54A:3-9

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 60

NJSA: 54A:3-9 (Establishes alternative business calculation under gross income tax to permit consolidation and carryforward of certain business-related losses)

BILL NO: S2754 (Substituted for A3870)

SPONSOR(S) Buono and others

DATE INTRODUCED: February 22, 2011

COMMITTEE: **ASSEMBLY:** ---

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** March 3, 2011

SENATE: March 3, 2011

DATE OF APPROVAL: April 28, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Introduced version of bill enacted)

S2754

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes

A3870

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:
To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or mailto:refdesk@njstatelib.org

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Gov. Christie signs bipartisan bills to modernize N.J. tax code for small businesses," NewJerseyNewsroom.com, 4-29-11
"N.J. tax for single sales goes into law," The Philadelphia Inquirer, 4-29-11
"Christie Signs Two Tax Reductions for New Jersey Businesses," Bloomberg Press, 4-29-11
"Governor signs tax cut bills after Democrats pass tweaks," Courier News, 4-29-11
"Christie signs tax-cut bills," Asbury Park Press, 4-29-11
"Christie signs 2 tax cut bills to aid business," Courier-Post, 4-29-11

LAW/RWH

§1 - C.54A:3-9
§2 - Note

P.L.2011, CHAPTER 60, ***approved April 28, 2011***
Senate, No. 2754
(CORRECTED COPY)

AN ACT establishing the alternative business calculation under the gross income tax to permit the consolidation and carryforward of certain business-related losses, supplementing Title 54A of the New Jersey Statutes.

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

1. a. Notwithstanding the provisions of N.J.S.54A:5-1, for the purposes of the alternative business calculation pursuant to this section a taxpayer who sustains a net loss in one or more of the net categories of gross income determined pursuant to subsections b., d., k., and p. of N.J.S.54A:5-1 shall net that loss against any other gains or losses sustained in those categories of gross income and any loss carryforward allowed pursuant to subsection b. of this section to determine alternative business income or loss.

b. Notwithstanding the provisions of N.J.S.54A:5-2, a taxpayer who sustains an alternative business loss pursuant to the provisions of subsection a. of this section may carry that loss forward, if necessary and in accordance with the terms and conditions prescribed by the director, for application pursuant to the provisions of subsection a. of this section during each of the 20 taxable years following the alternative business loss' taxable year.

c. (1) A taxpayer shall calculate regular business income as the total of the subsection b., d., k., and p. categories of gross income determined pursuant to N.J.S.54A:5-1 in accordance with N.J.S.54A:5-2.

(2) A taxpayer shall subtract alternative business income from regular business income determined pursuant to paragraph (1) of this subsection to determine the business increment.

(3) For purposes of calculating a taxpayer's liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., a taxpayer shall adjust the taxpayer's taxable income pursuant to the following schedule:

For taxable years beginning in 2012, the taxpayer shall subtract from taxable income 10% of the business increment;

For taxable years beginning in 2013, the taxpayer shall subtract from taxable income 20% of the business increment;

For taxable years beginning in 2014, the taxpayer shall subtract from taxable income 30% of the business increment;

For taxable years beginning in 2015, the taxpayer shall subtract from taxable income 40% of the business increment.

For taxable years beginning in 2016 and thereafter, the taxpayer shall subtract from taxable income 50% of the business increment.

2. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2012.

STATEMENT

This bill establishes an alternative business calculation under the gross income tax as a mechanism that permits taxpayers who generate income from different types of business entities to offset gains from one type of business with losses from another, and permits taxpayers to carry forward business-related losses for a period of up to 20 taxable years.

The bill specifically permits taxpayers to net gains and losses derived from one or more of the following business-related categories of gross income: net profits from business; net gains or net income derived from or in the form of rents, royalties, patents, and copyrights; distributive share of partnership income; and net pro rata share of S corporation income. The bill specifies that a taxpayer who sustains a loss from a sole proprietorship may apply that loss against income derived from a partnership, subchapter S corporation, or rents and royalties, but is prohibited from applying those losses from those categories to income that is not related to the taxpayer’s conduct of the taxpayer’s own business, including salaries and wages, the disposition of property, and interest and dividends.

The bill provides that net losses from the business-related categories of income may be carried forward and applied against income in future taxable years. The bill limits the application of net losses which are carried forward to gains and losses from the same business-related categories of income from which the net loss is derived, and allows the losses to be carried forward for a period of up to 20 taxable years following the year the net loss occurs.

The bill phases in the tax savings over five years beginning with tax year 2012. Once fully implemented, the maximum savings will be equal to 50 percent of the savings that would accrue from unlimited netting between these income categories and the net loss carryforward.

Establishes alternative business calculation under gross income tax to permit consolidation and carryforward of certain business-related losses.

SENATE, No. 2754

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED FEBRUARY 22, 2011

Sponsored by:
Senator BARBARA BUONO
District 18 (Middlesex)
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)
Senator STEVEN V. OROHO
District 24 (Sussex, Hunterdon and Morris)
Assemblyman LOUIS D. GREENWALD
District 6 (Camden)
Assemblyman PETER J. BARNES, III
District 18 (Middlesex)
Assemblyman GORDON M. JOHNSON
District 37 (Bergen)
Assemblywoman NELLIE POU
District 35 (Bergen and Passaic)

Co-Sponsored by:
Senator Sarlo, Assemblymen Conners and Conaway

SYNOPSIS

Establishes alternative business calculation under gross income tax to permit consolidation and carryforward of certain business-related losses.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/4/2011)

AN ACT establishing the alternative business calculation under the gross income tax to permit the consolidation and carryforward of certain business-related losses, supplementing Title 54A of the New Jersey Statutes.

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

1. a. Notwithstanding the provisions of N.J.S.54A:5-1, for the purposes of the alternative business calculation pursuant to this section a taxpayer who sustains a net loss in one or more of the net categories of gross income determined pursuant to subsections b., d., k., and p. of N.J.S.54A:5-1 shall net that loss against any other gains or losses sustained in those categories of gross income and any loss carryforward allowed pursuant to subsection b. of this section to determine alternative business income or loss.

b. Notwithstanding the provisions of N.J.S.54A:5-2, a taxpayer who sustains an alternative business loss pursuant to the provisions of subsection a. of this section may carry that loss forward, if necessary and in accordance with the terms and conditions prescribed by the director, for application pursuant to the provisions of subsection a. of this section during each of the 20 taxable years following the alternative business loss' taxable year.

c. (1) A taxpayer shall calculate regular business income as the total of the subsection b., d., k., and p. categories of gross income determined pursuant to N.J.S.54A:5-1 in accordance with N.J.S.54A:5-2.

(2) A taxpayer shall subtract alternative business income from regular business income determined pursuant to paragraph (1) of this subsection to determine the business increment.

(3) For purposes of calculating a taxpayer's liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., a taxpayer shall adjust the taxpayer's taxable income pursuant to the following schedule:

For taxable years beginning in 2012, the taxpayer shall subtract from taxable income 10% of the business increment;

For taxable years beginning in 2013, the taxpayer shall subtract from taxable income 20% of the business increment;

For taxable years beginning in 2014, the taxpayer shall subtract from taxable income 30% of the business increment;

For taxable years beginning in 2015, the taxpayer shall subtract from taxable income 40% of the business increment.

For taxable years beginning in 2016 and thereafter, the taxpayer shall subtract from taxable income 50% of the business increment.

2. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2012.

STATEMENT

This bill establishes an alternative business calculation under the gross income tax as a mechanism that permits taxpayers who generate income from different types of business entities to offset gains from one type of business with losses from another, and permits taxpayers to carry forward business-related losses for a period of up to 20 taxable years.

The bill specifically permits taxpayers to net gains and losses derived from one or more of the following business-related categories of gross income: net profits from business; net gains or net income derived from or in the form of rents, royalties, patents, and copyrights; distributive share of partnership income; and net pro rata share of S corporation income. The bill specifies that a taxpayer who sustains a loss from a sole proprietorship may apply that loss against income derived from a partnership, subchapter S corporation, or rents and royalties, but is prohibited from applying those losses from those categories to income that is not related to the taxpayer’s conduct of the taxpayer’s own business, including salaries and wages, the disposition of property, and interest and dividends.

The bill provides that net losses from the business-related categories of income may be carried forward and applied against income in future taxable years. The bill limits the application of net losses which are carried forward to gains and losses from the same business-related categories of income from which the net loss is derived, and allows the losses to be carried forward for a period of up to 20 taxable years following the year the net loss occurs.

The bill phases in the tax savings over five years beginning with tax year 2012. Once fully implemented, the maximum savings will be equal to 50 percent of the savings that would accrue from unlimited netting between these income categories and the net loss carryforward.

FISCAL NOTE
SENATE, No. 2754
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: MARCH 4, 2011

SUMMARY

Synopsis: Establishes alternative business calculation under gross income tax to permit consolidation and carryforward of certain business-related losses.

Type of Impact: Annual revenue loss from the Property Tax Relief Fund (PTRF).

Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
State Revenue Loss (PTRF)	$23,000,000	$67,000,000	$117,000,000	$167,000,000	$200,000,000

Office of Legislative Services Estimate

Fiscal Impact	Annual Impact FY 2012 and Thereafter
State Revenue Loss	
Property Tax Relief Fund	Unknown, significant, and variable annual losses

- The Governor's Budget Message for FY 2012 proposes the five-year phase-in of the alternative business calculation under the gross income tax (GIT) to permit consolidation and carryforward of certain business-related losses. Figures from the Budget-in-Brief indicate that the phase-in would reduce GIT revenues deposited into the Property Tax Relief Fund by $23.0 million in FY 2012, by $67.0 million in FY 2013, by $117.0 million in FY 2014, by $167.0 million in FY 2015 and by $200.0 million in FY 2016. Once fully implemented, the maximum savings will be equal to 50 percent of the savings that would accrue from unlimited netting between these income categories and the net loss carryforward. Depending on economic conditions, annual revenue losses could also exceed this amount.
- The Office of Legislative Services (OLS) is unable to confirm or refute the Executive's estimated potential revenue loss under this bill. While the OLS agrees that annual losses will be significant and variable from year to year, the Division's analysis rests in part on confidential Federal and State tax return data to which the OLS has no access.

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State House Annex
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BILL DESCRIPTION

Senate Bill No. 2754 of 2011 establishes an alternative business calculation under the gross income tax as a mechanism that permits taxpayers who generate income from different types of business entities to offset gains from one type of business with losses from another, and permits taxpayers to carry forward business-related losses for a period of up to 20 taxable years.

The bill specifically permits taxpayers to net gains and losses derived from one or more of the following business-related categories of gross income: net profits from business; net gains or net income derived from or in the form of rents, royalties, patents, and copyrights; distributive share of partnership income; and net pro rata share of S corporation income. The bill specifies that a taxpayer who sustains a loss from a sole proprietorship may apply that loss against income derived from a partnership, subchapter S corporation, or rents and royalties, but is prohibited from applying those losses from those categories to income that is not related to the taxpayer's conduct of the taxpayer's own business, including salaries and wages, the disposition of property, and interest and dividends.

The bill provides that net losses from the business-related categories of income may be carried forward and applied against income in future taxable years. The bill limits the application of net losses which are carried forward to gains and losses from the same business-related categories of income from which the net loss is derived, and allows the losses to be carried forward for a period of up to 20 taxable years following the year the net loss occurs.

The bill phases in the tax savings over five years beginning with tax year 2012. Once fully implemented, the maximum savings will be equal to 50 percent of the savings that would accrue from unlimited netting between these income categories and the net loss carryforward.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Governor's Budget Message for FY 2012 proposes the five-year phase-in of the alternative business calculation under the GIT to permit consolidation and carryforward of certain business-related losses. Figures from the Budget-in-Brief indicate that the phase-in would reduce GIT revenues deposited into the Property Tax Relief Fund by $23.0 million in FY 2012, by $67.0 million in FY 2013, by $117.0 million in FY 2014, by $167.0 million in FY 2015 and by $200.0 million in FY 2016. The total fiscal impact is consistent with the Department of the Treasury and the Office of Management and Budget estimate for Senate Bill No. 1646 of 2010. However, that prior bill was based on a 100 percent tax savings whereas this bill provides for a 50 percent tax savings. Accordingly, the total revenue loss estimate under this bill is half the total revenue loss estimate of the prior bill. Based on estimates prepared in October, 2010, for the prior bill, about two-thirds of the revenue loss is attributable to the consolidation of losses across certain business-related income categories, while about one-third of the revenue loss is attributable to allowing losses to be carried forward into future tax years.

No current net loss data for the State GIT exist, so the Division of Taxation prepared the estimates by matching federal Internal Revenue Service (IRS) data for taxpayers with State GIT taxpayer data, for income in the four categories to be combined under this bill. For tax returns in 2007, the most recent year available, the Division estimates an income difference between the federal IRS return data and the State return data of $2.8 billion, and about 50 percent of this income difference would be impacted by this bill. The estimate is highly sensitive to economic conditions. The Division points out that in difficult economic conditions the potential losses claimed by taxpayers affected by this bill could increase.

OFFICE OF LEGISLATIVE SERVICES

The OLS is unable to confirm or refute the Executive's estimated potential revenue loss under this bill. While the OLS agrees that annual losses will be significant and variable from year to year, the Division's analysis rests in part on confidential Federal and State tax return data to which the OLS has no access.

The OLS cannot independently estimate a specific revenue loss amount for this bill, because OLS has no access to individual State and federal tax returns, which the Executive used to model the potential impact of this bill. The bill would combine the gains and losses from several business-related categories of income, and allow losses to be carried forward into future years. In Tax Year 2007, the most recent year with publicly available aggregate New Jersey GIT data, estimated income in these categories totaled over $46 billion. However, there are no published New Jersey tax data that indicate the size of losses claimed by income category, nor the amount of unclaimed losses that may offset gains under the consolidated reporting.

The IRS aggregated data for similar categories of income on federal tax returns in 2007, suggest that annual losses applied against liability from net gains, partnerships and businesses may equal about 10 percent of reported income in those categories. Applying that 10 percent figure to the $46 billion of New Jersey income in those categories yields possible income reductions of $4.6 billion. However, it is unknown the extent to which the losses that are taken are incurred in that particular year or are carried forward from prior years. Also unknown is the extent to which losses under federal tax returns are applied against income from differing income categories, which is allowed under the federal tax code.

While the aggregate IRS data are not directly applicable to the potential State impact of this bill, the possible income loss of $4.6 billion suggested by the publicly available aggregate data is not inconsistent with the Executive's estimate of a potential $2.8 billion reduction in taxable income from consolidation of losses across business-related categories, plus the allowance of losses to be carried forward into future tax years.

The OLS agrees that income and losses from these business-related sources are particularly volatile from year to year. A good year economically, such as 2007, may see relatively fewer losses, while a recessionary year such as 2008 and 2009, with dramatic declines in the stock markets and in business earnings, could see a sharp spike in losses. Moreover, the income base against which losses can be applied will also vary due to the economy. In good years taxpayers will have greater earnings against which to apply losses, while in recessionary years taxpayer income in the categories impacted by this bill will fall and the opportunity to apply losses will decline.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Martin Poethke* *Lead Fiscal Analyst*
Approved:	*David J. Rosen* *Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 3870

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED FEBRUARY 22, 2011

Sponsored by:
Assemblyman LOUIS D. GREENWALD
District 6 (Camden)
Assemblyman PETER J. BARNES, III
District 18 (Middlesex)
Assemblyman GORDON M. JOHNSON
District 37 (Bergen)
Assemblywoman NELLIE POU
District 35 (Bergen and Passaic)

Co-Sponsored by:
Assemblymen Conners and Conaway

SYNOPSIS

Establishes alternative business calculation under gross income tax to permit consolidation and carryforward of certain business-related losses.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/4/2011)

AN ACT establishing the alternative business calculation under the gross income tax to permit the consolidation and carryforward of certain business-related losses, supplementing Title 54A of the New Jersey Statutes.

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

1. a. Notwithstanding the provisions of N.J.S.54A:5-1, for the purposes of the alternative business calculation pursuant to this section a taxpayer who sustains a net loss in one or more of the net categories of gross income determined pursuant to subsections b., d., k., and p. of N.J.S.54A:5-1 shall net that loss against any other gains or losses sustained in those categories of gross income and any loss carryforward allowed pursuant to subsection b. of this section to determine alternative business income or loss.

b. Notwithstanding the provisions of N.J.S.54A:5-2, a taxpayer who sustains an alternative business loss pursuant to the provisions of subsection a. of this section may carry that loss forward, if necessary and in accordance with the terms and conditions prescribed by the director, for application pursuant to the provisions of subsection a. of this section during each of the 20 taxable years following the alternative business loss' taxable year.

c. (1) A taxpayer shall calculate regular business income as the total of the subsection b., d., k., and p. categories of gross income determined pursuant to N.J.S.54A:5-1 in accordance with N.J.S.54A:5-2.

(2) A taxpayer shall subtract alternative business income from regular business income determined pursuant to paragraph (1) of this subsection to determine the business increment.

(3) For purposes of calculating a taxpayer's liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., a taxpayer shall adjust the taxpayer's taxable income pursuant to the following schedule:

For taxable years beginning in 2012, the taxpayer shall subtract from taxable income 10% of the business increment;

For taxable years beginning in 2013, the taxpayer shall subtract from taxable income 20% of the business increment;

For taxable years beginning in 2014, the taxpayer shall subtract from taxable income 30% of the business increment;

For taxable years beginning in 2015, the taxpayer shall subtract from taxable income 40% of the business increment.

For taxable years beginning in 2016 and thereafter, the taxpayer shall subtract from taxable income 50% of the business increment.

2. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2012.

STATEMENT

This bill establishes an alternative business calculation under the gross income tax as a mechanism that permits taxpayers who generate income from different types of business entities to offset gains from one type of business with losses from another, and permits taxpayers to carry forward business-related losses for a period of up to 20 taxable years.

The bill specifically permits taxpayers to net gains and losses derived from one or more of the following business-related categories of gross income: net profits from business; net gains or net income derived from or in the form of rents, royalties, patents, and copyrights; distributive share of partnership income; and net pro rata share of S corporation income. The bill specifies that a taxpayer who sustains a loss from a sole proprietorship may apply that loss against income derived from a partnership, subchapter S corporation, or rents and royalties, but is prohibited from applying those losses from those categories to income that is not related to the taxpayer's conduct of the taxpayer's own business, including salaries and wages, the disposition of property, and interest and dividends.

The bill provides that net losses from the business-related categories of income may be carried forward and applied against income in future taxable years. The bill limits the application of net losses which are carried forward to gains and losses from the same business-related categories of income from which the net loss is derived, and allows the losses to be carried forward for a period of up to 20 taxable years following the year the net loss occurs.

The bill phases in the tax savings over five years beginning with tax year 2012. Once fully implemented, the maximum savings will be equal to 50 percent of the savings that would accrue from unlimited netting between these income categories and the net loss carryforward.

FISCAL NOTE
ASSEMBLY, No. 3870
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: MARCH 31, 2011

SUMMARY

Synopsis: Establishes alternative business calculation under gross income tax to permit consolidation and carryforward of certain business-related losses.

Type of Impact: Annual revenue loss from the Property Tax Relief Fund (PTRF).

Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
State Revenue Loss (PTRF)	$23,000,000	$67,000,000	$117,000,000	$167,000,000	$200,000,000

Office of Legislative Services Estimate

Fiscal Impact	Annual Impact FY 2012 and Thereafter
State Revenue Loss	
Property Tax Relief Fund	Unknown, significant, and variable annual losses

- The Governor's Budget Message for FY 2012 proposes the five-year phase-in of the alternative business calculation under the gross income tax (GIT) to permit consolidation and carryforward of certain business-related losses. Figures from the Budget-in-Brief indicate that the phase-in would reduce GIT revenues deposited into the Property Tax Relief Fund by $23.0 million in FY 2012, by $67.0 million in FY 2013, by $117.0 million in FY 2014, by $167.0 million in FY 2015 and by $200.0 million in FY 2016. Once fully implemented, the maximum savings will be equal to 50 percent of the savings that would accrue from unlimited netting between these income categories and the net loss carryforward. Depending on economic conditions, annual revenue losses could also exceed this amount.

- The Office of Legislative Services (OLS) is unable to confirm or refute the Executive's estimated potential revenue loss under this bill. While the OLS agrees that annual losses will

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be significant and variable from year to year, the Division's analysis rests in part on confidential Federal and State tax return data to which the OLS has no access.

BILL DESCRIPTION

Assembly Bill No. 3870 of 2011 establishes an alternative business calculation under the gross income tax as a mechanism that permits taxpayers who generate income from different types of business entities to offset gains from one type of business with losses from another, and permits taxpayers to carry forward business-related losses for a period of up to 20 taxable years.

The bill specifically permits taxpayers to net gains and losses derived from one or more of the following business-related categories of gross income: net profits from business; net gains or net income derived from or in the form of rents, royalties, patents, and copyrights; distributive share of partnership income; and net pro rata share of S corporation income. The bill specifies that a taxpayer who sustains a loss from a sole proprietorship may apply that loss against income derived from a partnership, subchapter S corporation, or rents and royalties, but is prohibited from applying those losses from those categories to income that is not related to the taxpayer’s conduct of the taxpayer’s own business, including salaries and wages, the disposition of property, and interest and dividends.

The bill provides that net losses from the business-related categories of income may be carried forward and applied against income in future taxable years. The bill limits the application of net losses which are carried forward to gains and losses from the same business-related categories of income from which the net loss is derived, and allows the losses to be carried forward for a period of up to 20 taxable years following the year the net loss occurs.

The bill phases in the tax savings over five years beginning with tax year 2012. Once fully implemented, the maximum savings will be equal to 50 percent of the savings that would accrue from unlimited netting between these income categories and the net loss carryforward.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Governor’s Budget Message for FY 2012 proposes the five-year phase-in of the alternative business calculation under the gross income tax (GIT) to permit consolidation and carryforward of certain business-related losses. Figures from the Budget-in-Brief indicate that the phase-in would reduce GIT revenues deposited into the Property Tax Relief Fund by $23.0 million in FY 2012, by $67.0 million in FY 2013, by $117.0 million in FY 2014, by $167.0 million in FY 2015 and by $200.0 million in FY 2016. The total fiscal impact is consistent with the Department of the Treasury and the Office of Management and Budget estimate for Senate Bill No. 1646 of 2010. However, that prior bill was based on a 100 percent tax savings whereas this bill provides for a 50 percent tax savings. Accordingly, the total revenue loss estimate under this bill is half the total revenue loss estimate of the prior bill. Based on estimates prepared in October, 2010, for the prior bill, about two-thirds of the revenue loss is attributable to the consolidation of losses across certain business-related income categories, while about one-third of the revenue loss is attributable to allowing losses to be carried forward into future tax years.

No current net loss data for the State GIT exist, so the Division of Taxation prepared the estimates by matching federal Internal Revenue Service (IRS) data for taxpayers with State GIT taxpayer data, for income in the four categories to be combined under this bill. For tax returns in 2007, the most recent year available, the Division estimates an income difference between the federal IRS return data and the State return data of $2.8 billion, and about 50 percent of this income difference would be impacted by this bill. The estimate is highly sensitive to economic conditions. The Division points out that in difficult economic conditions the potential losses claimed by taxpayers affected by this bill could increase.

OFFICE OF LEGISLATIVE SERVICES

The OLS is unable to confirm or refute the Executive’s estimated potential revenue loss under this bill. While the OLS agrees that annual losses will be significant and variable from year to year, the Division's analysis rests in part on confidential Federal and State tax return data to which the OLS has no access.

OLS cannot independently estimate a specific revenue loss amount for this bill, because OLS has no access to individual State and federal tax returns, which the Executive used to model the potential impact of this bill. The bill would combine the gains and losses from several business-related categories of income, and allow losses to be carried forward into future years. In Tax Year 2007, the most recent year with publicly available aggregate New Jersey GIT data, estimated income in these categories totaled over $46 billion. However, there are no published New Jersey tax data that indicate the size of losses claimed by income category, nor the amount of unclaimed losses that may offset gains under the consolidated reporting.

Internal Revenue Service (IRS) aggregated data for similar categories of income on federal tax returns in 2007, suggest that annual losses applied against liability from net gains, partnerships and businesses may equal about 10 percent of reported income in those categories. Applying that 10 percent figure to the $46 billion of New Jersey income in those categories yields possible income reductions of $4.6 billion. However, it is unknown the extent to which the losses that are taken are incurred in that particular year or are carried forward from prior years. Also unknown is the extent to which losses under federal tax returns are applied against income from differing income categories, which is allowed under the federal tax code.

While the aggregate IRS data are not directly applicable to the potential State impact of this bill, the possible income loss of $4.6 billion suggested by the publicly available aggregate data is not inconsistent with the Executive’s estimate of a potential $2.8 billion reduction in taxable income from consolidation of losses across business-related categories, plus the allowance of losses to be carried forward into future tax years.

The OLS agrees that income and losses from these business-related sources are particularly volatile from year to year. A good year economically, such as 2007, may see relatively fewer losses, while a recessionary year such as 2008 and 2009, with dramatic declines in the stock markets and in business earnings, could see a sharp spike in losses. Moreover, the income base against which losses can be applied will also vary due to the economy. In good years taxpayers will have greater earnings against which to apply losses, while in recessionary years taxpayer income in the categories impacted by this bill will fall and the opportunity to apply losses will decline.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Martin Poethke* *Lead Fiscal Analyst*
Approved:	*David J. Rosen* *Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Chris Christie Takes Action on Budget Proposals to Provide Tax Relief and Spur Economic Growth

Thursday, April 28, 2011 Tags: Education

Signs Two Bills Implementing Key Proposals from Fiscal Year 2012 Budget

Trenton, NJ – Affirming his commitment to creating jobs for New Jersey families, Governor Chris Christie today signed Senate Bills 2753 and 2754 to provide common sense, targeted tax relief to improve the state's business climate and spur economic growth. In his Fiscal Year 2012 Budget proposal, Governor Christie proposed a $200 million package of job-creating tax reforms and incentives to boost New Jersey's economy. The Governor has stressed the importance of reforms to break from the state's hostile climate towards business expansion and job growth, while maintaining fiscal discipline over state spending and adhering a constitutionally-balanced budget. The legislation signed today implements key proposals advanced by Governor Christie in that effort.

"Today, we are providing critical tax reforms and incentives to boost our economy, foster job growth and opportunity for New Jersey families, and putting a down payment on a more prosperous future for our state," said Governor Christie. "We must continue to take action to lay a sustainable fiscal path for New Jersey, ensure that tax cuts are done in the context of a balanced budget and implement reform in the most efficient manner possible. I'm pleased that there is a bipartisan consensus in New Jersey around the need to improve our state's oppressive business tax climate through tax policy changes and common sense regulatory reform, and I look forward to pursuing more needed reforms with the legislature."

S-2753 will change the corporate business tax formula from a three-factor formula to a single sales factor formula, as well as create a modified sales fraction formula for airlines. S-2754 will permit taxpayers to net gains and losses from certain business-related categories of gross incomes and allow those losses to be carried forward for up to twenty years.

Since Governor Christie took office, the Administration has been committed to bringing real, bipartisan solutions to the critical challenges faced by the state. These include closing an $11 billion budget deficit without tax increases, passing Cap 2.0 to bring real property tax relief, and taking major steps toward pension and benefit reform. Last fall, Governor Christie called on the legislature to deliver for New Jersey families by acting on his proposals, including his "took kit" legislation to give local governments the tools to control costs and limit property taxes.

Additionally, the Administration has continued to advance policies to further improve New Jersey's business climate by sunsetting the corporate business tax surcharge, signing new, robust business attraction legislation, and protecting businesses from an average $400 per employee, or 52% increase in the unemployment insurance payroll tax. Those policies, coupled with recent activities like the Governor's 'Creating Jersey Jobs Summit,' the Lt. Governor's '100 Businesses' initiative, and the recent Illinois ad campaign to promote New Jersey as a destination for businesses, all demonstrate that New Jersey is well-positioned for business expansion, economic growth and job creation as our economy recovers.

Prime Sponsors of S-2753 included Senators Jim Whelan (D-Atlantic), Fred Madden (D-Gloucester), and Steven Oroho (R- Sussex/Hunterdon/Morris). Assembly sponsors included Assembly member Lou Greenwald (D-Camden), Matthew Milam (D- Cumberland/Atlantic/Cape May), Grace Spencer (D-Essex), and Nellie Pou (D-Passaic). Prime sponsors of S-2754 included Senators Barbara Buono (D-Middlesex), Linda Greenstein (D-Middlesex/Mercer) and Steven Oroho (R-Sussex/Hunterdon/Morris). Assembly sponsors included Assembly members Lou Greenwald (D-Camden), Peter Barnes (D-Middlesex), Gordon Johnson (D-Bergen), and Nellie Pou (D-Passaic).

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