54A: 5-1

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 54A:5-1

(Corporation Tax Act--allow deductions for environment violations & clean-up costs)

LAWS OF: 1990 **CHAPTER:** 79

Bill No: A3265

Sponsor(s): Doria

Date Introduced: March 22, 1990

Committee: Assembly: Energy & Environment

Senate: -----

Amended during passage: No Assembly Committee Substiute enacted.

Date of Passage: Assembly: June 14, 1990

Senate: June 18, 1990

Date of Approval: July 21, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: No

Fiscal Note: Yes

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: No

Hearings: Yes

(over)

974.90 New Jersey. Legislature. Senate. Environmental Quality
p777 Committee, and Assembly Environmental Quality and Energy
1990 Committee
Joint public hearing, held 1-23-90 and 2-6-90. Trenton, 1990.

(see v 2, p.50)

974.90 New Jersey. Legislature. Senate. Energy & Environment
p777 Committee.
1989e Public hearing held 4-19-89. Camden, 1989.

See newspaper clippings--attached:

KBG/SLJ

ASSEMBLY, No. 3265

STATE OF NEW JERSEY

INTRODUCED MARCH 22, 1990

By Assemblymen DORIA, CHARLES, Scerni, Hudak, Deverin, Jacobson, Schwartz, Spadoro, Duch, Gill, Salmon, Kenny, McGreevey, Mazur, Mecca, Baer, Naples, Pelly, Watson, Kronick, Smith, Cohen, Menendez, Bryant, Assemblywoman Ford, Assemblymen Doyle, Villapiano, Cimino and Impreveduto

AN ACT concerning deductions from certain State taxes of environmental cleanup and related costs, and amending N.J.S.54A:5-1 and P.L.1945, c.162

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

1. N.J.S.54A:5-1 is amended to read as follows:

54A:5-1. New Jersey Gross Income Defined. New Jersey gross income shall consist of the following categories of income:

a. Salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property.

b. Net profits from business. The net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the method of accounting allowed for federal income tax purposes but without deduction:

(1) of taxes based on income; or

(2) (a) any expenses incurred in containing, cleaning up, disposing of, and mitigating the adverse effects of an unauthorized discharge of a hazardous substance, or (b) actual damages or other compensation, and interest charges thereon, paid to the State or any political subdivision, agency or other instrumentality of the State, for costs incurred by the State or other governmental agency in containing, cleaning up, disposing, or mitigating the adverse effects of an unauthorized discharge of a hazardous substance onto the land or into the waters or air, or for any loss or destruction of wildlife resulting from the discharge, or the restoration thereof, or paid to any other person for injuries to a person or damages to property resulting from the unauthorized discharge; provided however, that the exceptions under this paragraph shall not apply to damages or compensation paid as a result of an unauthorized discharge that was the result of fire, riot, sabotage, flood, storm event, natural cause, or other act of God, or caused by a person who was outside the reasonable control of a discharger. As used in this paragraph, "discharge" and "hazardous substance" shall have the same meaning as set forth in section 3 of P.L.1976, c.141 (C.58:10-23.11b).

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.

c. Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible as determined in accordance with the method of accounting allowed for federal income tax purposes. For the purpose of determining gain or loss, the basis of property shall be the adjusted basis used for federal income tax purposes, but without a deduction for costs, damages, or compensation excepted pursuant to paragraph (2) of subsection b. of this section.

For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the "Tax on Capital Gains and Other Unearned Income Act" (P.L.1975, c.172), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under P.L.1975, c.172, it shall not be used to offset any gain under the "New Jersey Gross Income Tax Act" (P.L.1976, c.47).

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clause (1) or (2) of section 54A:6-14 of this act or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income" shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. For purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

For purposes of this clause, the term "reorganization" means--

(i) A statutory merger or consolidation;

(ii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(iii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(iv) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;

(v) A recapitalization;

(vi) A mere change in identity, form, or place of organization however effected; or

(vii) The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (i) if such transaction would have qualified under subclause (i) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction;

(viii) A transaction otherwise qualifying under subclause (i) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

For purposes of this clause, the term "control" means the ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of total number of shares of all other classes of stock of the corporation.

For purposes of this clause, the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization

other jurisdiction.
(cf: P.L.1987, c.310, s.1)

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

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

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

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

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

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

In the case of banking corporations which have international banking facilities as defined in subsection (n), the foregoing or from both combined, as well as profit gained through a sale or conversion of capital assets. For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax; provided, however, that in the determination of such entire net income,

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

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

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

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

(C) Taxes paid or accrued to the United States on or measured by profits or income, or the tax imposed by this act, or any tax paid or accrued with respect to subsidiary dividends excluded from entire net income as provided in paragraph (5) of subsection (k) of this section;

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

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

(i) Up to an amount not exceeding $1,000.00;

(ii) In full to the extent that it relates to bonds or other evidences of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization, to persons, who, prior to such reorganization, were bona fide creditors of the corporation or its predecessors, but were not stockholders or shareholders thereof;

(iii) In full to the extent that it relates to debt of a financial business corporation owed to an affiliate corporation; provided that such interest rate does not exceed 2% over prime rate; the prime rate to be determined by the Commissioner of Banking;

(iv) In full to the extent that it relates to financing of motor vehicle inventory held for sale to customers; provided said indebtedness is owed to a taxpayer customarily and routinely providing this type of financing;

(v) In full to the extent it relates to debt of a banking corporation to a bank holding company, of which the banking corporation is a subsidiary, or to a debt of a banking corporation to another banking corporation with respect to federal funds transactions governed by section 23A of the Federal Reserve Act (12 U.S.C.§ 371c.) when both banking corporations are subsidiaries of the same bank holding company, as defined in 12 U.S.C.§ 1841.

(F)(i) The amount by which depreciation reported to the United States Treasury Department for property placed in service on and after January 1, 1981, for purposes of computing federal taxable income in accordance with section 168 of the Internal Revenue Code in effect after December 31, 1980, exceeds the amount of depreciation determined in accordance with the Internal Revenue Code provisions in effect prior to January 1, 1981, but only with respect to a taxpayer's accounting period ending after December 31, 1981; provided, however, that where a taxpayer's accounting period begins in 1981 and ends in 1982, no modification shall be required with respect to this paragraph (F) for the report filed for such period with respect to property placed in service during that part of the accounting period which occurs in 1981.

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

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

(G) The amount of (1) any expenses incurred in containing, cleaning up, disposing of, or mitigating the adverse effects of an unauthorized discharge of a hazardous substance, or (2) actual damages or other compensation, and interest charges thereon, paid to the State or any political subdivision, agency or other instrumentality of the State, for costs incurred by the State or other governmental agency in containing, cleaning up, disposing, or mitigating the adverse effects of an unauthorized discharge of a hazardous substance onto the land or into the waters or air, or for any loss or destruction of wildlife resulting from the discharge, or the restoration thereof, or paid to any other person for injuries to a person or damages to property resulting from the unauthorized discharge; provided however, that the exceptions under this paragraph shall not apply to damages or

<u>compensation paid as a result of an unauthorized discharge that was the result of fire, riot, sabotage, flood, storm event, natural cause, or other act of God, or caused by a person who was outside the reasonable control of a discharger. As used in this paragraph, "discharge" and "hazardous substance" shall have the same meaning as set forth in section 3 of P.L.1976, c.141 (C.58:10-23.11b).</u>

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

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

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

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

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

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

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

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

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

(5) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section. With respect to other dividends, entire net income shall

not include 50% of the total included in computing such taxable income for federal income tax purposes.

(6)(A) Net operating loss deduction. There shall be allowed as a deduction for the taxable year the net operating loss carryover to that year.

(B) Net operating loss carryover. A net operating loss for any taxable year ending after June 30, 1984 shall be a net operating loss carryover to each of the seven years following the year of the loss.The entire amount of the net operating loss for any taxable year (the "loss year") shall be carried to the earliest of the taxable years to which the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior taxable years to which the loss may be carried.

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

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

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

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

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

(cf: P.L.1989, c.59, s.1)

3. This act shall take effect immediately.

STATEMENT

This bill amends the "Corporation Business Tax Act (1945)" and the "New Jersey Gross Income Tax Act." The bill would eliminate as deductible expenses the costs of cleaning up an unauthorized discharge or release of a hazardous substance. Certain related expenses are also to be excluded, as are damages or compensation paid therefor to governmental agencies, or to other persons for injuries or damage to property resulting from such a discharge or release.

ENVIRONMENT

Concerns certain tax deductible expenses for certain environmental cleanups.

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 3265

STATE OF NEW JERSEY

DATED: APRIL 16, 1990

Assembly Committee Substitute for Assembly Bill No. 3265 amends the "Corporation Business Tax Act (1945)" and the "New Jersey Gross Income Tax Act" to eliminate as a deductible business expense:

(1) any civil, civil administrative, or criminal penalty or fine assessed and collected for a violation of State or federal environmental law, or of an environmental ordinance or resolution of a local governmental entity;

(2) any economic benefits accruing to a violator as a result of a violation, which economic benefits are assessed and recovered pursuant to a civil, civil administrative, or criminal action;

(3) treble damages paid to the State for cleanup and removal costs incurred as a result of the failure of a discharger to clean up an unauthorized discharge pursuant to a directive issued by the Department of Environmental Protection in accordance with subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

Exempted from the provisions of the bill are penalties or fines for violations resulting from an event or act of God beyond the reasonable control of the violator, or an act or omission of a person who was outside the reasonable control of a violator.

LEGISLATIVE FISCAL ESTIMATE TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 3265

STATE OF NEW JERSEY

DATED: July 6, 1990

Assembly Committee Substitute for Assembly Bill No. 3265 of 1990 amends the "Corporation Business Tax Act" and the New Jersey Gross Income Tax Act" to eliminate as a deductible business expense:

(1) any civil, civil administrative, or criminal penalty or fine assessed and collected for a violation of State or federal environmental law, or of an environmental ordinance or resolution of a local governmental entity;

(2) any economic benefits accruing to a violator as a result of a violation, which economic benefits are assessed and recovered pursuant to a civil, civil administrative, or criminal action;

(3) treble damages paid to the State for cleanup and removal costs incurred as a result of the failure of a discharger to clean up an unauthorized discharge pursuant to a directive issued by the Department of Environmental Protection in accordance with subsection a. of section 7 of P.L.1976, c. 141 (C.58:10-23.11f).

Exempted from the provisions of the bill are penalties or fines for violations resulting from an event or act of God beyond the reasonable control of the violator, or an act or omission of a person who was outside the reasonable control of a violator.

The Office of Legislative Services cannot estimate the amount of additional tax revenues the State would accrue as a result of the bill's enactment due to the uncertainy of such future occurances and their eventual legal disposition. An attempt to develop an estimate based on previous penalties of this sort was not successful because not all assessed penalties have been collected, "economic benefits" are difficult to gauge, and the amount of penalties that were actually used as deductible business expenses could not be ascertained.

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.

OFFICE OF THE GOVERNOR
NEWS RELEASE

CN-001 **TRENTON, N.J. 08625**

Contact: Emma Byrne, Nancy Kearney

Release: Saturday, July 21, 1990

FLORIO SIGNS BILLS IMPOSING RECORD FINES FOR OIL SPILLS AND TOUGHER INDUSTRY RULES

PORT ELIZABETH -- On the heels of yet another incident in the Arthur Kill, Governor Jim Florio today signed a package of bills that impose record fines of up to $10 million for oil spills and toughen industry procedures.

Specifically the bills:

IMPOSE RECORD PENALTIES FOR SPILLS

(S 2517/A 3264; Sponsored by Senator Richard Van Wagner, Assemblyman John Villipiano and Assemblywoman Marlene Lynch Ford)

Currently the law allows for penalties of up to $50,000 per day for each violation, and does not take into account the size of the spill. This bill amends the Spill Compensation and Control Act to allow a penalty of up to $10 million for a catastrophic spill of a hazardous substance, defined as a spill of 100,000 gallons or more.

The penalties apply to anyone whose discharge reaches New Jersey waters or lands, whether or not the spill actually occurred outside of the state. The bill directs the Department of Environmental Protection to take into account the conduct of the discharge and the extent of the damage in determining the level of the fine.

The bill also provides DEP with other enforcement tools. It authorizes DEP to assess civil administrative penalties to recover costs of investigation or cleanup, instead of having to go to court to collect penalties. It also expands the list of damages for which a polluter must pay to include the cost of restoring or replacing personal property, lost income resulting from damage caused by the spill, and the cost of repairing or replacing damaged and destroyed natural resources.

PROHIBIT NIGHTIME TRANSFERS WITHOUT PROPER LIGHTING

(A 3268/ S 2478; Sponsored by Senator Richard Van Wagner, Assemblyman George Otlowski)

In order to address the problem of detecting oil spills at night, this bill prohibits nighttime transfers of petroleum products through underwater pipelines unless there is proper lighting.

Within one year, the Department of Environmental Protection (DEP) must promulgate rules requiring lighting of transfer connection points, adjacent facilities and vessel areas and surrounding waters for all nighttime transfers of hazardous substances. The DEP may also require, if necessary, to have lighting at the point at which underwater pipelines emerge onto the land. The DEP regulations are to mirror the Coast Guard's guidelines on lighting to the maximum extent possible.

DEPLOY BOOMS AS A PRECAUTION DURING TRANSFERS

(S 2520/A 3263; Sponsored by Senator Richard Van Wagner/Assemblymen Tom Duch and Louis Gill)

This bill requires the Department of Environmental Protection to adopt regulations that containment booms or other safety devices must be in place for any transfer of a hazardous liquid.

Within one year, DEP will provide a list of hazardous liquids and identify the circumstances for which booms must be in place, based on criteria such as the safety record and degree of danger the transfer poses. DEP may also require that specific equipment or chemicals be on hand to contain a spill. For flammable substances and other transfers when it would be dangerous to use booms, DEP will prescribe other safety measures.

Companies must incorporate these safety measures in the Discharge Prevention Control and Countermeasure plans they are required to file with the DEP. Within 31 days after DEP adopts the regulations, companies must have in place or on stand-by, all equipment and personnel required.

If the transfer is occurring at a land-based facility, the facility is responsible for ensuring that the equipment and personnel are in place. If the transfer is between two vessels, each vessel is responsible.

ELIMINATE TAX WRITE-OFFS FOR CLEANUPS

(A 3265/S 2519; Sponsored by Assemblyman Joe Doria/Senator Richard Van Wagner)

This bill amends the New Jersey Gross Income Tax Act to provide that treble damages paid for cleaning up a spill, and fines and penalties paid for a spill will not be tax deductible as a business expense.

Any fine collected for a violation of a state or federal environmental law, an administrative consent order, a local penalty or fine, or any economic benefit gained as a result of a violation can not be deducted as a business expense from net profits. This does not apply if the fine was for a violation that resulted from an act beyond the control of the violator or if the violation was caused by a person outside the control of the violator, such as a fire or flood.

The bill also prohibits deducting the treble damages paid to the Department of Environmental Protection for the cost of removing or cleaning up a spill. (This occurs when DEP does the cleanup and then assesses damages on the polluter at three times the cost of the cleanup.)

IMPOSE TOUGHER REGULATIONS FOR STORAGE AND TRANSFER

(A 3262/S 2518; Sponsored by Assemblyman Bob Smith and Neil Cohen/Senator Richard Van Wagner)

This bill is the main regulatory bill strengthening the Discharge Prevention Control and Countermeasures (DPCC) program at DEP. The program requires that facilities that refine, store or transfer hazardous substances submit cleanup and removal plans to DEP. This bill beefs up the program and puts greater and more specific burdens on facilities in doing their plans.

The bill requires that the plans must be more specific in identifying areas that might be damaged by a spill. Companies must identify environmentally sensitive areas and come up with plans to protect and assess the damage of those areas.

ENFORCE BETTER PIPELINE SAFETY

(S 2516/A 3266/A 3257; Sponsored by Senator Ray Lesniak/Assemblyman George Hudak and Tom Deverin)

This bill requires facilities to register all pipelines in New Jersey, and directs DEP to conduct a study to make recommendations for regulating pipelines for safety.

Currently, the federal government regulates interstate pipelines, but there is no regulation of intrastate pipelines.

Within 18 months, DEP must adopt regulations establishing a registration program for all intrastate pipelines. Within 6 months after the regulations are issued, facilities must submit the pipeline information, including maps, types of pipes, descriptions of the materials transported through pipes, and any other necessary information.

Within 3 years, DEP must conduct a study to determine the appropriateness of establishing a program similar to the federal interstate pipeline safety program for intrastate pipelines. This study must include an assessment of state-of-the-art leak detection systems, of the closure and removal of abandoned pipelines, of the need for secondary containment devices for underwater pipelines, and of automatic internal leak detection devices. The report will be submitted to the Legislature and the Governor, making specific recommendations of necessary legislative and administrative action.

# # #

REMARKS PREPARED FOR DELIVERY BY GOVERNOR JIM FLORIO
OIL SPILL PREVENTION AND PENALTIES BILL SIGNING
ELIZABETH, NEW JERSEY
SATURDAY, JULY 21, 1990

I THOUGHT I'D SEEN THE LAST OF THE ARTHUR KILL OIL SPILLS, BUT ONCE AGAIN, WE'RE STANDING AT THE SCENE OF YET ANOTHER ASSAULT AGAINST THE ENVIRONMENT.

I DON'T KNOW ABOUT YOU, BUT I'VE HAD IT UP TO HERE WITH THE CARELESSNESS, NEGLECT AND INDIFFERENCE WE'VE SEEN FROM THOSE RESPONSIBLE FOR MOVING OIL HERE.

YOU'D THINK BY NOW, THESE COMPANIES UNDERSTOOD THE POINT.

EVEN CHILDREN GET THE POINT. LET ME READ JUST A FEW LINES FROM LETTERS I RECEIVED THE OTHER DAY FROM SOME YOUNG STUDENTS AT THE ASCENSION SCHOOL IN NEW MILFORD:

CRISTINA RODRIGUEZ: "I AM CONCERNED ABOUT THESE OIL SPILLS. WHAT'S GOING TO HAPPEN TO MY WORLD, MY CHILDREN'S WORLD, OR MAYBE EVEN MY GRANDCHILDREN'S WORLD?"

REY CRUZ: "I AM VERY UPSET ABOUT OIL SPILLS. FISH ARE DYING, AND IF THIS KEEPS UP, OUR CHILDREN WON'T EVEN KNOW WHAT A FISH IS."

HOW MUCH PLAINER COULD IT BE? THE ENVIRONMENT CAN'T TAKE THIS KIND OF ABUSE ANY MORE. THE PEOPLE OF NEW JERSEY CAN'T TAKE IT ANY MORE. AND I SURE WON'T TAKE IT ANY MORE.

UNFORTUNATELY, SOME PEOPLE STILL DON'T GET THE MESSAGE.

NOW THEY WILL.

IN A MOMENT, I'M GOING TO SIGN A PACKAGE OF BILLS INTO LAW THAT'S GOING TO MAKE PEOPLE THINK TWICE -- MAYBE MORE -- BEFORE THEY ACT IRRESPONSIBLY TOWARD OUR ENVIRONMENT.

THESE LAWS CARRY A VERY SIMPLE MESSAGE.

YOU SPILL, YOU PAY.

NOT A LITTLE BIT, BUT A LOT.

UP TO $10 MILLION.

IT'S TIME TO HIT THESE COMPANIES WHERE IT HURTS -- WITH STIFF PENALTIES AND FINES.

AND WHEN THEY'RE FORCED TO PAY FOR THE CLEANUP, AND PAY TRIPLE DAMAGES, WE'RE NOT GOING TO LET THEM DEDUCT THAT AS THE COST OF DOING BUSINESS.

BECAUSE THE COST OF DOING BUSINESS SHOULDN'T COME AT OUR EXPENSE, OR THAT OF THE NATURAL ENVIRONMENT. WE'RE GOING TO PUT THE COST BACK WHERE IT BELONGS -- IN THEIR POCKETS.

AND WHEN THEY FEEL THAT STING, MAYBE -- JUST MAYBE -- THEY'LL WAKE UP AND REALIZE THAT IT'S IN THEIR BEST INTEREST TO PAY ATTENTION TO WHAT THEY'RE DOING.

I KNOW I SPEAK NOT JUST FOR THE PEOPLE OF NEW JERSEY, BUT FOR THE FUTURE CHILDREN -- AND GRANDCHILDREN -- OF CRISTINA AND REY AND ALL THE OTHER CHILDREN WHO ARE CONCERNED.

IT'S NOT GOING TO BE BUSINESS AS USUAL ANY MORE. THESE LAWS ARE GOING TO TEACH INDUSTRY A NEW VERSION OF THE THREE "R'S:"

RESPONSIBILITY FOR ITS ACTIONS.

RESPONSIBILITY TO THE ENVIRONMENT.

AND RESPONSIBILITY AS GOOD NEIGHBORS.

THAT MEANS NO MORE TRANSFERS OF OIL WITHOUT CONTAINMENT BOOMS. IT MEANS NO MORE NIGHT TIME TRANSFERS OF OIL INTO PIPELINES WITHOUT PROPER LIGHTING.

IT MEANS THAT THE INDUSTRY JUST GOT A NEW PARTNER -- THE DEP. WE'RE GOING TO STRENGTHEN ITS HAND, AND IT'S GOING TO USE THAT STRENGTH TO HOLD THE INDUSTRY'S FEET TO THE FIRE.

I'VE ASKED THE CHILDREN WHO WROTE TO ME TO HELP ME TODAY, SO IF THEY WOULD COME FORWARD, WE'LL SIGN THESE BILLS INTO LAW.

AFTER SIX MONTHS AND NEARLY ONE MILLIONS GALLONS OF OIL, WE GOT THE MESSAGE. THIS IS OUR ANSWER.

NONE OF THIS WOULD HAVE BEEN POSSIBLE WITHOUT THE HARD WORK AND PERSISTENCE OF SOME OF OUR LEGISLATORS, WHO ARE HERE TODAY.

I ESPECIALLY WANT TO THANK SENATOR VAN WAGNER FOR HIS EFFORTS. AND I WANT TO THANK SENATOR LESNIAK AND ASSEMBLYMAN SMITH FOR THEIR PART IN THIS LEGISLATION.

AND NOW, I'D LIKE SENATOR VAN WAGNER AND ASSEMBLYMAN SMITH TO COME UP AND SAY A FEW WORDS.

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 3265

STATE OF NEW JERSEY

ADOPTED APRIL 23, 1990

Sponsored by Assemblymen DORIA and CHARLES

AN ACT concerning business expense deductions from State income and corporate taxes for violations of environmental laws, ordinances or resolutions, and amending N.J.S.54A:5-1 and P.L.1945, c.162.

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

1. N.J.S. 54A:5-1 is amended to read as follows:

54A:5-1. New Jersey Gross Income Defined. New Jersey gross income shall consist of the following categories of income:

a. Salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property.

b. Net profits from business. The net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the method of accounting allowed for federal income tax purposes but without deduction of the amount of:

(1) taxes based on income;

(2) a civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or ommission of a person who was outside the reasonable control of the violator; and

(3) treble damages paid to the Department of Environmental

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.

Protection pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon the failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, a discharge.

c. Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible as determined in accordance with the method of accounting allowed for federal income tax purposes. For the purpose of determining gain or loss, the basis of property shall be the adjusted basis used for federal income tax purposes , but without a deduction for penalties, fines, or economic benefits excepted pursuant to subparagraph (2), or for treble damages excepted pursuant to subparagraph (3) of subsection b. of this section.

For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the "Tax on Capital Gains and Other Unearned Income Act" (P.L.1975, c.172), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under P.L.1975, c.172, it shall not be used to offset any gain under the "New Jersey Gross Income Tax Act" (P.L.1976, c.47).

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clause (1) or (2) of section 54A:6-14 of this act or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income" shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. For purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

For purposes of this clause, the term "reorganization" means--

(i) A statutory merger or consolidation;

(ii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(iii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(iv) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;

(v) A recapitalization;

(vi) A mere change in identity, form, or place of organization however effected; or

(vii) The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (i) if such transaction would have qualified under subclause (i) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction;

(viii) A transaction otherwise qualifying under subclause (i) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

For purposes of this clause, the term "control" means the ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of total number of shares of all other classes of stock of the corporation.

For purposes of this clause, the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under subclause (i) by reason of subclause (vii) the term "a party to a reorganization" includes the controlling corporation referred to in such subclause (vii).

Notwithstanding any provisions hereof, upon every such exchange or conversion, the taxpayer's basis for the stock or securities received shall be the same as the taxpayer's actual or attributed basis for the stock, securities or property surrendered in exchange therefor.

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

e. Interest, except interest referred to in clause (1) or (2) of N.J.S.54A:6-14, or distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

f. Dividends. "Dividends" means any distribution in cash or property made by a corporation, association or business trust, (1) out of accumulated earnings and profits, or (2) out of earnings and profits of the year in which such dividend is paid.

The term "dividends" shall not include distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

g. Gambling winnings.

h. Net gains or income derived through estates or trusts.

i. Income in respect of a decedent.

j. Amounts distributed or withdrawn from an employee trust attributable to contributions to the trust which were excluded from gross income under the provisions of chapter 6 of Title 54A of the New Jersey Statutes and pensions and annuities except to the extent of exclusions in section 54A:6-10 hereunder, notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

k. Distributive share of partnership income.

l. Amounts received as prizes and awards, except as provided in sections 54A:6-8 and 54A:6-11 hereunder.

m. Rental value of a residence furnished by an employer or a rental allowance paid by an employer to provide a home.

n. Alimony and separate maintenance payments to the extent that such payments are required to be made under a decree of divorce or separate maintenance but not including payments for support of minor children.

o. Income, gain or profit derived from acts or omissions defined as crimes or offenses under the laws of this State or any other jurisdiction.

(cf: P.L.1987, c.310, s.1)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets. For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax; provided, however, that in the determination of such entire net income, (1) Entire net income shall exclude for the periods set forth in paragraph (2)(F)(i) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D) (v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which is included in a taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of paragraph (8) of that section.

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

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

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

(C) Taxes paid or accrued to the United States on or measured by profits or income, or the tax imposed by this act, or any tax paid or accrued with respect to subsidiary dividends excluded from entire net income as provided in paragraph (5) of subsection (k) of this section;

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

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

(i) Up to an amount not exceeding $1,000.00;

(ii) In full to the extent that it relates to bonds or other evidences of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization, to persons, who, prior to such reorganization, were bona fide creditors of the corporation or its predecessors, but were not stockholders or shareholders thereof;

(iii) In full to the extent that it relates to debt of a financial business corporation owed to an affiliate corporation; provided that such interest rate does not exceed 2% over prime rate; the prime rate to be determined by the Commissioner of Banking;

(iv) In full to the extent that it relates to financing of motor vehicle inventory held for sale to customers; provided said indebtedness is owed to a taxpayer customarily and routinely providing this type of financing;

(v) In full to the extent it relates to debt of a banking corporation to a bank holding company, of which the banking corporation is a subsidiary, or to a debt of a banking corporation to another banking corporation with respect to federal funds transactions governed by section 23A of the Federal Reserve Act (12 U.S.C.§ 371c.) when both banking corporations are subsidiaries of the same bank holding company, as defined in 12 U.S.C.§ 1841.

(F)(i) The amount by which depreciation reported to the United States Treasury Department for property placed in service on and after January 1, 1981, for purposes of computing federal taxable income in accordance with section 168 of the Internal Revenue Code in effect after December 31, 1980, exceeds the amount of depreciation determined in accordance with the Internal Revenue Code provisions in effect prior to January 1, 1981, but only with respect to a taxpayer's accounting period ending after December 31, 1981; provided, however, that where a taxpayer's accounting period begins in 1981 and ends in 1982, no modification shall be required with respect to this paragraph (F) for the report filed for such period with respect to property placed in service during that part of the accounting period which occurs in 1981.

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

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

(G) (1) The amount of any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or ommission of a person who was outside the reasonable control of the violator.

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

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

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

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

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

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

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

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

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

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

(5) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more

subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section. With respect to other dividends, entire net income shall not include 50% of the total included in computing such taxable income for federal income tax purposes.

(6)(A) Net operating loss deduction. There shall be allowed as a deduction for the taxable year the net operating loss carryover to that year.

(B) Net operating loss carryover. A net operating loss for any taxable year ending after June 30, 1984 shall be a net operating loss carryover to each of the seven years following the year of the loss.The entire amount of the net operating loss for any taxable year (the "loss year") shall be carried to the earliest of the taxable years to which the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior taxable years to which the loss may be carried.

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

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

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

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

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

(cf: P.L.1989, c.59, s.1)

3. This act shall take effect immediately.

ENVIRONMENT

Eliminates certain tax deductible business expenses for violations of environmental laws, ordinances or resolutions.