the regulations in the face of a challenge that they exceeded the Legislature's intent.

ALTERNATIVE MINIMUM ASSESSMENT.

The bill implements an alternative minimum assessment (AMA) that will accurately measure a company's economic presence in New Jersey and assure that companies that enjoy the advantages of the New Jersey economy will be required to satisfy a levy beyond the \$200 minimum now in the law. S corporations, professional corporations, investment companies, pass-through entities, and corporations operating as cooperative under federal requirements will be exempt from the AMA.

The AMA also assures a fair measure of support of State services from firms that exploit the State's marketplace, but are exempt from a tax like the CBT pursuant to federal Pub. L. 86-272, 73 Stat. 555, 15 U.S.C. s 381 et seq. This reform will effectively capture the value of the activities in New Jersey of out-of-state companies that currently pay no corporate income taxes in New Jersey.

Companies will assess their AMA liability with a formula that uses either allocated gross receipts or allocated gross profits as a determining factor. The bill defines gross profits to mean gross receipts minus the cost of goods sold, and the bill adopts the federal definition of cost of goods. By permitting companies to use their

gross profits to calculate their AMA, the bill protects high volume, low margin industries such as retailers, food stores, car dealers and others that are so vital to the state's economy from bearing a disproportionate burden. The bill gives the Director of the Division of Taxation the authority to expand or adjust the definition of "cost of goods sold" if justified to achieve a more equitable result among the various types of businesses subject to the alternative calculation.

Corporations subject to the CBT will be required to compute the AMA and pay the greater of the CBT or the AMA. Businesses with gross profits of less than \$1 million are not subject to the AMA. Businesses with gross profits of between \$1 million and \$10 million are subject to AMA at a rate of .0025 times the amount of gross profits over \$1 million multiplied by 1.11111 (which has the effect of phasing out the \$1 million exclusion between \$1 million and \$10 million). For businesses with more than \$10 million in gross profits, the AMA is based on a rising rate multiplied by total gross profits, ranging from .0035 times profits between \$10 million and \$15 million to .008 times gross profits above \$37.5 million.

A similarly graduated rate is applied to gross receipts. For gross receipts of \$2 million or less, there is no assessment. For gross receipts between \$2 million and \$20 million, the rate is .00125 times (with a similar phase-out of the exclusion). Between \$20 million and \$30 million, the calculation is .00175 times total gross receipts, rising to a high of .004 times gross receipts for gross receipts of more than \$75 million.

The bill places a cap of \$20 million on the AMA for affiliated groups of five or more taxpayers.

A provision of the bill restricts the opportunities for a taxpayer to break its AMA-subject entities into smaller units so as to take advantage of the lower range of the graduated scale on the AMA by limiting the exclusion for all members of an affiliated or controlled group to \$5 million of gross profits (\$10 million of gross receipts), or five times the exclusion amount for the members of the group.

The bill sunsets the AMA for privilege periods beginning after June 30, 2006, except for taxpayers exempt from the CBT pursuant to federal Public Law 86-272. To avoid any claim of discriminatory treatment by such businesses, based on a claim that CBT payers might be subject to lower liabilities than out-of-state businesses covered by Pub L. 86-272, the amendment provides such out-of-state businesses with the option of consenting to the jurisdiction of the State to impose the CBT.

Furthermore, if a company's AMA exceeds its CBT in one year, the bill allows the difference between the AMA and the CBT as a credit (that carries forward without limit) to reduce the company's CBT liability in a future year. The bill limits the credit applied in any one year to an amount that does not reduce the CBT liability to less than 50 percent of the CBT otherwise due or less than the minimum

franchise tax for the privilege period, which puts the AMA credit in line with the operation of other tax credits under the corporation business tax.

PASS-THROUGH ENTITIES.

Pass-through entity return processing fee. The bill institutes a \$150 per-owner processing fee on the owners of pass-through entities, having more than two owners. "Pass-through" entities, such as partnerships, limited liability partnerships, and limited liability companies, are not subject to tax themselves, but "pass through" their income to their owners (partners of partnerships or members of limited liability companies) who are subject in their separate capacities. Pass-through entities that have New Jersey source income or New Jersey resident owners must annually file a New Jersey K-1 form with the State in which they report their income and must list their owners.

For pass-through entities that have income from New Jersey sources and more than two members, the bill establishes an annual \$150 per owner filing fee, capped at \$250,000 per entity annually. The bill establishes a similar filing fee of \$150 per licensed professional for professional corporations with more than two licensed professionals, also capped at \$250,000 per corporation annually. The bill treats these fees as payments under the State Uniform Tax Procedure Law for purposes of penalties, interest and other administrative functions.

Pass-through entity payment on behalf of owners.

The Division of Taxation estimates that half of K-1s filed in New Jersey list out-of-State residents who are involved in New Jersey pass-through entities with New Jersey source income. Enforcement is difficult in such cases. The bill addresses this problem by providing a mechanism for securing revenue prior to distribution in an amount that would be equivalent to withholding. Pass-through entities other than those listed on a national exchange must make a payment on the share of the income of each nonresident (corporate, partnership, individual, trust or estate) owner at a 9% rate for corporate owners and a 6.37% rate for individual owners. The payment is credited to separate accounts for each owner, and may be credited against their respective tax liabilities.

REVENUE MEASURES.

Two year NOL suspension. The bill suspends the application of net operating loss (NOL) deductions for tax years 2002 and 2003. The usual seven year carryforward (14 years for certain high-technology corporations) is extended for two years. This suspension does not apply to the NOLs purchase through the high-technology incentive program.

Subchapter S corporation phase-out freeze. Subchapter S corporation tax rates are currently in the third year of a four year

"phase-out" or reduction to no tax imposed. This bill resets the tax rate on S corporations to the 2001 tax year levels through tax year 2005, and then resumes the phase-out thereafter.

Acceleration of fourth quarter payments for substantial taxpayers. The bill, in effect, accelerates the fourth quarter estimated tax payment (due for most taxpayers in September) into the second quarter (for most taxpayers due in June) for taxpayers with gross receipts of \$50 million or more. The accelerated schedule would remain in effect for these taxpayers for privilege periods beginning in 2002 and thereafter.

Decoupling from federal "bonus" depreciation. The bill disallows the deduction of the 30% "bonus" depreciation that was allowed for certain property for federal tax purposes under the federal "Job Creation and Worker Assistance Act of 2002," Pub L. 107-147. The bill returns the New Jersey depreciation rules to New Jersey law as it stood before the enactment of the federal law, and gives the Director of the Division of Taxation authority to formulate rules and regulations to carry out the decoupling from federal law, including the necessary basis adjustments.

Increased minimum tax. The bill increases the minimum tax from \$210 annually to \$500 annually for tax year 2002 and thereafter, except for corporations that are members of affiliated or controlled groups with total payrolls of \$5 million or more, whose minimum tax will be \$2,000.

SMALL BUSINESS PROVISIONS.

CBT tax rate reduction for small business. The bill reduces the statutory rate from 7.5 percent to 6.5 percent for businesses with less than \$50,000 of net taxable income, which is more than a 13 percent rate cut. That would result in a tax decrease for approximately 20,000 small businesses, according to estimates by the Division of Taxation.

Enhanced New Jobs Investment Tax Credit. The bill encourages job creation by doubling the value of the new jobs factor under the New Jobs Investment Tax Credit, and increasing the eligibility caps allowing the qualification of midsized businesses for the credit.

ADMINISTRATIVE PROVISIONS.

To assist in the limiting tax avoidance, and to capture transactions not expressly addressed, the bill provides additional enforcement tools to the Director of the Division of Taxation.

Disclosure of inter-affiliate transactions. The bill addresses the problem of taxpayers failing to present sufficient data to allow the Division of Taxation to gain an understanding of the true earnings picture of any member or all members of an affiliated group or control group. The bill allows the director to require the disclosure of inter-affiliate transactions, including transactions with related businesses that are not themselves CBT taxpayers, including management fees,

rents and charges for other services.. Disclosure is required only upon request of the director, and the taxpayer has 90 days to comply. Noncompliance is treated as a failure to file a complete return, subject to the normal penalties under the State Uniform Tax Procedure Law.

Mandatory consolidated filing. The bill requires taxpayers to determine their taxes after eliminating all inter-affiliate payments in excess of fair compensation. The bill also provides that if a taxpayer cannot demonstrate by clear and convincing evidence that it has accurately reported its true earnings in such a manner, the director may compel consolidated filing.

NOL suspension hold-harmless. The bill forbids the imposition of any penalty for the underpayment of an estimated payment that is due to the two year suspension of the application of NOL carryforwards.

Fourth Quarter 2002 25% estimated payment. For the fourth quarter estimated payment for the 2002 tax year, and only that payment, the bill suspends the usual forgiveness provisions that apply to estimated tax payments and requires the fourth quarter payment to be 25% of the total liability for 2002, calculated under the provisions of the bill. The amendment is intended to allow taxpayers a quarter to adjust to the new rules and calculate likely 2002 final tax liability under the new rules, while fulfilling the State's need for revenue data under the new rules to use in estimating revenues for the following fiscal year. The first quarter payment for 2003 based on total 2002 liability will be due at the usual time, as will the full "catch-up" amount due under the new rules for 2002 in the fourth month following the close of the privilege period.

AIR CARRIERS.

Air carrier AMA credit. The bill allows an air carrier that contributes more than 25% of the total amortization for capital improvement projects at Newark International Airport paid through rates and charges to take a credit of 50% of its amortization payment for the privilege period against its calculation of AMA, so long as the credit does not reduce the AMA to less than the CBT statutory minimum. An air carrier that takes this credit for a privilege period is not allowed the AMA credit against the CBT for AMA paid in that privilege period.

Air carrier consolidated return election. The bill allows an air carrier to file a consolidated return with its affiliated group.

CORPORATION BUSINESS TAX STUDY COMMISSION.

The bill creates a nine-member, bipartisan Corporation Business Tax Study Commission, to study the reforms adopted under the bill and: (1) evaluate whether the tax burden is equitably borne among business taxpayers or favors large multinational businesses over smaller businesses operating wholly within New Jersey; (2) examine whether tax burdens are distributed fairly among the corporate business tax and other forms of business and personal taxes within the

state; (3) study whether profitable corporations can avoid paying their fair share of New Jersey tax by using minimization or avoidance strategies; (4) examine whether New Jersey and its corporate business taxpayers would be better served by combined unitary reporting and suggest a form for that reporting to take, and (5) determine whether the reforms adopted by the bill yield stable, recurring revenues sufficient to achieve long-term structural balance for State finances.

The commission will have access to as much data as possible within the confidentiality restrictions of R.S. 54:50-9, and the ability to draw upon existing State resources for assistance in undertaking its work, in addition to the ability to appoint an executive director. The commission must make its report by December 30, 2003. If the report is not produced by June 30, 2004, then the director shall suspend the AMA for privilege periods commencing after December 31, 2004. If the commission recommends the termination of the AMA the AMA shall not be imposed for privilege periods beginning after December 31, 2004.

CORPORATION BUSINESS TAX EXCESS REVENUE FUND.

The bill creates a restricted reserve fund known as the Corporation Business Tax Excess Revenue Fund, into which amounts in excess of the annual target for corporation business tax revenues will be deposited. The target will be set at \$1,823,000,000 in FY 2003. The targets for following fiscal years would be calculated based on the target for the prior fiscal year multiplied by the weighted average of the rate of growth of collections from the gross income tax and the sales and use tax. The rate of growth will be calculated for each by comparing the anticipated revenue from each source certified by the Governor upon approval of the annual appropriation act for the current year against the amount of money actually deposited from collections of each in the immediately preceding fiscal year, the deposits to be determined from the annual financial report of the State for the immediately preceding fiscal year.

Balances in the fund will be available for appropriation in FY 2004 and FY 2005 to assist in covering shortfalls in corporation business tax collections from the target amount for the fiscal year. If there is a balance in the fund on December 30, 2005, the Director of the Division of Taxation is required to adjust corporation business tax rates for privilege periods beginning in calendar 2006 downward by an amount sufficient to equal the balance in the fund.

FISCAL IMPACT:

The State Treasurer's most recent published figures indicate that the Executive anticipates \$965 million in additional revenue for FY2003 as a result of the enactment of the business tax revisions proposed under this bill. The Office of Legislative Services notes that this revenue is expected to decline in following fiscal years.

COMMITTEE AMENDMENTS:

The amendments to the bill are extensive, involving technical changes, responses to taxpayer comments, and Legislative policy initiatives. They are enumerated by section.

Section 3 amendments:

- , The bill as introduced repealed the exclusion of dividend income and offered an election to taxpayers to compute their tax based on their federal consolidated return. The amendment restores the dividend exclusion as in current law for subsidiaries owned 50 percent or more, but subjects other dividends received to full taxation. As the consolidated election was linked to the repeal of the dividend exclusion, which is restored, conforming changes delete the reference the filing of a consolidated return, in section 3 and other sections.
- , Expand the definition of "Corporation" to include any entity classified as a corporation for federal income tax purposes, so as to include single-member Limited Liability Companies that opt to be taxed as a corporation for federal income tax purposes.
- , Restore the deductibility of dividends paid by REITs.
- , The bill continues to create a general prohibition against taking an interest deduction for a payment to a related member. However, the amendments create three additional exceptions to the general rule, described in detail above, incorporating the "unreasonable disallowance" standards detailed in reference to the disallowance of the deduction of intangibles expenses.
- , The amendment to the bonus depreciation rule replaces a more restrictive rule in the bill as introduced.
- , Clarify technically the provision on research and development tax credits without changing the substance of the provision.

Section 5 amendments:

- , Add to the definition of "related member," which applies throughout the bill, to clarify that the "related member" provisions are intended to include not only corporations but entities such as partnerships and limited liability companies that share common ownership interests by or in other members of the group.

Section 6 amendments:

- , The bill as introduced increased the proportion of investment company net income subject to tax from 25% to 60%, the amendments reduce that to 40%.
- , Raise the minimum tax.
- , Cap "throwout" liability for an affiliated group at \$5 million and provide for administration of the cap.
- , Exempt federally qualified cooperatives from the AMA.

Section 7 amendments:

- , Provide the graduated AMA.
- , Raise the AMA cap for affiliated groups from \$15 million to \$20 million per group.
- , Give the Director of the Division of Taxation authority to expand or adjust the definition of “cost of goods sold” if justified to achieve a more equitable result among the various types of taxpayers subject to the alternative calculation.
- , Limit the exclusion for all members of an affiliated or controlled group to \$5 million of gross profits (\$10 million of gross receipts), or five times the exclusion amount for any particular member of the group.
- , Allow out-of-State businesses covered by Pub. L. 86-272, the option of consenting to the jurisdiction of the State to impose the CBT.
- , Limit the AMA credit in any one year to 50 percent of the corporation business tax or the CBT minimum.
- , Disallow air carriers taking a credit against the AMA from using AMA from that year as a credit against CBT.

Section 8 amendments:

- , Alter the “throwout rule” to clarify that receipts that are subject to a tax on business presence or business activity, such as a tax on gross receipts, in another state will not be excluded from the denominator of the sales fraction in determining the portion of income allocable to New Jersey.

Section 10 amendments:

- , Clarify that the powers of the Director of the Division of Taxation to require a consolidated return are so important to the essential function of verifying that a tax return fairly represents entire net income, that the director is given authority to force the filing of a consolidated return up to the limits of the U.S. Constitution and federal statutes.

Section 11 amendments:

- , Clarify that, for administrative and compliance efficiency, the additional disclosure of inter-group information is required only upon request of the director, and gives the taxpayer 90 days to comply (noncompliance is maintained as a nonfiling situation) and make other technical changes.

Section 12 amendments:

- , Clarifies that partnerships listed on a U.S. national stock exchange are not subject to payment responsibilities.

Section 13 (added by amendment)

- , Accelerates estimated payments for taxpayers with gross receipts of \$50 million or more.

Section 14 amendments:

- , Clarify that for enforcement purposes, the professional corporation fees will be payments under the State Uniform Tax Procedure Law, subject to the usual tax penalties for failure to file and pay and make other technical changes.

Section 22 amendments:

- , Clarify that for enforcement purposes, the partnership fees will be payments under the State Uniform Tax Procedure Law, subject to the usual tax penalties for failure to file.
- , Clarify that the partnership fees only apply to partnerships that derive income from New Jersey.

Section 26 amendments:

- , Broaden application of the situsing rule to further reduce the tax disincentives for companies to locate in this State.

Section 27 amendments:

- , Technical, to precisely track existing regulations, reflecting the Legislature's intention to state again that the regulations accurately represent existing law.

Section 28 (added by amendment)

- , Provides that tax year 2002 fourth quarter payment will be a full 25% of the total liability for 2002 under the provisions of this bill.

Section 29 (added by amendment)

- , Provides air carrier credit.

Section 30 (added by amendment)

- , Allows air carrier to file a consolidated return.

Section 31 (added by amendment)

- , Creates Corporation Business Tax Study Commission.

Section 32 (added by amendment)

- , Establishes the Corporation Business Tax Excess Revenue Fund.

Minority Statement

By Assemblymen Malone, Blee, Kean and O'Toole.

Governor McGreevey is proposing a budget that increases spending by \$2.3 billion in FY'03 and needs to identify revenue sources to fund this spending plan. One source is to increase the Corporate Business Tax, which through this bill, increases taxes for New Jersey businesses by at least \$1 billion.

The sponsor's statement would lead one to believe that the changes proposed in this legislation are designed to close tax loopholes and shift tax liability to those corporations that have an ability to pay. This bill does neither. This bill increases the tax burden on "mom & pop" shops and mid-size corporations, and makes changes that will cause New Jersey based multinational corporations to rethink their decisions on where to locate and expand.

For the past ten years the Legislature has worked to make changes in the business community's perceptions and attitudes toward New Jersey as a place to locate. This has led to an explosion of high-paying jobs that has catapulted New Jersey to the forefront of the country in per capita income. Those ten years of steady, positive changes would be wiped out with this one piece of legislation.

The most egregious provision of the legislation establishes the Alternative Minimum Assessment. This is nothing less than a new tax on business. A survey conducted by the Business and Industry Association of New Jersey of its members showed that most, if not all, small and mid-size companies will see a significant increase in their tax burden. These companies no longer will be able to consider the most routine expenses, such as payroll, a cost of doing business. Thus they will be taxed on their payroll under this legislation. Faced with the question of how they can cover this added cost, employers will find that the only way they can is through a reduction in their workforce.

It has also been the policy of the Legislature to promote health care accessibility, especially through employment. To encourage businesses to provide health benefits to their employees, the Legislature has allowed them to deduct health care costs. Under this legislation, however, deducting health care costs no longer will be allowed. This presents employers with the choice of either paying higher taxes or providing health care benefits. And with this change, the health care benefits of many New Jerseyans will be lost.

Since March 2002 the public has heard the argument that many of the state's largest corporations do not pay their fair share in business taxes. Such rhetoric may sound compelling, but this bill is not an attempt to establish fairness – it is an attempt to obtain more state revenue regardless of fairness. Should a corporation that has not made a profit in three years be expected to pay taxes at a level equivalent to that of a profitable corporation? Should a business in bankruptcy be required to pay a higher level of taxes? This bill makes a mockery of

the fairness argument by squeezing money out of unprofitable businesses to fuel proposed increases in state spending.

The business community has offered changes to the bill that will bring the business community's share of New Jersey's tax burden back into line with that of past years, without backsliding on the economic gains the state has made over the past ten years.

Without further changes, we are unable to vote for the bill.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2501

STATE OF NEW JERSEY

210th LEGISLATURE

DATED: SEPTEMBER 13, 2002

SUMMARY

Synopsis: Business Tax Reform Act
Type of Impact: Increase in General Fund revenue
Agencies Affected: Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	FY03	FY04	FY05
State Revenue	\$836,000,000 - \$1,025,000,000	\$524,000,000 - \$631,000,000	\$398,000,000 - \$491,000,000

- ! This far-reaching restructuring of business taxation is anticipated to raise about \$1 billion in FY03.
- ! In FY04 the revenue gain will decrease by about 40 percent, with a further decline in FY05.

BILL DESCRIPTION

The Business Tax Reform Act is intended to reform New Jersey's system of taxation of corporations and other business entities through revision of the corporation business tax (CBT) and other changes of law. Provisions of the bill close numerous loopholes that may allow profitable companies to reduce their taxable New Jersey income. The bill also establishes an alternative minimum assessment to establish CBT liabilities based on gross receipts or gross profits. In addition the bill increases the CBT for inactive corporations,

For a detailed discussion of the provisions of the bill, please consult the Assembly Budget Committee Statement to this bill.

FISCAL ANALYSIS***EXECUTIVE BRANCH***

While no formal fiscal analysis was provided by the Executive branch, the State Treasurer did provide revenue estimates for each component of the bill for fiscal year 2003. Those estimates are reflected the table below.

OFFICE OF LEGISLATIVE SERVICES

	Revenue Increase in \$Millions							
	Treasurer		OLS					
	FY03		FY03		FY04		FY05	
	low	high	low	high	low	high	low	high
"Loophole Closers"	157	220	157	220	122	172	122	172
Net Operating Loss Disallowance (NOL)	180	200	234	260	126	140	0	0
Alternative Minimum Assessment (AMA)	260	300	260	300	203	234	203	234
Partnership Processing Fee	50	80	40	60	28	40	28	40
Minimum Tax Increase	45	45	45	45	45	45	45	45
Speed Up	100	140	100	140	0	0	0	0
TOTAL	792	985	836	1025	524	631	398	491

The corporation business tax is the most difficult State revenue source to estimate. Projecting the impact of far reaching changes to the structure of that tax is even more challenging. The Treasurer has shared some of the aggregate data used in the formulation of his estimates, but OLS does not have access to individual tax returns.

The OLS estimates do not account for behavioral changes that may occur after enactment of this bill. Some inactive corporations and partnerships may be dissolved. Some corporations may change their status or relocate. Some corporations may alter their business or accounting practices. Such changes are likely to reduce the revenues estimated above.

"Loophole Closers"

This category includes changes to the treatment of certain interest and royalty expenses, the exclusion of deductions for certain dividends, the "throw out rule" which changes the calculation of sales attributable to New Jersey, and rate changes for investment companies and savings and loan associations.

The Treasurer's estimates are based on anecdotal information from the Division of Taxation. OLS has no independent data to project the revenue increase and believes that the estimates are plausible for FY03. For FY04 and FY05, OLS has reduced both the low and high estimates to reflect the extra money (estimated to be 28 percent) that will be collected in the first year of the change because of the mid-year enactment of the bill.

Net Operating Loss (NOL)

The Treasurer's estimates are based on analysis of tax returns for prior years.

OLS accepts the administration estimates of the tax year effects, but believes that timing issues will shift about 30 percent of the addition TY04 revenue into FY03. Accordingly, OLS believes that the FY03 revenue increase will be greater than that anticipated by the Treasurer and will be lower in FY04.

This provision does not apply to FY05 and in fact there may be a loss of revenue in FY05 because of the accumulation of unused NOLs through FY03 and FY04.

Alternative Minimum Assessment (AMA)

The administration estimate is based on an examination of a sample of tax returns from corporations that allocate income and then an extrapolation from this sample to the universe of corporation taxpayers. OLS, in an analysis of the bill as introduced, indicated that this method may not adequately recognize the potential AMA liability of small- and medium-sized entities. However, OLS believes that the committee amendments to the AMA reduce the liability of these companies and reduce the risk of a significant underestimate of the revenue.

For FY04 and FY05, OLS has reduced both the low and high estimates to reflect the extra money that will be collected in the first year of the change because of the mid-year enactment of the bill.

Partnership Processing Fee

The administration projection is based on data currently collected by the Division of Taxation. It is not possible to determine from those data precisely which of the partnerships would be excluded from the payment of this fee. OLS's somewhat lower revenue forecast for FY03 reflects a more conservative estimate of the number of partnerships that will be subject to this provision.

Owing to a partial prepayment provision, the revenue for FY03 should be 50 percent greater than it will be in subsequent years.

Minimum Tax Increase

The Treasurer's estimate for the revenues to be generated by the increased minimum tax rests on data collected by the Division of Taxation. OLS believes that the estimate is reasonable.

Speed Up

The shift of the third quarterly tax payment to the second quarter for certain large taxpayers will have the effect of increasing FY03 by \$100-140 million. It will have no net effect in subsequent fiscal years.

General Comments

The OLS estimates do not account for behavioral changes that may occur after enactment of this bill. Some inactive corporations and partnerships may be dissolved. Some corporations may change their status or relocate. Some corporations may alter their business or accounting practices. Such changes are likely to reduce the revenues estimated above.

Decoupling from Special Federal Depreciation Rules

The administration's revenue estimate does not include the bill's provision to decouple from the special Federal depreciation rule enacted earlier this year. Absent this provision, the State's CBT collection might drop by \$100 million or more in FY03. The administration's "baseline" CBT estimate for FY03 of \$870 million assumed the decoupling.

Section: *Revenue, Finance and Appropriations*

Analyst: *David J. Rosen*
Section Chief

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 1556

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 30, 2002

Sponsored by:

Senator BERNARD F. KENNY, JR.

District 33 (Hudson)

SYNOPSIS

Business Tax Reform Act; revises and updates the corporation business tax and establishes filing fees for certain returns.

CURRENT VERSION OF TEXT

As introduced.



S1556 KENNY

2

1 AN ACT revising and updating the corporation business tax and
2 concerning filing fees for certain returns and designated the
3 Business Tax Reform Act, amending and supplementing P.L.1945,
4 c.162, amending P.L.1947, c.50, P.L.1993, c.170, P.L.1993,
5 c.173, P.L.1997, c.350, and N.J.S.54A:8-6, and repealing various
6 parts of the statutory law.

7

8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10

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

13 2. Every domestic or foreign corporation which is not hereinafter
14 exempted shall pay an annual franchise tax for **[the year 1946 and]**
15 each year **[thereafter]**, as hereinafter provided, for the privilege of
16 having or exercising its corporate franchise in this State, or for the
17 privilege of deriving receipts from sources within this State, or for the
18 privilege of engaging in contacts within this State, or for the privilege
19 of doing business, employing or owning capital or property, or
20 maintaining an office, in this State. And such franchise tax shall be in
21 lieu of all other State, county or local taxation upon or measured by
22 intangible personal property used in business by corporations liable to
23 taxation under this act **[but, whenever such corporation holds shares**
24 **of stock in a bank as defined in R.S. 54:9-1, and such bank has not**
25 **elected to have the taxable value of such shares assessed to it and to**
26 **pay the tax levied against such shares as provided in R.S. 54:9-14, or,**
27 **having made such election, such bank subsequently revokes it, the**
28 **provisions of this section shall not exempt such shares of stock from**
29 **the tax imposed by chapter 9 of Title 54 of the Revised Statutes]**.

30 A foreign corporation shall not be deemed to be deriving receipts,
31 engaging in contacts, doing business, employing or owning capital or
32 property in the State, for the purposes of this act, by reason of (1) the
33 maintenance of cash balances with banks or trust companies in this
34 State, or (2) the ownership of shares of stock or securities in this State
35 if such shares or securities are pledged as collateral security, or
36 deposited with one or more banks or trust companies or brokers who
37 are members of a recognized security exchange, in safekeeping or
38 custody accounts, or (3) the taking of any action by any such bank or
39 trust company or broker, which is incidental to the rendering of
40 safekeeping or custodian service to such corporation.

41 A taxpayer's exercise of its franchise in this State is subject to
42 taxation in this State if the taxpayer's business activity in this State is
43 sufficient to give this State jurisdiction to impose the tax under the

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

Matter underlined thus is new matter.

1 Constitution and statutes of the United States.

2 (cf: P.L.1973, c.95, s.1)

3

4 2. Section 3 of P.L.1945, c.162 (C.54:10A-3) is amended to read
5 as follows:

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

8 (a) Corporations subject to a tax assessed upon the basis of gross
9 receipts, other than the alternative minimum assessment determined
10 pursuant to section 7 of P.L. , c. (C.)(now pending before the
11 Legislature as this bill) [or] , and corporations subject to a tax
12 assessed upon the basis of insurance premiums collected;

13 (b) Corporations which operate regular route autobus service
14 within this State under operating authority conferred pursuant to
15 R.S.48:4-3, provided, however, that such corporations shall not be
16 exempt from the tax on net income imposed by section 5(c) of
17 P.L.1945, c.162 (C.54:10A-5);

18 (c) Railroad, canal corporations, [savings banks,] production
19 credit associations organized under the Farm Credit Act of 1933, or
20 agricultural cooperative associations incorporated or domesticated
21 under or subject to chapter 13 of Title 4 of the Revised Statutes and
22 exempt under Subtitle A, Chapter 1F, Part IV, Section 521 of the
23 federal Internal Revenue Code (26 U.S.C. s.521)[, or building and
24 loan or savings and loan associations];

25 (d) Cemetery corporations not conducted for pecuniary profit or
26 any private shareholder or individual;

27 (e) Nonprofit corporations, associations or organizations
28 established, organized or chartered, without capital stock, under the
29 provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of
30 the New Jersey Statutes or under a special charter or under any similar
31 general or special law of this or any other state, and not conducted for
32 pecuniary profit of any private shareholders or individual;

33 (f) Sewerage and water corporations subject to a tax under the
34 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) or any statute or
35 law imposing a similar tax or taxes;

36 (g) Nonstock corporations organized under the laws of this State
37 or of any other state of the United States to provide mutual ownership
38 housing under federal law by tenants, provided, however, that the
39 exemption hereunder shall continue only so long as the corporations
40 remain subject to rules and regulations of the Federal Housing
41 Authority and the Commissioner of the Federal Housing Authority
42 holds membership certificates in the corporations and the corporate
43 property is encumbered by a mortgage deed or deed of trust insured
44 under the National Housing Act (48 Stat.1246) as amended by
45 subsequent Acts of Congress. In order to be exempted under this
46 subsection, corporations shall annually file a report on or before

1 August 15 with the commissioner, in the form required by the
2 commissioner, to claim such exemption, and shall pay a filing fee of
3 \$25.00;

4 (h) Corporations not for profit organized under any law of this
5 State where the primary purpose thereof is to provide for its
6 shareholders or members housing in a retirement community as the
7 same is defined under the provisions of the "Retirement Community
8 Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.);

9 (i) Corporations which are licensed as insurance companies under
10 the laws of another state, including corporations which are surplus
11 lines insurers declared eligible by the Commissioner of Banking and
12 Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to
13 insure risks within this State; and

14 (j) (1) Municipal electric corporations that were in existence as of
15 January 1, 1995 provided that all of their income is from sales,
16 exchanges or deliveries of electricity derived from customers using
17 electricity within their municipal boundaries; and (2) Municipal
18 electric utilities that were in existence as of January 1, 1995 provided
19 that all of their income is from sales, exchanges or deliveries of
20 electricity derived from customers using electricity within their
21 franchise area existing as of January 1, 1995. If a municipal electric
22 corporation derives income from sales, exchanges or deliveries of
23 electricity from customers using the electricity outside its municipal
24 boundaries, such municipal electric corporation shall be subject to the
25 tax imposed by this act on all income. If a municipal electric utility
26 derives income from sales, exchanges or deliveries of electricity from
27 customers using electricity outside its franchise area existing as of
28 January 1, 1995, such municipal electric utility shall be subject to the
29 tax imposed by the act on all income.

30 (cf: P.L.1998, c.114, s.1)

31

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

34 For the purposes of this act, unless the context requires a different
35 meaning:

36 (a) "Commissioner" or "director" shall mean the Director of the
37 Division of Taxation of the State Department of the Treasury.

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

41 (c) "Corporation" shall mean any corporation, joint-stock company
42 or association and any business conducted by a trustee or trustees
43 wherein interest or ownership is evidenced by a certificate of interest
44 or ownership or similar written instrument and any state or federally
45 chartered building and loan association or savings and loan
46 association.

1 (d) "Net worth" shall mean the aggregate of the values disclosed
2 by the books of the corporation for (1) issued and outstanding capital
3 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
4 profits, and (4) surplus reserves which can reasonably be expected to
5 accrue to holders or owners of equitable shares, not including
6 reasonable valuation reserves, such as reserves for depreciation or
7 obsolescence or depletion. Notwithstanding the foregoing, net worth
8 shall not include any deduction for the amount of the excess
9 depreciation described in paragraph (2)(F) of subsection (k) of this
10 section. The foregoing aggregate of values shall be reduced by 50%
11 of the amount disclosed by the books of the corporation for investment
12 in the capital stock of one or more subsidiaries, which investment is
13 defined as ownership (1) of at least 80% of the total combined voting
14 power of all classes of stock of the subsidiary entitled to vote and (2)
15 of at least 80% of the total number of shares of all other classes of
16 stock except nonvoting stock which is limited and preferred as to
17 dividends. In the case of investment in an entity organized under the
18 laws of a foreign country, the foregoing requisite degree of ownership
19 shall effect a like reduction of such investment from the net worth of
20 the taxpayer, if the foreign entity is considered a corporation for any
21 purpose under the United States federal income tax laws, such as (but
22 not by way of sole examples) for the purpose of supplying deemed
23 paid foreign tax credits or for the purpose of status as a controlled
24 foreign corporation. In calculating the net worth of a taxpayer entitled
25 to reduction for investment in subsidiaries, the amount of liabilities of
26 the taxpayer shall be reduced by such proportion of the liabilities as
27 corresponds to the ratio which the excluded portion of the subsidiary
28 values bears to the total assets of the taxpayer.

29 In the case of banking corporations which have international
30 banking facilities as defined in subsection (n), the foregoing aggregate
31 of values shall also be reduced by retained earnings of the international
32 banking facility. Retained earnings means the earnings accumulated
33 over the life of such facility and shall not include the distributive share
34 of dividends paid and federal income taxes paid or payable during the
35 tax year.

36 If in the opinion of the commissioner, the corporation's books do
37 not disclose fair valuations the commissioner may make a reasonable
38 determination of the net worth which, in his opinion, would reflect the
39 fair value of the assets, exclusive of subsidiary investments as defined
40 aforesaid, carried on the books of the corporation, in accordance with
41 sound accounting principles, and such determination shall be used as
42 net worth for the purpose of this act.

43 (e) (Deleted by amendment, P.L.1998, c.114.)

44 (f) "Investment company" shall mean any corporation whose
45 business during the period covered by its report consisted, to the
46 extent of at least 90% thereof of holding, investing and reinvesting in

1 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
2 other securities for its own account, but this shall not include any
3 corporation which: (1) is a merchant or a dealer of stocks, bonds and
4 other securities, regularly engaged in buying the same and selling the
5 same to customers; or (2) had less than 90% of its average gross
6 assets in New Jersey, at cost, invested in stocks, bonds, debentures,
7 mortgages, notes, patents, patent rights or other securities or
8 consisting of cash on deposit during the period covered by its report;
9 or (3) is a banking corporation, a savings institution, or a financial
10 business corporation as defined in the Corporation Business Tax Act.

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

15 (h) "Taxpayer" shall mean any corporation, [limited liability
16 company, foreign limited liability company, limited partnership or
17 foreign limited partnership] affiliated group of corporations electing
18 to file a consolidated return under section 18 of P.L.1945, c.162
19 (C.54:10A-18), and any partnership required, or consenting, to
20 report or to pay taxes, interest or penalties under this act. "Taxpayer"
21 shall not include a [limited liability company, foreign limited liability
22 company, limited partnership or foreign limited] partnership that is
23 listed on a United States national stock exchange.

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

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

30 (k) "Entire net income" shall mean total net income from all
31 sources, whether within or without the United States, and shall include
32 the gain derived from the employment of capital or labor, or from both
33 combined, as well as profit gained through a sale or conversion of
34 capital assets.

35 For the purpose of this act, the amount of a taxpayer's entire net
36 income shall be deemed prima facie to be equal in amount to the
37 taxable income, before net operating loss deduction and special
38 deductions, which the taxpayer is required to report, or, if the taxpayer
39 is classified as a partnership for federal tax purposes, would otherwise
40 be required to report, to the United States Treasury Department for
41 the purpose of computing its federal income tax [provided,]. If an
42 affiliated group elects to file a consolidated return under section 18
43 of P.L.1945, c.162 (C.54:10A-18), the group will be considered a
44 single taxpayer and for the purposes of this act the amount of the
45 taxpayer's entire net income shall be deemed prima facie to be equal in
46 amount to the taxable income, before net operating loss deduction and

1 special deductions, that the taxpayer is required to report, or, if the
2 taxpayer is classified as a partnership for federal tax purposes, would
3 otherwise be required to report, to the United States Treasury
4 Department for the purpose of computing its consolidated federal
5 income tax.

6 Provided however, that in the determination of such entire net
7 income,

8 (1) Entire net income shall exclude for the periods set forth in
9 paragraph (2)(F)(i) of this subsection, any amount, except with respect
10 to qualified mass commuting vehicles as described in section
11 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
12 prior to January 1, 1984, which is included in a taxpayer's federal
13 taxable income solely as a result of an election made pursuant to the
14 provisions of paragraph (8) of that section.

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

17 (A) The amount of any specific exemption or credit allowed in any
18 law of the United States imposing any tax on or measured by the
19 income of corporations;

20 (B) Any part of any income from dividends or interest on any kind
21 of stock, securities or indebtedness[, except as provided in paragraph
22 (5) of subsection (k) of this section];

23 (C) Taxes paid or accrued to the United States, a possession or
24 territory of the United States, a state, a political subdivision thereof,
25 or the District of Columbia, or to any foreign country, state, province,
26 territory or subdivision thereof, on or measured by profits or income,
27 or business presence or business activity, or the tax imposed by this
28 act[, or any tax paid or accrued with respect to subsidiary dividends
29 excluded from entire net income as provided in paragraph (5) of
30 subsection (k) of this section];

31 (D) (Deleted by amendment, P.L.1985, c.143.)

32 (E) (Deleted by amendment, P.L.1995, c.418.)

33 (F) (i) The amount by which depreciation reported to the United
34 States Treasury Department for property placed in service on and after
35 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
36 years beginning on and after the effective date of P.L.1993, c.172, for
37 purposes of computing federal taxable income in accordance with
38 section 168 of the Internal Revenue Code in effect after December 31,
39 1980, exceeds the amount of depreciation determined in accordance
40 with the Internal Revenue Code provisions in effect prior to January
41 1, 1981, but only with respect to a taxpayer's accounting period ending
42 after December 31, 1981; provided, however, that where a taxpayer's
43 accounting period begins in 1981 and ends in 1982, no modification
44 shall be required with respect to this paragraph (F) for the report filed
45 for such period with respect to property placed in service during that
46 part of the accounting period which occurs in 1981. The provisions

1 of this subparagraph shall not apply to assets placed in service prior to
2 January 1, 1998 of a gas, gas and electric, and electric public utility
3 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
4 seq.) prior to 1998.

5 (ii) For the periods set forth in subparagraph (F)(i) of this
6 subsection, any amount, except with respect to qualified mass
7 commuting vehicles as described in section 168(f)(8)(D)(v) of the
8 Internal Revenue Code as in effect immediately prior to January 1,
9 1984, which the taxpayer claimed as a deduction in computing federal
10 income tax pursuant to a qualified lease agreement under paragraph
11 (8) of that section.

12 The director shall promulgate rules and regulations necessary to
13 carry out the provisions of this section, which rules shall provide,
14 among others, the manner in which the remaining life of property shall
15 be reported.

16 (G) (i) The amount of any civil, civil administrative, or criminal
17 penalty or fine, including a penalty or fine under an administrative
18 consent order, assessed and collected for a violation of a State or
19 federal environmental law, an administrative consent order, or an
20 environmental ordinance or resolution of a local governmental entity,
21 and any interest earned on the penalty or fine, and any economic
22 benefits having accrued to the violator as a result of a violation, which
23 benefits are assessed and recovered in a civil, civil administrative, or
24 criminal action, or pursuant to an administrative consent order. The
25 provisions of this paragraph shall not apply to a penalty or fine
26 assessed or collected for a violation of a State or federal
27 environmental law, or local environmental ordinance or resolution, if
28 the penalty or fine was for a violation that resulted from fire, riot,
29 sabotage, flood, storm event, natural cause, or other act of God
30 beyond the reasonable control of the violator, or caused by an act or
31 omission of a person who was outside the reasonable control of the
32 violator.

33 (ii) The amount of treble damages paid to the Department of
34 Environmental Protection pursuant to subsection a. of section 7 of
35 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
36 department in removing, or arranging for the removal of, an
37 unauthorized discharge upon failure of the discharger to comply with
38 a directive from the department to remove, or arrange for the removal
39 of, the discharge.

40 (H) The amount of any sales and use tax paid by a utility vendor
41 pursuant to section 71 of P.L.1997, c.162.

42 (I) In the case of a real estate investment trust, the amount of any
43 dividends paid by the real estate investment trust.

1 (J) Interest paid to a related entity, as defined in section 5 of
2 P.L. , c. (C.) (now pending before the Legislature as this
3 bill), except that a deduction shall be permitted to the extent that the
4 interest is directly or indirectly paid to an independent lender and the
5 taxpayer guarantees the debt on which the interest is required.

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

10 (4) There shall be allowed as a deduction from entire net income
11 of a banking corporation, to the extent not deductible in determining
12 federal taxable income, the eligible net income of an international
13 banking facility determined as follows:

14 (A) The eligible net income of an international banking facility shall
15 be the amount remaining after subtracting from the eligible gross
16 income the applicable expenses;

17 (B) Eligible gross income shall be the gross income derived by an
18 international banking facility, which shall include, but not be limited to,
19 gross income derived from:

20 (i) Making, arranging for, placing or carrying loans to foreign
21 persons, provided, however, that in the case of a foreign person which
22 is an individual, or which is a foreign branch of a domestic corporation
23 (other than a bank), or which is a foreign corporation or foreign
24 partnership which is controlled by one or more domestic corporations
25 (other than banks), domestic partnerships or resident individuals, all
26 the proceeds of the loan are for use outside of the United States;

27 (ii) Making or placing deposits with foreign persons which are
28 banks or foreign branches of banks (including foreign subsidiaries) or
29 foreign branches of the taxpayers or with other international banking
30 facilities;

31 (iii) Entering into foreign exchange trading or hedging transactions
32 related to any of the transactions described in this paragraph; or

33 (iv) Such other activities as an international banking facility may,
34 from time to time, be authorized to engage in;

35 (C) Applicable expenses shall be any expense or other deductions
36 attributable, directly or indirectly, to the eligible gross income
37 described in subparagraph (B) of this paragraph.

38 (5) [Entire net income shall exclude 100% of dividends which were
39 included in computing such taxable income for federal income tax
40 purposes, paid to the taxpayer by one or more subsidiaries owned by
41 the taxpayer to the extent of the 80% or more ownership of investment
42 described in subsection (d) of this section. With respect to other
43 dividends, entire net income shall not include 50% of the total included
44 in computing such taxable income for federal income tax purposes]

45 (Deleted by amendment, P.L. , c.)(now pending before the
46 Legislature as this bill).

1 (6) (A) Net operating loss deduction. There shall be allowed as
2 a deduction for the [taxable year] privilege period the net operating
3 loss carryover to that [year] period.

4 (B) Net operating loss carryover. A net operating loss for any
5 [taxable year] privilege period ending after June 30, 1984 shall be a
6 net operating loss carryover to each of the seven [years] privilege
7 periods following the [year] period of the loss. The entire amount of
8 the net operating loss for any [taxable year] privilege period (the
9 "loss [year] period") shall be carried to the earliest of the [taxable
10 years] privilege periods to which the loss may be carried. The
11 portion of the loss which shall be carried to each of the other [taxable
12 years] privilege periods shall be the excess, if any, of the amount of
13 the loss over the sum of the entire net income, computed without the
14 exclusions permitted in paragraphs (4) and (5) of this subsection or the
15 net operating loss deduction provided by subparagraph (A) of this
16 paragraph, for each of the prior [taxable years] privilege periods to
17 which the loss may be carried.

18 (C) Net operating loss. For purposes of this paragraph the term
19 "net operating loss" means the excess of the deductions over the gross
20 income used in computing entire net income without the net operating
21 loss deduction provided for in subparagraph (A) of this paragraph and
22 the exclusions in paragraphs (4) and (5) of this subsection.

23 (D) Change in ownership. Where there is a change in 50% or more
24 of the ownership of a corporation because of redemption or sale of
25 stock and the corporation changes the trade or business giving rise to
26 the loss, no net operating loss sustained before the changes may be
27 carried over to be deducted from income earned after such changes.
28 In addition where the facts support the premise that the corporation
29 was acquired under any circumstances for the primary purpose of the
30 use of its net operating loss carryover, the director may disallow the
31 carryover.

32 (E) Notwithstanding the provisions of this paragraph (6) of
33 subsection (k) of this section to the contrary, if, in a privilege period
34 before the corporation became a member of an affiliated group that has
35 elected to file a consolidated return pursuant to section 18 of
36 P.L.1945, c.162 (C.54:10A-18), the corporation incurred a net
37 operating loss, the deductibility of the loss on that consolidated return
38 shall be limited to only the amount necessary to reduce to zero the
39 entire net income, calculated on a separate return basis, of the
40 corporation that incurred the net operating loss. Except as provided
41 in this subparagraph, the separate return limitation year ("SRLY")
42 rules promulgated pursuant to section 1502 of the federal Internal
43 Revenue Code of 1986, 26 U.S.C. s.1502, shall apply.

44 (F) Notwithstanding the provisions of this paragraph (6) of
45 subsection (k) of this section to the contrary, for privilege periods

1 beginning during calendar year 2002 and calendar year 2003, no
2 deduction for any net operating loss carryover shall be allowed. If and
3 only to the extent that any net operating loss carryover deduction is
4 disallowed by reason of this subparagraph (F), the date on which the
5 amount of the disallowed net operating loss carryover deduction
6 would otherwise expire shall be extended by two years.

7 Provided, that this subparagraph (F) shall not restrict the surrender
8 or acquisition of corporation business tax benefit certificates pursuant
9 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict
10 the application of corporation business tax benefit certificates pursuant
11 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

12 (7) The entire net income of gas, electric and gas and electric
13 public utilities that were subject to the provisions of P.L.1940, c.5
14 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting
15 the New Jersey depreciation allowance for federal tax depreciation
16 with respect to assets placed in service prior to January 1, 1998. For
17 gas, electric, and gas and electric public utilities that were subject to
18 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,
19 the New Jersey depreciation allowance shall be computed as follows:
20 All depreciable assets placed in service prior to January 1, 1998 shall
21 be considered a single asset account. The New Jersey tax basis of this
22 depreciable asset account shall be an amount equal to the carryover
23 adjusted basis for federal income tax purposes on December 31, 1997
24 of all depreciable assets in service on December 31, 1997, increased
25 by the excess, of the "net carrying value," defined to be adjusted book
26 basis of all assets and liabilities, excluding deferred income taxes,
27 recorded on the public utility's books of account on December 31,
28 1997, over the carryover adjusted basis for federal income tax
29 purposes on December 31, 1997 of all assets and liabilities owned by
30 the gas, electric, or gas and electric public utility as of December 31,
31 1997. "Books of account" for gas, gas and electric, and electric public
32 utilities means the uniform system of accounts as promulgated by the
33 Federal Energy Regulatory Commission and adopted by the Board of
34 Public Utilities. The following adjustments to entire net income shall
35 be made pursuant to this section:

36 (A) Depreciation for property placed in service prior to January 1,
37 1998 shall be adjusted as follows:

38 (i) Depreciation for federal income tax purposes shall be
39 disallowed in full.

40 (ii) A deduction shall be allowed for the New Jersey depreciation
41 allowance. The New Jersey depreciation allowance shall be computed
42 for the single asset account described above based on the New Jersey
43 tax basis as adjusted above as if all assets in the single asset account
44 were first placed in service on January 1, 1998. Depreciation shall be
45 computed using the straight line method over a thirty-year life. A full
46 year's depreciation shall be allowed in the initial tax year. No half-year

1 convention shall apply. The depreciable basis of the single account
2 shall be reduced by the adjusted federal tax basis of assets sold,
3 retired, or otherwise disposed of during any year on which gain or loss
4 is recognized for federal income tax purposes as described in
5 subparagraph (B) of this paragraph.

6 (B) Gains and losses on sales, retirements and other dispositions of
7 assets placed in service prior to January 1, 1998 shall be recognized
8 and reported on the same basis as for federal income tax purposes.

9 (C) The Director of the Division of Taxation shall promulgate
10 regulations describing the methodology for allocating the single asset
11 account in the event that a portion of the utility's operations are
12 separated, spun-off, transferred to a separate company or otherwise
13 desegregated.

14 (8) In the case of taxpayers that are gas, electric, gas and electric,
15 or telecommunication public utilities as defined pursuant to subsection
16 (q) of this section, the director shall have authority to promulgate rules
17 and issue guidance correcting distortions and adjusting timing
18 differences resulting from the adoption of P.L.1997, c.162
19 (C.54:10A-5.25 et al.).

20 (9) Notwithstanding paragraph (1) of this subsection, entire net
21 income shall not include the income derived by a corporation
22 organized in a foreign country from the international operation of a
23 ship or ships, or from the international operation of aircraft, if such
24 income is exempt from federal taxation pursuant to section 883 of the
25 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

26 (10) Entire net income shall exclude all income of an alien
27 corporation the activities of which are limited in this State to investing
28 or trading in stocks and securities for its own account, investing or
29 trading in commodities for its own account, or any combination of
30 those activities, within the meaning of section 864 of the federal
31 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on
32 December 31, 1998. Notwithstanding the previous sentence, if an
33 alien corporation undertakes one or more infrequent, extraordinary or
34 non-recurring activities, including but not limited to the sale of
35 tangible property, only the income from such infrequent, extraordinary
36 or non-recurring activity shall be subject to the tax imposed pursuant
37 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income
38 subject to tax shall be determined without regard to the allocation to
39 that specific transaction of any general business expense of the
40 taxpayer and shall be specifically assigned to this State for taxation by
41 this State without regard to section 6 of P.L.1945, c.162
42 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"
43 means a corporation organized under the laws of a jurisdiction other
44 than the United States or its political subdivisions.

1 (11) No deduction shall be allowed for research and experimental
2 expenditures, to the extent that those research and experimental
3 expenditures are qualified research expenses or basic research
4 payments for which an amount of credit is claimed pursuant to section
5 1 of P.L.1993, c.175 (C.54:10A-5.24) and those research and
6 experimental expenditures are not used to compute a federal credit
7 claimed pursuant to section 41 of the federal Internal Revenue Code
8 of 1986, 26 U.S.C. s.41.

9 (12) There shall be added back to entire net income all special
10 depreciation claimed as a federal deduction as a result of the
11 enactment of the federal "Job Creation and Worker Assistance Act of
12 2002," Pub.L.107-147. For the privilege period in which the final year
13 of the recovery period of the property affected by the depreciation
14 rules provided by Pub.L.107-147 ends, or for the privilege period in
15 which the earlier disposition of that property occurs, the amount
16 previously added back to entire net income shall be deducted from
17 entire net income.

18 (13) If, in a privilege period preceding the filing of the first New
19 Jersey consolidated return for the affiliated group of which the
20 corporation is a member:

21 (A) the corporation realized a gain or loss on a transaction;

22 (B) the corporation was subject to the tax imposed pursuant to
23 section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period;

24 (C) the transaction was treated as a deferred intercompany
25 transaction for federal income tax purposes; and

26 (D) the transaction was not deferred for New Jersey income tax
27 purposes, then

28 the taxable income of the affiliated group and the adjusted bases of
29 its members shall be adjusted to remove the impacts of a gain or loss
30 from that deferred intercompany transaction reported for federal
31 income tax purposes.

32 (1) "Real estate investment trust" shall mean any corporation, trust
33 or association qualifying and electing to be taxed as a real estate
34 investment trust under federal law.

35 (m) "Financial business corporation" shall mean any corporate
36 enterprise which is (1) in substantial competition with the business of
37 national banks and which (2) employs moneyed capital with the object
38 of making profit by its use as money, through discounting and
39 negotiating promissory notes, drafts, bills of exchange and other
40 evidences of debt; buying and selling exchange; making of or dealing
41 in secured or unsecured loans and discounts; dealing in securities and
42 shares of corporate stock by purchasing and selling such securities and
43 stock without recourse, solely upon the order and for the account of
44 customers; or investing and reinvesting in marketable obligations
45 evidencing indebtedness of any person, copartnership, association or
46 corporation in the form of bonds, notes or debentures commonly

1 known as investment securities; or dealing in or underwriting
2 obligations of the United States, any state or any political subdivision
3 thereof, or of a corporate instrumentality of any of them. This shall
4 include, without limitation of the foregoing, business commonly
5 known as industrial banks, dealers in commercial paper and
6 acceptances, sales finance, personal finance, small loan and mortgage
7 financing businesses, as well as any other enterprise employing
8 moneyed capital coming into competition with the business of national
9 banks; provided that the holding of bonds, notes, or other evidences
10 of indebtedness by individual persons not employed or engaged in the
11 banking or investment business and representing merely personal
12 investments not made in competition with the business of national
13 banks, shall not be deemed financial business. Nor shall "financial
14 business" include national banks, production credit associations
15 organized under the Farm Credit Act of 1933 or the Farm Credit Act
16 of 1971, Pub.L. 92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
17 insurance companies duly authorized to transact business in this State,
18 security brokers or dealers or investment companies or bankers not
19 employing moneyed capital coming into competition with the business
20 of national banks, real estate investment trusts, or any of the following
21 entities organized under the laws of this State: credit unions, savings
22 banks, savings and loan and building and loan associations,
23 pawnbrokers, and State banks and trust companies.

24 (n) "International banking facility" shall mean a set of asset and
25 liability accounts segregated on the books and records of a depository
26 institution, United States branch or agency of a foreign bank, or an
27 Edge or Agreement Corporation that includes only international
28 banking facility time deposits and international banking facility
29 extensions of credit as such terms are defined in section 204.8(a)(2)
30 and section 204.8(a)(3) of Regulation D of the board of governors of
31 the Federal Reserve System, 12 CFR Part 204, effective December 3,
32 1981. In the event that the United States enacts a law, or the board
33 of governors of the Federal Reserve System adopts a regulation which
34 amends the present definition of international banking facility or of
35 such facilities' time deposits or extensions of credit, the Commissioner
36 of Banking and Insurance shall forthwith adopt regulations defining
37 such terms in the same manner as such terms are set forth in the laws
38 of the United States or the regulations of the board of governors of the
39 Federal Reserve System. The regulations of the Commissioner of
40 Banking and Insurance shall thereafter provide the applicable
41 definitions.

42 (o) "S corporation" means a corporation included in the definition
43 of an "S corporation" pursuant to section 1361 of the federal Internal
44 Revenue Code of 1986, 26 U.S.C. s.1361.

1 (p) "New Jersey S corporation" means a corporation that is an S
2 corporation; which has made a valid election pursuant to section 3 of
3 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
4 corporation continuously since the effective date of the valid election
5 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

6 (q) "Public Utility" means "public utility" as defined in
7 R.S.48:2-13.

8 (r) "Qualified investment partnership" means a [limited liability
9 company, foreign limited liability company, limited partnership or
10 foreign limited partnership treated as a] partnership under this act that
11 has more than 10 members or partners with no member or partner
12 owning more than a 50% interest in the entity and that derives at least
13 90% of its gross income from dividends, interest, payments with
14 respect to securities loans, and gains from the sale or other disposition
15 of stocks or securities or foreign currencies or commodities or other
16 similar income (including but not limited to gains from swaps, options,
17 futures or forward contracts) derived with respect to its business of
18 investing or trading in those stocks, securities, currencies or
19 commodities, but "investment partnership" shall not include a "dealer
20 in securities" within the meaning of section 1236 of the federal Internal
21 Revenue Code of 1986, 26 U.S.C. s.1236.

22 (s) "Savings institution" means a state or federally chartered
23 building and loan association, savings and loan association, or savings
24 bank.

25 (t) "Partnership" means an entity classified as a partnership for
26 federal income tax purposes.

27 (cf: P.L.2001, c.136, s.1)

28
29 4. Section 1 of P.L.1997, c.350 (C.54:10A-4.3) is amended to read
30 as follows:

31 1. a. Notwithstanding the provisions of paragraph (6) of
32 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the
33 contrary, a taxpayer that has for the fiscal or calendar accounting
34 period (referred to hereafter as the "tax year"), qualified research
35 expenses as defined in section 41 of the federal Internal Revenue Code
36 of 1986, 26 U.S.C. s.41, as in effect on June 30, 1992, paid or
37 incurred for research conducted in this State, in the fields of advanced
38 computing, advanced materials, biotechnology, electronic device
39 technology, environmental technology, or medical device technology,
40 shall be allowed to carry over a net operating loss for that tax year to
41 each of the 15 tax years following the year of the loss.

42 b. As used in this section:

43 "Advanced computing" means a technology used in the designing
44 and developing of computing hardware and software, including
45 innovations in designing the full spectrum of hardware from hand-held
46 calculators to super computers, and peripheral equipment;

1 "Advanced materials" means materials with engineered properties
2 created through the development of specialized processing and
3 synthesis technology, including ceramics, high value-added metals,
4 electronic materials, composites, polymers, and biomaterials;

5 "Biotechnology" means the continually expanding body of
6 fundamental knowledge about the functioning of biological systems
7 from the macro level to the molecular and sub-atomic levels, as well
8 as novel products, services, technologies and sub-technologies
9 developed as a result of insights gained from research advances which
10 add to that body of fundamental knowledge;

11 "Electronic device technology" means a technology involving
12 microelectronics, semiconductors, electronic equipment, and
13 instrumentation, radio frequency, microwave, and millimeter
14 electronics, and optical and optic-electrical devices, or data and digital
15 communications and imaging devices;

16 "Environmental technology" means assessment and prevention of
17 threats or damage to human health or the environment, environmental
18 cleanup, or the development of alternative energy sources; and

19 "Medical device technology" means a technology involving any
20 medical equipment or product (other than a pharmaceutical product)
21 that has therapeutic value, diagnostic value, or both, and is regulated
22 by the federal Food and Drug Administration.

23 c. Notwithstanding the provisions of subsection a. of this section,
24 for tax years beginning during calendar year 2002 and calendar year
25 2003, no deduction for any net operating loss carryover shall be
26 allowed. If and only to the extent that any net operating loss
27 carryover deduction is disallowed by reason of this subsection, the
28 date on which the amount of the disallowed net operating loss
29 carryover deduction would otherwise expire shall be extended by two
30 years.

31 (cf: P.L.1997, c.350, s.1)

32

33 5. (New section) a. For the purposes of this section:

34 "Intangible expenses and costs" includes (1) expenses, losses and
35 costs for, related to, or in connection directly or indirectly with the
36 direct or indirect acquisition, use, maintenance or management,
37 ownership, sale, exchange, or any other disposition of intangible
38 property to the extent such amounts are allowed as deductions or
39 costs in determining taxable income before operating loss deduction
40 and special deductions for the taxable year under the federal Internal
41 Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses related to, or
42 incurred in connection directly or indirectly with, factoring
43 transactions or discounting transactions; (3) royalty, patent, technical
44 and copyright fees; (4) licensing fees; and (5) other similar expenses
45 and costs.

1 "Intangible property" means patents, patent applications, trade
2 names, trademarks, service marks, copyrights, mask works, trade
3 secrets and similar types of intangible assets.

4 "Interest expenses and costs" means amounts directly or indirectly
5 allowed as deductions under section 163 of the federal Internal
6 Revenue Code of 1986, 26 U.S.C. s.163, for purposes of determining
7 taxable income under the code to the extent such expenses and costs
8 are directly or indirectly for, related to, or in connection with the
9 direct or indirect acquisition, maintenance, management, ownership,
10 sale, exchange or disposition of intangible property.

11 "Related member" means a person that, with respect to the taxpayer
12 during all or any portion of the privilege period, is a related entity, a
13 component member as defined in subsection (b) of section 1563 of the
14 federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, or is a
15 person to or from whom there is attribution of stock ownership in
16 accordance with subsection (e) of section 1563 of the federal Internal
17 Revenue Code of 1986, 26 U.S.C. s.1563.

18 "Related entity" means (1) a stockholder who is an individual, or
19 a member of the stockholder's family enumerated in section 318 of the
20 federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
21 stockholder and the members of the stockholder's family own, directly,
22 indirectly, beneficially or constructively, in the aggregate, at least 50%
23 of the value of the taxpayer's outstanding stock; (2) a stockholder, or
24 a stockholder's partnership, limited liability company, estate, trust or
25 corporation, if the stockholder and the stockholder's partnerships,
26 limited liability companies, estates, trusts and corporations own
27 directly, indirectly, beneficially or constructively, in the aggregate, at
28 least 50% per cent of the value of the taxpayer's outstanding stock; or
29 (3) a corporation, or a party related to the corporation in a manner
30 that would require an attribution of stock from the corporation to the
31 party or from the party to the corporation under the attribution rules
32 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
33 taxpayer owns, directly, indirectly, beneficially or constructively, at
34 least 50% percent of the value of the corporation's outstanding stock.
35 The attribution rules of the federal Internal Revenue Code of 1986, 26
36 U.S.C. s.318, shall apply for purposes of determining whether the
37 ownership requirements of this definition have been met.

38 b. For purposes of computing its entire net income under section
39 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add back
40 otherwise deductible interest expenses and costs and intangible
41 expenses and costs directly or indirectly paid, accrued or incurred to,
42 or in connection directly or indirectly with one or more direct or
43 indirect transactions with, one or more related members.

44 c. (1) The adjustments required in subsection b. of this section
45 shall not apply if the taxpayer establishes by clear and convincing
46 evidence that the adjustments are unreasonable, or the taxpayer and

1 the director agree in writing to the application or use of an alternative
2 method of apportionment under section 8 of P.L.1945, c.162
3 (C.54:10A-8). Nothing in this subsection shall be construed to limit
4 or negate the director's authority to otherwise enter into agreements
5 and compromises otherwise allowed by law. Provided further, the
6 adjustments required in subsection b. of this section shall not apply to
7 payments between members of an affiliated group that have elected to
8 file a consolidated return pursuant to section 18 of P.L.1945, c.162
9 (C.54:10A-18).

10 (2) The adjustments required in subsection b. of this section shall
11 not apply to the portion of interest expenses and costs and intangible
12 expenses and costs that the taxpayer establishes by a preponderance
13 of the evidence meets both of the following: (a) the related member
14 during the same income year directly or indirectly paid, received,
15 accrued or incurred the portion to or from a person that is not a
16 related member, and (b) the transaction giving rise to the interest
17 expenses and costs or the intangible expenses and costs between the
18 taxpayer and the related member did not have as a principal purpose
19 the avoidance of any portion of the tax due under Title 54 of the
20 Revised Statutes or Title 54A of the New Jersey Statutes.

21 d. Nothing in this section shall require a taxpayer to add to its net
22 income more than once any amount of interest expenses and costs that
23 the taxpayer pays, accrues or incurs to a related member described in
24 subsection b. of this section.

25 e. Nothing in this section shall be construed to limit or negate the
26 director's authority to make adjustments under paragraph (3) of
27 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section
28 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
29 (C.54:10A-10).

30

31 6. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read
32 as follows:

33 5. The franchise tax to be annually assessed to and paid by each
34 taxpayer shall be the greater of the amount computed pursuant to this
35 section or the alternative minimum assessment computed pursuant to
36 section 7 of P.L. , c. (C.) (now pending before the Legislature as
37 this bill); provided however, that in the case of a taxpayer that is a
38 New Jersey S corporation, an investment company, or a professional
39 corporation or a similar corporation for profit organized for the
40 purpose of rendering professional services under the laws of another
41 state, there shall be no alternative minimum assessment computed
42 pursuant to section 7 of P.L. , c. (C.).

43 The amount computed pursuant to this section shall be sum of the
44 amount computed under subsection (a) hereof, or in the alternative to
45 the amount computed under subsection (a) hereof, the amount
46 computed under subsection (f) hereof, and the amount computed

S1556 KENNY

1 under subsection (c) hereof:

2 (a) That portion of its entire net worth as may be allocable to this
3 State as provided in section 6, multiplied by the following rates: 2
4 mills per dollar on the first \$100,000,000.00 of allocated net worth;
5 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill
6 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar
7 on all amounts of allocated net worth in excess of \$300,000,000.00;
8 provided, however, that with respect to reports covering accounting
9 or privilege periods set forth below, the rate shall be that percentage
10 of the rate set forth in this subsection for the appropriate year:

11

12 Accounting or Privilege

13 Periods Beginning on or The Percentage of the Rate
14 after: to be Imposed Shall be:

15

16 April 1, 1983	75%
17 July 1, 1984	50%
18 July 1, 1985	25%
19 July 1, 1986	0

20

21 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

22 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
23 1/4% of its entire net income or such portion thereof as may be
24 allocable to this State as provided in section 6 of P.L.1945, c.162
25 (C.54:10A-6) plus such portion thereof as is specifically assigned to
26 this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1);
27 provided, however, that with respect to reports covering accounting
28 or privilege periods or parts thereof ending after December 31, 1967,
29 the rate shall be 4 1/4%; and that with respect to reports covering
30 accounting or privilege periods or parts thereof ending after December
31 31, 1971, the rate shall be 5 1/2%; and that with respect to reports
32 covering accounting or privilege periods or parts thereof ending after
33 December 31, 1974, the rate shall be 7 1/2%; and that with respect to
34 reports covering privilege periods or parts thereof ending after
35 December 31, 1979, the rate shall be 9%; provided however, that for
36 a taxpayer that has entire net income of \$100,000 or less for a
37 privilege period and is not a [limited liability company, foreign limited
38 liability company, limited partnership or foreign limited] partnership
39 the rate for that privilege period shall be 7 1/2% and provided further
40 that for a taxpayer that has entire net income of \$50,000 or less for a
41 privilege period and is not a partnership the rate for that privilege
42 period shall be 6 1/2%.

43 (2) For a taxpayer that is a New Jersey S corporation:

44 (i) for privilege periods ending on or before June 30, 1998 the rate
45 determined by subtracting the maximum tax bracket rate provided
46 under N.J.S.54A:2-1 for the privilege period from the tax rate that

1 would otherwise be applicable to the taxpayer's entire net income for
2 the privilege period if the taxpayer were not an S corporation provided
3 under paragraph (1) of this subsection for the privilege period; and
4 (ii) For a taxpayer that has entire net income in excess of \$100,000
5 for the privilege period, for privilege periods ending on or after July
6 1, 1998, but on or before June 30, 2001, the rate shall be 2%,
7 for privilege periods ending on or after July 1, 2001, but on or
8 before ~~[June 30, 2002]~~ June 30, 2006 , the rate shall be 1.33%,
9 for privilege periods ending on or after ~~[July 1, 2002]~~ July 1, 2006,
10 but on or before ~~[June 30, 2003]~~ June 30, 2007, the rate shall be
11 0.67%, and
12 for privilege periods ending on or after ~~[July 1, 2003]~~ July 1, 2007
13 there shall be no rate of tax imposed under this paragraph, and
14 (iii) For a taxpayer that has entire net income of \$100,000 or less
15 for privilege periods ending on or after July 1, 1998, but on or before
16 June 30, 2001 the rate for that privilege period shall be 0.5%, and for
17 privilege periods ending on or after July 1, 2001 there shall be no rate
18 of tax imposed under this paragraph.
19 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or
20 (iii) of this paragraph shall be multiplied by its entire net income that
21 is not subject to federal income taxation or such portion thereof as
22 may be allocable to this State pursuant to sections 6 through 10 of
23 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such portion
24 thereof as is specifically assigned to this State as provided in section
25 5 of P.L.1993, c.173 (C.54:10A-6.1).
26 (3) For a taxpayer that is a New Jersey S corporation, in addition
27 to the amount, if any, determined under paragraph (2) of this
28 subsection, the tax rate that would otherwise be applicable to the
29 taxpayer's entire net income for the privilege period if the taxpayer
30 were not an S corporation provided under paragraph (1) of this
31 subsection for the privilege period multiplied by its entire net income
32 that is subject to federal income taxation or such portion thereof as
33 may be allocable to this State pursuant to sections 6 through 10 of
34 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).
35 (d) Provided, however, that the franchise tax to be annually
36 assessed to and paid by any investment company or real estate
37 investment trust, which has elected to report as such and has filed its
38 return in the form and within the time provided in this act and the rules
39 and regulations promulgated in connection therewith, shall, in the case
40 of an investment company, be measured by ~~[25%]~~ 60% of its entire
41 net income and ~~[25%]~~ 60% of its entire net worth, and in the case of
42 a real estate investment trust, by 4% of its entire net income and 15%
43 of its entire net worth, at the rates hereinbefore set forth for the
44 computation of tax on net income and net worth, respectively, but in
45 no case less than \$250, and further provided, however, that the
46 franchise tax to be annually assessed to and paid by a regulated

1 investment company which for a period covered by its report satisfies
2 the requirements of Chapter 1, Subchapter M, Part I, Section 852(a)
3 of the federal Internal Revenue Code shall be \$250.

4 (e) The tax assessed to any taxpayer pursuant to this section shall
5 not be less than \$25 in the case of a domestic corporation, \$50 in the
6 case of a foreign corporation, or \$250 in the case of an investment
7 company or regulated investment company. Provided however, that
8 for accounting or privilege periods beginning in calendar year 1994
9 and thereafter the minimum taxes for taxpayers other than an
10 investment company or a regulated investment company shall be as
11 provided in the following schedule:

12	13	14	15
	Period Beginning	Domestic	Foreign
	In Calendar Year	Corporation	Corporation
		Minimum Tax	Minimum Tax
16	1994	\$ 50	\$100
17	1995	\$100	\$200
18	1996	\$150	\$200
19	1997	\$200	\$200

20
21 and provided further that the director shall adjust the minimum tax for
22 accounting or privilege periods beginning in each fifth year following
23 calendar year 1997 and each fifth year thereafter by multiplying the
24 minimum tax for periods beginning in 1997 by an amount equal to one
25 plus 75% of the increase, if any, in the annual average total producer
26 price index for finished goods published by the federal Department of
27 Labor, Bureau of Labor Statistics, for the year preceding the
28 determination year over such index for calendar year 1996 which
29 adjusted minimum tax amount shall be rounded to the next highest
30 multiple of \$10.

31 (f) In lieu of the portion of the tax based on net worth and to be
32 computed under subsection (a) of this section, any taxpayer, the value
33 of whose total assets everywhere, less reasonable reserves for
34 depreciation, as of the close of the period covered by its report,
35 amounts to less than \$150,000, may elect to pay the tax shown in a
36 table which shall be promulgated by the director.

37 (g) Provided however, that for privilege periods beginning on or
38 after January 1, 2001 but before January 1, 2002 the franchise tax
39 annually assessed to and paid by a taxpayer:

40 (1) that is a limited liability company or foreign limited liability
41 company classified as a partnership for federal income tax purposes
42 shall be the amount determined pursuant to the provisions of section
43 3 of P.L.2001, c.136 (C.54:10A-15.6); or

1 (2) that is a limited partnership or foreign limited partnership
2 classified as a partnership for federal income tax purposes shall be the
3 amount determined pursuant to the provisions of section 4 of
4 P.L.2001, c.136 (C.54:10A-15.7).

5 (h) Provided however, that for privilege periods beginning on or
6 after January 1, 2002 the franchise tax annually assessed to and paid
7 by a taxpayer that is a partnership shall be the amount determined
8 pursuant to the provisions of section 12 of P.L. , c. (C.)(now
9 pending before the Legislature as this bill).

10 (cf: P.L.2001, c.136, s.2)

11
12 7. (New section) a. For the purposes of this section:

13 "Affiliated group" means a group of corporations defined as an
14 affiliated group by section 1504 of the federal Internal Revenue Code
15 of 1986, 26 U.S.C. s.1504, or any successor federal law, that files a
16 consolidated federal income tax return for the privilege period
17 pursuant to sections 1501 through 1504 of the federal Internal
18 Revenue Code of 1986, 26 U.S.C. ss.1501-1504 or any successor
19 federal law.

20 "Cost of goods sold" means the cost of goods sold calculated
21 pursuant to the same method used by the taxpayer for the purpose of
22 computing its federal income tax, multiplied by the allocation factor
23 computed as set forth in section 6 of P.L.1945, c.162 (C.54:10A-6).

24 "Member of an affiliated group" means a taxpayer that is part of an
25 affiliated group.

26 "New Jersey gross profits" means New Jersey gross receipts
27 reduced by returns and allowances attributable to New Jersey gross
28 receipts, less the cost of goods sold.

29 "New Jersey gross receipts" means the receipts of the taxpayer for
30 the privilege period, computed on the cash or accrual basis according
31 to the method of accounting used in the computation of its net income
32 for federal tax purposes arising during the privilege period from:

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

36 (2) sales of tangible personal property located without the State at
37 the time of the receipt of or appropriation to the orders where
38 shipment is made to points within the State,

39 (3) services performed within the State,

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

42 (5) all other business receipts earned within the State.

43 b. For privilege periods beginning on or after January 1, 2002, the
44 alternative minimum assessment shall be equal to the amount
45 computed under paragraphs (1) or (2) of this subsection pursuant to
46 the election made pursuant to subsection c. of this section:

1 (1) New Jersey gross profits, reduced by \$500,000, multiplied by
2 .006; or

3 (2) New Jersey gross receipts, reduced by \$1,000,000, multiplied
4 by .003.

5 c. A taxpayer shall, for the first privilege period for which it is
6 required to compute the alternative minimum assessment pursuant to
7 this section, elect to employ the computation method set forth in
8 paragraph (1) or the computation method set forth in paragraph (2) of
9 subsection b. of this section, which computation method shall be
10 employed by the taxpayer for the computation of the alternative
11 minimum assessment for that privilege period and for the next
12 succeeding four privilege periods, pursuant to regulations and forms
13 as the director may prescribe. The taxpayer may change its election
14 at any time after the initial five privilege periods; provided however,
15 that any change in the method of computation of the alternative
16 minimum assessment which the taxpayer elects shall be employed by
17 the taxpayer for the privilege period for which the change is effective
18 and for the next four succeeding privilege periods.

19 d. (1) Notwithstanding the provisions of subsection b. of this
20 section, the alternative minimum assessment for a taxpayer for a
21 privilege period, other than a taxpayer electing to file a consolidated
22 return for the privilege period pursuant to section 18 of P.L.1945,
23 c.162 (C.54:10A-18), shall not exceed \$5,000,000. For a taxpayer
24 electing to file a consolidated return for the privilege period pursuant
25 to section 18 of P.L.1945, c.162 (C.54:10A-18), the alternative
26 minimum assessment shall not exceed \$5,000,000 for each member of
27 the affiliated group, except as provided in paragraph (2) or (3) of this
28 subsection.

29 (2) If four or more taxpayers are members of an affiliated group,
30 the sum of the alternative minimum assessments of each of the
31 members of the affiliated group for a privilege period shall not exceed
32 \$15,000,000. If the sum of the alternative minimum assessment for all
33 members of the affiliated group computed as set forth in subsection b.
34 after application of the maximum set by paragraph (1) of this
35 subsection would otherwise exceed \$15,000,000, the alternative
36 minimum assessment for a member of the affiliated group shall equal
37 the alternative minimum assessment for that member of the affiliated
38 group computed as set forth in subsection b. after application of the
39 maximum set by paragraph (1) of this subsection
40 multiplied by a fraction, the numerator of which is \$15,000,000 and
41 the denominator of which is the sum of the alternative minimum
42 assessments for all members of the affiliated group computed as set
43 forth in subsection b. after application of the maximum set by
44 paragraph (1) of this subsection.

45 (3) For the purpose of calculating the alternative minimum
46 assessment, the amount of the sum of the alternative minimum

1 assessments of the members of an affiliated group shall not, when
2 added to the amounts of the members' tax computed pursuant to
3 section 5 of P.L.1945, c.162 (C.54:10A-5), exceed \$15,000,000.

4 e. The alternative minimum assessment computed pursuant to this
5 section for privilege periods commencing after December 31, 2006
6 shall be \$0.00, except that for taxpayers exempt from corporation net
7 income taxation pursuant to 15 U.S.C. s.381 et seq. (Pub.L.86-272),
8 73 Stat. 555, such assessment shall continue to be computed as
9 otherwise provided herein.

10 f. (1) If the alternative minimum assessment for a taxpayer
11 computed pursuant to this section exceeds the tax computed pursuant
12 to section 5 of P.L.1945, c.165 (C.54:10A-5) for a privilege period,
13 the taxpayer shall be allowed an amount of credit equal to the amount
14 by which the alternative minimum assessment computed pursuant to
15 this section for the privilege period exceeds the tax computed pursuant
16 to section 5 of P.L.1945, c.165 (C.54:10A-5) for that privilege period.
17 The amount of credit may be carried forward for application in
18 subsequent privilege periods subject to the limitations of paragraph (2)
19 of this subsection.

20 (2) A taxpayer may apply all or a portion of the credits allowed by
21 paragraph (1) of this subsection against the tax computed pursuant to
22 section 5 of P.L. 1945, c. 162 (C. 54:10A-5), for a privilege period for
23 which the tax pursuant to that section exceeds the alternative minimum
24 assessment computed for the privilege period pursuant to this section;
25 provided however, that the amount of credit applied shall not reduce
26 the amount of tax otherwise due to less than the alternative minimum
27 assessment as computed pursuant to this section for the privilege
28 period.

29
30 8. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read
31 as follows:

32 6. In the case of a taxpayer which maintains a regular place of
33 business outside this State other than a statutory office, the portion of
34 its entire net worth to be used as a measure of the tax imposed by
35 subsection (a) of section [5(a)] 5 of [this act] P.L.1945, c.162
36 (C.54:10A-5), and the portion of its entire net income to be used as a
37 measure of the tax imposed by subsection (c) of section [5(a)] 5 of
38 [this act] P.L.1945, c.162 (C.54:10A-5), shall be determined by
39 multiplying such entire net worth and entire net income, respectively,
40 by an allocation factor which is the property fraction, plus twice the
41 sales fraction plus the payroll fraction and the denominator of which
42 is four, except as the director may determine pursuant to section 8 of
43 P.L.1945, c.162 (C.54:10A-8), that is:

44 (A) The property fraction is the average value of the taxpayer's real
45 and tangible personal property within the State during the period
46 covered by its report divided by the average value of all the taxpayer's

1 real and tangible personal property wherever situated during such
2 period; provided, however, that for the purpose of determining
3 average value, the provisions with respect to depreciation as set forth
4 in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of
5 P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving
6 at such value.

7 (B) The sales fraction is the receipts of the taxpayer, computed on
8 the cash or accrual basis according to the method of accounting used
9 in the computation of its net income for federal tax purposes, arising
10 during such period from

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

14 (2) sales of tangible personal property located without the State at
15 the time of the receipt of or appropriation to the orders where
16 shipment is made to points within the State,

17 (3) (Deleted by amendment.)

18 (4) services performed within the State,

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

21 (6) all other business receipts [(excluding dividends excluded from
22 entire net income by paragraph (1) of subsection (k) of section 4 of
23 P.L.1945, c.162 (C.54:10A-4))] earned within the State,

24 divided by the total amount of the taxpayer's receipts, similarly
25 computed, arising during such period from all sales of its tangible
26 personal property, services, rentals, royalties and all other business
27 receipts, whether within or without the State; provided however, that
28 if receipts would be assigned to a state, a possession or territory of the
29 United States or the District of Columbia or to any foreign country
30 in which the taxpayer is not subject to a tax on or measured by profits
31 or income then the receipts shall be excluded from the denominator
32 of the sales fraction.

33 [For the purposes of this section, receipts shall not include any sum
34 or sums of money received in payment for gas or electric energy sold
35 to a public utility subject to taxation pursuant to P.L.1940, c.5
36 (C.54:30A-49 et seq.) for resale to ratepayers of the public utility.]

37 (C) The payroll fraction is the total wages, salaries and other
38 personal service compensation, similarly computed, during such period
39 of officers and employees within the State divided by the total wages,
40 salaries and other personal service compensation, similarly computed,
41 during such period of all the taxpayer's officers and employees within
42 and without the State.

43 In the case of a taxpayer which does not maintain a regular place of
44 business outside this State other than a statutory office, the allocation
45 factor shall be 100%.

1 In the case of a banking corporation which maintains a regular place
2 of business outside this State other than a statutory office, and which
3 elects to take the exclusion from net worth provided in subsection (d)
4 of section 4 of P.L.1945, c.162 (C.54:10A-4) or the deduction from
5 entire net income provided in paragraph (4) of subsection (k) of
6 section 4 of P.L.1945, c.162 (C.54:10A-4), the allocation factor shall
7 be computed and applied in accordance with section 6 of P.L.1945,
8 c.162 (C.54:10A-6); provided, however, that the numerators and the
9 denominators of the fractions described in (A), (B) or (C) above shall
10 include all amounts attributable, directly or indirectly, to the
11 production of the eligible net income of an international banking
12 facility as defined in paragraph (4) of subsection (k) of section 4 of
13 P.L.1945, c.162 (C.54:10A-4), whether or not such amounts are
14 otherwise attributable to this State.
15 (cf: P.L.1995, c.245, s.1)

16

17 9. Section 5 of P.L.1993, c.173 (C.54:10A-6.1) is amended to read
18 as follows:

19 5. a. "Operational income" subject to allocation to New Jersey
20 means income from tangible and intangible property if the acquisition,
21 management, and disposition of the property constitute integral parts
22 of the taxpayer's regular trade or business operations and includes
23 investment income serving an operational function. Income that a
24 taxpayer demonstrates with clear and [cogent] convincing evidence
25 is not operational income is classified as nonoperational income, and
26 the nonoperational income of taxpayers[, other than those that have
27 their principal place from which the trade or business of the taxpayer
28 is directed or managed in this State,] is not subject to allocation but
29 shall be specifically assigned; provided, that 100% of the
30 nonoperational income of a taxpayer that has its principal place from
31 which the trade or business of the taxpayer is directed or managed in
32 this State shall be specifically assigned to this State to the extent
33 permitted under the Constitution and statutes of the United States.

34 b. Corporate expenses related to nonoperational income are not
35 deductible in determining entire net income. Notwithstanding the
36 provisions of R.S.54:49-6 or any other law to the contrary:

37 (1) if in prior privilege periods property had been classified as
38 operational property, and later is demonstrated to have been
39 nonoperational property and is subsequently disposed of, all expenses,
40 without limitation, deducted for prior privilege periods related to such
41 nonoperational property shall be added back and recaptured as income
42 in the period of disposition of such property;

43 (2) if in prior privilege periods income had been classified as
44 serving an operational function, and later is demonstrated not to have
45 been serving an operational function, all expenses, without limitation,
46 deducted in prior privilege periods related to such income not serving

1 an operational function shall be added back and recaptured as income;
2 and

3 (3) the denominators of the fractions used to determine the
4 allocation factor pursuant to section 6 of P.L.1945, c.162
5 (C.54:10A-6), for privilege periods for which redeterminations are
6 required pursuant to paragraphs (1) and (2) of this subsection shall be
7 redetermined to exclude the amounts, if any, relating to the
8 nonoperational property or the nonoperational income.

9 c. The Director of the Division of Taxation shall prescribe such
10 forms for administration and adopt such administrative rules as the
11 director deems necessary for the implementation of this section.

12 (cf: P.L.1993, c.173, s.5)

13

14 10. Section 10 of P.L.1945, c.162 (C.54:10A-10) is amended to
15 read as follows:

16 10. a. Whenever it shall appear to the [commissioner] director that
17 any taxpayer fails to maintain its records in accordance with sound
18 accounting principles or conducts its business or maintains its records
19 in such manner as either directly or indirectly to distort its true entire
20 net income or its true entire net worth under this act or the proportion
21 thereof properly allocable to this State, or whenever any taxpayer
22 maintains a place of business outside this State, or whenever any
23 agreement, understanding or arrangement exists between a taxpayer
24 and any other corporation or any person or firm, for the purpose of
25 evading tax under this act, or whereby the activity, business, receipts,
26 expenses, assets, liabilities, income or net worth of the taxpayer are
27 improperly or inaccurately reflected, the [commissioner] director is
28 authorized and empowered, in [his] the director's discretion and in
29 such manner as [he] the director may determine, to adjust and
30 redetermine such items, and to adjust items of gross receipts, tangible
31 or intangible property and payrolls within and without the State and
32 the allocation of entire net income or entire net worth or to make any
33 other adjustments in any tax report or tax returns as may be necessary
34 to make a fair and reasonable determination of the amount of tax
35 payable under this act.

36 b. Where [(a)] (1) any taxpayer conducts its activity or business
37 under any agreement, arrangement or understanding in such manner as
38 either directly or indirectly to benefit its members or stockholders, or
39 any of them, or any person or persons directly or indirectly interested
40 in such activity or business, by entering into any transaction at more
41 or less than a fair price which, but for such agreement, arrangement
42 or understanding, might have been paid or received therefor, or [(b)]
43 (2) any taxpayer, a substantial portion of whose capital stock is
44 owned either directly or indirectly by or through another corporation,
45 enters into any transaction with such other corporation on such terms
46 as to create an improper loss or net income, the [commissioner]

1 director may include in the entire net income of the taxpayer the fair
2 profits which, but for such agreement, arrangement or understanding,
3 the taxpayer might have derived from such transaction. The
4 ~~[commissioner]~~ director may require any person or corporation to
5 submit such information under oath or affirmation, or to permit such
6 examination of its books, papers and documents, as may be necessary
7 to enable ~~[him]~~ the director to determine the existence, nature or
8 extent of an agreement, understanding or arrangement to which this
9 section relates, whether or not such person or corporation is subject
10 to the tax imposed by this act.

11 c. The entire net income of a taxpayer exercising its franchise in
12 this State that is a member of an affiliated group or a controlled group
13 pursuant to sections 1504 or 1563 of the federal Internal Revenue
14 Code of 1986, 26 U.S.C. ss.1504 or 1563, shall be determined by
15 eliminating all payments to, or charges by, other members of the
16 affiliated or controlled group in excess of fair compensation in all
17 inter-group transactions of any kind. If the taxpayer cannot
18 demonstrate as a fact by clear and convincing evidence that a report
19 by a taxpayer discloses the true earnings of the taxpayer on its
20 business carried on in this State, the director may, at the director's
21 discretion, require the taxpayer to file a consolidated return of the
22 entire operations of the affiliated group or controlled group, including
23 its own operations and income. The director shall determine the true
24 amount of entire net income earned by the taxpayer in this State. The
25 consolidated entire net income of the taxpayer and of the other
26 members of its affiliated group or controlled group shall be allocated
27 to this State by use of the applicable allocation formula that the
28 director requires pursuant to P.L.1945, c.162 (C.54A:10A-1 et seq.)
29 be used by the taxpayer. The return shall include in the allocation
30 formula the property, payrolls, and sales of all corporations for which
31 the return is made. The director may require a consolidated return
32 under this section without regard to whether the other members of the
33 affiliated or controlled group, other than the taxpayer, are or are not
34 exercising their franchises in this State.

35 A consolidated return required by this section shall be filed within
36 60 days after it is demanded, subject to the penalties of the State
37 Uniform Tax Procedure Law, R.S.54:48-1 et seq.

38 The member of an affiliated group or a controlled group shall
39 incorporate in its return required under this section information needed
40 to determine under this section its taxable entire net income, and shall
41 furnish any additional information the director requires, subject to the
42 penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et
43 seq. A taxpayer shall furnish any additional information requested
44 within 30 days after it is demanded, subject to

1 the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1
2 et seq.

3 (cf: P.L.1958, c.63, s.5)

4

5 11. Section 14 of P.L.1945, c.162 (C.54:10A-14) is amended to
6 read as follows:

7 14. (a) The [commissioner] director may by general rule or by
8 special notice require any taxpayer to submit copies or pertinent
9 extracts of its federal income tax returns, or of any other tax return
10 made to any agency of the federal government, or of this or any other
11 state, or of any statement or registration made pursuant to any state
12 or federal law pertaining to securities or securities exchange
13 regulation.

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

25 (c) Each taxpayer filing a return that is a member of an affiliated
26 group or a controlled group pursuant to sections 1504 or 1563 of the
27 federal Internal Revenue Code of 1986, 26 U.S.C. ss.1504 or 1563
28 shall disclose in its return for the privilege period the amount of all
29 inter-member costs or expenses, including but not limited to
30 management fees, rents, and other services, for the privilege period.
31 If the taxpayer acquires products or services from another member of
32 its affiliated group or controlled group, which it re-sells or otherwise
33 uses to generate revenue, the taxpayer shall disclose the amount of
34 revenue generated from those products or services. The director shall
35 promulgate rules and procedures for the manner of disclosure. A
36 failure to file such a disclosure shall be deemed the filing of an
37 incomplete tax return, subject to the penalties of the State Uniform
38 Tax Procedure Law, R.S.54:48-1 et seq.

39 (cf: P.L.1949, c.236, s. 4)

40

41 12. (New section) a. A partnership that is not a qualified
42 investment partnership shall, on or before the 15th day of the fourth
43 month succeeding the close of each privilege period, remit a payment
44 of tax. The amount of tax shall be equal to the sum of: all of the
45 share of the entire net income of the partnership for that privilege
46 period of all nonresident noncorporate partners, multiplied by an

1 allocation factor determined, pursuant to section 6 of P.L.1945, c.162
2 (C.54:10A-6), based on the allocation fractions of the partnership for
3 that privilege period, and multiplied by .0637 plus all of the share of
4 the entire net income of the partnership for that privilege period of all
5 nonresident corporate partners, multiplied by an allocation factor
6 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
7 based on the allocation fractions of the partnership for that privilege
8 period, and multiplied by .09.

9 b. An amount of tax paid by a partnership pursuant to subsection
10 a. of this section shall be credited to accounts of its nonresident
11 partners in proportion to each nonresident partner's share of allocated
12 entire net income as of the date of its receipt by the director, and each
13 amount of tax so credited shall be deemed to have been paid by the
14 respective partner in respect of the privilege period or taxable year of
15 the partner.

16 c. For the purposes of this section:

17 "Nonresident noncorporate partner" means, an individual, an estate
18 or a trust subject to taxation pursuant to the "New Jersey Gross
19 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
20 taxpayer or a resident estate or trust under that act;

21 "Nonresident corporate partner" means a partner that is not an
22 individual, an estate or a trust subject to taxation pursuant to the "New
23 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
24 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
25 (C.54:10A-3), and that does not maintain a regular place of business
26 in this State other than a statutory office; and

27 "Partner" means an owner of an interest in the partnership, in
28 whatever manner that owner and ownership interest are designated.

29

30 13. Section 18 of P.L.1945, c.162 (C.54:10A-18) is amended to
31 read as follows:

32 18. a. The ~~commissioner~~ director shall design a form of return
33 and forms for such additional statements or schedules as ~~he~~ the
34 director may require to be filed therewith. Such forms shall provide for
35 the setting forth of such facts as the ~~commissioner~~ director may
36 deem necessary for the proper enforcement of this act. ~~He~~ The
37 director shall cause a supply thereof to be printed and shall furnish
38 appropriate blank forms to each taxpayer upon application or
39 otherwise as he may deem necessary. Failure to receive a form shall
40 not relieve any taxpayer from the obligation to file a return under the
41 provisions of this act. Each such return shall have annexed thereto a
42 certification by the president, vice-president, comptroller, secretary,
43 treasurer, assistant treasurer, accounting officer of the taxpayer or any
44 other officer of the taxpayer duly authorized so to act to the effect that
45 the statements contained therein are true. The fact that an individual's
46 name is signed on a certification of the report shall be prima facie

1 evidence that such individual is authorized to sign and certify the
2 report on behalf of the corporation. In the case of a corporation in
3 liquidation or in the hands of a receiver or trustee, certification shall
4 be made by the person responsible for the conduct of the affairs of
5 such corporation.

6 b. The return of an S corporation shall, in addition to any
7 information set forth pursuant to subsection a. of this section, set forth
8 with respect to each shareholder: the shareholder's name, address and
9 federal taxpayer identification number (social security number or
10 employer identification number); whether the shareholder is a resident
11 of this State; whether the shareholder has filed a consent to
12 jurisdictional requirements pursuant to section 3 or section 4 of
13 P.L.1993, c.173 (C.54:10A-5.22 or C.54:10A-5.23); the allocation
14 factor determined pursuant to sections 6 through 10 of P.L.1945,
15 c.162 (C.54:10A-6 through 54:10A-10); the amount of any
16 distribution made to the shareholder, including any amount paid on
17 behalf of the shareholder pursuant to subsection c. or d. of section 4
18 of P.L.1993, c.173 (C.54:10A-5.23); the balance of the accumulated
19 earnings and profits account; the balance of the accumulated
20 adjustments account described in section 16 of P.L.1993, c.173
21 (C.54A:5-14), which account the corporation shall maintain; and such
22 other information as the director may prescribe by regulation. The S
23 corporation shall, on or before the day on which such return is
24 required to be filed, furnish to each person who was a shareholder
25 during the [accounting or] privilege period a copy of such information
26 shown on the return as the director may by regulation prescribe.

27 c. (1) The return of a taxpayer that is a professional corporation
28 or a similar corporation for profit organized for the purpose of
29 rendering professional services under the laws of another state, shall
30 in addition to any information set forth pursuant to subsection a. of
31 this section, set forth the name, address and federal taxpayer
32 identification number (social security number or employer
33 identification number) of each licensed professional of the corporation.

34 (2) Each professional corporation or similar corporation for profit
35 organized for the purpose of rendering professional services under the
36 laws of another state that has more than two licensed professionals
37 shall at the time such return is required to be filed make a payment of
38 a filing fee of \$150 for each licensed professional of the corporation,
39 up to a maximum of \$250,000.

40 (3) Each professional corporation required to make a payment
41 pursuant to paragraph (2) of this subsection shall also make, at the
42 same time as making its payment pursuant to paragraph (2) of this
43 subsection, an installment payment of its filing fee for the succeeding
44 return period in an amount equal to 50% of the amount required to be
45 paid pursuant to paragraph (2). The amount of the installment
46 payment shall be credited against the amount of the filing fee due for

1 the succeeding return period, or, if the amount of the installment
2 payment exceeds the amount of the filing fee due for the succeeding
3 return period, successive return periods.

4 d. (1) An affiliated group of C corporations, as defined in section
5 1504 of the Internal Revenue Code of 1986, 26 U.S.C. s.1504, may
6 elect in accordance with the provisions of this subsection to make a
7 single, consolidated return with respect to the corporate income tax
8 imposed by section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege
9 period in lieu of separate returns. The making of a consolidated return
10 is a privilege and shall be upon the condition that all C corporations,
11 which at any time during the privilege period have been members of
12 the affiliated group, consent to be included in such return. The making
13 of a consolidated return shall be considered as such consent. The
14 privilege of filing of a consolidated return shall not be permitted if less
15 than all the members of the affiliated group consent to be included in
16 such return. Such election may, upon two years notice of the
17 revocation to the director, be revoked after five or more privilege
18 periods for which it has been in effect.

19 (2) Each corporation included as part of an affiliated group filing
20 a consolidated return shall be jointly and severally liable for the tax
21 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) of the
22 affiliated group with respect to the privilege period, except that any
23 corporation which was not a member of the affiliated group for the
24 entire taxable year shall be jointly and severally liable only for the
25 portion of the consolidated tax liability attributable to that portion of
26 the year during which the corporation was a member of the affiliated
27 group, prorated on a daily basis

28 (3) Nothing in this subsection shall be construed as requiring the
29 filing of a combined income tax return under the unitary business
30 concept.

31 (4) The director shall promulgate regulations interpreting the
32 provisions of this section that are consistent, to the maximum extent
33 possible, with applicable federal Treasury regulations.

34 (cf: P.L.1993, c.173, s.6)

35
36 14. Section 10 of P.L.1947, c.50 (C.54:10A-19.1) is amended to
37 read as follows:

38 10. (a) (Deleted by amendment, P.L.1992, c.175).

39 (b) (Deleted by amendment, P.L.1992, c.175).

40 (c) (Deleted by amendment, P.L.1992, c.175).

41 (d) The examination of returns and the assessment of additional
42 taxes, penalties and interest shall be as provided by the State Uniform
43 Tax [Uniform] Procedure Law, R.S.54:48-1 et seq., except as
44 otherwise provided.

45 (e) The filing of a complaint by a taxpayer in the tax court shall
46 suspend the running of the statute of limitations for the contested issue

1 or issues for all subsequent privilege periods.

2 (cf: P.L.1992, c.175, s.21)

3

4 15. (New section) Notwithstanding any other provision of law, no
5 interest or penalty shall be assessed against any taxpayer for
6 underpayment of installment payments of its estimated tax due and
7 payable after December 31, 2001 and before June 16, 2002, if, and
8 only to the extent, the underpayment of estimated tax is the result of
9 the temporary suspension of the deduction for net operating loss
10 carryovers provided in section 4 of P.L.1945, c.162 (C.54:10A-4) as
11 amended in section 3 of P.L.2002, c. (now pending before the
12 Legislature as this bill) or subsection c. of section 1 of P.L.1997, c.350
13 (C.54:10A-4.3).

14

15 16. (New section) a. Notwithstanding the limitation of the
16 application of subsection (g) of section 5 of P.L.1945, c.162
17 (C.54:10A-5) made pursuant to section 6 of P.L. , c. (now
18 pending before the Legislature as this bill), that limitation shall not
19 affect any obligation, lien or duty to make installment payments and
20 pay interest or penalties which have accrued or may accrue by virtue
21 of any duty to make installment payments pursuant to the provisions
22 of section 5 of P.L.2001, c.136 (C.54:10A-15.8) prior to the limitation
23 of the application of subsection (g) of section 5 of P.L.1945, c.162
24 (C.54:10A-5) made pursuant to section 6 of P.L. , c. ; and
25 provided that all estimated payments which would have been due and
26 payable prior to the enactment of P.L. , c. shall be due and
27 payable as if the limitation were not in effect; and provided that this
28 limitation shall not affect the legal authority of the State to audit
29 records and assess and collect installment payments which may be due,
30 together with such interest and penalties as have accrued or would
31 have accrued thereon and shall not affect any determination of, or
32 affect any proceeding for, the enforcement thereof.

33 b. Notwithstanding the provisions of section 5 of P.L.2001, c.136
34 (C.54:10A-15.8) to the contrary, any amount of tax paid pursuant to
35 subsection a. of that section for privilege periods beginning on or after
36 January 1, 2002 shall be credited against the tax paid pursuant to
37 section 12 of P.L. , c. (C.)(now pending before the Legislature
38 as this bill).

39

40 17. Section 2 of P.L.1993, c.170 (C.54:10A-5.5) is amended to
41 read as follows:

42 2. As used in this act:

43 "Business relocation or expansion or investment" means capital
44 investment in a new or expanded business facility in this State

45 "Business facility" means any factory, mill, plant, refinery,
46 warehouse, building, complex of buildings or structural components

1 of buildings, and all machinery, equipment and personal property
2 located within this State, used in connection with the operation of the
3 business of a corporation that is subject to the tax imposed pursuant
4 to section 5 of P.L.1945, c.162 (C.54:10A-5), and all facility
5 preparation and start-up costs of the taxpayer for the business facility
6 which it capitalizes for federal income tax purposes.

7 "Compensation" means wages, salaries, commissions or any other
8 form of remuneration paid to employees for personal services.

9 "Controlled group" means one or more chains of corporations
10 connected through stock ownership with a common parent corporation
11 if stock possessing at least 50% of the voting power of all classes of
12 stock of each of the corporations is owned directly or indirectly by one
13 or more of the corporations; and the common parent owns directly
14 stock possessing at least 50% of the voting power of all classes of
15 stock of at least one of the other corporations.

16 "Director" means the Director of the Division of Taxation in the
17 Department of the Treasury.

18 "Expanded business facility" means any business facility, other than
19 a new business facility, resulting from acquisition, construction,
20 reconstruction, installation or erection of improvements or additions
21 to existing property if such improvements or additions are purchased
22 on or after the operative date of this act, but only to the extent of a
23 taxpayer's qualified investment in such improvements or additions.

24 "New business facility" means a business facility which:

25 a. is employed by a taxpayer in the conduct of a business which is
26 or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.). Such
27 facility shall not be considered a new business facility in the hands of
28 a taxpayer if the taxpayer's only activity with respect to such facility
29 is to lease it to another person;

30 b. is purchased by a taxpayer and is placed in service or use on or
31 after the operative date of this act;

32 c. was not purchased by a taxpayer from a related person. The
33 director may waive this requirement if the facility was acquired from
34 a related person for its fair market value and the acquisition was not
35 tax motivated;

36 d. was not in service or use during the 90 day period immediately
37 prior to transfer of the title to the facility, provided that this restriction
38 for the 90 day period may be waived by the director if the director
39 determines that individuals employed at the facility may be considered
40 as "new employees" as defined in this section.

41 "New employee" means an individual residing and domiciled in this
42 State, hired by a taxpayer to fill a position or a job in this State which
43 previously did not exist in the taxpayer's business enterprise in this
44 State prior to the date on which the taxpayer's qualified investment is
45 placed in service or use in this State provided that:

46 a. the individual's duties in connection with the operation of the

1 business facility are on a regular, full-time and permanent basis or
2 regular part-time and permanent basis;

3 b. the individual is not a related individual as defined in subsection
4 (i) of section 51 of the federal Internal Revenue Code of 1986, 26
5 U.S.C. s.51, or does not own 10% or more of the business with such
6 ownership interest to be determined under the rules set forth in section
7 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267;

8 c. the individual is not an individual who worked for the taxpayer
9 during the six month period ending on the date the taxpayer's qualified
10 investment is placed in service or use and is rehired by the taxpayer
11 during the six month period beginning on the date the taxpayer's
12 qualified investment is placed in service or use in this State; and

13 d. the individual is not an employee for whom the taxpayer is
14 allowed a credit pursuant to section 19 of P.L.1983, c.303
15 (C.52:27H-78) or section 12 of P.L.1985, c.227 (C.55:19-13).

16 As used in this definition: "full-time" means employment for at least
17 140 hours per month at a wage not less than the State or federal
18 minimum wage, if either minimum wage provision is applicable to the
19 business and "permanent basis" does not include employment that is
20 temporary or seasonal and therefore the compensation paid to
21 temporary or seasonal employees will not be considered for purposes
22 of sections 4 and 6 of this act; and "part-time" means customarily
23 performing such duties at least 20 hours per week for at least six
24 months during the tax year. In no event shall the number of new
25 employees directly attributable to the qualified investment for the
26 purpose of the credit allowed pursuant to this act exceed the total
27 increase in the taxpayer's average employment in this State for the tax
28 year over the average employment in this State for the previous tax
29 year and in no event shall the number of new employees directly
30 attributable to the qualified investment for the purpose of the credit
31 allowed pursuant to this act exceed one half of the average
32 employment in this State for the tax year; and provided, that the
33 director may require that the net increase in the taxpayer's employment
34 in this State be determined and certified for the taxpayer's controlled
35 group.

36 Provided further, however, that individuals filling jobs saved as a
37 direct result of the taxpayer's qualified investment in property
38 purchased for business relocation or expansion on or after the
39 operative date of this act may be treated as new employees filling new
40 jobs if the taxpayer certifies the material facts to the director and the
41 director expressly finds that: but for the new employer purchasing the
42 assets of a business in bankruptcy under chapter 7 or 11 of the United
43 States Bankruptcy Code and such new employer making qualified
44 investment in property purchased for business relocation or expansion,
45 the assets would have been sold by the United States bankruptcy court
46 in a liquidation sale and the jobs so saved would have been lost; or but

1 for the taxpayer's qualified investment in property purchased for
2 business relocation or expansion in this State, the business facility in
3 this State would have closed and the employees located at the facility
4 would have lost their jobs; provided that the director shall not make
5 this certification unless the director finds that the business is insolvent
6 as defined in paragraph (32) of 11 U.S.C. s.101 or that the business
7 facility was destroyed in whole or in significant part by fire, flood or
8 act of God.

9 "New job" means a job which did not exist in the business of the
10 taxpayer in this State prior to the taxpayer's qualified investment being
11 made, and which is filled by a new employee.

12 "Partnership" means a syndicate, group, pool, joint venture or other
13 unincorporated organization through or by means of which any
14 business, financial operation or venture is carried on, and which is not
15 a trust or estate, a corporation or a sole proprietorship. The term
16 "partner" includes a member in such a syndicate, group, pool, joint
17 venture or organization.

18 "Property purchased for business relocation or expansion" means
19 improvements to real property and tangible personal property, but only
20 if that improvement or personal property was constructed or
21 purchased and placed in service or use by the taxpayer, for use as a
22 component part of a new or expanded business facility located in this
23 State.

24 a. Property purchased for business relocation or expansion shall
25 include only:

26 (1) improvements to real property placed in service or use on or
27 after the operative date of this act by the taxpayer;

28 (2) tangible personal property placed in service or use by the
29 taxpayer on or after the operative date of this act, with respect to
30 which depreciation, or amortization in lieu of depreciation, is
31 allowable in determining the corporation business tax liability of the
32 taxpayer under P.L.1945, c.162, and which has a remaining recovery
33 period of three or more years at the time the property is placed in
34 service or use in this State; or

35 (3) tangible personal property owned and used by the taxpayer at
36 a business location outside this State which is moved into this State on
37 or after the operative date of this act, for use as a component part of
38 a new or expanded business facility located in this State; provided that
39 the property is depreciable or amortizable personal property for
40 income tax purposes, and has a remaining recovery period of three or
41 more years at the time the property is placed in service or use in this
42 State.

43 b. Property purchased for business relocation or expansion shall
44 not include:

45 (1) Repair costs, including materials used in the repair, unless for
46 federal income tax purposes, the cost of the repair must be capitalized

1 and not expensed;

2 (2) Airplanes;

3 (3) Property which is primarily used outside this State with that use
4 being determined based upon the amount of time the property is
5 actually used both within and without this State;

6 (4) Property which is acquired incident to the purchase of the stock
7 or assets of the seller unless for good cause shown, the director
8 consents to waiving this disqualification; or

9 (5) Property purchased on or after the operative date of this act,
10 unless pursuant to a written contract to purchase executed prior to the
11 operative date of this act, the cost or consideration for which cannot
12 be quantified with any reasonable degree of accuracy at the time such
13 property is placed in service or use; provided that if the contract of
14 purchase specifies a minimum purchase price the amount thereof shall
15 be used to determine the qualified investment in such property under
16 section 5 of this act if the property otherwise qualifies as property
17 purchased for business relocation or expansion.

18 c. Property shall be deemed to have been purchased prior to a
19 specified date only if:

20 (1) the physical construction, reconstruction or erection of the
21 property was begun prior to the specified date, or such property was
22 constructed, reconstructed, erected or acquired pursuant to a written
23 contract as existing and binding on the purchase prior to the specified
24 date; or

25 (2) the machinery or equipment was owned by the taxpayer prior
26 to the specified date, or was acquired by the taxpayer pursuant to a
27 binding purchase contract which was in effect prior to the specified
28 date.

29 "Purchase" means any acquisition of property, including an
30 acquisition pursuant to a lease, but only if:

31 a. the property is not acquired from a person whose relationship to
32 the person acquiring it would result in the disallowance of deductions
33 under section 267 or subsection (b) of section 707 of the federal
34 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

35 b. the property is not acquired by one member of a controlled
36 group from another member of the same controlled group. The
37 director may waive this requirement if the property was acquired from
38 a related party for its then fair market value; and

39 c. the basis of the property for federal income tax purposes, in the
40 hands of the person acquiring it, is not determined:

41 (1) in whole or in part by reference to the federal adjusted basis of
42 such property in the hands of the person from whom it was acquired;

43 or

1 (2) under subsection (e) of section 1014 of the federal Internal
2 Revenue Code of 1986, 26 U.S.C. s.1014.

3 "Related person" means:

4 a. a corporation, partnership, association or trust controlled by the
5 taxpayer;

6 b. an individual, corporation, partnership, association or trust that
7 is in control of the taxpayer;

8 c. a corporation, partnership, association or trust controlled by an
9 individual, corporation, partnership, association or trust that is in
10 control of the taxpayer; or

11 d. a member of the same controlled group as the taxpayer.

12 As used in the definition of related person and as is applicable to the
13 definitions of purchase and small or mid-size business taxpayer,
14 "control," with respect to a corporation, means ownership, directly or
15 indirectly, of stock possessing 50% or more of the total combined
16 voting power of all classes of the stock of the corporation entitled to
17 vote; "control," with respect to a trust, means ownership, directly or
18 indirectly, of 50% or more of the beneficial interest in the principal or
19 income of the trust. The ownership of stock in a corporation, of a
20 capital or profits interest in a partnership or association or of a
21 beneficial interest in a trust shall be determined in accordance with the
22 rules for constructive ownership of stock provided in subsection (c) of
23 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
24 s.267, other than paragraph (3) of subsection (c) of that section.

25 "Small or mid-size business taxpayer" means a taxpayer that has an
26 annual payroll, as calculated pursuant to section 6 of P.L.1945, c.162
27 (C.54:10A-6), of ~~[\$2,000,000]~~ \$5,000,000 or less and annual gross
28 receipts, as calculated pursuant to section 6 of P.L.1945, c.162
29 (C.54:10A-6), of not more than ~~[\$6,000,000]~~ \$10,000,000 for the tax
30 year in which property purchased for business relocation or expansion
31 is placed in service or use by the taxpayer; provided that beginning
32 with tax years commencing on and after January 1 next following the
33 operative date of ~~[this act]~~ P.L.2002, c. (now pending before the
34 Legislature as this bill) the director shall prescribe the amount of
35 annual payroll and annual gross receipts which shall apply by
36 increasing each such amount hereinabove by an annual inflation
37 adjustment factor, which prescribed amount shall be rounded to the
38 next lowest multiple of \$50. "Annual inflation adjustment factor"
39 means the factor calculated by dividing the consumer price index for
40 urban wage earners and clerical workers for the nation, as prepared by
41 the United States Department of Labor for September of the calendar
42 year prior to the calendar year in which the tax year begins, by that
43 index for September of the calendar year two years prior to the
44 calendar year in which the tax year begins. The annual payroll of a
45 taxpayer shall include the employees of its domestic and foreign
46 affiliates, whether employed on a full-time, part-time, temporary, or

1 other basis, during the preceding 12 months. If a taxpayer has not
2 been in existence for 12 months, the payroll of the taxpayer shall be
3 divided by the number of weeks, including fractions of a week, that it
4 has been in business, and the result multiplied by 52. That amount
5 shall then be added to the 12 month payrolls of its domestic and
6 foreign affiliates to determine the annual payroll of the taxpayer for
7 purposes of this definition. The annual gross receipts of a taxpayer
8 shall include the annual gross receipts of its foreign and domestic
9 affiliates. The annual gross receipts of a taxpayer which has been in
10 business for three or more complete tax years means the average of the
11 annual gross receipts of the business for the last three tax years. For
12 purposes of this definition, the gross receipts of the taxpayer includes
13 receipts from sales of tangible personal property and services,
14 interests, rents, royalties, fees, commissions and receipts from any
15 other source, but less returns and allowances, sales of fixed assets,
16 interaffiliated transactions between a business and its domestic and
17 foreign affiliates, and taxes collected for remittance to a third party, as
18 shown on its books for federal income tax purposes. The annual
19 receipts of a taxpayer that has been in business for less than three
20 complete tax years means its total receipts for the period it has been
21 in business, divided by the number of weeks including fractions of a
22 week that it has been in business, and multiplied by 52. "Affiliates"
23 includes all concerns that are affiliates of each other when either
24 directly or indirectly one concern controls the other or a third party or
25 parties controls both. In determining whether concerns are
26 independently owned and operated and whether or not affiliation
27 exists, the director shall consider all appropriate factors, including
28 common ownership, common management and contractual
29 relationships. "Concern" means any business entity organized for
30 profit (even if its ownership is in the hands of a nonprofit entity),
31 having a place of business located in this State, and which makes a
32 contribution to the economy of this State through payment of taxes,
33 or the sale or use in this State of tangible personal property, or the
34 procurement or providing of services in this State, or the hiring of
35 employees who work in this State. "Concern" includes but is not
36 limited to any person as defined in R.S.1:1-2.

37 "Tax year" means the fiscal or calendar accounting year of a
38 taxpayer.

39 (cf: P.L.1993, c.170, s.2)

40

41 18. Section 3 of P.L.1993, c.170 (C.54:10A-5.6) is amended to
42 read as follows:

43 3. a. A taxpayer shall be allowed a credit against the portion of the
44 tax imposed in section 5 of P.L.1945, c.162 (C.54:10A-5), that is
45 attributable to and the direct consequence of the taxpayer's qualified
46 investment in a new or expanded business facility in this State which

1 results in the creation of at least five new jobs in the case of a small or
2 mid-size business taxpayer, or at least 50 new jobs in the case of any
3 other taxpayer, provided that the median compensation of all new jobs
4 included in the taxpayer's determination of the new jobs factor shall
5 not be less than \$27,000 per year, provided that beginning with tax
6 years commencing on and after January 1 next following the operative
7 date of this act the director shall adjust the median annual
8 compensation which shall apply as provided in subsection e. of this
9 section. The amount of this credit shall be determined and applied as
10 hereinafter provided.

11 b. The amount of the credit allowed shall be determined by
12 multiplying the amount of the taxpayer's "qualified investment,"
13 determined under section 5 of this act, in "property purchased for
14 business relocation or expansion" by the taxpayer's new jobs factor
15 determined under section 6 of this act. The product of this calculation
16 shall establish the maximum amount of credit allowed under this act
17 due to the qualified investment.

18 c. The amount of credit allowed shall be taken over a five year
19 period, at the rate of one-fifth of the amount thereof per tax year,
20 beginning with the tax year in which the taxpayer places the qualified
21 investment in service or use in this State.

22 d. For purposes of the credit allowed by this section, property shall
23 be considered placed in service or use in the earlier of the following
24 tax years:

25 (1) The tax year in which, under the taxpayer's depreciation
26 practice, the period for depreciation with respect to such property
27 begins; or

28 (2) The taxable year in which the property is placed in a condition
29 or state of readiness and availability for a specifically assigned
30 function.

31 e. Beginning with tax years commencing on and after January 1
32 next following the operative date of this act the director shall prescribe
33 the annual median compensation of all new jobs included in the
34 taxpayer's determination of new jobs factor by increasing the amount
35 of median compensation set forth in subsection a. of this section by an
36 annual inflation adjustment factor, which prescribed amount shall be
37 rounded to the next lowest multiple of \$50. "Annual inflation
38 adjustment factor" means the factor calculated by dividing the
39 consumer price index for urban wage earners and clerical workers for
40 the nation, as prepared by the United States Department of Labor for
41 September of the calendar year prior to the calendar year in which the
42 tax year begins, by that index for September of the calendar year two
43 years prior to the calendar year in which the tax year begins.

44 (cf: P.L.1993, c.170, s.3)

1 19. Section 6 of P.L.1993, c.170 (C.54:10A-5.9) is amended to
2 read as follows:

3 6. a. The new jobs factor used to determine the amount of credit
4 allowed under this act shall be based on the number of new jobs
5 created in this State that are directly attributable to the qualified
6 investment of the taxpayer.

7 b. (1) (a) For a taxpayer that is not a small or mid-size business
8 taxpayer, if 50 new jobs are created and filled during the tax year in
9 which the qualified investment is placed in service or use in this State,
10 the applicable new jobs factor shall be 0.005. For each 50 additional
11 new jobs over the initial 50, up to 1000 total new jobs, the applicable
12 new jobs factor of 0.005 shall be increased by adding thereto 0.005,
13 up to a maximum new jobs factor of 0.10.

14 (b) During each of the remaining four years of the five year credit
15 period, the taxpayer shall redetermine the new jobs factor for the tax
16 year on the annual return based on the average number of new
17 employees employed in new jobs during that tax year (determined on
18 a monthly basis) created as the direct result of the taxpayer's qualified
19 investment.

20 (2) (a) For a taxpayer that is a small or mid-size business taxpayer,
21 if five new jobs are created and filled during the tax year in which the
22 qualified investment is placed in service or use in this State, the
23 applicable new jobs factor shall be ~~[0.005]~~ 0.01. For each five
24 additional new jobs over the initial five, up to 100 total new jobs, the
25 applicable new jobs factor of ~~[0.005]~~ 0.01 shall be increased by
26 adding thereto ~~[0.005]~~ 0.01, up to a maximum new jobs factor of
27 ~~[0.10]~~ 0.20.

28 (b) During each of the remaining four years of the five year credit
29 period, the taxpayer shall redetermine the new jobs factor for the tax
30 year on the annual return based on the average number of new
31 employees employed in new jobs during that tax year (determined on
32 a monthly basis) created as the direct result of the taxpayer's qualified
33 investment.

34 c. An employee's position shall be directly attributable to the
35 qualified investment if:

36 (1) the employee's service is performed or the employee's base of
37 operations is at the new or expanded business facility;

38 (2) the position did not exist prior to the construction, renovation,
39 expansion or acquisition of the business facility and the making of the
40 qualified investment; and

41 (3) but for the qualified investment, the position would not have
42 existed.

43 d. With the annual corporation business tax return filed under
44 P.L.1945, c.162, for each tax year during the five year credit period
45 for a qualified investment, the taxpayer shall certify:

1 (1) the new jobs factor for that tax year for the qualified
2 investment;

3 (2) the amount of the credit allowed for that year for the qualified
4 investment;

5 (3) that the qualified investment property continued to be used in
6 the business, or if any of it was disposed of during the year, the date
7 of disposition, and that such property was not disposed of prior to
8 expiration of its recovery period, as determined under section 5 of this
9 act; and

10 (4) that the new jobs are directly attributable to the qualified
11 investment, are filled by individuals who meet the definition of new
12 employee, and the median annual compensation of all new employees
13 is equal to or greater than the minimum median annual compensation
14 required by section 3 of this act.

15 e. With the annual return for the corporation business tax imposed
16 under P.L.1945, c.162, filed for the tax year in which the qualified
17 investment is first placed in service or use in this State, the taxpayer
18 shall estimate and certify the number of new jobs reasonably projected
19 to be created by it in this State within the period prescribed in
20 subsection g. of this section, that are, or will be directly attributable to
21 the qualified investment of the taxpayer.

22 f. The hours of part-time employees shall be aggregated to
23 determine the number of equivalent full-time employees for the
24 purpose of determining the new jobs factor pursuant to subsection b.
25 of this section but shall not be so aggregated for the purposes of
26 subsection c. of this section.

27 g. With the annual return for the tax imposed under P.L.1945,
28 c.162, filed for the third tax year in which the qualified investment is
29 in service or use in this State, the taxpayer shall certify the actual
30 number of new jobs created by it in this State, that are directly
31 attributable to the qualified investment of the taxpayer.

32 (1) If the actual number of jobs created would result in a higher
33 new jobs factor, the credit allowed under this act shall be redetermined
34 and amended returns filed for the first and second tax years that the
35 qualified investment was in service or use in this State.

36 (2) If the actual number of jobs created would result in a lower
37 new jobs factor, the credit previously allowed under this act shall be
38 redetermined and amended returns filed for the first and second tax
39 years. Any additional taxes due under P.L.1945, c.162, shall be
40 remitted with the amended returns filed with the director, together
41 with any penalty and interest, for failure to pay any such tax when due
42 as provided in the State Uniform Tax [Uniform] Procedure Law,
43 R.S.54:48-1 et seq.

44 (cf: P.L.1993, c.170, s.6)

1 20. Section 8 of P.L.1993, c.170 (C.54:10A-5.11) is amended to
2 read as follows:

3 8. a. (1) Property of a small or mid-size business taxpayer shall
4 not be treated as disposed of under section 7 of this act by reason of
5 a mere change in the form of conducting the business as long as the
6 property is retained in a business of a small or mid-size business
7 taxpayer in this State, and the taxpayer retains a controlling interest in
8 the successor business. In this event, the successor business shall be
9 allowed to claim the amount of credit still available with respect to the
10 new or expanded business facility or facilities transferred, and the
11 small or mid-size business taxpayer-transferor shall not be required to
12 redetermine the amount of credit allowed in earlier tax years.

13 (2) Property of a taxpayer that is not a small or mid-size business
14 taxpayer shall not be treated as disposed of under section 7 of this act
15 by reason of a mere change in the form of conducting the business as
16 long as the property is retained in a business of a taxpayer in this
17 State, and the taxpayer retains a controlling interest in the successor
18 business. In this event, the successor business shall be allowed to
19 claim the amount of credit still available with respect to the new or
20 expanded business facility or facilities transferred, and the
21 taxpayer-transferor shall not be required to redetermine the amount of
22 credit allowed in earlier tax years.

23 b. (1) Property of a small or mid-size business taxpayer shall be
24 treated as disposed of under section 7 of this act by reason of a change
25 in the form of conducting the business if the property is not retained
26 in a business of a small or mid-size business taxpayer in this State in
27 which the small or mid-size business taxpayer retains a controlling
28 interest.

29 (2) Property of a small or mid-size business taxpayer shall not be
30 treated as disposed of under section 7 of this act by reason of any
31 transfer or sale to a successor small or mid-size business taxpayer
32 which continues to operate the new or expanded business facility in
33 this State. Upon transfer or sale, the successor shall acquire the
34 amount of credit that remains available under this act for each
35 subsequent tax year and the taxpayer-transferor shall not be required
36 to redetermine the amount of credit allowed in earlier years.

37 (3) Property of a business that is not a small or mid-size business
38 taxpayer shall not be treated as disposed of under section 7 of this act
39 by reason of any transfer or sale to a successor taxpayer which
40 continues to operate the new or expanded business facility in this
41 State. Upon transfer or sale, the successor shall acquire the amount
42 of credit that remains available under this act for each subsequent tax
43 year and the taxpayer-transferor shall not be required to redetermine
44 the amount of credit allowed in earlier years.

1 (4) Property of a small or mid-size business taxpayer shall be
2 treated as disposed of under section 7 by reason of any transfer or sale
3 to a successor that is not a small or mid-size business taxpayer,
4 whether or not the successor continues to operate the business in this
5 State. Upon such transfer or sale, the successor shall not acquire any
6 amount of credit under this act and the taxpayer-transferor shall
7 redetermine, as required by this act, the amount of credit allowed in
8 earlier years.

9 (cf: P.L.1993, c.170, s.8)

10
11 21. N.J.S.54A:8-6 is amended to read as follows:

12 54A:8-6. Requirements concerning returns, notices, records and
13 statements. (a) General. The director may prescribe regulations as
14 to the keeping of records, the content and form of returns and
15 statements, and the filing of copies of federal income tax returns and
16 determinations. The director may require any person, by regulation or
17 notice served upon such person, to make such returns, render such
18 statements, or keep such records, as the director may deem sufficient
19 to show whether or not such person is liable under this act for tax or
20 for collection of tax.

21 (b) Partnerships. ~~Every~~ (1) Each entity classified as a
22 partnership for federal income tax purposes, including but not limited
23 to a partnership [or], a limited liability partnership, or a limited
24 liability company, having a resident [partner] owner of an interest in
25 the entity or having any income derived from New Jersey sources,
26 shall make a return for the taxable year setting forth all items of
27 income, gain, loss and deduction and such other pertinent information
28 as the director may by regulations and instructions prescribe. The
29 director shall prescribe a State return form that, at a minimum,
30 includes the name and address of each partner, member, or other
31 owner of an interest in the entity however designated, of the
32 [partnership] entity for taxable years ending on or after December 31,
33 1994. Such return shall be filed on or before the fifteenth day of the
34 fourth month following the close of each taxable year.

35 (2) (A) Each entity classified as a partnership for federal income
36 tax purposes, including but not limited to a partnership , a limited
37 liability partnership, or a limited liability company, that has more than
38 two owners shall at the prescribed time for making the return required
39 under this subsection make a payment of a filing fee of \$150 for each
40 owner of an interest in the entity, up to a maximum of \$250,000.

41 (B) Each entity required to make a payment pursuant to
42 subparagraph (A) of this paragraph shall also make, at the same time
43 as making its payment pursuant to subparagraph (A) of this paragraph,
44 an installment payment of its filing fee for the succeeding return period
45 in an amount equal to 50% of the amount required to be paid pursuant
46 to subparagraph (A). The amount of the installment payment shall be

1 credited against the amount of the filing fee due for the succeeding
2 return period, or, if the amount of the installment payment exceeds the
3 amount of the filing fee due for the succeeding return period,
4 successive return periods.

5 (3) Each [partnership or limited liability partnership] entity
6 required to file a return under this subsection for any taxable year
7 shall, on or before the day on which the return for the taxable year is
8 required to be filed, furnish to each person who is a partner or other
9 owner of an interest in the entity however designated, or who holds an
10 interest in such [partnership] entity as a nominee for another person
11 at any time during that taxable year a copy of such information
12 required to be shown on such return as the director may prescribe.

13 (4) For the purposes of this subsection, "taxable year" means a year
14 or period which would be a taxable year of the partnership if it were
15 subject to tax under this act.

16 (c) Information at source. The director may prescribe regulations
17 and instructions requiring returns of information to be made and filed
18 on or before February 15 of each year as to the payment or crediting
19 in any calendar year of amounts of \$100.00 or more to any taxpayer
20 under this act. Such returns may be required of any person, including
21 lessees or mortgagors of real or personal property, fiduciaries,
22 employers, and all officers and employees of this State, or of any
23 municipal corporation or political subdivision of this State, having the
24 control, receipt, custody, disposal or payment of interest, rents,
25 salaries, wages, premiums, annuities, compensations, remunerations,
26 emoluments or other fixed or determinable gains, profits or income,
27 except interest coupons payable to bearer. A duplicate of the
28 statement as to tax withheld on wages, required to be furnished by an
29 employer to an employee, shall constitute the return of information
30 required to be made under this section with respect to such wages.

31 (d) Notice of qualification as receiver, et cetera. Every receiver,
32 trustee in bankruptcy, assignee for benefit of creditors, or other like
33 fiduciary shall give notice of his qualification as such to the director,
34 as may be required by regulation.

35 (cf: P.L.1995, c.96, s.14)

36

37 22. The following are repealed:

38 Sections 1 through 16, 18 and 19 of P.L.1973, c.31 (C.54:10D-1
39 et seq.); and

40 Sections 1 through 19 and 21 through 24 of P.L.1973, c.170
41 (C.54:10E-1 through 54:10E-19 and C.54:10E-21 through 54:10E-
42 24).

43

44 23. (New section) a. Notwithstanding the repeal of the "Savings
45 Institutions Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), and the
46 Corporation Income Tax Act (1972), P.L.1973, c.170 (C.54:10E-1 et

1 seq.), pursuant to section 22 of P.L. , c. (now pending
2 before the Legislature as this bill), their repeal shall not affect any
3 obligation, lien or duty to pay taxes, interest or penalties which have
4 accrued or may accrue by virtue of any taxes imposed pursuant to the
5 provisions of the laws repealed by section 22 of P.L. , c. ,
6 or which may be imposed with respect to any redetermination,
7 correction, recomputation or deficiency assessment; and provided that
8 all taxes and returns which would have been due and payable for the
9 tax period ending prior to the enactment of P.L. , c. (now
10 pending before the Legislature as this bill) shall be due and payable as
11 if the laws were in effect; and provided that these repeals shall not
12 affect the legal authority of the State to audit records and assess and
13 collect taxes due or which may be due, together with such interest and
14 penalties as have accrued or would have accrued thereon under the
15 provisions of the law repealed; and provided that the repeal by section
16 22 of P.L. , c. , shall not affect any determination of, or
17 affect any proceeding for, the enforcement thereof.

18 b. In the case of a taxpayer that was taxpayer as defined pursuant
19 to P.L.1973, c.170 (C.54:10E-1 et seq.), for the fiscal or calendar
20 accounting period next ending after the effective date of this section,
21 "basis of the facts shown on the return of the taxpayer for, and the law
22 applicable to, the preceding fiscal or calendar accounting year" shall,
23 for the purposes of paragraph (1) of subsection d. of section 5 of
24 P.L.1981, c.184 (C.54:10A-15.4), for the fiscal or calendar year next
25 beginning after the effective date of this act, be deemed to be the basis
26 of the facts shown on the return of the taxpayer for, and the law
27 applicable to, the preceding fiscal or calendar accounting year pursuant
28 to P.L.1973, c.170 (C.54:10E-1 et seq.).

29 c. In the case of a taxpayer that was a taxpayer as defined pursuant
30 to P.L.1973, c.31 (C.54:10D-1 et seq.), for the fiscal or calendar
31 accounting period next ending after the effective date of this section,
32 "basis of the facts shown on the return of the taxpayer for, and the law
33 applicable to, the preceding fiscal or calendar accounting year" shall,
34 for the purposes of paragraph (1) of subsection d. of section 5 of
35 P.L.1981, c.184 (C.54:10A-15.4), for the fiscal or calendar year next
36 beginning after the effective date of this act, be deemed to be the basis
37 of the facts shown on the return of the taxpayer for, and the law
38 applicable to, the preceding fiscal or calendar accounting year pursuant
39 to P.L.1973, c.31 (C.54:10D-1 et seq.).

40

41 24. (New section) a. The director shall adopt regulations in
42 accordance with the "Administrative Procedure Act," P.L.1968, c.410
43 (C.52:14B-1 et seq.), and prescribe forms to administer the provisions
44 of this act.

45 b. Notwithstanding the provisions of P.L.1968, c.410 to the
46 contrary, the director may adopt immediately upon filing with the

1 Office of Administrative Law, such regulations as the director deems
2 necessary to implement the provisions of this act, which regulations
3 shall be effective for a period not to exceed 180 days from the date of
4 the filing. The regulations may thereafter be amended, adopted or
5 readopted by the director as the director deems necessary in
6 accordance with the requirements of P.L.1968, c.410.

7

8 25. (New section) a. (1) For the purposes of determining the
9 sales fraction pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
10 and for the purposes of the definition of New Jersey gross receipts
11 pursuant to section 7 of P.L. , c. (C.)(now pending before the
12 Legislature as this bill), the portion of receipts received from an
13 investment company arising from the sale of management,
14 administrative or distribution services to that investment company shall
15 be deemed to arise from services performed within the State equal to
16 the product of:

17 (a) the total of the receipts from the sale of those services; and

18 (b) a fraction, the numerator of which is the sum of the monthly
19 percentages determined for each month of the investment company's
20 taxable year for federal income tax purposes which taxable year ends
21 within the privilege period of the taxpayer (excluding any month
22 during which the investment company had no outstanding shares) and
23 the denominator of which is the number of those monthly percentages.

24 (2) For the purposes of this subsection:

25 "Monthly percentage" for each month shall be determined by
26 dividing the number of shares in the investment company that are
27 owned on the last day of the month by the number of shareholders that
28 are residents of this State by the total number of shares in the
29 investment company outstanding on that date;

30 "Resident" means, in the case of an individual, "resident taxpayer"
31 pursuant to N.J.S.54A:1-2, in the case of an estate or trust "resident
32 estate or trust" pursuant to N.J.S.54A:1-2; a business entity is resident
33 in this State if the location of the actual seat of management or control
34 is in this State. It shall be presumed that the residence of a
35 shareholder, with respect to any month, is the shareholder's mailing
36 address on the records of the investment company as of the last day of
37 the month;

38 "Investment company" means a regulated investment company, as
39 defined in section 851 of the federal Internal Revenue Code of 1986,
40 26 U.S.C. s.851, and a partnership to which subsection (a) of section
41 7704 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.7704
42 applies by virtue of paragraph (3) of that section and that meets the
43 requirements of subsection (b) of section 851 of the federal Internal
44 Revenue Code of 1986, 26 U.S.C. s.851. This definition shall be
45 applied to the taxable year for federal income tax purposes of the
46 business entity that is asserted to constitute an investment company

1 that ends within the privilege period of the taxpayer;

2 "Receipts from an investment company" include amounts received
3 directly from an investment company as well as amounts received from
4 the shareholders in that investment company, in their capacity as
5 shareholders.

6 "Management services" means the rendering of investment advice
7 to an investment company, making determinations as to when sales
8 and purchases of securities are to be made on behalf of an investment
9 company, or the selling or purchasing of securities constituting assets
10 of an investment company, and related activities, but only if the
11 activity is performed pursuant to a contract with the investment
12 company entered into pursuant to section 15(a) of the federal
13 Investment Company Act of 1940 (54 Stat. 789), as amended;

14 "Distribution services" means the services of advertising, servicing
15 investor accounts including redemptions, marketing shares or selling
16 shares of an investment company; provided however, that in the case
17 of advertising, servicing investor accounts including redemptions, or
18 marketing shares, only if that service is performed by a person who is,
19 or was in the case of a closed end company, also engaged in the
20 service of selling those shares. In the case of an open end company,
21 the service of selling shares shall be performed pursuant to a contract
22 entered into pursuant to section 15(b) of the federal Investment
23 Company Act of 1940 (54 Stat. 789), as amended;

24 "Administration services" includes clerical, accounting,
25 bookkeeping, data processing, internal auditing, legal and tax services
26 performed for an investment company but only if the provider of the
27 service, during the privilege period in which the service is sold, also
28 sells management or distribution services to the investment company.

29 b. (1) For the purpose of determining the sales fraction pursuant
30 to section 6 of P.L.1945, c.162 (C.54:10A-6), and for the purposes of
31 the definition of New Jersey gross receipts pursuant to section 7 of
32 P.L. , c. (C.)(now pending before the Legislature as this bill)
33 for a taxpayer that is a registered securities or commodities broker or
34 dealer, the following receipts shall be deemed to arise from services
35 performed within this State:

36 (a) Receipts constituting brokerage commissions derived from the
37 execution of securities or commodities purchase or sales orders for the
38 accounts of customers shall be deemed to arise from services
39 performed at the mailing address in the records of the taxpayer of the
40 customer who is responsible for paying the commissions.

41 (b) Receipts constituting margin interest earned on behalf of
42 brokerage accounts shall be deemed to arise from services performed
43 at the mailing address in the records of the taxpayer of the customer
44 who is responsible for paying the margin interest.

45 (c) Gross income, including any accrued interest or dividends,
46 from principal transactions for the purchase or sale of stocks, bonds,

1 foreign exchange and other securities or commodities (including
2 futures and forward contracts, options and other types of securities or
3 commodities derivatives contracts) shall be deemed to arise from
4 services performed within this State to the extent that production
5 credits are awarded to branches, offices or employees of the taxpayer
6 within this State as a result of those principal transactions. For
7 purposes of this subsection, gross income from principal transactions
8 shall be determined after the deduction of any cost incurred by the
9 taxpayer to acquire the securities or commodities. For purposes of
10 this subsection, "production credits" means credits granted pursuant
11 to the internal accounting system used by the taxpayer to measure the
12 amount of revenue that should be awarded to a particular branch or
13 office or employee of the taxpayer which is based, at least in part, on
14 the branch's, the office's or the employees' particular activities. Upon
15 request, the taxpayer shall be required to furnish a detailed explanation
16 of such internal accounting system to the director.

17 (d) Receipts constituting fees earned by the taxpayer for advisory
18 services to a customer in connection with the underwriting of
19 securities for such customer (such customer being the entity which is
20 contemplating issuing or is issuing securities) or fees earned by the
21 taxpayer for managing an underwriting shall be deemed to arise from
22 services performed at the mailing address in the records of the
23 taxpayer of the customer who is responsible for paying the fees.

24 (e) Receipts constituting the primary spread or selling concession
25 from underwritten securities shall be deemed to arise from services
26 performed within this State to the extent that production credits are
27 awarded to branches, offices or employees of the taxpayer within the
28 State as a result of the sale of the underwritten securities. For the
29 purposes of this subsection, "primary spread" means the difference
30 between the price paid by the taxpayer to the issuer for the securities
31 being marketed and the price received from the subsequent sale of the
32 underwritten securities at the initial public offering price, less any
33 selling concession and any fees paid to the taxpayer for advisory
34 services or any manager's fees, if the fees are not paid by the customer
35 to the taxpayer separately; "public offering price" means the price
36 agreed upon by the taxpayer and the issuer at which the securities are
37 to be offered to the public; and "selling concession" means the amount
38 paid to the taxpayer for participating in the underwriting of a security
39 if the taxpayer is not the lead underwriter.

40 (f) Receipts constituting interest earned by the taxpayer on loans
41 and advances made by the taxpayer to a corporation affiliated with the
42 taxpayer but with which the taxpayer is not permitted or required to
43 file a combined report pursuant to the "Corporation Business Tax Act
44 (1945)" shall be deemed to arise from services performed at the
45 principal place of business of the affiliated corporation.

1 (g) Receipts constituting account maintenance fees shall be deemed
2 to arise from services performed at the mailing address in the records
3 of the taxpayer of the customer who is responsible for paying the
4 account maintenance fees.

5 (h) Receipts constituting fees for management or advisory services,
6 including fees for advisory services in relation to a merger or
7 acquisition activities but excluding fees paid for services described in
8 subsection a. of this section, shall be deemed to arise from services
9 performed at the mailing address in the records of the taxpayer of the
10 customer who is responsible for paying the fees.

11 (2) For purposes of this subsection:

12 "Securities" has the meaning provided by paragraph (2) of
13 subsection (c) of section 475 of the federal Internal Revenue Code of
14 1986, 26 U.S.C. s.475;

15 "Commodities" has the meaning provided by paragraph (2) of
16 subsection (e) of section 475 of the federal Internal Revenue Code of
17 1986, 26 U.S.C. s.475; and

18 "Registered securities or commodities broker or dealer" means a
19 broker or dealer registered as such by the federal Securities and
20 Exchange Commission or the federal Commodities Futures Trading
21 Commission.

22 (3) If a taxpayer receives any of the receipts enumerated in
23 paragraph (1) of this subsection as a result of a securities
24 correspondent relationship that the taxpayer has with another
25 registered securities or commodities broker or dealer and the taxpayer
26 acted in this relationship as the clearing firm, those receipts shall be
27 deemed to arise from services performed within this State to the extent
28 set forth in paragraph (1) of this subsection. The amount of those
29 receipts shall exclude the amount the taxpayer is required to pay to the
30 correspondent firm for the correspondent relationship. If the taxpayer
31 receives any of the receipts enumerated in paragraph (1) of this
32 subsection as a result of a securities correspondent relationship the
33 taxpayer has with another registered securities or commodities broker
34 or dealer and the taxpayer acted in this relationship as the introducing
35 firm, those receipts shall be deemed to arise from services performed
36 within this State to the extent set forth in paragraph (1) of this
37 subsection.

38 (4) If, for purposes of paragraph (1) of this subsection, the
39 taxpayer is unable from its records to determine the mailing address of
40 the customer, the receipts enumerated in subsection (1) shall be
41 deemed to arise from services performed at the branch or office of the
42 taxpayer that generates the transaction for the customer that generated
43 the receipts.

44
45 26. (New section) Notwithstanding any provision of subsection
46 (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal

1 Internal Revenue Code, including but not limited to 26 U.S.C. s.381
2 or any successor or equivalent provision, that permits a corporation to
3 use the net operating losses of another for federal income tax purposes
4 following certain transactions, including but not limited to those
5 qualifying as reorganizations under the provisions of subparagraphs
6 (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of section
7 368 of the federal Internal Revenue Code, 26 U.S.C. s.368, a net
8 operating loss for a privilege period ending after June 30, 1984, may
9 be carried over and allowed as a deduction only by the corporation
10 that sustained the loss; provided however, that in the case of a merger
11 of two or more corporations pursuant to statute of this State or any
12 other jurisdiction, including a merger that has the effect of changing
13 the jurisdiction of incorporation, the net operating loss may be carried
14 over by the corporation that sustained the loss and that is also the
15 surviving corporation following the merger. No net operating loss
16 shall be allowed as a deduction by a corporation resulting from a
17 consolidation pursuant to statute of this State or of any other
18 jurisdiction.

19

20 27. This act shall take effect immediately and apply to privilege
21 periods and taxable years beginning on or after January 1, 2002,
22 provided however that section 26 shall apply to privilege periods
23 ending after June 30, 1984.

24

25

26

STATEMENT

27

28 This bill, designated the Business Tax Reform Act, revises and
29 updates the corporation business tax to close a number of loopholes
30 and limit certain tax benefits. In doing so the bill makes some
31 fundamental reforms to the New Jersey business tax structure.

32 The New Jersey system of taxes on business income is broken.
33 Twenty years ago, the corporation business tax raised \$838 million –
34 about 15 percent of the State's total tax revenue. Just five years ago,
35 this proportion had dropped to 8 percent and by State Fiscal Year
36 2001, it stood at 6.6 percent.

37 This is largely the result of proliferating loopholes that have
38 permitted many profitable companies to avoid paying virtually any
39 business tax. In 1999, the last tax year for which statistics are
40 available, nearly 77 percent of all companies paid only the statutory
41 minimum tax of \$200. Of the 50 companies with the largest payrolls
42 in New Jersey, 30 paid only the \$200 minimum. That is less tax than
43 would be paid by a single parent who had one child and who earned
44 \$25,000 a year. Ten of these 50 companies, some of which are
45 headquartered here, had an aggregate payroll of \$3.5 billion, told their
46 shareholders they had \$13.3 billion in profits, \$2 billion of which

1 profits would have been attributed to New Jersey profits, and subject
2 to our corporation business tax, based on how they apportion their
3 income among various states. That \$2 billion in New Jersey profits
4 would have generated \$177 million in corporation business tax
5 revenues. But not one of those 10 companies paid more than the \$200
6 minimum in corporate business tax in 2000. That is not fair and that
7 is not equitable.

8 Tax loopholes allow multi-state corporations to transfer their
9 profits to related out-of-State and offshore companies. Many of these
10 companies use these loopholes to reduce their net income to little or
11 nothing, thus avoiding the New Jersey taxation.

12 The corporation business tax does not reach some out-of-state
13 companies that do business here. Instead, these companies are able to
14 take advantage of the state's lucrative market, extensive infrastructure,
15 and geographic prominence, while paying no corporate taxes to New
16 Jersey. If some companies exploit loopholes and avoid paying their
17 fair share then the corporate citizens who pay their fair share are put
18 at a competitive economic disadvantage with companies that evade or
19 exploit the system. This bill provides a level playing field for all
20 businesses, large and small, that invest in New Jersey, employ our
21 citizens and do business here.

22 This bill corrects these core problems with the tax structure in three
23 ways.

24 First, it closes numerous loopholes that allow profitable companies
25 to reduce their net New Jersey income on paper and avoid their true
26 tax liability and avoid paying their fair share.

27 Second, it provides an alternative minimum assessment to
28 accurately measure a company's economic presence in New Jersey.
29 The bill allows companies to assess their tax liability with a formula
30 that uses either reported gross receipts or gross profits as a
31 determining factor. Companies will then pay this alternative
32 assessment, instead of the current corporation business tax, if it is
33 larger than the corporation business tax liability.

34 Third, the bill establishes a revenue stream that captures
35 enforcement and processing costs that New Jersey incurs from
36 processing the vast network of limited liability companies and
37 partnerships.

38 At the same time, the bill takes affirmative steps to protect small
39 businesses. The bill reduces by more than 13 percent the rate at which
40 small businesses are taxed under the corporation business tax, resulting
41 in a tax decrease for approximately 20,000 small businesses. Further,
42 the bill includes provisions designed to encourage job creation by
43 doubling the new jobs factor and expanding the eligibility for midsized
44 businesses through an expanded New Jobs Investment Tax Credit
45 program.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1556

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2002

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1556.

This bill is designated the Business Tax Reform Act. The Business Tax Reform Act is intended to reform New Jersey's system of taxation of corporations and other business entities through revision of the corporation business tax and other changes of law.

First, the bill updates the law to increase equity among business taxpayers and closes numerous loopholes that allow many profitable companies to reduce their taxable New Jersey income. Second, the bill creates an alternative minimum assessment to measure a company's economic activity in New Jersey in situations where the traditional "taxable income" measure is not a fair one. Third, the bill affects the tracking of the income of business organizations, like partnerships, that do not themselves pay taxes but that instead distribute income to their owners, the eventual taxpayers. The bill also provides several new tax advantages to small business.

"LOOPHOLE CLOSERS" AND TAX BASE CHANGES.

Revenues from the corporation business tax (CBT), the State's main income-measured business tax, have been declining in the face of apparent economic expansion. There is evidence that large corporations with apparently substantial economic activity in this State and substantial profit have managed to avoid taxation of this income by New Jersey. Some large and seemingly expanding corporations have managed to avoid having any taxable income at all. New Jersey's experience is part of a national trend, especially in so-called "separate entity" states like New Jersey, where each corporate entity within an affiliated group computes its tax separately, and corporations may structure transactions between affiliates in various states to avoid tax. Effective corporate tax rates in the states fell during and despite the economic expansion of the 1990s.

The "loophole closers" address various ways in which corporations reduce or avoid tax on income, restoring equity between the corporations that can use these methods and those that cannot or do not. The bill also makes a number of changes to the tax base that

increase the taxation equity between corporations that have different organizational forms, but engage in economically similar businesses.

Disallowance of deduction for intangible expenses paid to a related party. The bill provides a limit on the ability of a taxpayer to deduct royalties and other intangible expenses and costs and related interest when paid to affiliates. The provision addresses, but does not apply solely to, a tax avoidance device that allows a multicorporate structure to export income from a state where the income is generated as a form of expense (for example, as a royalty payment to an out-of-state affiliate that the paying corporation deducts from its income) and then import the income back (for example, as a tax-free dividend or as a loan). The bill continues to allow such deductions in areas that are established as “non-tax avoidance” situations.

The bill gives the Director of the Division of Taxation authority to determine (1) whether a taxpayer has met its evidentiary burden of establishing by clear and convincing evidence that the add-back of an expense is unreasonable, or (2) that it is appropriate to enter into agreements or compromises with the taxpayer to produce an equitable level of taxation. As the general rule is to disallow the deduction, this provision has the effect of requiring the taxpayer to secure prior approval (through general regulation or case-by-case determination) for the deduction before departing from the general rule.

Another exception provided to the general rule of disallowance is for interest and intangible expenses directly or indirectly paid to, or accrued or incurred by, a related member in a foreign nation with a comprehensive income tax treaty with the United States. The director may require the disclosure of such information as the director deems necessary to determine that the taxpayer’s situation falls within the exception.

The deduction may also be permitted upon a showing that the arrangement involves an unrelated third party.

Disallowance of deduction of interest paid to a related party. The bill also restricts deductibility of inter-affiliate interest expenses. However, the bill would again allow such deductions as exceptions in areas that are established as “non-tax avoidance” situations.

The first exception is intended to avoid unfairly duplicative taxation, and sets the following criteria for determining whether such a situation exists: (1) the principal purpose of the transaction was not to avoid taxes; (2) the interest was paid at an arm’s length rate pursuant to an arm’s length contract; and (3) the transaction was already subject to tax at levels approximating that of New Jersey’s corporation business tax as determined by (a) the fact that the related member was subject to tax on income or receipts by another state or national entity, (b) a measure of the tax included the interest received from the related member, and (c) the rate of the foreign tax on the interest was not less than three percentage points below the tax rate that would have been applied to the interest income if it were taxable

in this State.

The second exception is permitted when the taxpayer establishes that the disallowance of the deduction is unreasonable. As with the similar provision for intangible costs, the disallowance is unreasonable if it would violate the policy goals of the disallowance. For example, the bill permits a taxpayer to keep the deduction if the interest paid is ultimately paid to a third-party unrelated lender, as evidenced by a guarantee provided by the taxpayer to the outside lender. If a taxpayer can demonstrate that, despite the absence of a guarantee, interest is being paid on a loan that was simply “pushed down” from a third party lender, then it would be unreasonable to disallow the interest deduction. As the deduction is retained by exception to a general rule that disallows the deduction, the effect is to require the taxpayer to secure prior approval from the director (through general regulation or case-by-case determination) before departing from the general rule of nondeductibility.

The third exception permits the deduction if the taxpayer establishes, by a preponderance of the evidence as determined by the director, that the interest payment involves a related entity in a foreign nation having a comprehensive income tax treaty with the United States, so long as the taxpayer fully discloses the transaction on its return as prescribed by the director.

A fourth exception, noted above, is intended to cover the situation where debt is “pushed down” from a corporate parent to a subsidiary but involves a regular, market-rate loan from an outside lender. This exception permits the deduction if the transaction involves an independent lender, and the taxpayer taking the deduction guarantees the debt on which the interest is required.

Throwout Rule. Under the apportionment formula now used for determining the portion of a corporation’s total taxable income that is taxable by New Jersey, the sales fraction is the most heavily weighted factor. The more goods that are shipped out of New Jersey, the lower this factor is. Some of those sales are made in states where the corporation is not subject to tax because the corporation has no operations in those states. These sales are typically referred to as “nowhere sales” because they result in income being assigned so that it is taxed nowhere. The bill closes this loophole by “throwing out” the “nowhere sales” from the denominator of the sales fraction, so that more of the income of the corporation is assigned to states where the corporation actually has operations.

The bill limits tax liability related to the throwout rule for affiliated groups to prevent exceptionally large impact on business tax burdens. If the calculation of tax liability after the exclusion of certain receipts from the denominator is more than \$5 million higher than the tax liability for the group calculated without the exclusion of the receipts, then the additional liability for the group is limited to \$5 million, and may be spread proportionately among them. The director is given

authority to assign a single corporation within the group to act as key corporation for any adjustment as the director may prescribe.

Extending the reach of the CBT to Constitutional limits. The bill extends the reach of the New Jersey CBT to a corporation that derives any income from New Jersey sources. Under current law, the CBT is imposed upon a corporation "doing business," employing or owning capital property, or maintaining an office in the State. By extending the reach of the CBT to the income of all corporations that derive income from New Jersey, New Jersey extends the reach of the CBT to the full extent permitted under the United States Constitution and federal law.

Nonoperational income fully taxed. The bill requires that 100 percent of "nonoperational income" (income unrelated to the usual operations of the business, usually headquarters-managed investment income) be assigned to the headquarters state to the extent permitted under the Constitution and statutes of the United States. This income usually may only be taxed by the headquarters state, but current law treats it like income from operations and apportions it by formula, which allows a significant part of the nonoperational income of New Jersey-headquartered companies to escape taxation. The bill recognizes that income wholly generated by activities in New Jersey should be subject to New Jersey tax.

Disallow deduction for income taxes paid to foreign nations. Like laws enacted in several other states, the bill disallows a deduction for taxes paid to foreign nations. This disallowance parallels that adopted in 1992 for income taxes paid to other states.

Clarification of research and development expense deduction. The bill disallows the deduction of certain research and development expenses that are used to claim the New Jersey research and development credit but are not used to claim a federal research and development credit. Without this disallowance a taxpayer would sometimes be able to claim both a New Jersey deduction and a New Jersey credit based on the same expenses.

Investment company income. Investment companies enjoy a preferred tax status under the CBT. New Jersey defines an investment company as a business engaged in managing its own portfolio. The CBT currently defines the taxable income of such companies as 25 percent of their entire net income. The bill raises the proportion of net entire net income subject to tax to 40 percent.

Savings institutions. In view of federal law changes that modernize the powers and treatment of savings banks, building and loan associations, and savings and loan associations, the bill subjects these institutions to the CBT imposed on competing depository and credit institutions.

Deduction for dividends received from another corporation. Current law excludes 100 percent of dividends received from companies in which the taxpayer has an ownership interest of 80

percent or more, and excludes 50 percent of all other dividends received. The bill disallows the deduction for dividends received from a corporation in which the taxpayer has less than a 50 percent ownership interest.

Locating the receipts from financial services. The bill provides that for the purpose of determining the sales fraction for allocating New Jersey receipts of broker/dealers and asset management firms, the sales occur where the customers receive the services, as opposed to where the services are performed as under current rules. This assures that New Jersey collects a fair share of tax from transactions that have as their practical effect a use of New Jersey economic opportunities; as a side effect, it removes a barrier to these financial service providers locating in New Jersey.

Codification of Net Operating Loss Rule. The bill codifies the New Jersey regulations governing the use of net operating losses (NOLs) with the goal of foreclosing further challenges to them. The regulations were adopted in 1986 (see N.J.A.C.18:7-5.13), and the New Jersey Supreme Court found them to be validly retroactive to all tax years ending after June 30, 1984, coinciding with the effective date of the 1985 law, P.L.1985, c.143, that first permitted the carry-forward of NOLs. The Supreme Court in that case upheld the validity of the regulations in the face of a challenge that they exceeded the Legislature's intent.

ALTERNATIVE MINIMUM ASSESSMENT.

The bill implements an alternative minimum assessment (AMA) that will accurately measure a company's economic presence in New Jersey and assure that companies enjoying the advantages of the New Jersey economy will be required to satisfy a levy beyond the \$200 minimum now in the law. S corporations, professional corporations, investment companies, pass-through entities, and corporations operating as cooperatives under federal requirements will be exempt from the AMA.

The AMA also assures a fair measure of support for State services from firms that exploit the State's marketplace, but are exempt from a tax like the CBT pursuant to federal Pub.L. 86-272, 73 Stat. 555, 15 U.S.C. s.381 et seq. This reform will effectively capture the value of the activities in New Jersey of out-of-state companies that currently pay no corporate income taxes in New Jersey.

Companies will assess their AMA liability with a formula that uses either allocated gross receipts or allocated gross profits as a determining factor. The bill defines gross profits to mean gross receipts minus the cost of goods sold, and the bill adopts the federal definition of cost of goods. By permitting companies to use their gross profits to calculate their AMA, the bill protects high-volume, low-margin industries such as retailers, food stores, car dealers and others that are so vital to the State's economy from bearing a

disproportionate burden. The bill gives the Director of the Division of Taxation the authority to expand or adjust the definition of “cost of goods sold” if justified to achieve a more equitable result among the various types of businesses subject to the alternative calculation.

Corporations subject to the CBT will be required to compute the AMA and pay the greater of the CBT or the AMA. Businesses with gross profits of less than \$1 million are not subject to the AMA. Businesses with gross profits of between \$1 million and \$10 million are subject to the AMA at a rate of .0025 times the amount of gross profits over \$1 million multiplied by 1.11111 (which has the effect of phasing out the \$1 million exclusion between \$1 million and \$10 million). For businesses with more than \$10 million in gross profits, the AMA is based on a rising rate multiplied by total gross profits, ranging from .0035 times profits between \$10 million and \$15 million to .008 times gross profits above \$37.5 million.

A similarly graduated rate is applied to gross receipts. For gross receipts of \$2 million or less, there is no assessment. For gross receipts between \$2 million and \$20 million, the rate is .00125 times (with a similar phase-out of the exclusion). Between \$20 million and \$30 million, the calculation is .00175 times total gross receipts, rising to a high of .004 times gross receipts for gross receipts of more than \$75 million.

The bill places a cap of \$20 million on the AMA for affiliated groups of five or more taxpayers.

A provision of the bill restricts the opportunities for a taxpayer to break any of its entities subject to the AMA into smaller units so as to take advantage of the lower range of the graduated scale on the AMA by limiting the exclusion for all members of an affiliated or controlled group to \$5 million of gross profits (\$10 million of gross receipts), or five times the exclusion amount for the members of the group.

The bill sunsets the AMA for privilege periods beginning after June 30, 2006, except for taxpayers exempt from the CBT pursuant to federal Public Law 86-272. To avoid any claim of discriminatory treatment by such businesses, based on a claim that CBT payers might be subject to lower liabilities than out-of-state businesses covered by Pub.L. 86-272, the amendment provides such out-of-state businesses with the option of consenting to the jurisdiction of the State to impose the CBT.

Furthermore, if a company’s AMA exceeds its CBT in one year, the bill allows the difference between the AMA and the CBT as a credit (that carries forward without limit) to reduce the company’s CBT liability in a future year. The bill limits the credit applied in any one year to an amount that does not reduce the CBT liability to less than 50 percent of the CBT otherwise due or less than the minimum franchise tax for the privilege period, which puts the AMA credit in line with the operation of other tax credits under the corporation business tax.

PASS-THROUGH ENTITIES.

Pass-through entity return processing fee. The bill institutes a \$150-per-owner processing fee on the owners of pass-through entities having more than two owners. "Pass-through" entities, such as partnerships, limited liability partnerships, and limited liability companies, are not subject to tax themselves, but "pass through" their income to their owners (partners of partnerships or members of limited liability companies) who are subject in their separate capacities. Pass-through entities that have New Jersey source income or New Jersey resident owners must annually file a New Jersey K-1 form with the State in which they report their income and must list their owners.

For pass-through entities that have income from New Jersey sources and more than two members, the bill establishes an annual \$150-per-owner filing fee, capped at \$250,000 per entity annually. The bill establishes a similar filing fee of \$150 per licensed professional for professional corporations with more than two licensed professionals, also capped at \$250,000 per corporation annually. The bill treats these fees as payments under the State Uniform Tax Procedure Law for purposes of penalties and interest and for administrative purposes.

Pass-through entity payment on behalf of owners. The Division of Taxation estimates that half of K-1s filed in New Jersey list out-of-State residents who are involved in New Jersey pass-through entities with New Jersey source income. Enforcement is difficult in such cases. The bill addresses this problem by providing a mechanism for securing revenue prior to distribution in an amount that would be equivalent to withholding. Pass-through entities other than those listed on a national exchange must make a payment on the share of the income of each nonresident (corporate, partnership, individual, trust or estate) owner at a 9% rate for corporate owners and a 6.37% rate for individual owners. The payment is credited to separate accounts for each owner, and may be credited against their respective tax liabilities.

REVENUE MEASURES.

Two-year NOL suspension. The bill suspends the application of net operating loss (NOL) deductions for tax years 2002 and 2003. The usual seven year carryforward (14 years for certain high-technology corporations) is extended for two years. This suspension does not apply to the NOLs purchased through the high-technology incentive program.

Subchapter S corporation phase-out freeze. Subchapter S corporation tax rates are currently in the third year of a four-year "phase-out" or reduction to no tax imposed. This bill resets the tax rate on S corporations to the 2001 tax year levels through tax year 2005, and then resumes the phase-out thereafter.

Acceleration of third quarter payments for substantial taxpayers.

The bill, in effect, accelerates the third quarter estimated tax payment (due for most taxpayers in September) into the second quarter (for most taxpayers due in June) for taxpayers with gross receipts of \$50 million or more. The accelerated schedule would remain in effect for these taxpayers for privilege periods beginning in 2002 and thereafter.

Decoupling from federal "bonus" depreciation. The bill disallows the deduction of the 30% "bonus" depreciation that was allowed for certain property for federal tax purposes under the federal "Job Creation and Worker Assistance Act of 2002," Pub.L. 107-147. The bill returns the New Jersey depreciation rules to New Jersey law as it stood before the enactment of the federal law, and gives the Director of the Division of Taxation authority to formulate rules and regulations to carry out the decoupling from federal law, including the necessary basis adjustments.

Increased minimum tax. The bill increases the minimum tax from \$210 annually to \$500 annually for tax year 2002 and thereafter, except for corporations that are members of affiliated or controlled groups with total payrolls of \$5 million or more, whose minimum tax will be \$2,000.

SMALL BUSINESS PROVISIONS.

CBT tax rate reduction for small business. The bill reduces the statutory rate from 7.5 percent to 6.5 percent for businesses with less than \$50,000 of net taxable income, which is more than a 13 percent rate cut. That would result in a tax decrease for approximately 20,000 small businesses, according to estimates by the Division of Taxation.

Enhanced New Jobs Investment Tax Credit. The bill encourages job creation by doubling the value of the new jobs factor under the New Jobs Investment Tax Credit, and increasing the eligibility caps allowing the qualification of midsized businesses for the credit.

ADMINISTRATIVE PROVISIONS.

To reduce tax avoidance and to capture transactions not expressly addressed, the bill provides additional enforcement tools to the Director of the Division of Taxation.

Disclosure of inter-affiliate transactions. The bill addresses the problem of taxpayers failing to present sufficient data to allow the Division of Taxation to gain an understanding of the true earnings picture of any member or all members of an affiliated group or control group. The bill allows the director to require the disclosure of such inter-affiliate transactions (including transactions with related businesses that are not themselves CBT taxpayers) as the payment of management fees, rents and charges for other services. Disclosure is required only upon request of the director, and the taxpayer would have 90 days to comply. Noncompliance would be treated as a failure

to file a complete return and be subject to the normal penalties under the State Uniform Tax Procedure Law.

Mandatory consolidated filing. The bill requires taxpayers to determine their taxes after eliminating all inter-affiliate payments in excess of fair compensation. The bill also provides that if a taxpayer cannot demonstrate by clear and convincing evidence that it has accurately reported its true earnings in such a manner, the director may compel consolidated filing.

NOL suspension hold-harmless. The bill forbids the imposition of any penalty for the underpayment of an estimated payment attributable to the two-year suspension of the application of NOL carryforwards.

Fourth Quarter 2002 25% estimated payment. For the fourth quarter estimated payment for the 2002 tax year, and only that payment, the bill suspends the usual forgiveness provisions that apply to estimated tax payments and requires the fourth quarter payment to be 25% of the total liability for 2002, calculated under the provisions of the bill. The provision is intended to allow taxpayers a quarter to adjust to the new rules and calculate likely 2002 final tax liability under the new rules, while fulfilling the State's need for revenue data under the new rules to use in estimating revenues for the following fiscal year. The first quarter payment for 2003 based on total 2002 liability will be due at the usual time, as will the full "catch-up" amount due under the new rules for 2002 in the fourth month following the close of the privilege period.

AIR CARRIERS.

Air carrier AMA credit. The bill allows an air carrier that contributes more than 25% of the total amortization for capital improvement projects at Newark International Airport paid through rates and charges to take a credit of 50% of its amortization payment for the privilege period against its calculation of AMA, so long as the credit does not reduce the AMA to less than the CBT statutory minimum. An air carrier that takes this credit for a privilege period is not allowed the AMA credit against the CBT for AMA paid in that privilege period.

Air carrier consolidated return election. The bill allows an air carrier to file a consolidated return with its affiliated group.

CORPORATION BUSINESS TAX STUDY COMMISSION.

The bill creates a nine-member, bipartisan Corporation Business Tax Study Commission to study the reforms adopted under the bill and: (1) evaluate whether the tax burden is equitably borne among business taxpayers or favors large multinational businesses over smaller businesses operating wholly within New Jersey; (2) examine whether tax burdens are distributed fairly among payers of the corporation business tax and other forms of business and personal taxes within the State; (3) study whether profitable corporations can

avoid paying their fair share of New Jersey tax by using minimization or avoidance strategies; (4) examine whether New Jersey and its corporation business taxpayers would be better served by combined unitary reporting and suggest a form for that reporting to take; and (5) determine whether the reforms adopted by the bill yield stable, recurring revenues sufficient to achieve long-term structural balance for State finances.

The commission will have access to as much data as possible within the confidentiality restrictions of R.S.54:50-9, and the ability to draw upon existing State resources for assistance in undertaking its work, in addition to the ability to appoint an executive director. The commission must make its report by December 30, 2003. If the report is not produced by June 30, 2004, then the director shall suspend the AMA for privilege periods commencing after December 31, 2004. If the commission recommends the termination of the AMA, the assessment shall not be imposed for privilege periods beginning after December 31, 2004.

CORPORATION BUSINESS TAX EXCESS REVENUE FUND.

The bill creates a restricted reserve fund known as the Corporation Business Tax Excess Revenue Fund, into which amounts in excess of the annual target for corporation business tax revenues will be deposited. The target will be set at \$1,823,000,000 in FY2003. The targets for following fiscal years would be based on the target for the prior fiscal year multiplied by the weighted average of the rate of growth of collections from the gross income tax and the sales and use tax. The rate of growth will be calculated for each by comparing the anticipated revenue from each source certified by the Governor upon approval of the annual appropriation act for the current year against the amount of money actually deposited from collections of each in the immediately preceding fiscal year, the deposits to be determined from the annual financial report of the State for the immediately preceding fiscal year.

Balances in the fund will be available for appropriation in FY2004 and FY 2005 to assist in covering shortfalls in corporation business tax collections from the target amount for the fiscal year. If there is a balance in the fund on December 30, 2005, the Director of the Division of Taxation is required to adjust corporation business tax rates for privilege periods beginning in calendar 2006 downward by an amount sufficient to equal the balance in the fund.

COMMITTEE AMENDMENTS:

The amendments to the bill are extensive, involving technical changes, responses to taxpayer comments, and Legislative policy initiatives. They are enumerated by section.

Section 3 amendments:

- , The bill as introduced repealed the exclusion of dividend income and offered an election to taxpayers to compute their tax based on their federal consolidated return. The amendment restores the dividend exclusion as in current law for subsidiaries owned 50 percent or more, but subjects other dividends received to full taxation. As the consolidated election was linked to the repeal of the dividend exclusion, which is restored, conforming changes delete references to the filing of a consolidated return in section 3 and other sections.
- , Expand the definition of "Corporation" to include any entity classified as a corporation for federal income tax purposes, so as to include single-member limited liability companies that opt to be taxed as a corporation for federal income tax purposes.
- , Restore the deductibility of dividends paid by REITs.
- , The bill continues to create a general prohibition against taking an interest deduction for a payment to a related member. However, the amendments create three additional exceptions to the general rule, described in detail above, incorporating the "unreasonable disallowance" standards detailed in reference to the disallowance of the deduction of intangibles expenses.
- , The amendment to the bonus depreciation rule replaces a more restrictive rule in the bill as introduced.
- , Clarify technically the provision on research and development tax credits without changing the substance of the provision.

Section 5 amendments:

- , Add to the definition of "related member," which applies throughout the bill, to clarify that the "related member" provisions are intended to include not only corporations but entities such as partnerships and limited liability companies that share common ownership interests by or in other members of the group.

Section 6 amendments:

- , The bill as introduced increased the proportion of investment company net income subject to tax from 25% to 60%; the amendments reduce that to 40%.
- , Raise the minimum tax.
- , Cap "throwout" liability for an affiliated group at \$5 million and provide for administration of the cap.
- , Exempt federally qualified cooperatives from the AMA.

Section 7 amendments:

- , Provide the graduated AMA.
- , Raise the AMA cap for affiliated groups from \$15 million to \$20 million per group.

- , Give the Director of the Division of Taxation authority to expand or adjust the definition of “cost of goods sold” if justified to achieve a more equitable result among the various types of taxpayers subject to the alternative calculation.
- , Limit the exclusion for all members of an affiliated or controlled group to \$5 million of gross profits (\$10 million of gross receipts), or five times the exclusion amount for any particular member of the group.
- , Allow out-of-State businesses covered by Pub.L. 86-272, the option of consenting to the jurisdiction of the State to impose the CBT.
- , Limit the AMA credit in any one year to 50 percent of the corporation business tax or the CBT minimum.
- , Disallow air carriers taking a credit against the AMA from using AMA from that year as a credit against CBT.

Section 8 amendments:

- , Alter the “throwout rule” to clarify that receipts that are subject to a tax on business presence or business activity in another state (such as a tax on gross receipts) will not be excluded from the denominator of the sales fraction in determining the portion of income allocable to New Jersey.

Section 10 amendments:

- , Clarify that the powers of the Director of the Division of Taxation to require a consolidated return are so important to the essential function of verifying that a tax return fairly represents entire net income, that the director is given authority to force the filing of a consolidated return up to the limits of the U.S. Constitution and federal statutes.

Section 11 amendments:

- , Clarify that, for administrative and compliance efficiency, the additional disclosure of inter-group information is required only upon request of the director, give the taxpayer 90 days to comply (noncompliance is maintained as a nonfiling situation), and make other technical changes.

Section 12 amendments:

- , Clarify that partnerships listed on a U.S. national stock exchange are not subject to payment responsibilities.

Section 13 (added by amendment):

- , Accelerates estimated payments for taxpayers with gross receipts of \$50 million or more.

Section 14 amendments:

- , Clarify that for enforcement purposes, the professional corporation fees will be payments under the State Uniform Tax Procedure Law, subject to the usual tax penalties for failure to file and pay, and make other technical changes.

Section 22 amendments:

- , Clarify that for enforcement purposes, the partnership fees will be payments under the State Uniform Tax Procedure Law, subject to the usual tax penalties for failure to file.
- , Clarify that the partnership fees only apply to partnerships that derive income from New Jersey.

Section 26 amendments:

- , Broaden application of the site-of-service rule to further reduce the tax disincentives for companies to locate in this State.

Section 27 amendments:

- , Make technical changes to precisely track existing regulations, reflecting the Legislature's intention to restate that the regulations accurately represent existing law.

Section 28 (added by amendment):

- , Provides that tax year 2002 fourth quarter payment will be a full 25% of the total liability for 2002 under the provisions of this bill.

Section 29 (added by amendment):

- , Provides air carrier credit.

Section 30 (added by amendment):

- , Allows air carrier to file a consolidated return.

Section 31 (added by amendment):

- , Creates Corporation Business Tax Study Commission.

Section 32 (added by amendment):

- , Establishes the Corporation Business Tax Excess Revenue Fund.

FISCAL IMPACT:

The State Treasurer's most recent published figures indicate that the Executive anticipates \$965 million in additional revenue for FY2003 as a result of the enactment of the business tax revisions proposed under this bill. The Office of Legislative Services notes that this revenue is expected to decline in subsequent fiscal years.