

# 54:10A-4

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2001            **CHAPTER:** 136  
**NJSA:** 54:10A-4        (Payment obligations of partnerships/LLCs)  
**BILL NO:** A3045        (Substituted for S2466)

**SPONSOR(S):** Gregg

**DATE INTRODUCED:** December 11, 2000

**COMMITTEE:**            **ASSEMBLY:** Commerce; Appropriations

**SENATE:** ----

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**            **ASSEMBLY:** June 28, 2001

**SENATE:** June 28, 2001

**DATE OF APPROVAL:** June 29, 2001

### FOLLOWING ARE ATTACHED IF AVAILABLE:

**FINAL TEXT OF BILL** (Assembly Committee Substitute enacted)

(Amendments during passage denoted by superscript numbers)

#### A3045

**SPONSORS STATEMENT:** (Begins on page 14 of original bill)            Yes

**COMMITTEE STATEMENT:**            **ASSEMBLY:** Yes 6-21-  
2001(Approp.)

6-4-2001

(Commerce)

**SENATE:** No

**FLOOR AMENDMENT STATEMENTS:** No

**LEGISLATIVE FISCAL NOTE:** Yes

**S2466**

**SPONSORS STATEMENT:** (Begins on page 17 of original bill) Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**SENATE:** No

**FLOOR AMENDMENT STATEMENTS:** No

**LEGISLATIVE FISCAL NOTE:** Yes

Identical to fiscal note for A3045

**S1962**

**SPONSORS STATEMENT:** (Begins on page 14 of original bill) Yes

Bill and Sponsors Statement identical to A3045

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** Yes

**FLOOR AMENDMENT STATEMENTS:** No

**LEGISLATIVE FISCAL ESTIMATE:** Yes

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

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**NEWSPAPER ARTICLES:** No

# ASSEMBLY, No. 3045

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 11, 2000

**Sponsored by:**

**Assemblyman GUY R. GREGG**

**District 24 (Sussex, Hunterdon and Morris)**

**SYNOPSIS**

Concerns payment obligations of certain partnerships and limited liability companies and certain of their partners and members under the corporation business tax.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning payment obligations of certain partnerships and  
2 limited liability companies and their partners and members under the  
3 corporation business tax, amending and supplementing P.L.1945,  
4 c.162.

5

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

8

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

1 paid foreign tax credits or for the purpose of status as a controlled  
2 foreign corporation. In calculating the net worth of a taxpayer entitled  
3 to reduction for investment in subsidiaries, the amount of liabilities of  
4 the taxpayer shall be reduced by such proportion of the liabilities as  
5 corresponds to the ratio which the excluded portion of the subsidiary  
6 values bears to the total assets of the taxpayer.

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

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

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

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

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

39 (h) "Taxpayer" shall mean any corporation , limited liability  
40 company, foreign limited liability company, limited partnership or  
41 foreign limited partnership required to report or to pay taxes, interest  
42 or penalties under this act.

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

46 (j) Except as herein provided, "privilege period" shall mean the

1 calendar or fiscal accounting period for which a tax is payable under  
2 this act.

3 (k) "Entire net income" shall mean total net income from all  
4 sources, whether within or without the United States, and shall include  
5 the gain derived from the employment of capital or labor, or from both  
6 combined, as well as profit gained through a sale or conversion of  
7 capital assets. For the purpose of this act, the amount of a taxpayer's  
8 entire net income shall be deemed prima facie to be equal in amount to  
9 the taxable income, before net operating loss deduction and special  
10 deductions, which the taxpayer is required to report , or, if the  
11 taxpayer is classified as a partnership for federal tax purposes, would  
12 otherwise be required to report, to the United States Treasury  
13 Department for the purpose of computing its federal income tax;  
14 provided, however, that in the determination of such entire net income,

15 (1) Entire net income shall exclude for the periods set forth in  
16 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
17 to qualified mass commuting vehicles as described in section  
18 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
19 prior to January 1, 1984, which is included in a taxpayer's federal  
20 taxable income solely as a result of an election made pursuant to the  
21 provisions of paragraph (8) of that section.

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

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

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

30 (C) Taxes paid or accrued to the United States, a possession or  
31 territory of the United States, a state, a political subdivision thereof,  
32 or the District of Columbia on or measured by profits or income, or  
33 business presence or business activity, or the tax imposed by this act,  
34 or any tax paid or accrued with respect to subsidiary dividends  
35 excluded from entire net income as provided in paragraph (5) of  
36 subsection (k) of this section;

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

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

39 (F) (i) The amount by which depreciation reported to the United  
40 States Treasury Department for property placed in service on and after  
41 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
42 years beginning on and after the effective date of P.L.1993, c.172, for  
43 purposes of computing federal taxable income in accordance with  
44 section 168 of the Internal Revenue Code in effect after December 31,  
45 1980, exceeds the amount of depreciation determined in accordance  
46 with the Internal Revenue Code provisions in effect prior to January

1 1, 1981, but only with respect to a taxpayer's accounting period ending  
2 after December 31, 1981; provided, however, that where a taxpayer's  
3 accounting period begins in 1981 and ends in 1982, no modification  
4 shall be required with respect to this paragraph (F) for the report filed  
5 for such period with respect to property placed in service during that  
6 part of the accounting period which occurs in 1981. The provisions  
7 of this subparagraph shall not apply to assets placed in service prior to  
8 January 1, 1998 of a gas, gas and electric, and electric public utility  
9 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
10 seq.) prior to 1998.

11 (ii) For the periods set forth in subparagraph (F)(i) of this  
12 subsection, any amount, except with respect to qualified mass  
13 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
14 Internal Revenue Code as in effect immediately prior to January 1,  
15 1984, which the taxpayer claimed as a deduction in computing federal  
16 income tax pursuant to a qualified lease agreement under paragraph  
17 (8) of that section.

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

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

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

46 (H) The amount of any sales and use tax paid by a utility vendor

1 pursuant to section 71 of P.L.1997, c.162.

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

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

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

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

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

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

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

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

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

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

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

44 (B) Net operating loss carryover. A net operating loss for any  
45 taxable year ending after June 30, 1984 shall be a net operating loss  
46 carryover to each of the seven years following the year of the loss. The



1 entire amount of the net operating loss for any taxable year (the "loss  
2 year") shall be carried to the earliest of the taxable years to which the  
3 loss may be carried. The portion of the loss which shall be carried to  
4 each of the other taxable years shall be the excess, if any, of the  
5 amount of the loss over the sum of the entire net income, computed  
6 without the exclusions permitted in paragraphs (4) and (5) of this  
7 subsection or the net operating loss deduction provided by  
8 subparagraph (A) of this paragraph, for each of the prior taxable years  
9 to which the loss may be carried.

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

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

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

1 be made pursuant to this section:

2 (A) Depreciation for property placed in service prior to January 1,  
3 1998 shall be adjusted as follows:

4 (i) Depreciation for federal income tax purposes shall be  
5 disallowed in full.

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

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

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

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

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

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

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

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

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

1 banks, savings and loan and building and loan associations,  
2 pawnbrokers, and State banks and trust companies.

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

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

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

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

31 (cf: P.L.1999, c.369)

32

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

35 5. The franchise tax to be annually assessed to and paid by each  
36 taxpayer shall be the sum of the amount computed under subsection  
37 (a) hereof, or in the alternative to the amount computed under  
38 subsection (a) hereof, the amount computed under subsection (f)  
39 hereof, and the amount computed under subsection (c) hereof:

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

1 or privilege periods set forth below, the rate shall be that percentage  
 2 of the rate set forth in this subsection for the appropriate year:

3 Accounting or Privilege 4 Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
5 April 1, 1983	75%
6 July 1, 1984	50%
7 July 1, 1985	25%
8 July 1, 1986	0

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

10 (c) (1) For a taxpayer that is not a New Jersey S corporation,  
 11 31/4% of its entire net income or such portion thereof as may be  
 12 allocable to this State as provided in section 6 of P.L.1945, c.162  
 13 (C.54:10A-6); provided, however, that with respect to reports  
 14 covering accounting or privilege periods or parts thereof ending after  
 15 December 31, 1967, the rate shall be 41/4%; and that with respect to  
 16 reports covering accounting or privilege periods or parts thereof  
 17 ending after December 31, 1971, the rate shall be 51/2%; and that with  
 18 respect to reports covering accounting or privilege periods or parts  
 19 thereof ending after December 31, 1974, the rate shall be 71/2%; and  
 20 that with respect to reports covering [accounting or] privilege periods  
 21 or parts thereof ending after December 31, 1979, the rate shall be 9%;  
 22 provided however, that for a taxpayer that has entire net income of  
 23 \$100,000 or less for a privilege period and is not a limited liability  
 24 company, foreign limited liability company, limited partnership or  
 25 foreign limited partnership the rate for that privilege period shall be  
 26 71/2%.

27 (2) For a taxpayer that is a New Jersey S corporation, for privilege  
 28 periods ending on or before June 30, 1998 the rate determined by  
 29 subtracting the maximum tax bracket rate provided under  
 30 N.J.S.54A:2-1 for the privilege period from the tax rate that would  
 31 otherwise be applicable to the taxpayer's entire net income for the  
 32 privilege period if the taxpayer were not an S corporation provided  
 33 under paragraph (1) of this subsection for the privilege period and for  
 34 privilege periods ending on or after July 1, 1998 the rate shall be 2%,  
 35 provided however that for a taxpayer that has entire net income of  
 36 \$100,000 or less for a privilege period ending on or after July 1,  
 37 1998, the rate for that privilege period shall be 0.5%, multiplied by its  
 38 entire net income that is not subject to federal income taxation or such  
 39 portion thereof as may be allocable to this State pursuant to sections  
 40 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10);  
 41 plus

42 (3) For a taxpayer that is a New Jersey S corporation, in addition  
 43 to the amount, if any, determined under paragraph (2) of this  
 44 subsection, the tax rate that would otherwise be applicable to the

1 taxpayer's entire net income for the privilege period if the taxpayer  
 2 were not an S corporation provided under paragraph (1) of this  
 3 subsection for the privilege period multiplied by its entire net income  
 4 that is subject to federal income taxation or such portion thereof as  
 5 may be allocable to this State pursuant to sections 6 through 10 of  
 6 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

7 (d) Provided, however, that the franchise tax to be annually  
 8 assessed to and paid by any investment company or real estate  
 9 investment trust, which has elected to report as such and has filed its  
 10 return in the form and within the time provided in this act and the rules  
 11 and regulations promulgated in connection therewith, shall, in the case  
 12 of an investment company, be measured by 25% of its entire net  
 13 income and 25% of its entire net worth, and in the case of a real estate  
 14 investment trust, by 4% of its entire net income and 15% of its entire  
 15 net worth, at the rates hereinbefore set forth for the computation of  
 16 tax on net income and net worth, respectively, but in no case less than  
 17 \$250, and further provided, however, that the franchise tax to be  
 18 annually assessed to and paid by a regulated investment company  
 19 which for a period covered by its report satisfies the requirements of  
 20 Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal  
 21 Revenue Code shall be \$250.

22 (e) The tax assessed to any taxpayer pursuant to this section shall  
 23 not be less than \$25 in the case of a domestic corporation, \$50 in the  
 24 case of a foreign corporation, or \$250 in the case of an investment  
 25 company or regulated investment company. Provided however, that  
 26 for accounting or privilege periods beginning in calendar year 1994  
 27 and thereafter the minimum taxes for taxpayers other than an  
 28 investment company or a regulated investment company shall be as  
 29 provided in the following schedule:

30	Period Beginning	Domestic	Foreign
31	In Calendar Year	Corporation	Corporation
32		Minimum Tax	Minimum
33	1994	\$ 50	\$100
34	1995	\$100	\$200
35	1996	\$150	\$200
36	1997	\$200	\$200

37 and provided further that the director shall adjust the minimum tax for  
 38 accounting or privilege periods beginning in each fifth year following  
 39 calendar year 1997 and each fifth year thereafter by multiplying the  
 40 minimum tax for periods beginning in 1997 by an amount equal to one  
 41 plus 75% of the increase, if any, in the annual average total producer  
 42 price index for finished goods published by the federal Department of  
 43 Labor, Bureau of Labor Statistics, for the year preceding the  
 44 determination year over such index for calendar year 1996 which  
 45 adjusted minimum tax amount shall be rounded to the next highest  
 46 multiple of \$10.

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

7 (g) Provided however, that there shall be no franchise tax annually  
8 assessed pursuant to this section to a taxpayer that is a limited liability  
9 company or foreign limited liability company classified as a partnership  
10 for federal income tax purposes and that is in compliance with the  
11 provisions of section 3 of P.L. , c. (C. )(now pending before  
12 the Legislature as this bill) or a taxpayer that is a limited partnership  
13 or foreign limited partnership classified as a partnership for federal  
14 income tax purposes and that is in compliance with the provisions of  
15 section 4 of P.L. , c. (C. )(now pending before the  
16 Legislature as this bill).

17 (cf: P.L.1997, c.40)

18  
19 3. (New section) a. A limited liability company or foreign limited  
20 liability company that is classified as a partnership for federal income  
21 tax purposes may obtain and retain in its records for inspection by the  
22 director the consent of each of its members that are not individuals,  
23 trusts or estates subject to the "New Jersey Gross Income Tax Act",  
24 N.J.S.54A:1-1 et seq., to the following jurisdictional requirements in  
25 a form prescribed by the Director of the Division of Taxation: that this  
26 State shall have the right and jurisdiction to tax and collect the tax on  
27 the entire net income allocated to the member of the limited liability  
28 company or foreign limited liability company.

29 b. A limited liability company or foreign limited liability company  
30 that has not obtained and retained the written consent of one or more  
31 of its members that are not individuals, trusts or estates subject to the  
32 "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, at  
33 the time of filing the report required by subsection b. of  
34 N.J.S.54A:8-6, remit a payment of tax equal to the entire net income  
35 allocated to the nonconsenting members for the privilege period,  
36 multiplied by the maximum rate set forth at paragraph (1) of  
37 subsection (c) of section 5 of P.L.1945, c. 162 (C.54:10A-5) for the  
38 privilege period. The limited liability company or foreign limited  
39 liability company shall have the right, but not the obligation, to recover  
40 from the nonconsenting members such payments made by the  
41 company.

42  
43 4. (New section) a. A limited partnership or foreign limited  
44 partnership that is classified as a partnership for federal tax purposes  
45 shall obtain and retain in its records for inspection by the director the  
46 consent of each of its partners, both general and limited, that are not

1 individuals, trusts or estates subject to the "New Jersey Gross Income  
2 Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional  
3 requirement in a form prescribed by the Director of the Division of  
4 Taxation: that this State shall have the right and jurisdiction to tax and  
5 collect the tax on the entire net income allocated to the member of the  
6 limited liability company or foreign limited liability company.

7 b. A limited partnership or foreign limited partnership which has  
8 not obtained and retained the written consent of one or more of its  
9 partners that are not individuals, trusts or estates subject to the "New  
10 Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, at the  
11 time of filing the report required by subsection b. of N.J.S.54A:8-6,  
12 remit a payment of tax equal to the entire net income allocated to the  
13 nonconsenting partners for the privilege period, multiplied by the  
14 maximum rate set forth at paragraph (1) of subsection (c) of section  
15 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period. The  
16 limited partnership or foreign partnership shall have the right, but not  
17 the obligation, to recover from the nonconsenting partner payments  
18 made by the partnership.

19  
20 5. (New section) a. The director shall adopt regulations in  
21 accordance with the "Administrative Procedure Act," P.L.1968, c. 410  
22 (C.52:14B-1 et seq.), and prescribe forms to administer the provisions  
23 of this act.

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

32  
33 6. This act shall take effect immediately and sections 3 and 4 shall  
34 apply to privilege periods beginning on or after January 1, 2001.

#### 35 36 37 STATEMENT

38  
39 This bill closes a gap in the administration of the taxes imposed on  
40 the owners of limited partnerships and limited liability companies.

41 Limited partnerships and limited liability companies are relatively  
42 new forms of business entities that have become popular because they  
43 combine some of the tax advantages of a pass-through entity such as  
44 a general partnership (e.g., lack of an entity-level tax and a distributee-  
45 level tax on distributed earnings) and the sort of limited liability for  
46 owners that is provided by the corporate form of organization.



1       However, it appears that the use of some of these entities in New  
2 Jersey that were created to avoid a double level of taxation is resulting  
3 in the avoidance of even a single taxation of their income derived from  
4 their New Jersey activities. When the tax rate on Subchapter S  
5 corporations was lowered in New Jersey pursuant to P.L.1993, c.173,  
6 an administrative mechanism was put in place to assure the fair  
7 taxation of the owners of those corporations. The Subchapter S  
8 corporation owners were given a choice of consenting to the normal  
9 New Jersey taxation of the income they derived or, if they did not so  
10 consent, of having the S corporation withhold their taxes,.

11       This bill provides a similar mechanism for the taxation of limited  
12 corporate owners of limited liability companies and limited  
13 partnerships. A limited liability company, foreign limited liability  
14 company, limited partnership or foreign limited partnership that is  
15 classified as a partnership for federal tax purposes is required to obtain  
16 the consent of each of its owners that are not individuals, trusts or  
17 estates subject to the "New Jersey Gross Income Tax Act",  
18 N.J.S.54A:1-1 et seq. (for example, each owner that is itself a  
19 corporation) that this State has the right and jurisdiction to tax the  
20 entire income derived from the business. A business that does not  
21 have the consent for one of that group of its owners must pay  
22 corporation business tax on its nonconsenting owner's share of the  
23 business' New Jersey income.

24       A limited liability company, foreign limited liability company,  
25 limited partnership or foreign limited partnership (that is classified as  
26 a partnership for federal tax purposes) that properly complies with the  
27 requirement to obtain consents from its corporate owners and that  
28 pays the taxes of any of its corporate owners that do not consent to  
29 New Jersey taxation is relieved of any other obligations under the  
30 corporation business tax. A business that does not comply with the  
31 consent and payment requirements becomes a corporation business  
32 taxpayer itself.

ASSEMBLY COMMERCE, TOURISM, GAMING AND  
MILITARY AND VETERANS' AFFAIRS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3045**

**STATE OF NEW JERSEY**

DATED: JUNE 4, 2001

The Assembly Commerce, Tourism, Gaming and Military and Veterans' Affairs Committee reports favorably Assembly, No. 3045.

This bill closes a gap in the administration of the taxes imposed on the owners of limited partnerships and limited liability companies.

Limited partnerships and limited liability companies are relatively new forms of business entities that have become popular because they combine some of the tax advantages of a pass-through entity such as a general partnership (e.g., lack of an entity-level tax and a distributee-level tax on distributed earnings) and the sort of limited liability for owners that is provided by the corporate form of organization.

However, it appears that the use of some of these entities in New Jersey that were created to avoid a double level of taxation is resulting in the avoidance of even a single taxation of their income derived from their New Jersey activities. When the tax rate on Subchapter S corporations was lowered in New Jersey pursuant to P.L.1993, c.173, an administrative mechanism was put in place to assure the fair taxation of the owners of those corporations. The Subchapter S corporation owners were given a choice of consenting to the normal New Jersey taxation of the income they derived or, if they did not so consent, of having the S corporation withhold their taxes.

This bill provides a similar mechanism for the taxation of limited corporate owners of limited liability companies and limited partnerships. A limited liability company, foreign limited liability company, limited partnership or foreign limited partnership that is classified as a partnership for federal tax purposes is required to obtain the consent of each of its owners that are not individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq. (for example, each owner that is itself a corporation) that this State has the right and jurisdiction to tax the entire income derived from the business. A business that does not have the consent for one of that group of its owners must pay corporation business tax on its nonconsenting owner's share of the business' New Jersey income.

Under the bill, a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership that: (1)

is classified as a partnership for federal tax purposes, (2) properly complies with the requirement to obtain consents from its corporate owners, and (3) pays the taxes of any of its corporate owners that do not consent to New Jersey taxation, is relieved of any other obligations under the corporation business tax. A business that does not comply with the consent and payment requirements becomes a corporation business taxpayer itself.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 3045**

**STATE OF NEW JERSEY**

DATED: JUNE 21, 2001

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3045.

This Assembly Committee Substitute for Assembly Bill No. 3045 closes a gap in the administration of the taxes imposed on the owners of limited partnerships and limited liability companies.

This substitute provides a mechanism, similar to the consent and deemed payment provisions put in place for the owners of Subchapter S corporations by P.L.1993, c.173, that assures the fair taxation of the owners of limited liability companies and limited partnerships. Under this substitute, a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership that is classified as a partnership for federal tax purposes may obtain the consent of each of its owners that are not individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq. (for example, each owner that is itself a corporation) that this State has the right and jurisdiction to tax the owner's income derived from the activities of the limited liability company or limited partnership in New Jersey. A business that does not have the consent of all of its owners must pay a corporation business tax liability, on behalf of its nonconsenting owners, on each of the nonconsenting owner's shares of the business' New Jersey income.

A number of organizations, because of their distinctive characteristics, are exempted from certain provisions of the substitute. Limited liability companies and limited partnerships that have been listed on national stock exchanges (which have many owners, with the ownership changing from day to day) are exempt from the coverage of the substitute. Owner organizations that are exempt by statute from the corporation business tax are exempt from the deemed payment provisions: their liabilities would, in any case, be zero. "Qualified investment partnerships," limited liability companies or limited partnerships with more than 10 owners, none of whom owns more than 50% of the entity, and that derive at least 90% of their income from financial transactions, are exempt from making payments on behalf of their owners.

For each "privilege period" (tax year) of a limited liability company or limited partnership, the company or partnership must make a payment on the 15th day of the fourth month following the close of the period (in most cases, April 15) equal to the corporation business tax imposed at its highest rate on the income shares of the organization's owners that have not themselves consented to New Jersey taxation (no amount is paid on behalf of owners that have consented to taxation).

These payment amounts are credited to accounts for the nonconsenting owners, who may let them stand in payment of their liabilities or who may consent to taxation and, as part of that process, apply for refunds of any amounts in excess of their actual liability paid on their behalf.

The limited liability companies and limited partnerships will also make estimated payments of their nonconsenting members' current years' taxes on 15th day of the fourth month of the privilege period (again, usually April 15th). These payments will be based, where appropriate, on the prior year's income of the company or partnership.

The substitute is effective, retroactively, for privilege periods beginning on or after January 1, 2001. Transition provisions exempt the companies and partnerships from making estimated payments for tax year 2001 (those payments would have been due April 15, 2001) and reduce the final payment of tax on behalf of the nonconsenting members for 2001, due in 2002, to 45% of the amount otherwise due to account for the enactment of the new provisions in the middle of a tax period.

**FISCAL IMPACT:**

The Department of the Treasury has not provided any information that would allow an estimate of the revenue impact of this Administration initiative. The Office of Legislative Services does not have any information available to it that would enable it to make a revenue estimate.

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 3045**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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ADOPTED JUNE 21, 2001

**Sponsored by:**

**Assemblyman GUY R. GREGG**

**District 24 (Sussex, Hunterdon and Morris)**

**Co-Sponsored by:**

**Senator Bucco**

**SYNOPSIS**

Concerns payment obligations of certain partnerships and limited liability companies and certain of their partners and members under the corporation business tax.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Appropriations Committee.



**(Sponsorship Updated As Of: 6/29/2001)**

1 **AN ACT** concerning payment obligations of certain partnerships and  
2 limited liability companies and their partners and members under  
3 the corporation business tax, amending and supplementing  
4 P.L.1945, c.162.

5

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

8

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

1 paid foreign tax credits or for the purpose of status as a controlled  
2 foreign corporation. In calculating the net worth of a taxpayer entitled  
3 to reduction for investment in subsidiaries, the amount of liabilities of  
4 the taxpayer shall be reduced by such proportion of the liabilities as  
5 corresponds to the ratio which the excluded portion of the subsidiary  
6 values bears to the total assets of the taxpayer.

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

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

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

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

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

39 (h) "Taxpayer" shall mean any corporation, limited liability  
40 company, foreign limited liability company, limited partnership or  
41 foreign limited partnership required, or consenting, to report or to pay  
42 taxes, interest or penalties under this act. "Taxpayer" shall not include  
43 a limited liability company, foreign limited liability company, limited  
44 partnership or foreign limited partnership that is listed on a United  
45 States national stock exchange

46 (i) "Fiscal year" shall mean an accounting period ending on any



1 day other than the last day of December on the basis of which the  
2 taxpayer is required to report for federal income tax purposes.

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

6 (k) "Entire net income" shall mean total net income from all  
7 sources, whether within or without the United States, and shall include  
8 the gain derived from the employment of capital or labor, or from both  
9 combined, as well as profit gained through a sale or conversion of  
10 capital assets. For the purpose of this act, the amount of a taxpayer's  
11 entire net income shall be deemed prima facie to be equal in amount to  
12 the taxable income, before net operating loss deduction and special  
13 deductions, which the taxpayer is required to report, or, if the taxpayer  
14 is classified as a partnership for federal tax purposes, would otherwise  
15 be required to report, to the United States Treasury Department for  
16 the purpose of computing its federal income tax; provided, however,  
17 that in the determination of such entire net income,

18 (1) Entire net income shall exclude for the periods set forth in  
19 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
20 to qualified mass commuting vehicles as described in section  
21 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
22 prior to January 1, 1984, which is included in a taxpayer's federal  
23 taxable income solely as a result of an election made pursuant to the  
24 provisions of paragraph (8) of that section.

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

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

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

33 (C) Taxes paid or accrued to the United States, a possession or  
34 territory of the United States, a state, a political subdivision thereof,  
35 or the District of Columbia on or measured by profits or income, or  
36 business presence or business activity, or the tax imposed by this act,  
37 or any tax paid or accrued with respect to subsidiary dividends  
38 excluded from entire net income as provided in paragraph (5) of  
39 subsection (k) of this section;

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

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

42 (F) (i) The amount by which depreciation reported to the United  
43 States Treasury Department for property placed in service on and after  
44 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
45 years beginning on and after the effective date of P.L.1993, c.172, for  
46 purposes of computing federal taxable income in accordance with

1 section 168 of the Internal Revenue Code in effect after December 31,  
2 1980, exceeds the amount of depreciation determined in accordance  
3 with the Internal Revenue Code provisions in effect prior to  
4 January 1, 1981, but only with respect to a taxpayer's accounting  
5 period ending after December 31, 1981; provided, however, that  
6 where a taxpayer's accounting period begins in 1981 and ends in 1982,  
7 no modification shall be required with respect to this paragraph (F) for  
8 the report filed for such period with respect to property placed in  
9 service during that part of the accounting period which occurs in 1981.  
10 The provisions of this subparagraph shall not apply to assets placed in  
11 service prior to January 1, 1998 of a gas, gas and electric, and electric  
12 public utility that was subject to the provisions of P.L.1940, c.5  
13 (C.54:30A-49 et seq.) prior to 1998.

14 (ii) For the periods set forth in subparagraph (F)(i) of this  
15 subsection, any amount, except with respect to qualified mass  
16 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
17 Internal Revenue Code as in effect immediately prior to January 1,  
18 1984, which the taxpayer claimed as a deduction in computing federal  
19 income tax pursuant to a qualified lease agreement under paragraph  
20 (8) of that section.

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

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

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

1 a directive from the department to remove, or arrange for the removal  
2 of, the discharge.

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

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

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

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

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

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

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

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

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

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

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

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

1 that year.

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

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

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

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

1 1997. "Books of account" for gas, gas and electric, and electric public  
2 utilities means the uniform system of accounts as promulgated by the  
3 Federal Energy Regulatory Commission and adopted by the Board of  
4 Public Utilities. The following adjustments to entire net income shall  
5 be made pursuant to this section:

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

8 (i) Depreciation for federal income tax purposes shall be  
9 disallowed in full.

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

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

25 (C) The Director of the Division of Taxation shall promulgate  
26 regulations describing the methodology for allocating the single asset  
27 account in the event that a portion of the utility's operations are  
28 separated, spun-off, transferred to a separate company or otherwise  
29 disaggregated.

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

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

42 (10) Entire net income shall exclude all income of an alien  
43 corporation the activities of which are limited in this State to investing  
44 or trading in stocks and securities for its own account, investing or  
45 trading in commodities for its own account, or any combination of  
46 those activities, within the meaning of section 864 of the federal

1 Internal Revenue Code of 1986, 26 U.S.C.s.864, as in effect on  
2 December 31, 1998. Notwithstanding the previous sentence, if an  
3 alien corporation undertakes one or more infrequent, extraordinary or  
4 non-recurring activities, including but not limited to the sale of  
5 tangible property, only the income from such infrequent, extraordinary  
6 or non-recurring activity shall be subject to the tax imposed pursuant  
7 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income  
8 subject to tax shall be determined without regard to the allocation to  
9 that specific transaction of any general business expense of the  
10 taxpayer and shall be specifically assigned to this State for taxation by  
11 this State without regard to section 6 of P.L.1945, c.162  
12 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"  
13 means a corporation organized under the laws of a jurisdiction other  
14 than the United States or its political subdivisions.

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

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

1 security brokers or dealers or investment companies or bankers not  
2 employing moneyed capital coming into competition with the business  
3 of national banks, real estate investment trusts, or any of the following  
4 entities organized under the laws of this State: credit unions, savings  
5 banks, savings and loan and building and loan associations,  
6 pawnbrokers, and State banks and trust companies.

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

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

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

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

35 (r) "Qualified investment partnership" means a limited liability  
36 company, foreign limited liability company, limited partnership or  
37 foreign limited partnership treated as a partnership under this act that  
38 has more than 10 members or partners with no member or partner  
39 owning more than a 50% interest in the entity and that derives at least  
40 90% of its gross income from dividends, interest, payments with  
41 respect to securities loans, and gains from the sale or other disposition  
42 of stocks or securities or foreign currencies or commodities or other  
43 similar income (including but not limited to gains from swaps, options,  
44 futures or forward contracts) derived with respect to its business of  
45 investing or trading in those stocks, securities, currencies or  
46 commodities, but "investment partnership" shall not include a "dealer

1 in securities" within the meaning of section 1236 of the federal Internal  
 2 Revenue Code of 1986, 26 U.S.C. s.1236.

3 (cf: P.L.1999, c.369, s.1)

4

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

7 5. The franchise tax to be annually assessed to and paid by each  
 8 taxpayer shall be the sum of the amount computed under subsection  
 9 (a) hereof, or in the alternative to the amount computed under  
 10 subsection (a) hereof, the amount computed under subsection (f)  
 11 hereof, and the amount computed under subsection (c) hereof:

12 (a) That portion of its entire net worth as may be allocable to this  
 13 State as provided in section 6, multiplied by the following rates: 2  
 14 mills per dollar on the first \$100,000,000.00 of allocated net worth;  
 15 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill  
 16 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar  
 17 on all amounts of allocated net worth in excess of \$300,000,000.00;  
 18 provided, however, that with respect to reports covering accounting  
 19 or privilege periods set forth below, the rate shall be that percentage  
 20 of the rate set forth in this subsection for the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

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

28 (c) (1) For a taxpayer that is not a New Jersey S corporation,  
 29 31/4% of its entire net income or such portion thereof as may be  
 30 allocable to this State as provided in section 6 of P.L.1945, c.162  
 31 (C.54:10A-6); provided, however, that with respect to reports  
 32 covering accounting or privilege periods or parts thereof ending after  
 33 December 31, 1967, the rate shall be 41/4%; and that with respect to  
 34 reports covering accounting or privilege periods or parts thereof  
 35 ending after December 31, 1971, the rate shall be 51/2%; and that with  
 36 respect to reports covering accounting or privilege periods or parts  
 37 thereof ending after December 31, 1974, the rate shall be 71/2%; and  
 38 that with respect to reports covering [accounting or] privilege periods  
 39 or parts thereof ending after December 31, 1979, the rate shall be 9%;  
 40 provided however, that for a taxpayer that has entire net income of  
 41 \$100,000 or less for a privilege period and is not a limited liability  
 42 company, foreign limited liability company, limited partnership or  
 43 foreign limited partnership the rate for that privilege period shall be  
 44 71/2%.



1 (2) For a taxpayer that is a New Jersey S corporation:  
2 (i) for privilege periods ending on or before June 30, 1998 the rate  
3 determined by subtracting the maximum tax bracket rate provided  
4 under N.J.S.54A:2-1 for the privilege period from the tax rate that  
5 would otherwise be applicable to the taxpayer's entire net income for  
6 the privilege period if the taxpayer were not an S corporation provided  
7 under paragraph (1) of this subsection for the privilege period; and  
8 (ii) For a taxpayer that has entire net income in excess of \$100,000  
9 for the privilege period, for privilege periods ending on or after  
10 July 1, 1998, but on or before June 30, 2001, the rate shall be 2%,  
11 for privilege periods ending on or after July 1, 2001, but on or  
12 before June 30, 2002, the rate shall be 1.33%,  
13 for privilege periods ending on or after July 1, 2002, but on or  
14 before June 30, 2003, the rate shall be 0.67%, and  
15 for privilege periods ending on or after July 1, 2003 there shall be  
16 no rate of tax imposed under this paragraph, and  
17 (iii) For a taxpayer that has entire net income of \$100,000 or less  
18 for privilege periods ending on or after July 1, 1998, but on or before  
19 June 30, 2001 the rate for that privilege period shall be 0.5%, and for  
20 privilege periods ending on or after July 1, 2001 there shall be no rate  
21 of tax imposed under this paragraph,  
22 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or  
23 (iii) of this paragraph shall be multiplied by its entire net income that  
24 is not subject to federal income taxation or such portion thereof as  
25 may be allocable to this State pursuant to sections 6 through 10 of  
26 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).  
27 (3) For a taxpayer that is a New Jersey S corporation, in addition  
28 to the amount, if any, determined under paragraph (2) of this  
29 subsection, the tax rate that would otherwise be applicable to the  
30 taxpayer's entire net income for the privilege period if the taxpayer  
31 were not an S corporation provided under paragraph (1) of this  
32 subsection for the privilege period multiplied by its entire net income  
33 that is subject to federal income taxation or such portion thereof as  
34 may be allocable to this State pursuant to sections 6 through 10 of  
35 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).  
36 (d) Provided, however, that the franchise tax to be annually  
37 assessed to and paid by any investment company or real estate  
38 investment trust, which has elected to report as such and has filed its  
39 return in the form and within the time provided in this act and the rules  
40 and regulations promulgated in connection therewith, shall, in the case  
41 of an investment company, be measured by 25% of its entire net  
42 income and 25% of its entire net worth, and in the case of a real estate  
43 investment trust, by 4% of its entire net income and 15% of its entire  
44 net worth, at the rates hereinbefore set forth for the computation of  
45 tax on net income and net worth, respectively, but in no case less than  
46 \$250, and further provided, however, that the franchise tax to be

1 annually assessed to and paid by a regulated investment company  
 2 which for a period covered by its report satisfies the requirements of  
 3 Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal  
 4 Revenue Code shall be \$250.

5 (e) The tax assessed to any taxpayer pursuant to this section shall  
 6 not be less than \$25 in the case of a domestic corporation, \$50 in the  
 7 case of a foreign corporation, or \$250 in the case of an investment  
 8 company or regulated investment company. Provided however, that  
 9 for accounting or privilege periods beginning in calendar year 1994  
 10 and thereafter the minimum taxes for taxpayers other than an  
 11 investment company or a regulated investment company shall be as  
 12 provided in the following schedule:

13	Period Beginning Domestic	Foreign
14	In Calendar Year	Corporation Corporation
15		Minimum Tax Minimum
16	1994	\$ 50 \$100
17	1995	\$100 \$200
18	1996	\$150 \$200
19	1997	\$200 \$200

20 and provided further that the director shall adjust the minimum tax for  
 21 accounting or privilege periods beginning in each fifth year following  
 22 calendar year 1997 and each fifth year thereafter by multiplying the  
 23 minimum tax for periods beginning in 1997 by an amount equal to one  
 24 plus 75% of the increase, if any, in the annual average total producer  
 25 price index for finished goods published by the federal Department of  
 26 Labor, Bureau of Labor Statistics, for the year preceding the  
 27 determination year over such index for calendar year 1996 which  
 28 adjusted minimum tax amount shall be rounded to the next highest  
 29 multiple of \$10.

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

36 (g) Provided however, that the franchise tax annually assessed to  
 37 and paid by a taxpayer:

38 (1) that is a limited liability company or foreign limited liability  
 39 company classified as a partnership for federal income tax purposes  
 40 shall be the amount determined pursuant to the provisions of section  
 41 3 of P.L. , c. (C. )(now pending before the Legislature as this  
 42 bill); or

43 (2) that is a limited partnership or foreign limited partnership  
 44 classified as a partnership for federal income tax purposes shall be the  
 45 amount determined pursuant to the provisions of section 4 of  
 46 P.L. , c. (C. )(now pending before the Legislature as this bill).

47 (cf: P.L.2001, c.23, s.1)

1       3. (New section) a. A limited liability company or foreign limited  
2 liability company that is classified as a partnership for federal income  
3 tax purposes may obtain and retain in its records for inspection by the  
4 director the consent of each of its members that are not corporations  
5 exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-  
6 3), or individuals, trusts or estates subject to the "New Jersey Gross  
7 Income Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional  
8 requirements in a form prescribed by the Director of the Division of  
9 Taxation: that this State shall have the right and jurisdiction to tax and  
10 collect the tax, hereby imposed, on the entire net income of the  
11 member (1) based upon combining the respective numerators and  
12 denominators of the allocation fractions of the member with the  
13 member's share of the numerators and denominators of the limited  
14 liability company or foreign limited liability company to determine an  
15 allocation factor to be applied to the member's entire net income,  
16 including the member's distributive share of the company income, to  
17 determine the portion of the member's entire net income allocated to  
18 this State if the relationship between the member and limited liability  
19 company or foreign limited liability company is unitary, or (2) based  
20 upon separately using the allocation fractions of the limited liability  
21 company or foreign limited liability company to determine the  
22 allocation factor to be applied to the member's distributive share of the  
23 company income, using the allocation fractions of the member to  
24 determine the allocation factor to be applied to the member's entire net  
25 income excluding the member's distributive share of the income of the  
26 limited liability company or foreign limited liability company, and then  
27 combining those allocated amounts of net income to determine the  
28 portion of the member's entire net income allocated to this State if the  
29 relationship between the member and limited liability company or  
30 foreign limited liability company is not unitary.

31       b. A limited liability company or foreign limited liability company  
32 that is not a qualified investment partnership and that has not obtained  
33 and retained the written consent of one or more of its members that  
34 are not corporations exempt from tax pursuant to section 3 of  
35 P.L.1945, c.162 (C.54:10A-3), or individuals, trusts or estates subject  
36 to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq.,  
37 shall, on or before the 15th day of the fourth month succeeding the  
38 close of each privilege period, remit a payment of tax equal to the  
39 nonconsenting members' share of the entire net income of the limited  
40 liability company or foreign limited liability company for that privilege  
41 period, multiplied by an allocation factor determined, pursuant to  
42 section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation  
43 fractions of the limited liability company or foreign limited liability  
44 company for that privilege period, and multiplied by the maximum rate  
45 set forth at paragraph (1) of subsection (c) of section 5 of P.L.1945,  
46 c. 162 (C.54:10A-5) for that privilege period. The limited liability

1 company or foreign limited liability company shall have the right, but  
2 not the obligation, to recover from the nonconsenting members such  
3 payments made by the company.

4 c. An amount of tax paid by a limited liability company or foreign  
5 limited liability company pursuant to subsection b. of this section  
6 attributable to a nonconsenting member shall be credited to the  
7 member as of the date of its receipt by the director.

8  
9 4. (New section) a. A limited partnership or foreign limited  
10 partnership that is classified as a partnership for federal income tax  
11 purposes may obtain and retain in its records for inspection by the  
12 director the consent of each of its partners that are not corporations  
13 exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-  
14 3), or individuals, trusts or estates subject to the "New Jersey Gross  
15 Income Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional  
16 requirements in a form prescribed by the Director of the Division of  
17 Taxation: that this State shall have the right and jurisdiction to tax and  
18 collect the tax, hereby imposed, on the entire net income of the partner  
19 (1) based upon combining the respective numerators and denominators  
20 of the allocation fractions of the partner with the partner's share of the  
21 numerators and denominators of the limited partnership or foreign  
22 limited partnership to determine an allocation factor to be applied to  
23 the partner's entire net income, including the partner's distributive  
24 share of the partnership income, to determine the portion of the  
25 partner's entire net income allocated to this State if the relationship  
26 between the partner and limited partnership or foreign limited  
27 partnership is unitary, or (2) based upon separately using the allocation  
28 fractions of the limited partnership or foreign limited partnership to  
29 determine the allocation factor to be applied to the partner's  
30 distributive share of the partnership income, using the allocation  
31 fractions of the partner to determine the allocation factor to be applied  
32 to the partner's entire net income excluding the partner's distributive  
33 share of the income of the limited partnership or foreign limited  
34 partnership, and then combining those two allocated amounts of net  
35 income to determine the portion of the partner's entire net income  
36 allocated to this State if the relationship between the partner and the  
37 limited partnership or foreign limited partnership is not unitary.

38 b. A limited partnership or foreign limited partnership that is not  
39 a qualified investment partnership and that has not obtained and  
40 retained the written consent of one or more of its partners that are not  
41 corporations exempt from tax pursuant to section 3 of P.L.1945, c.162  
42 (C.54:10A-3), or individuals, trusts or estates subject to the "New  
43 Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, on or  
44 before the 15th day of the fourth month succeeding the close of each  
45 privilege period, remit a payment of tax equal to the nonconsenting  
46 partners' share of the entire net income of the limited partnership or

1 foreign limited partnership for that privilege period, multiplied by an  
2 allocation factor determined, pursuant to section 6 of P.L.1945, c.162  
3 (C.54:10A-6), based on the allocation fractions of the limited  
4 partnership or foreign limited partnership for that privilege period,  
5 and multiplied by the maximum rate set forth at paragraph (1) of  
6 subsection (c) of section 5 of P.L.1945, c. 162 (C.54:10A-5) for that  
7 privilege period. The limited partnership or foreign limited partnership  
8 shall have the right, but not the obligation, to recover from the  
9 nonconsenting partners such payments made by the partnership.

10 c. An amount of tax paid by a limited partnership or foreign  
11 limited partnership pursuant to subsection b. of this section  
12 attributable to a nonconsenting partner shall be credited to the partner  
13 as of the date of its receipt by the director.

14

15 5. (New section) a. Notwithstanding the provisions of subsection  
16 (f) of section 15 of P.L.1945, c.162 (C.54:10A-15) to the contrary, a  
17 taxpayer that is a limited liability company or a foreign limited liability  
18 company subject to the provisions of subsection b. of section 3 of  
19 P.L. , c. (C. )(now pending before the Legislature as this bill)  
20 or that is a limited partnership or foreign limited partnership subject to  
21 the provisions of subsection b. of section 4 of P.L. , c. (C. )(now  
22 pending before the Legislature as this bill) shall, in addition to the tax  
23 payable pursuant to subsection b. of section 3 or subsection b. of  
24 section 4 of P.L. , c. (C. ), make an installment payment of its  
25 tax for the privilege period on or before the 15th day of the fourth  
26 month of the privilege period equal to the tax payable pursuant to  
27 subsection b. of section 3 or subsection b. of section 4 of P.L. ,  
28 c. (C. ). Any amount of tax paid pursuant to this subsection  
29 shall be credited against the tax paid pursuant to subsection b. of  
30 section 3 or subsection b. of section 4 of P.L. , c. (C. ).

31 b. Notwithstanding the provisions of section 5 of P.L.1981, c.184  
32 (C.54:10A-15.4) to the contrary, the amount of underpayment of an  
33 installment payment pursuant to subsection a. of this section shall, for  
34 the purposes of subsection e. of section 5 of P.L.1981, c.184, be the  
35 excess of 100% of the tax liability determined pursuant to subsection  
36 b. of section 3 or subsection b. of section 4 of P.L. , c. (C. )  
37 at the rates and other facts in effect for the privilege period but on the  
38 basis of the entire net income for the prior privilege period over the  
39 amount paid pursuant to subsection a. of this section; provided  
40 however, that if the taxpayer did not have a prior privilege period  
41 consisting of a 12 month period, the amount of underpayment of an  
42 installment payment shall be the excess of 90% of the tax liability  
43 determined pursuant to subsection b. of section 3 or subsection b. of  
44 section 4 of P.L. , c. (C. ) for the current privilege period over  
45 the amount paid pursuant to subsection a. of this section.

1       6. (New section) a. Notwithstanding the provisions of subsection  
2 of b. of section 3 of P.L. , c. (C. )(now pending before the  
3 Legislature as this bill) and the provisions of subsection b. of section  
4 4 of P.L. , c. (C. )(now pending before the Legislature as this  
5 bill), the liability of a taxpayer that is a limited liability company or a  
6 foreign limited liability company subject to the provisions of  
7 subsection b. of section 3 of P.L. , c. (C. ) or that is a limited  
8 partnership or foreign limited partnership subject to the provisions of  
9 subsection b. of section 4 of P.L. , c. (C. ) shall, for privilege  
10 periods beginning in calendar year 2001, be 45% of the amount  
11 otherwise due.

12       b. Notwithstanding the provisions of subsection of a. of section 5  
13 of P.L. , c. (C. )(now pending before the Legislature as this  
14 bill), no estimated payment shall be due from a taxpayer that is a  
15 limited liability company or a foreign limited liability company subject  
16 to the provisions of subsection b. of section 3 of P.L. , c. (C. )  
17 or that is a limited partnership or foreign limited partnership subject to  
18 the provisions of subsection b. of section 4 of P.L. , c. (C. )  
19 for privilege periods beginning in calendar year 2001.

20

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

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

33

34       8. This act shall take effect immediately and apply to privilege  
35 periods beginning on or after January 1, 2001.

**FISCAL NOTE**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, No. 3045**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: JULY 11, 2001

**SUMMARY**

**Synopsis:** Concerns payment obligations of certain partnerships and limited liability companies and certain of their partners and members under the corporation business tax.

**Type of Impact:** Limits potential decreases in corporation business tax revenue.

**Agencies Affected:** Department of the Treasury, Division of Taxation.

**Executive Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Revenue</b>	\$420 million	Not specified	Not specified

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Revenue</b>	Indeterminate	Indeterminate	Indeterminate

- ! The bill requires limited liability companies and limited partnerships that are classified as partnerships for federal tax purposes to obtain the consent of each of its non-individual (e.g., incorporated) members or partners to New Jersey taxation. A business that does not have the consent for one of its "non-individual" (usually incorporated) owners must pay corporation business tax on behalf of that nonconsenting owner's share of the business' New Jersey income.
- ! The bill forecloses an avenue of corporation business tax avoidance.

**BILL DESCRIPTION**

Assembly Committee Substitute for Assembly, Bill No. 3045 of 2001 provides a mechanism for taxing the owners of limited liability companies and limited partnerships. The bill allows a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership that is classified as a partnership for federal tax purposes to obtain the consent of each of its owners that are not individuals, trusts or estates subject to the "New Jersey Gross

Income Tax Act", N.J.S.54A:1-1 et seq. (for example, each owner that is itself a corporation) that this State has the right and jurisdiction to tax the owner's income derived from the activities of the limited liability company or limited partnership in New Jersey. A business that does not have the consent of all of its owners must pay a corporation business tax liability, on behalf of its nonconsenting owners, on each of the nonconsenting owner's shares of the business' New Jersey income. A number of organizations, because of their distinctive characteristics, are exempted from certain provisions of the substitute.

For each privilege period of a limited liability company or limited partnership, the company or partnership must make a payment on the 15th day of the fourth month following the close of the period (in most cases, April 15) equal to the corporation business tax imposed at its highest rate on the income shares of the organization's owners that have not themselves consented to New Jersey taxation (no amount is paid on behalf of owners that have consented to taxation).

These payment amounts are credited to accounts for the nonconsenting owners, who may let them stand in payment of their liabilities or who may consent to taxation and, as part of that process, apply for refunds of any amounts in excess of their actual liability paid on their behalf.

The limited liability companies and limited partnerships will also make estimated payments of their nonconsenting members' current years' taxes on 15th day of the fourth month of the privilege period (again, usually April 15th). These payments will be based, where appropriate, on the prior year's income of the company or partnership.

The substitute is effective, retroactively, for privilege periods beginning on or after January 1, 2001. Transition provisions exempt the companies and partnerships from making estimated payments for tax year 2001 (those payments would have been due April 15, 2001) and reduce the final payment of tax on behalf of the nonconsenting members for 2001, due in 2002, to 45% of the amount otherwise due to account for the enactment of the new provisions in the middle of a tax period.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Department of the Treasury notes that there are approximately 70,000 limited liability companies and 15,000 limited partnerships doing business in New Jersey. The department notes that the detailed information concerning percentage of ownership and allocations of net income of limited liability companies and limited partnerships is unavailable, and that therefore only a rough order-of-magnitude estimate is possible.

The department notes further that if 25 percent of the entire corporation business tax base for 1998 were subject to the tax avoidance mechanism being foreclosed by the bill, then corporation business tax revenues for that period would have been reduced by over \$350 million. The department notes further that, in cooperation with corporation tax experts, it has identified several New Jersey limited liability companies where the combined revenue impact of the bill could exceed \$200 million.

Apparently using this information, after noting that taxation for the 2001 privilege period will be 45 percent of the amount otherwise due, the department projects that the 2001 period final payments due in FY2002 will be \$120 million and that the estimated payments (based on 100 percent of the 2001 liability) due in FY2002 will be \$300 million, for a total FY2002 revenue impact of \$420 million.



***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) concurs with the Department of the Treasury that only a rough order-of-magnitude estimate is possible. The department states that its revenue estimate is based on specialized anecdotal data, which is unavailable to the OLS. There is no information available to the OLS which would allow it to agree or disagree with the departmental estimate, although the OLS does note that 45 percent of 300 is 135, not 120, and that it is not unlikely that businesses that were, if the departmental estimate is on target, able to direct 25 percent of the entire corporate tax base through a tax avoidance vehicle in a few years will adapt swiftly to the changes under the bill.

Section: *Revenue, Finance and Appropriations*

Analyst: *Philip N. Liloia*  
*Lead Counsel*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67.

**SENATE, No. 2466**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED JUNE 21, 2001

**Sponsored by:**

**Senator ANTHONY R. BUCCO**

**District 25 (Morris)**

**SYNOPSIS**

Concerns payment obligations of certain partnerships and limited liability companies and certain of their partners and members under the corporation business tax.

**CURRENT VERSION OF TEXT**

As introduced.



**S2466 BUCCO**

2

1 **AN ACT** concerning payment obligations of certain partnerships and  
2 limited liability companies and their partners and members under the  
3 corporation business tax, amending and supplementing P.L.1945,  
4 c.162.

5  
6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8  
9 1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read  
10 as follows:

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

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

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

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

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

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

**Matter underlined thus is new matter.**

1 paid foreign tax credits or for the purpose of status as a controlled  
2 foreign corporation. In calculating the net worth of a taxpayer entitled  
3 to reduction for investment in subsidiaries, the amount of liabilities of  
4 the taxpayer shall be reduced by such proportion of the liabilities as  
5 corresponds to the ratio which the excluded portion of the subsidiary  
6 values bears to the total assets of the taxpayer.

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

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

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

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

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

39 (h) "Taxpayer" shall mean any corporation , limited liability  
40 company, foreign limited liability company, limited partnership or  
41 foreign limited partnership required, or consenting, to report or to  
42 pay taxes, interest or penalties under this act. "Taxpayer" shall not  
43 include a limited liability company, foreign limited liability company,  
44 limited partnership or foreign limited partnership that is listed on a  
45 United States national stock exchange

46 (i) "Fiscal year" shall mean an accounting period ending on any day

1 other than the last day of December on the basis of which the taxpayer  
2 is required to report for federal income tax purposes.

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

6 (k) "Entire net income" shall mean total net income from all  
7 sources, whether within or without the United States, and shall include  
8 the gain derived from the employment of capital or labor, or from both  
9 combined, as well as profit gained through a sale or conversion of  
10 capital assets. For the purpose of this act, the amount of a taxpayer's  
11 entire net income shall be deemed prima facie to be equal in amount to  
12 the taxable income, before net operating loss deduction and special  
13 deductions, which the taxpayer is required to report . or . if the  
14 taxpayer is classified as a partnership for federal tax purposes, would  
15 otherwise be required to report. to the United States Treasury  
16 Department for the purpose of computing its federal income tax;  
17 provided, however, that in the determination of such entire net income,

18 (1) Entire net income shall exclude for the periods set forth in  
19 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
20 to qualified mass commuting vehicles as described in section  
21 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
22 prior to January 1, 1984, which is included in a taxpayer's federal  
23 taxable income solely as a result of an election made pursuant to the  
24 provisions of paragraph (8) of that section.

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

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

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

33 (C) Taxes paid or accrued to the United States, a possession or  
34 territory of the United States, a state, a political subdivision thereof,  
35 or the District of Columbia on or measured by profits or income, or  
36 business presence or business activity, or the tax imposed by this act,  
37 or any tax paid or accrued with respect to subsidiary dividends  
38 excluded from entire net income as provided in paragraph (5) of  
39 subsection (k) of this section;

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

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

42 (F) (i) The amount by which depreciation reported to the United  
43 States Treasury Department for property placed in service on and after  
44 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
45 years beginning on and after the effective date of P.L.1993, c.172, for  
46 purposes of computing federal taxable income in accordance with

1 section 168 of the Internal Revenue Code in effect after December 31,  
2 1980, exceeds the amount of depreciation determined in accordance  
3 with the Internal Revenue Code provisions in effect prior to January  
4 1, 1981, but only with respect to a taxpayer's accounting period ending  
5 after December 31, 1981; provided, however, that where a taxpayer's  
6 accounting period begins in 1981 and ends in 1982, no modification  
7 shall be required with respect to this paragraph (F) for the report filed  
8 for such period with respect to property placed in service during that  
9 part of the accounting period which occurs in 1981. The provisions  
10 of this subparagraph shall not apply to assets placed in service prior to  
11 January 1, 1998 of a gas, gas and electric, and electric public utility  
12 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
13 seq.) prior to 1998.

14 (ii) For the periods set forth in subparagraph (F)(i) of this  
15 subsection, any amount, except with respect to qualified mass  
16 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
17 Internal Revenue Code as in effect immediately prior to January 1,  
18 1984, which the taxpayer claimed as a deduction in computing federal  
19 income tax pursuant to a qualified lease agreement under paragraph  
20 (8) of that section.

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

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

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

1 a directive from the department to remove, or arrange for the removal  
2 of, the discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (7) The entire net income of gas, electric and gas and electric  
28 public utilities that were subject to the provisions of P.L.1940, c.5  
29 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
30 the New Jersey depreciation allowance for federal tax depreciation  
31 with respect to assets placed in service prior to January 1, 1998. For  
32 gas, electric, and gas and electric public utilities that were subject to  
33 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,  
34 the New Jersey depreciation allowance shall be computed as follows:  
35 All depreciable assets placed in service prior to January 1, 1998 shall  
36 be considered a single asset account. The New Jersey tax basis of this  
37 depreciable asset account shall be an amount equal to the carryover  
38 adjusted basis for federal income tax purposes on December 31, 1997  
39 of all depreciable assets in service on December 31, 1997, increased  
40 by the excess, of the "net carrying value," defined to be adjusted book  
41 basis of all assets and liabilities, excluding deferred income taxes,  
42 recorded on the public utility's books of account on December 31,  
43 1997, over the carryover adjusted basis for federal income tax  
44 purposes on December 31, 1997 of all assets and liabilities owned by  
45 the gas, electric, or gas and electric public utility as of December 31,  
46 1997. "Books of account" for gas, gas and electric, and electric public



1 utilities means the uniform system of accounts as promulgated by the  
2 Federal Energy Regulatory Commission and adopted by the Board of  
3 Public Utilities. The following adjustments to entire net income shall  
4 be made pursuant to this section:

5 (A) Depreciation for property placed in service prior to January 1,  
6 1998 shall be adjusted as follows:

7 (i) Depreciation for federal income tax purposes shall be  
8 disallowed in full.

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

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

24 (C) The Director of the Division of Taxation shall promulgate  
25 regulations describing the methodology for allocating the single asset  
26 account in the event that a portion of the utility's operations are  
27 separated, spun-off, transferred to a separate company or otherwise  
28 disaggregated.

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

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

41 (10) Entire net income shall exclude all income of an alien  
42 corporation the activities of which are limited in this State to investing  
43 or trading in stocks and securities for its own account, investing or  
44 trading in commodities for its own account, or any combination of  
45 those activities, within the meaning of section 864 of the federal  
46 Internal Revenue Code of 1986, 26 U.S.C.s.864, as in effect on

1 December 31, 1998. Notwithstanding the previous sentence, if an  
2 alien corporation undertakes one or more infrequent, extraordinary or  
3 non-recurring activities, including but not limited to the sale of  
4 tangible property, only the income from such infrequent, extraordinary  
5 or non-recurring activity shall be subject to the tax imposed pursuant  
6 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income  
7 subject to tax shall be determined without regard to the allocation to  
8 that specific transaction of any general business expense of the  
9 taxpayer and shall be specifically assigned to this State for taxation by  
10 this State without regard to section 6 of P.L.1945, c.162  
11 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"  
12 means a corporation organized under the laws of a jurisdiction other  
13 than the United States or its political subdivisions.

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

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

1 employing moneyed capital coming into competition with the business  
2 of national banks, real estate investment trusts, or any of the following  
3 entities organized under the laws of this State: credit unions, savings  
4 banks, savings and loan and building and loan associations,  
5 pawnbrokers, and State banks and trust companies.

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

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

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

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

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

1 Revenue Code of 1986, 26 U.S.C.s.1236.

2 (cf: P.L.1999, c.369)

3

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

6 5. The franchise tax to be annually assessed to and paid by each  
7 taxpayer shall be the sum of the amount computed under subsection  
8 (a) hereof, or in the alternative to the amount computed under  
9 subsection (a) hereof, the amount computed under subsection (f)  
10 hereof, and the amount computed under subsection (c) hereof:

11 (a) That portion of its entire net worth as may be allocable to this  
12 State as provided in section 6, multiplied by the following rates: 2  
13 mills per dollar on the first \$100,000,000.00 of allocated net worth;  
14 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill  
15 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar  
16 on all amounts of allocated net worth in excess of \$300,000,000.00;  
17 provided, however, that with respect to reports covering accounting  
18 or privilege periods set forth below, the rate shall be that percentage  
19 of the rate set forth in this subsection for the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

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

27 (c) (1) For a taxpayer that is not a New Jersey S corporation,  
28 31/4% of its entire net income or such portion thereof as may be  
29 allocable to this State as provided in section 6 of P.L.1945, c.162  
30 (C.54:10A-6); provided, however, that with respect to reports  
31 covering accounting or privilege periods or parts thereof ending after  
32 December 31, 1967, the rate shall be 41/4%; and that with respect to  
33 reports covering accounting or privilege periods or parts thereof  
34 ending after December 31, 1971, the rate shall be 51/2%; and that with  
35 respect to reports covering accounting or privilege periods or parts  
36 thereof ending after December 31, 1974, the rate shall be 71/2%; and  
37 that with respect to reports covering [accounting or] privilege periods  
38 or parts thereof ending after December 31, 1979, the rate shall be 9%;  
39 provided however, that for a taxpayer that has entire net income of  
40 \$100,000 or less for a privilege period and is not a limited liability  
41 company, foreign limited liability company, limited partnership or  
42 foreign limited partnership the rate for that privilege period shall be  
43 71/2%.

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

1 (i) for privilege periods ending on or before June 30, 1998 the rate  
2 determined by subtracting the maximum tax bracket rate provided  
3 under N.J.S.54A:2-1 for the privilege period from the tax rate that  
4 would otherwise be applicable to the taxpayer's entire net income for  
5 the privilege period if the taxpayer were not an S corporation provided  
6 under paragraph (1) of this subsection for the privilege period; and  
7 (ii) For a taxpayer that has entire net income in excess of \$100,000  
8 for the privilege period, for privilege periods ending on or after July  
9 1, 1998, but on or before June 30, 2001, the rate shall be 2%,  
10 for privilege periods ending on or after July 1, 2001, but on or  
11 before June 30, 2002, the rate shall be 1.33%,  
12 for privilege periods ending on or after July 1, 2002, but on or  
13 before June 30, 2003, the rate shall be 0.67%, and  
14 for privilege periods ending on or after July 1, 2003 there shall be  
15 no rate of tax imposed under this paragraph, and  
16 (iii) For a taxpayer that has entire net income of \$100,000 or less  
17 for privilege periods ending on or after July 1, 1998, but on or before  
18 June 30, 2001 the rate for that privilege period shall be 0.5%, and for  
19 privilege periods ending on or after July 1, 2001 there shall be no rate  
20 of tax imposed under this paragraph,  
21 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or  
22 (iii) of this paragraph shall be multiplied by its entire net income that  
23 is not subject to federal income taxation or such portion thereof as  
24 may be allocable to this State pursuant to sections 6 through 10 of  
25 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).  
26 (3) For a taxpayer that is a New Jersey S corporation, in addition  
27 to the amount, if any, determined under paragraph (2) of this  
28 subsection, the tax rate that would otherwise be applicable to the  
29 taxpayer's entire net income for the privilege period if the taxpayer  
30 were not an S corporation provided under paragraph (1) of this  
31 subsection for the privilege period multiplied by its entire net income  
32 that is subject to federal income taxation or such portion thereof as  
33 may be allocable to this State pursuant to sections 6 through 10 of  
34 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).  
35 (d) Provided, however, that the franchise tax to be annually  
36 assessed to and paid by any investment company or real estate  
37 investment trust, which has elected to report as such and has filed its  
38 return in the form and within the time provided in this act and the rules  
39 and regulations promulgated in connection therewith, shall, in the case  
40 of an investment company, be measured by 25% of its entire net  
41 income and 25% of its entire net worth, and in the case of a real estate  
42 investment trust, by 4% of its entire net income and 15% of its entire  
43 net worth, at the rates hereinbefore set forth for the computation of  
44 tax on net income and net worth, respectively, but in no case less than  
45 \$250, and further provided, however, that the franchise tax to be  
46 annually assessed to and paid by a regulated investment company

1 which for a period covered by its report satisfies the requirements of  
 2 Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal  
 3 Revenue Code shall be \$250.

4 (e) The tax assessed to any taxpayer pursuant to this section shall  
 5 not be less than \$25 in the case of a domestic corporation, \$50 in the  
 6 case of a foreign corporation, or \$250 in the case of an investment  
 7 company or regulated investment company. Provided however, that  
 8 for accounting or privilege periods beginning in calendar year 1994  
 9 and thereafter the minimum taxes for taxpayers other than an  
 10 investment company or a regulated investment company shall be as  
 11 provided in the following schedule:

12	Period Beginning	Domestic	Foreign
13	In Calendar Year	Corporation	Corporation
14		Minimum Tax	Minimum
15	1994	\$ 50	\$100
16	1995	\$100	\$200
17	1996	\$150	\$200
18	1997	\$200	\$200

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

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

35 (g) Provided however, that the franchise tax annually assessed to  
 36 and paid by a taxpayer:

37 (1) that is a limited liability company or foreign limited liability  
 38 company classified as a partnership for federal income tax purposes  
 39 shall be the amount determined pursuant to the provisions of section  
 40 3 of P.L. , c. (C. )(now pending before the Legislature as this  
 41 bill); or

42 (2) that is a limited partnership or foreign limited partnership  
 43 classified as a partnership for federal income tax purposes shall be the  
 44 amount determined pursuant to the provisions of section 4 of P.L. ,  
 45 c. (C. )(now pending before the Legislature as this bill).

46 (cf: P.L.2001, c.23, s.1)

1       3. (New section) a. A limited liability company or foreign limited  
2 liability company that is classified as a partnership for federal income  
3 tax purposes may obtain and retain in its records for inspection by the  
4 director the consent of each of its members that are not corporations  
5 exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-  
6 3), or individuals, trusts or estates subject to the "New Jersey Gross  
7 Income Tax Act", N.J.S.54A:1-1 et seq., to the following  
8 jurisdictional requirements in a form prescribed by the Director of the  
9 Division of Taxation: that this State shall have the right and  
10 jurisdiction to tax and collect the tax, hereby imposed, on the entire  
11 net income of the member (1) based upon combining the respective  
12 numerators and denominators of the allocation fractions of the  
13 member with the member's share of the numerators and denominators  
14 of the limited liability company or foreign limited liability company to  
15 determine an allocation factor to be applied to the member's entire net  
16 income, including the member's distributive share of the company  
17 income, to determine the portion of the member's entire net income  
18 allocated to this State if the relationship between the member and  
19 limited liability company or foreign limited liability company is unitary,  
20 or (2) based upon separately using the allocation fractions of the  
21 limited liability company or foreign limited liability company to  
22 determine the allocation factor to be applied to the member's  
23 distributive share of the company income, using the allocation  
24 fractions of the member to determine the allocation factor to be  
25 applied to the member's entire net income excluding the member's  
26 distributive share of the income of the limited liability company or  
27 foreign limited liability company, and then combining those allocated  
28 amounts of net income to determine the portion of the member's entire  
29 net income allocated to this State if the relationship between the  
30 member and limited liability company or foreign limited liability  
31 company is not unitary.

32       b. A limited liability company or foreign limited liability company  
33 that is not a qualified investment partnership and that has not obtained  
34 and retained the written consent of one or more of its members that  
35 are not corporations exempt from tax pursuant to section 3 of  
36 P.L.1945, c.162 (C.54:10A-3), or individuals, trusts or estates subject  
37 to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq.,  
38 shall, on or before the 15th day of the fourth month succeeding the  
39 close of each privilege period, remit a payment of tax equal to the  
40 nonconsenting members' share of the entire net income of the limited  
41 liability company or foreign limited liability company for that privilege  
42 period, multiplied by an allocation factor determined, pursuant to  
43 section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation  
44 fractions of the limited liability company or foreign limited liability  
45 company for that privilege period, and multiplied by the maximum rate  
46 set forth at paragraph (1) of subsection (c) of section 5 of P.L.1945,

1 c. 162 (C.54:10A-5) for that privilege period. The limited liability  
2 company or foreign limited liability company shall have the right, but  
3 not the obligation, to recover from the nonconsenting members such  
4 payments made by the company.

5 c. An amount of tax paid by a limited liability company or foreign  
6 limited liability company pursuant to subsection b. of this section  
7 attributable to a nonconsenting member shall be credited to the  
8 member as of the date of its receipt by the director.

9

10 4. (New section) a. A limited partnership or foreign limited  
11 partnership that is classified as a partnership for federal income tax  
12 purposes may obtain and retain in its records for inspection by the  
13 director the consent of each of its partners that are not corporations  
14 exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-  
15 3), or individuals, trusts or estates subject to the "New Jersey Gross  
16 Income Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional  
17 requirements in a form prescribed by the Director of the Division of  
18 Taxation: that this State shall have the right and jurisdiction to tax and  
19 collect the tax, hereby imposed, on the entire net income of the partner  
20 (1) based upon combining the respective numerators and denominators  
21 of the allocation fractions of the partner with the partner's share of the  
22 numerators and denominators of the limited partnership or foreign  
23 limited partnership to determine an allocation factor to be applied to  
24 the partner's entire net income, including the partner's distributive  
25 share of the partnership income, to determine the portion of the  
26 partner's entire net income allocated to this State if the relationship  
27 between the partner and limited partnership or foreign limited  
28 partnership is unitary, or (2) based upon separately using the allocation  
29 fractions of the limited partnership or foreign limited partnership to  
30 determine the allocation factor to be applied to the partner's  
31 distributive share of the partnership income, using the allocation  
32 fractions of the partner to determine the allocation factor to be applied  
33 to the partner's entire net income excluding the partner's distributive  
34 share of the income of the limited partnership or foreign limited  
35 partnership, and then combining those two allocated amounts of net  
36 income to determine the portion of the partner's entire net income  
37 allocated to this State if the relationship between the partner and the  
38 limited partnership or foreign limited partnership is not unitary.

39 b. A limited partnership or foreign limited partnership that is not  
40 a qualified investment partnership and that has not obtained and  
41 retained the written consent of one or more of its partners that are not  
42 corporations exempt from tax pursuant to section 3 of P.L.1945, c.162  
43 (C.54:10A-3), or individuals, trusts or estates subject to the "New  
44 Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, on or  
45 before the 15th day of the fourth month succeeding the close of each  
46 privilege period, remit a payment of tax equal to the nonconsenting



1 partners' share of the entire net income of the limited partnership or  
2 foreign limited partnership for that privilege period, multiplied by an  
3 allocation factor determined, pursuant to section 6 of P.L.1945, c.162  
4 (C.54:10A-6), based on the allocation fractions of the limited  
5 partnership or foreign limited partnership for that privilege period,  
6 and multiplied by the maximum rate set forth at paragraph (1) of  
7 subsection (c) of section 5 of P.L.1945, c. 162 (C.54:10A-5) for that  
8 privilege period. The limited partnership or foreign limited partnership  
9 shall have the right, but not the obligation, to recover from the  
10 nonconsenting partners such payments made by the partnership.

11 c. An amount of tax paid by a limited partnership or foreign limited  
12 partnership pursuant to subsection b. of this section attributable to a  
13 nonconsenting partner shall be credited to the partner as of the date of  
14 its receipt by the director.

15  
16 5. (New section) a. Notwithstanding the provisions of subsection  
17 (f) of section 15 of P.L.1945, c.162 (C.54:10A-15) to the contrary, a  
18 taxpayer that is a limited liability company or a foreign limited liability  
19 company subject to the provisions of subsection b. of section 3 of  
20 P.L. , c. (C. )(now pending before the Legislature as this bill)  
21 or that is a limited partnership or foreign limited partnership subject to  
22 the provisions of subsection b. of section 4 of P.L. , c. (C. )  
23 (now pending before the Legislature as this bill) shall, in addition to  
24 the tax payable pursuant to subsection b. of section 3 or subsection b.  
25 of section 4 of P.L. , c. (C. ), make an installment payment of  
26 its tax for the privilege period on or before the 15th day of the fourth  
27 month of the privilege period equal to the tax payable pursuant to  
28 subsection b. of section 3 or subsection b. of section 4 of P.L. , c.  
29 (C. ). Any amount of tax paid pursuant to this subsection shall be  
30 credited against the tax paid pursuant to subsection b. of section 3 or  
31 subsection b. of section 4 of P.L. , c. (C. ).

32 b. Notwithstanding the provisions of section 5 of P.L.1981, c.184  
33 (C.54:10A-15.4) to the contrary, the amount of underpayment of an  
34 installment payment pursuant to subsection a. of this section shall, for  
35 the purposes of subsection e. of section 5 of P.L.1981, c.184, be the  
36 excess of 100% of the tax liability determined pursuant to subsection  
37 b. of section 3 or subsection b. of section 4 of P.L. , c. (C. )  
38 at the rates and other facts in effect for the privilege period but on the  
39 basis of the entire net income for the prior privilege period over the  
40 amount paid pursuant to subsection a. of this section; provided  
41 however, that if the taxpayer did not have a prior privilege period  
42 consisting of a 12 month period, the amount of underpayment of an  
43 installment payment shall be the excess of 90% of the tax liability  
44 determined pursuant to subsection b. of section 3 or subsection b. of  
45 section 4 of P.L. , c. (C. ) for the current privilege period over  
46 the amount paid pursuant to subsection a. of this section.

1       6. (New section) a. Notwithstanding the provisions of subsection  
2 of b. of section 3 of P.L. , c. (C. )(now pending before the  
3 Legislature as this bill) and the provisions of subsection b. of section  
4 4 of P.L. , c. (C. )(now pending before the Legislature as this  
5 bill), the liability of a taxpayer that is a limited liability company or a  
6 foreign limited liability company subject to the provisions of  
7 subsection b. of section 3 of P.L. , c. (C. ) or that is a limited  
8 partnership or foreign limited partnership subject to the provisions of  
9 subsection b. of section 4 of P.L. , c. (C. ) shall, for privilege  
10 periods beginning in calendar year 2001, be 45% of the amount  
11 otherwise due.

12       b. Notwithstanding the provisions of subsection of a. of section 5  
13 of P.L. , c. (C. )(now pending before the Legislature as this  
14 bill), no estimated payment shall be due from a taxpayer that is a  
15 limited liability company or a foreign limited liability company subject  
16 to the provisions of subsection b. of section 3 of P.L. , c. (C. )  
17 or that is a limited partnership or foreign limited partnership subject to  
18 the provisions of subsection b. of section 4 of P.L. , c. (C. )  
19 for privilege periods beginning in calendar year 2001.

20

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

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

33

34       8. This act shall take effect immediately and apply to privilege  
35 periods beginning on or after January 1, 2001.

36

37

38

#### STATEMENT

39

40       This bill closes a gap in the administration of the taxes imposed on  
41 the owners of limited partnerships and limited liability companies.

42       This bill provides a mechanism, similar to the consent and deemed  
43 payment provisions put in place for the owners of Subchapter S  
44 corporations by P.L.1993, c.173, that assures the fair taxation of the  
45 owners of limited liability companies and limited partnerships. Under  
46 this bill, a limited liability company, foreign limited liability company,  
47 limited partnership or foreign limited partnership that is classified as  
48 a partnership for federal tax purposes may obtain the consent of each

1 of its owners that are not individuals, trusts or estates subject to the  
2 "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq. (for  
3 example, each owner that is itself a corporation) that this State has the  
4 right and jurisdiction to tax the owner's income derived from the  
5 activities of the limited liability company or limited partnership in New  
6 Jersey.

7 A business that does not have the consent of all of its owners must  
8 pay a corporation business tax liability, on behalf of its nonconsenting  
9 owners, on each of the nonconsenting owner's shares of the business'  
10 New Jersey income.

11 A number of organizations, because of their distinctive  
12 characteristics, are exempted from certain provisions of the bill.  
13 Limited liability companies and limited partnerships that have been  
14 listed on national stock exchanges (which have many owners, with the  
15 ownership changing from day to day) are exempt from the coverage  
16 of the bill. Owner organizations that are exempt by statute from the  
17 corporation business tax are exempt from the deemed payment  
18 provisions: their liabilities would, in any case, be zero. "Qualified  
19 investment partnerships," limited liability companies or limited  
20 partnerships with more than 10 owners, none of whom owns more  
21 than 50% of the entity, and that derive at least 90% of their income  
22 from financial transactions, are exempt from making payments on  
23 behalf of their owners.

24 For each "privilege period" (tax year) of a limited liability company  
25 or limited partnership, the company or partnership must make a  
26 payment on the 15th day of the fourth month following the close of the  
27 period (in most cases, April 15) equal to the corporation business tax  
28 imposed at its highest rate on the income shares of the organization's  
29 owners that have not themselves consented to New Jersey taxation (no  
30 amount is paid on behalf of owners that have consented to taxation).

31 These payment amounts are credited to accounts for the  
32 nonconsenting owners, who may let them stand in payment of their  
33 liabilities or who may consent to taxation and, as part of that process,  
34 apply for refunds of any amounts in excess of their actual liability paid  
35 on their behalf.

36 The limited liability companies and limited partnerships will also  
37 make estimated payments of their nonconsenting members' current  
38 years' taxes on 15th day of the fourth month of the privilege period  
39 (again, usually April 15th). These payments will be based, where  
40 appropriate, on the prior year's income of the company or partnership.

41 The bill is effective, retroactively, for privilege periods beginning  
42 on or after January 1, 2001. Transition provisions exempt the  
43 companies and partnerships from making estimated payments for tax  
44 year 2001 (those payments would have been due April 15, 2001) and  
45 reduce the final payment of tax on behalf of the nonconsenting  
46 members for 2001, due in 2002, to 45% of the amount otherwise due  
47 to account for the enactment of the new provisions in the middle of a  
48 tax period.

**FISCAL NOTE**  
**SENATE, No. 2466**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: JULY 18, 2001

**SUMMARY**

**Synopsis:** Concerns payment obligations of certain partnerships and limited liability companies and certain of their partners and members under the corporation business tax.

**Type of Impact:** Limits potential decreases in corporation business tax revenue.

**Agencies Affected:** Department of the Treasury, Division of Taxation.

**Executive Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Revenue</b>	\$420 million	Not specified	Not specified

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Revenue</b>	Indeterminate	Indeterminate	Indeterminate

- ! The bill requires limited liability companies and limited partnerships that are classified as partnerships for federal tax purposes to obtain the consent of each of its non-individual (e.g., incorporated) members or partners to New Jersey taxation. A business that does not have the consent for one of its "non-individual" (usually incorporated) owners must pay corporation business tax on behalf of that nonconsenting owner's share of the business' New Jersey income.
- ! The bill forecloses an avenue of corporation business tax avoidance.

**BILL DESCRIPTION**

Senate Bill No. 2466 of 2001 provides a mechanism for taxing the owners of limited liability companies and limited partnerships. The bill allows a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership that is classified as a partnership for federal tax purposes to obtain the consent of each of its owners that are not individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq. (for example, each owner that is itself a corporation) that this State has the right and

jurisdiction to tax the owner's income derived from the activities of the limited liability company or limited partnership in New Jersey. A business that does not have the consent of all of its owners must pay a corporation business tax liability, on behalf of its nonconsenting owners, on each of the nonconsenting owner's shares of the business' New Jersey income. A number of organizations, because of their distinctive characteristics, are exempted from certain provisions of the substitute.

For each privilege period of a limited liability company or limited partnership, the company or partnership must make a payment on the 15th day of the fourth month following the close of the period (in most cases, April 15) equal to the corporation business tax imposed at its highest rate on the income shares of the organization's owners that have not themselves consented to New Jersey taxation (no amount is paid on behalf of owners that have consented to taxation).

These payment amounts are credited to accounts for the nonconsenting owners, who may let them stand in payment of their liabilities or who may consent to taxation and, as part of that process, apply for refunds of any amounts in excess of their actual liability paid on their behalf.

The limited liability companies and limited partnerships will also make estimated payments of their nonconsenting members' current years' taxes on 15th day of the fourth month of the privilege period (again, usually April 15th). These payments will be based, where appropriate, on the prior year's income of the company or partnership.

The substitute is effective, retroactively, for privilege periods beginning on or after January 1, 2001. Transition provisions exempt the companies and partnerships from making estimated payments for tax year 2001 (those payments would have been due April 15, 2001) and reduce the final payment of tax on behalf of the nonconsenting members for 2001, due in 2002, to 45 percent of the amount otherwise due to account for the enactment of the new provisions in the middle of a tax period.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Department of the Treasury notes that there are approximately 70,000 limited liability companies and 15,000 limited partnerships doing business in New Jersey. The department notes that the detailed information concerning percentage of ownership and allocations of net income of limited liability companies and limited partnerships is unavailable, and that therefore only a rough order-of-magnitude estimate is possible.

The department notes further that if 25 percent of the entire corporation business tax base for 1998 were subject to the tax avoidance mechanism being foreclosed by the bill, then corporation business tax revenues for that period would have been reduced by over \$350 million. The department notes further that, in cooperation with corporation tax experts, it has identified several New Jersey limited liability companies where the combined revenue impact of the bill could exceed \$200 million.

Apparently using this information, after noting that taxation for the 2001 privilege period will be 45 percent of the amount otherwise due, the department projects that the 2001 liability period final payments due in FY2002 will be \$120 million and that the estimated payments (based on 100 percent of the 2001 liability) due in FY2002 will be \$300 million, for a total FY2002 revenue impact of \$420 million.

***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) concurs with the Department of the Treasury that only a rough order-of-magnitude estimate is possible.

The department states that its revenue estimate is based on specialized anecdotal data, which is unavailable to the OLS. There is no information available to the OLS which would allow it to agree or disagree with the departmental estimate, although the OLS does note that 45 percent of 300 is 135, not 120, and, if the departmental estimate is on target, it is not unlikely that businesses that were able to direct 25 percent of the entire corporate tax base through a tax avoidance vehicle in a few years will be able to adjust their behavior to the changes under the bill.

Section: *Revenue, Finance and Appropriations*

Analyst: *Philip N. Liloia*  
*Lead Counsel*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67.

P.L. 2001, CHAPTER 136, *approved June 29, 2001*

Assembly Committee Substitute for

Assembly, No. 3045

1 **AN ACT** concerning payment obligations of certain partnerships and  
2 limited liability companies and their partners and members under  
3 the corporation business tax, amending and supplementing  
4 P.L.1945, c.162.

5

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

8

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

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

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

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

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

22 (d) "Net worth" shall mean the aggregate of the values disclosed  
23 by the books of the corporation for (1) issued and outstanding capital  
24 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided  
25 profits, and (4) surplus reserves which can reasonably be expected to  
26 accrue to holders or owners of equitable shares, not including  
27 reasonable valuation reserves, such as reserves for depreciation or  
28 obsolescence or depletion. Notwithstanding the foregoing, net worth  
29 shall not include any deduction for the amount of the excess  
30 depreciation described in paragraph (2)(F) of subsection (k) of this  
31 section. The foregoing aggregate of values shall be reduced by 50%  
32 of the amount disclosed by the books of the corporation for investment  
33 in the capital stock of one or more subsidiaries, which investment is  
34 defined as ownership (1) of at least 80% of the total combined voting  
35 power of all classes of stock of the subsidiary entitled to vote and (2)  
36 of at least 80% of the total number of shares of all other classes of  
37 stock except nonvoting stock which is limited and preferred as to  
38 dividends. In the case of investment in an entity organized under the

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

**Matter underlined thus is new matter.**

1 laws of a foreign country, the foregoing requisite degree of ownership  
2 shall effect a like reduction of such investment from the net worth of  
3 the taxpayer, if the foreign entity is considered a corporation for any  
4 purpose under the United States federal income tax laws, such as (but  
5 not by way of sole examples) for the purpose of supplying deemed  
6 paid foreign tax credits or for the purpose of status as a controlled  
7 foreign corporation. In calculating the net worth of a taxpayer entitled  
8 to reduction for investment in subsidiaries, the amount of liabilities of  
9 the taxpayer shall be reduced by such proportion of the liabilities as  
10 corresponds to the ratio which the excluded portion of the subsidiary  
11 values bears to the total assets of the taxpayer.

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

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

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

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

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

44 (h) "Taxpayer" shall mean any corporation, limited liability  
45 company, foreign limited liability company, limited partnership or  
46 foreign limited partnership required, or consenting, to report or to pay



1 taxes, interest or penalties under this act. "Taxpayer" shall not include  
2 a limited liability company, foreign limited liability company, limited  
3 partnership or foreign limited partnership that is listed on a United  
4 States national stock exchange

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

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

11 (k) "Entire net income" shall mean total net income from all  
12 sources, whether within or without the United States, and shall include  
13 the gain derived from the employment of capital or labor, or from both  
14 combined, as well as profit gained through a sale or conversion of  
15 capital assets. For the purpose of this act, the amount of a taxpayer's  
16 entire net income shall be deemed prima facie to be equal in amount to  
17 the taxable income, before net operating loss deduction and special  
18 deductions, which the taxpayer is required to report, or, if the taxpayer  
19 is classified as a partnership for federal tax purposes, would otherwise  
20 be required to report, to the United States Treasury Department for  
21 the purpose of computing its federal income tax; provided, however,  
22 that in the determination of such entire net income,

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

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

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

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

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

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

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

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

19 (ii) For the periods set forth in subparagraph (F)(i) of this  
20 subsection, any amount, except with respect to qualified mass  
21 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
22 Internal Revenue Code as in effect immediately prior to January 1,  
23 1984, which the taxpayer claimed as a deduction in computing federal  
24 income tax pursuant to a qualified lease agreement under paragraph  
25 (8) of that section.

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

30 (G) (i) The amount of any civil, civil administrative, or criminal  
31 penalty or fine, including a penalty or fine under an administrative  
32 consent order, assessed and collected for a violation of a State or  
33 federal environmental law, an administrative consent order, or an  
34 environmental ordinance or resolution of a local governmental entity,  
35 and any interest earned on the penalty or fine, and any economic  
36 benefits having accrued to the violator as a result of a violation, which  
37 benefits are assessed and recovered in a civil, civil administrative, or  
38 criminal action, or pursuant to an administrative consent order. The  
39 provisions of this paragraph shall not apply to a penalty or fine  
40 assessed or collected for a violation of a State or federal  
41 environmental law, or local environmental ordinance or resolution, if  
42 the penalty or fine was for a violation that resulted from fire, riot,  
43 sabotage, flood, storm event, natural cause, or other act of God  
44 beyond the reasonable control of the violator, or caused by an act or  
45 omission of a person who was outside the reasonable control of the  
46 violator.

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

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

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

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

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

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

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

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

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

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

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

43 (5) Entire net income shall exclude 100% of dividends which were  
44 included in computing such taxable income for federal income tax  
45 purposes, paid to the taxpayer by one or more subsidiaries owned by  
46 the taxpayer to the extent of the 80% or more ownership of investment

1 described in subsection (d) of this section. With respect to other  
2 dividends, entire net income shall not include 50% of the total included  
3 in computing such taxable income for federal income tax purposes.

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

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

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

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

33 (7) The entire net income of gas, electric and gas and electric  
34 public utilities that were subject to the provisions of P.L.1940, c.5  
35 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
36 the New Jersey depreciation allowance for federal tax depreciation  
37 with respect to assets placed in service prior to January 1, 1998. For  
38 gas, electric, and gas and electric public utilities that were subject to  
39 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,  
40 the New Jersey depreciation allowance shall be computed as follows:  
41 All depreciable assets placed in service prior to January 1, 1998 shall  
42 be considered a single asset account. The New Jersey tax basis of this  
43 depreciable asset account shall be an amount equal to the carryover  
44 adjusted basis for federal income tax purposes on December 31, 1997  
45 of all depreciable assets in service on December 31, 1997, increased  
46 by the excess, of the "net carrying value," defined to be adjusted book

1 basis of all assets and liabilities, excluding deferred income taxes,  
2 recorded on the public utility's books of account on December 31,  
3 1997, over the carryover adjusted basis for federal income tax  
4 purposes on December 31, 1997 of all assets and liabilities owned by  
5 the gas, electric, or gas and electric public utility as of December 31,  
6 1997. "Books of account" for gas, gas and electric, and electric public  
7 utilities means the uniform system of accounts as promulgated by the  
8 Federal Energy Regulatory Commission and adopted by the Board of  
9 Public Utilities. The following adjustments to entire net income shall  
10 be made pursuant to this section:

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

13 (i) Depreciation for federal income tax purposes shall be  
14 disallowed in full.

15 (ii) A deduction shall be allowed for the New Jersey depreciation  
16 allowance. The New Jersey depreciation allowance shall be computed  
17 for the single asset account described above based on the New Jersey  
18 tax basis as adjusted above as if all assets in the single asset account  
19 were first placed in service on January 1, 1998. Depreciation shall be  
20 computed using the straight line method over a thirty-year life. A full  
21 year's depreciation shall be allowed in the initial tax year. No half-year  
22 convention shall apply. The depreciable basis of the single account  
23 shall be reduced by the adjusted federal tax basis of assets sold,  
24 retired, or otherwise disposed of during any year on which gain or loss  
25 is recognized for federal income tax purposes as described in  
26 subparagraph (B) of this paragraph.

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

30 (C) The Director of the Division of Taxation shall promulgate  
31 regulations describing the methodology for allocating the single asset  
32 account in the event that a portion of the utility's operations are  
33 separated, spun-off, transferred to a separate company or otherwise  
34 disaggregated.

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

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

1 (10) Entire net income shall exclude all income of an alien  
2 corporation the activities of which are limited in this State to investing  
3 or trading in stocks and securities for its own account, investing or  
4 trading in commodities for its own account, or any combination of  
5 those activities, within the meaning of section 864 of the federal  
6 Internal Revenue Code of 1986, 26 U.S.C.s.864, as in effect on  
7 December 31, 1998. Notwithstanding the previous sentence, if an  
8 alien corporation undertakes one or more infrequent, extraordinary or  
9 non-recurring activities, including but not limited to the sale of  
10 tangible property, only the income from such infrequent, extraordinary  
11 or non-recurring activity shall be subject to the tax imposed pursuant  
12 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income  
13 subject to tax shall be determined without regard to the allocation to  
14 that specific transaction of any general business expense of the  
15 taxpayer and shall be specifically assigned to this State for taxation by  
16 this State without regard to section 6 of P.L.1945, c.162  
17 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"  
18 means a corporation organized under the laws of a jurisdiction other  
19 than the United States or its political subdivisions.

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

23 (m) "Financial business corporation" shall mean any corporate  
24 enterprise which is (1) in substantial competition with the business of  
25 national banks and which (2) employs moneyed capital with the object  
26 of making profit by its use as money, through discounting and  
27 negotiating promissory notes, drafts, bills of exchange and other  
28 evidences of debt; buying and selling exchange; making of or dealing  
29 in secured or unsecured loans and discounts; dealing in securities and  
30 shares of corporate stock by purchasing and selling such securities and  
31 stock without recourse, solely upon the order and for the account of  
32 customers; or investing and reinvesting in marketable obligations  
33 evidencing indebtedness of any person, copartnership, association or  
34 corporation in the form of bonds, notes or debentures commonly  
35 known as investment securities; or dealing in or underwriting  
36 obligations of the United States, any state or any political subdivision  
37 thereof, or of a corporate instrumentality of any of them. This shall  
38 include, without limitation of the foregoing, business commonly  
39 known as industrial banks, dealers in commercial paper and  
40 acceptances, sales finance, personal finance, small loan and mortgage  
41 financing businesses, as well as any other enterprise employing  
42 moneyed capital coming into competition with the business of national  
43 banks; provided that the holding of bonds, notes, or other evidences  
44 of indebtedness by individual persons not employed or engaged in the  
45 banking or investment business and representing merely personal  
46 investments not made in competition with the business of national

1 banks, shall not be deemed financial business. Nor shall "financial  
2 business" include national banks, production credit associations  
3 organized under the Farm Credit Act of 1933 or the Farm Credit Act  
4 of 1971, Pub.L. 92-181 (12 U.S.C.s.2091 et seq.), stock and mutual  
5 insurance companies duly authorized to transact business in this State,  
6 security brokers or dealers or investment companies or bankers not  
7 employing moneyed capital coming into competition with the business  
8 of national banks, real estate investment trusts, or any of the following  
9 entities organized under the laws of this State: credit unions, savings  
10 banks, savings and loan and building and loan associations,  
11 pawnbrokers, and State banks and trust companies.

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

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

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

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

40 (r) "Qualified investment partnership" means a limited liability  
41 company, foreign limited liability company, limited partnership or  
42 foreign limited partnership treated as a partnership under this act that  
43 has more than 10 members or partners with no member or partner  
44 owning more than a 50% interest in the entity and that derives at least  
45 90% of its gross income from dividends, interest, payments with  
46 respect to securities loans, and gains from the sale or other disposition

1 of stocks or securities or foreign currencies or commodities or other  
 2 similar income (including but not limited to gains from swaps, options,  
 3 futures or forward contracts) derived with respect to its business of  
 4 investing or trading in those stocks, securities, currencies or  
 5 commodities, but "investment partnership" shall not include a "dealer  
 6 in securities" within the meaning of section 1236 of the federal Internal  
 7 Revenue Code of 1986, 26 U.S.C. s.1236.

8 (cf: P.L.1999, c.369, s.1)

9  
 10 2. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read  
 11 as follows:

12 5. The franchise tax to be annually assessed to and paid by each  
 13 taxpayer shall be the sum of the amount computed under subsection  
 14 (a) hereof, or in the alternative to the amount computed under  
 15 subsection (a) hereof, the amount computed under subsection (f)  
 16 hereof, and the amount computed under subsection (c) hereof:

17 (a) That portion of its entire net worth as may be allocable to this  
 18 State as provided in section 6, multiplied by the following rates: 2  
 19 mills per dollar on the first \$100,000,000.00 of allocated net worth;  
 20 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill  
 21 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar  
 22 on all amounts of allocated net worth in excess of \$300,000,000.00;  
 23 provided, however, that with respect to reports covering accounting  
 24 or privilege periods set forth below, the rate shall be that percentage  
 25 of the rate set forth in this subsection for the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

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

33 (c) (1) For a taxpayer that is not a New Jersey S corporation,  
 34 31/4% of its entire net income or such portion thereof as may be  
 35 allocable to this State as provided in section 6 of P.L.1945, c.162  
 36 (C.54:10A-6); provided, however, that with respect to reports  
 37 covering accounting or privilege periods or parts thereof ending after  
 38 December 31, 1967, the rate shall be 41/4%; and that with respect to  
 39 reports covering accounting or privilege periods or parts thereof  
 40 ending after December 31, 1971, the rate shall be 51/2%; and that with  
 41 respect to reports covering accounting or privilege periods or parts  
 42 thereof ending after December 31, 1974, the rate shall be 71/2%; and  
 43 that with respect to reports covering [accounting or] privilege periods  
 44 or parts thereof ending after December 31, 1979, the rate shall be 9%;



1 provided however, that for a taxpayer that has entire net income of  
2 \$100,000 or less for a privilege period and is not a limited liability  
3 company, foreign limited liability company, limited partnership or  
4 foreign limited partnership the rate for that privilege period shall be  
5 7 1/2%.

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

7 (i) for privilege periods ending on or before June 30, 1998 the rate  
8 determined by subtracting the maximum tax bracket rate provided  
9 under N.J.S.54A:2-1 for the privilege period from the tax rate that  
10 would otherwise be applicable to the taxpayer's entire net income for  
11 the privilege period if the taxpayer were not an S corporation provided  
12 under paragraph (1) of this subsection for the privilege period; and

13 (ii) For a taxpayer that has entire net income in excess of \$100,000  
14 for the privilege period, for privilege periods ending on or after  
15 July 1, 1998, but on or before June 30, 2001, the rate shall be 2%,

16 for privilege periods ending on or after July 1, 2001, but on or  
17 before June 30, 2002, the rate shall be 1.33%,

18 for privilege periods ending on or after July 1, 2002, but on or  
19 before June 30, 2003, the rate shall be 0.67%, and

20 for privilege periods ending on or after July 1, 2003 there shall be  
21 no rate of tax imposed under this paragraph, and

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

27 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or  
28 (iii) of this paragraph shall be multiplied by its entire net income that  
29 is not subject to federal income taxation or such portion thereof as  
30 may be allocable to this State pursuant to sections 6 through 10 of  
31 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

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

41 (d) Provided, however, that the franchise tax to be annually  
42 assessed to and paid by any investment company or real estate  
43 investment trust, which has elected to report as such and has filed its  
44 return in the form and within the time provided in this act and the rules  
45 and regulations promulgated in connection therewith, shall, in the case  
46 of an investment company, be measured by 25% of its entire net

1 income and 25% of its entire net worth, and in the case of a real estate  
 2 investment trust, by 4% of its entire net income and 15% of its entire  
 3 net worth, at the rates hereinbefore set forth for the computation of  
 4 tax on net income and net worth, respectively, but in no case less than  
 5 \$250, and further provided, however, that the franchise tax to be  
 6 annually assessed to and paid by a regulated investment company  
 7 which for a period covered by its report satisfies the requirements of  
 8 Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal  
 9 Revenue Code shall be \$250.

10 (e) The tax assessed to any taxpayer pursuant to this section shall  
 11 not be less than \$25 in the case of a domestic corporation, \$50 in the  
 12 case of a foreign corporation, or \$250 in the case of an investment  
 13 company or regulated investment company. Provided however, that  
 14 for accounting or privilege periods beginning in calendar year 1994  
 15 and thereafter the minimum taxes for taxpayers other than an  
 16 investment company or a regulated investment company shall be as  
 17 provided in the following schedule:

18	Period Beginning Domestic	Foreign
19	In Calendar Year	Corporation Corporation
20		Minimum Tax Minimum
21	1994	\$ 50 \$100
22	1995	\$100 \$200
23	1996	\$150 \$200
24	1997	\$200 \$200

25 and provided further that the director shall adjust the minimum tax for  
 26 accounting or privilege periods beginning in each fifth year following  
 27 calendar year 1997 and each fifth year thereafter by multiplying the  
 28 minimum tax for periods beginning in 1997 by an amount equal to one  
 29 plus 75% of the increase, if any, in the annual average total producer  
 30 price index for finished goods published by the federal Department of  
 31 Labor, Bureau of Labor Statistics, for the year preceding the  
 32 determination year over such index for calendar year 1996 which  
 33 adjusted minimum tax amount shall be rounded to the next highest  
 34 multiple of \$10.

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

41 (g) Provided however, that the franchise tax annually assessed to  
 42 and paid by a taxpayer:

43 (1) that is a limited liability company or foreign limited liability  
 44 company classified as a partnership for federal income tax purposes  
 45 shall be the amount determined pursuant to the provisions of section  
 46 3 of P.L. , c. (C. )(now pending before the Legislature as this  
 47 bill); or

1       (2) that is a limited partnership or foreign limited partnership  
2 classified as a partnership for federal income tax purposes shall be the  
3 amount determined pursuant to the provisions of section 4 of  
4 P.L. , c. (C. )(now pending before the Legislature as this bill).  
5 (cf: P.L.2001, c.23, s.1)

6  
7       3. (New section) a. A limited liability company or foreign limited  
8 liability company that is classified as a partnership for federal income  
9 tax purposes may obtain and retain in its records for inspection by the  
10 director the consent of each of its members that are not corporations  
11 exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-  
12 3), or individuals, trusts or estates subject to the "New Jersey Gross  
13 Income Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional  
14 requirements in a form prescribed by the Director of the Division of  
15 Taxation: that this State shall have the right and jurisdiction to tax and  
16 collect the tax, hereby imposed, on the entire net income of the  
17 member (1) based upon combining the respective numerators and  
18 denominators of the allocation fractions of the member with the  
19 member's share of the numerators and denominators of the limited  
20 liability company or foreign limited liability company to determine an  
21 allocation factor to be applied to the member's entire net income,  
22 including the member's distributive share of the company income, to  
23 determine the portion of the member's entire net income allocated to  
24 this State if the relationship between the member and limited liability  
25 company or foreign limited liability company is unitary, or (2) based  
26 upon separately using the allocation fractions of the limited liability  
27 company or foreign limited liability company to determine the  
28 allocation factor to be applied to the member's distributive share of the  
29 company income, using the allocation fractions of the member to  
30 determine the allocation factor to be applied to the member's entire net  
31 income excluding the member's distributive share of the income of the  
32 limited liability company or foreign limited liability company, and then  
33 combining those allocated amounts of net income to determine the  
34 portion of the member's entire net income allocated to this State if the  
35 relationship between the member and limited liability company or  
36 foreign limited liability company is not unitary.

37       b. A limited liability company or foreign limited liability company  
38 that is not a qualified investment partnership and that has not obtained  
39 and retained the written consent of one or more of its members that  
40 are not corporations exempt from tax pursuant to section 3 of  
41 P.L.1945, c.162 (C.54:10A-3), or individuals, trusts or estates subject  
42 to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq.,  
43 shall, on or before the 15th day of the fourth month succeeding the  
44 close of each privilege period, remit a payment of tax equal to the  
45 nonconsenting members' share of the entire net income of the limited  
46 liability company or foreign limited liability company for that privilege

1 period, multiplied by an allocation factor determined, pursuant to  
2 section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation  
3 fractions of the limited liability company or foreign limited liability  
4 company for that privilege period, and multiplied by the maximum rate  
5 set forth at paragraph (1) of subsection (c) of section 5 of P.L.1945,  
6 c. 162 (C.54:10A-5) for that privilege period. The limited liability  
7 company or foreign limited liability company shall have the right, but  
8 not the obligation, to recover from the nonconsenting members such  
9 payments made by the company.

10 c. An amount of tax paid by a limited liability company or foreign  
11 limited liability company pursuant to subsection b. of this section  
12 attributable to a nonconsenting member shall be credited to the  
13 member as of the date of its receipt by the director.

14  
15 4. (New section) a. A limited partnership or foreign limited  
16 partnership that is classified as a partnership for federal income tax  
17 purposes may obtain and retain in its records for inspection by the  
18 director the consent of each of its partners that are not corporations  
19 exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-  
20 3), or individuals, trusts or estates subject to the "New Jersey Gross  
21 Income Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional  
22 requirements in a form prescribed by the Director of the Division of  
23 Taxation: that this State shall have the right and jurisdiction to tax and  
24 collect the tax, hereby imposed, on the entire net income of the partner  
25 (1) based upon combining the respective numerators and denominators  
26 of the allocation fractions of the partner with the partner's share of the  
27 numerators and denominators of the limited partnership or foreign  
28 limited partnership to determine an allocation factor to be applied to  
29 the partner's entire net income, including the partner's distributive  
30 share of the partnership income, to determine the portion of the  
31 partner's entire net income allocated to this State if the relationship  
32 between the partner and limited partnership or foreign limited  
33 partnership is unitary, or (2) based upon separately using the allocation  
34 fractions of the limited partnership or foreign limited partnership to  
35 determine the allocation factor to be applied to the partner's  
36 distributive share of the partnership income, using the allocation  
37 fractions of the partner to determine the allocation factor to be applied  
38 to the partner's entire net income excluding the partner's distributive  
39 share of the income of the limited partnership or foreign limited  
40 partnership, and then combining those two allocated amounts of net  
41 income to determine the portion of the partner's entire net income  
42 allocated to this State if the relationship between the partner and the  
43 limited partnership or foreign limited partnership is not unitary.

44 b. A limited partnership or foreign limited partnership that is not  
45 a qualified investment partnership and that has not obtained and  
46 retained the written consent of one or more of its partners that are not

1 corporations exempt from tax pursuant to section 3 of P.L.1945, c.162  
2 (C.54:10A-3), or individuals, trusts or estates subject to the "New  
3 Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, on or  
4 before the 15th day of the fourth month succeeding the close of each  
5 privilege period, remit a payment of tax equal to the nonconsenting  
6 partners' share of the entire net income of the limited partnership or  
7 foreign limited partnership for that privilege period, multiplied by an  
8 allocation factor determined, pursuant to section 6 of P.L.1945, c.162  
9 (C.54:10A-6), based on the allocation fractions of the limited  
10 partnership or foreign limited partnership for that privilege period,  
11 and multiplied by the maximum rate set forth at paragraph (1) of  
12 subsection (c) of section 5 of P.L.1945, c. 162 (C.54:10A-5) for that  
13 privilege period. The limited partnership or foreign limited partnership  
14 shall have the right, but not the obligation, to recover from the  
15 nonconsenting partners such payments made by the partnership.

16 c. An amount of tax paid by a limited partnership or foreign  
17 limited partnership pursuant to subsection b. of this section  
18 attributable to a nonconsenting partner shall be credited to the partner  
19 as of the date of its receipt by the director.

20

21 5. (New section) a. Notwithstanding the provisions of subsection  
22 (f) of section 15 of P.L.1945, c.162 (C.54:10A-15) to the contrary, a  
23 taxpayer that is a limited liability company or a foreign limited liability  
24 company subject to the provisions of subsection b. of section 3 of  
25 P.L. , c. (C. )(now pending before the Legislature as this bill)  
26 or that is a limited partnership or foreign limited partnership subject to  
27 the provisions of subsection b. of section 4 of P.L. , c. (C. )(now  
28 pending before the Legislature as this bill) shall, in addition to the tax  
29 payable pursuant to subsection b. of section 3 or subsection b. of  
30 section 4 of P.L. , c. (C. ), make an installment payment of its  
31 tax for the privilege period on or before the 15th day of the fourth  
32 month of the privilege period equal to the tax payable pursuant to  
33 subsection b. of section 3 or subsection b. of section 4 of P.L. ,  
34 c. (C. ). Any amount of tax paid pursuant to this subsection  
35 shall be credited against the tax paid pursuant to subsection b. of  
36 section 3 or subsection b. of section 4 of P.L. , c. (C. ).

37 b. Notwithstanding the provisions of section 5 of P.L.1981, c.184  
38 (C.54:10A-15.4) to the contrary, the amount of underpayment of an  
39 installment payment pursuant to subsection a. of this section shall, for  
40 the purposes of subsection e. of section 5 of P.L.1981, c.184, be the  
41 excess of 100% of the tax liability determined pursuant to subsection  
42 b. of section 3 or subsection b. of section 4 of P.L. , c. (C. )  
43 at the rates and other facts in effect for the privilege period but on the  
44 basis of the entire net income for the prior privilege period over the  
45 amount paid pursuant to subsection a. of this section; provided  
46 however, that if the taxpayer did not have a prior privilege period

1 consisting of a 12 month period, the amount of underpayment of an  
2 installment payment shall be the excess of 90% of the tax liability  
3 determined pursuant to subsection b. of section 3 or subsection b. of  
4 section 4 of P.L. , c. (C. ) for the current privilege period over  
5 the amount paid pursuant to subsection a. of this section.

6  
7 6. (New section) a. Notwithstanding the provisions of subsection  
8 of b. of section 3 of P.L. , c. (C. )(now pending before the  
9 Legislature as this bill) and the provisions of subsection b. of section  
10 4 of P.L. , c. (C. )(now pending before the Legislature as this  
11 bill), the liability of a taxpayer that is a limited liability company or a  
12 foreign limited liability company subject to the provisions of  
13 subsection b. of section 3 of P.L. , c. (C. ) or that is a limited  
14 partnership or foreign limited partnership subject to the provisions of  
15 subsection b. of section 4 of P.L. , c. (C. ) shall, for privilege  
16 periods beginning in calendar year 2001, be 45% of the amount  
17 otherwise due.

18 b. Notwithstanding the provisions of subsection of a. of section 5  
19 of P.L. , c. (C. )(now pending before the Legislature as this  
20 bill), no estimated payment shall be due from a taxpayer that is a  
21 limited liability company or a foreign limited liability company subject  
22 to the provisions of subsection b. of section 3 of P.L. , c. (C. )  
23 or that is a limited partnership or foreign limited partnership subject to  
24 the provisions of subsection b. of section 4 of P.L. , c. (C. )  
25 for privilege periods beginning in calendar year 2001.

26  
27 7. (New section) a. The director shall adopt regulations in  
28 accordance with the "Administrative Procedure Act," P.L.1968, c.410  
29 (C.52:14B-1 et seq.), and prescribe forms to administer the provisions  
30 of this act.

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

39  
40 8. This act shall take effect immediately and apply to privilege  
41 periods beginning on or after January 1, 2001.

42  
43  
44  
45 Concerns payment obligations of certain partnerships and limited  
46 liability companies and certain of their partners and members under the  
47 corporation business tax.

## CHAPTER 136

AN ACT concerning payment obligations of certain partnerships and limited liability companies and their partners and members under the corporation business tax, amending and supplementing P.L.1945, c.162.

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

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

C.54:10A-4 Definitions.

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 the 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 distributive 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) (Deleted by amendment, P.L.1998, c.114.)

(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, limited liability company, foreign limited liability company, limited partnership or foreign limited partnership required, or consenting, to report or to pay taxes, interest or penalties under this act. "Taxpayer" shall not include a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership that is listed on a United States national stock exchange.

(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, or, if the taxpayer is classified as a partnership for federal tax purposes, would otherwise be 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, a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia on or measured by profits or income, or business presence or business activity, 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) (Deleted by amendment, P.L.1995, c.418.)

(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, but prior to taxpayer fiscal or calendar accounting years beginning on and after the effective date of P.L.1993, c.172, 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. The provisions of this subparagraph shall not apply to assets placed in service prior to January 1, 1998 of a gas, gas and electric, and electric public utility that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998.

(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) (i) 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 omission of a person who was outside the reasonable control of the violator.

(ii) 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.

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

(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;

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

(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.

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

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

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

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

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

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

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

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

(10) Entire net income shall exclude all income of an alien corporation the activities of which are limited in this State to investing or trading in stocks and securities for its own account, investing or trading in commodities for its own account, or any combination of those activities, within the meaning

of section 864 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.864, as in effect on December 31, 1998. Notwithstanding the previous sentence, if an alien corporation undertakes one or more infrequent, extraordinary or non-recurring activities, including but not limited to the sale of tangible property, only the income from such infrequent, extraordinary or non-recurring activity shall be subject to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income subject to tax shall be determined without regard to the allocation to that specific transaction of any general business expense of the taxpayer and shall be specifically assigned to this State for taxation by this State without regard to section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this paragraph, "alien corporation" means a corporation organized under the laws of a jurisdiction other than the United States or its political subdivisions.

(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.s.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 and Insurance 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 and Insurance shall thereafter provide the applicable definitions.

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

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

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

(r) "Qualified investment partnership" means a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership treated as a partnership under this act that

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

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

C.54:10A-5 Franchise tax.

5. The franchise tax to be annually assessed to and paid by each taxpayer shall be the sum of the amount computed under subsection (a) hereof, or in the alternative to the amount computed under subsection (a) hereof, the amount computed under subsection (f) hereof, and the amount computed under subsection (c) hereof:

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

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

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

(c) (1) For a taxpayer that is not a New Jersey S corporation, 3 1/4% of its entire net income or such portion thereof as may be allocable to this State as provided in section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1967, the rate shall be 4 1/4%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 5 1/2%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 7 1/2%; and that with respect to reports covering privilege periods or parts thereof ending after December 31, 1979, the rate shall be 9%; provided however, that for a taxpayer that has entire net income of \$100,000 or less for a privilege period and is not a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership the rate for that privilege period shall be 7 1/2%.

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

(i) for privilege periods ending on or before June 30, 1998 the rate determined by subtracting the maximum tax bracket rate provided under N.J.S.54A:2-1 for the privilege period from the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this subsection for the privilege period; and

(ii) For a taxpayer that has entire net income in excess of \$100,000 for the privilege period, for privilege periods ending on or after July 1, 1998, but on or before June 30, 2001, the rate shall be 2%, for privilege periods ending on or after July 1, 2001, but on or before June 30, 2002, the rate shall be 1.33%,

for privilege periods ending on or after July 1, 2002, but on or before June 30, 2003, the rate shall be 0.67%, and

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

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

(iv) The taxpayer's rate determined under subparagraph (i), (ii) or (iii) of this paragraph shall be multiplied by its entire net income that is not subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

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

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

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

Period Beginning In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum
1994	\$ 50	\$100
1995	\$100	\$200
1996	\$150	\$200
1997	\$200	\$200

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

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

(g) Provided however, that the franchise tax annually assessed to and paid by a taxpayer:

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

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

C.54:10A-15.6 Provisions concerning certain limited, foreign limited liability companies, computation, allocation.

3. a. A limited liability company or foreign limited liability company that is classified as a partnership for federal income tax purposes may obtain and retain in its records for inspection by the director the consent of each of its members that are not corporations exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), or individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional requirements in a form prescribed by the Director of the Division of Taxation: that this State shall have the right and jurisdiction to tax and collect the tax, hereby imposed, on the entire net income of the member (1) based upon combining the respective numerators and denominators of the allocation fractions of the member with the member's share of the numerators and denominators of the limited liability company or foreign limited liability company to determine an allocation factor to be applied to the member's entire net income, including the member's distributive share of the company income, to determine the portion of the member's entire net income allocated to this State if the relationship between the member and limited liability company or foreign limited liability company is unitary, or (2) based upon separately using the allocation fractions of the limited liability company or foreign limited liability company to determine the allocation factor to be applied to the member's distributive share of the company income, using the allocation fractions of the member to determine the allocation factor to be applied to the member's entire net income excluding the member's distributive share of the income of the limited liability company or foreign limited liability company, and then combining those allocated amounts of net income to determine the portion of the member's entire net income allocated to this State if the relationship between the member and limited liability company or foreign limited liability company is not unitary.

b. A limited liability company or foreign limited liability company that is not a qualified investment partnership and that has not obtained and retained the written consent of one or more of its members that are not corporations exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), or individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax equal to the nonconsenting members' share of the entire net income of the limited liability company or foreign limited liability company for that privilege period, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the limited liability company or foreign limited liability company for that privilege period, and multiplied by the maximum rate set forth at paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) for that privilege period. The limited liability company or foreign limited liability company shall have the right, but not the obligation, to recover from the nonconsenting members such payments made by the company.

c. An amount of tax paid by a limited liability company or foreign limited liability company pursuant to subsection b. of this section attributable to a nonconsenting member shall be credited to the member as of the date of its receipt by the director.

C.54:10A-15.7 Provisions concerning certain limited, foreign limited partnerships, computation, allocation.

4. a. A limited partnership or foreign limited partnership that is classified as a partnership for federal income tax purposes may obtain and retain in its records for inspection by the director the consent of each of its partners that are not corporations exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), or individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional requirements in a form prescribed by the Director of the Division of Taxation: that this State shall have the right and jurisdiction to tax and collect the tax, hereby imposed, on the entire net income of the partner (1) based upon combining the respective numerators and denominators of the allocation fractions of the partner with the partner's share of the numerators and denominators of the limited partnership or foreign limited partnership to determine an allocation factor to be applied to the partner's entire net income, including the partner's distributive share of the partnership income, to determine the portion of the partner's entire net income allocated to this State if the relationship between the partner and limited partnership or foreign limited partnership is unitary, or (2) based upon separately using the allocation fractions of the limited partnership or foreign limited partnership to determine the allocation factor to be applied to the partner's distributive share of the partnership income, using the

allocation fractions of the partner to determine the allocation factor to be applied to the partner's entire net income excluding the partner's distributive share of the income of the limited partnership or foreign limited partnership, and then combining those two allocated amounts of net income to determine the portion of the partner's entire net income allocated to this State if the relationship between the partner and the limited partnership or foreign limited partnership is not unitary.

b. A limited partnership or foreign limited partnership that is not a qualified investment partnership and that has not obtained and retained the written consent of one or more of its partners that are not corporations exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), or individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax equal to the nonconsenting partners' share of the entire net income of the limited partnership or foreign limited partnership for that privilege period, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the limited partnership or foreign limited partnership for that privilege period, and multiplied by the maximum rate set forth at paragraph (1) of subsection (c) of section 5 of P.L.1945, c. 162 (C.54:10A-5) for that privilege period. The limited partnership or foreign limited partnership shall have the right, but not the obligation, to recover from the nonconsenting partners such payments made by the partnership.

c. An amount of tax paid by a limited partnership or foreign limited partnership pursuant to subsection b. of this section attributable to a nonconsenting partner shall be credited to the partner as of the date of its receipt by the director.

#### C.54:10A-15.8 Installment payments.

5. a. Notwithstanding the provisions of subsection (f) of section 15 of P.L.1945, c.162 (C.54:10A-15) to the contrary, a taxpayer that is a limited liability company or a foreign limited liability company subject to the provisions of subsection b. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or that is a limited partnership or foreign limited partnership subject to the provisions of subsection b. of section 4 of P.L.2001, c.136 (C.54:10A-15.7) shall, in addition to the tax payable pursuant to subsection b. of section 3 or subsection b. of section 4 of P.L.2001, c.136 (C.54:10A-15.6 or C.54:10A-15.7), make an installment payment of its tax for the privilege period on or before the 15th day of the fourth month of the privilege period equal to the tax payable pursuant to subsection b. of section 3 or subsection b. of section 4 of P.L.2001, c.136 (C.54:10A-15.6 or C.54:10A-15.7). Any amount of tax paid pursuant to this subsection shall be credited against the tax paid pursuant to subsection b. of section 3 or subsection b. of section 4 of P.L.2001, c.136 (C.54:10A-15.6 or C.54:10A-15.7).

b. Notwithstanding the provisions of section 5 of P.L.1981, c.184 (C.54:10A-15.4) to the contrary, the amount of underpayment of an installment payment pursuant to subsection a. of this section shall, for the purposes of subsection e. of section 5 of P.L.1981, c.184, be the excess of 100% of the tax liability determined pursuant to subsection b. of section 3 or subsection b. of section 4 of P.L.2001, c.136 (C.54:10A-15.6 or C.54:10A-15.7) at the rates and other facts in effect for the privilege period but on the basis of the entire net income for the prior privilege period over the amount paid pursuant to subsection a. of this section; provided however, that if the taxpayer did not have a prior privilege period consisting of a 12 month period, the amount of underpayment of an installment payment shall be the excess of 90% of the tax liability determined pursuant to subsection b. of section 3 or subsection b. of section 4 of P.L.2001, c.136 (C.54:10A-15.6 or C.54:10A-15.7) for the current privilege period over the amount paid pursuant to subsection a. of this section.

#### C.54:10A-15.9 Liability of taxpayers for privilege periods beginning in CY2001.

6. a. Notwithstanding the provisions of subsection b. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) and the provisions of subsection b. of section 4 of P.L.2001, c.136 (C.54:10A-15.7), the liability of a taxpayer that is a limited liability company or a foreign limited liability company subject to the provisions of subsection b. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or that is a limited partnership or foreign limited partnership subject to the provisions of subsection b. of section 4 of P.L.2001, c.136 (C.54:10A-15.7) shall, for privilege periods beginning in calendar year 2001, be 45% of the amount otherwise due.

b. Notwithstanding the provisions of subsection a. of section 5 of P.L.2001, c.136 (C.54:10A-15.8), no estimated payment shall be due from a taxpayer that is a limited liability company or a

foreign limited liability company subject to the provisions of subsection b. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or that is a limited partnership or foreign limited partnership subject to the provisions of subsection b. of section 4 of P.L.2001, c.136 (C.54:10A-15.7) for privilege periods beginning in calendar year 2001.

C.54:10A-15.10 Regulations, forms.

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

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

8. This act shall take effect immediately and apply to privilege periods beginning on or after January 1, 2001.

Approved June 29, 2001.



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*Office of the Governor*  
**NEWS RELEASE**

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RELEASE: June 29 , 2001

**Acting Governor Donald T. DiFrancesco signed the following legislation today:**

S-2450, sponsored by Senators Peter Inverso (R-Mercer/Middlesex) and John Matheussen(R-Camden/Gloucester) and Assemblymembers Nicholas Asselta (R-Cape May/Atlantic/Cumberland) and Joseph Azzolina (R-Middlesex/Monmouth), increases the retirement benefits under the Teachers' Pension and Annuity Fund (TPAF) and The Public Employees' Retirement System (PERS) for service, deferred and early retirement by changing the formula from 1/70 to 1/64 to final compensation for each year of Class A service and from 1/60 to 1/55 of final compensation for each year of Class B service.

The bill also increases the retirement benefit for TPAF and PERS veteran members with 35 or more years of service and reduces the age qualification from 60 to 55.

The bill also provides for a reduction in TPAF member contributions.

S-2465, sponsored by Assemblyman Joseph Malone (R-Burlington/Monmouth/Ocean) and Senator Walter Kavanaugh (R-Morris/Somerset), requires providers of goods and services to the State and its agencies or to casino licensees, and any subcontractor under those State and casino contracts, to register their businesses with the Division of Revenue.

S-1581, sponsored by Senators Gerald Cardinale (R-Bergen) and Richard Codey (R-Essex) and Assemblymen Kip Bateman (R-Morris/Somerset) and Joseph Doria (D-Hudson), allows an existing health service corporation, or any health corporation formed in the future, to convert from a non-profit health service to a for-profit domestic stock health insurer. As a condition of this conversion, the corporation is required to establish a charitable foundation and contribute to it the fair market value of the health service corporation at the time of the conversion to satisfy the charitable obligations of the converting corporation to the people of the State of New Jersey.

S-2298, sponsored by Senators Martha Bark (R-Atlantic/Burlington/Camden) and Bernard Kenny (D-Hudson) and Assemblymembers Paul DiGaetano (R-Bergen/Essex/Passaic) and Joseph Doria (D-Hudson), increases the membership of the Board of Public Utilities (BPU) from three to five members, no more than three of whom are to be of the same political party.

A-3045, sponsored by Senator Anthony Bucco (R-Morris) and Assemblyman Guy Gregg (R-Sussex/Hunterdon/Morris), closes a gap in the administration of the taxes imposed on the owners of limited partnerships and limited liability companies.