

# 54:10A-5

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2001                    **CHAPTER:** 23  
**NJSA:** 54:10A-5            (Eliminates corporation business tax on S corporations)  
**BILL NO:** A1846            (Substituted for S848)

**SPONSOR(S):** Gregg and Talarico

**DATE INTRODUCED:** January 24, 2000

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

**SENATE:** Commerce; Budget

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**            **ASSEMBLY:** January 29, 2001

**SENATE:** December 18, 2000

**DATE OF APPROVAL:** February 2, 2001

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (1st reprint enacted)

(Amendments during passage denoted by superscript numbers)

**A1846**

**SPONSORS STATEMENT:** (Begins on page 4 of original bill)            Yes

**COMMITTEE STATEMENT:**                            **ASSEMBLY:**            Yes    1/27/00  
(Commerce)

2/7/00 (Approp.)

**SENATE:**                            Yes    5/22/00  
(Commerce)

6/19/00 (Budget)

**FLOOR AMENDMENT STATEMENTS:**            Yes

**LEGISLATIVE FISCAL ESTIMATE:** Yes

**S848**

**SPONSORS STATEMENT:** (Begins on page 4 of original bill) Yes

Bill and Sponsors Statement identical to A1846

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

(Commerce)

**SENATE:** Yes 5/22/00

A1846

Identical to Assembly Commerce Statement for

6/19/00 (Budget)

**FLOOR AMENDMENT STATEMENTS:** Yes

**LEGISLATIVE FISCAL ESTIMATE:** Yes

**VETO MESSAGE:** No

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

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"DiFrancesco signs corporate tax cut measure," 2-3-2001 Asbury Park Press pA3

"Gov signs biz tax cut," 2-3-2001 Trentonian, p.12

"DiFrancesco cuts taxes after meet and greet," 2-3-2001 Star Ledger p.11

"First bill signed..." 2-3-2001 The Times, pA3

# ASSEMBLY, No. 1846

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JANUARY 24, 2000

**Sponsored by:**

**Assemblyman GUY R. GREGG**

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

**Assemblyman GUY F. TALARICO**

**District 38 (Bergen)**

**Co-Sponsored by:**

**Assemblymen LeFevre, Merkt, Barnes, Assemblywoman Buono,  
Assemblymen Garrett, Bateman, Arnone, Assemblywoman Greenstein and  
Assemblyman Thompson**

**SYNOPSIS**

Eliminates corporation business tax on regular income of S corporations.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/12/2000)**

1 AN ACT eliminating certain taxation of New Jersey S corporations  
 2 under the corporation business tax, amending P.L.1945, c.162.

3  
 4 **BE IT ENACTED** by the Senate and General Assembly of the State  
 5 of New Jersey:

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

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

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

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

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

30 (c) (1) For a taxpayer that is not a New Jersey S corporation,  
 31 3¼% of its entire net income or such portion thereof as may be  
 32 allocable to this State as provided in section 6 of P.L.1945, c.162  
 33 (C.54:10A-6); provided, however, that with respect to reports  
 34 covering accounting or privilege periods or parts thereof ending after  
 35 December 31, 1967, the rate shall be 4¼%; and that with respect to  
 36 reports covering accounting or privilege periods or parts thereof  
 37 ending after December 31, 1971, the rate shall be 5½%; and that with  
 38 respect to reports covering accounting or privilege periods or parts  
 39 thereof ending after December 31, 1974, the rate shall be 7½%; and  
 40 that with respect to reports covering accounting or privilege periods  
 41 or parts thereof ending after December 31, 1979, the rate shall be 9%;

**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 provided however, that for a taxpayer that has entire net income of  
2 \$100,000 or less for a privilege period the rate for that privilege period  
3 shall be 7½%.

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

11 (ii) For a taxpayer that has entire net income in excess of \$100,000  
12 for the privilege period, for privilege periods ending on or after July  
13 1, 1998, but on or before June 30, 2000, the rate shall be 2%, and for  
14 privilege periods ending on or after July 1, 2000 there shall be no rate  
15 of tax imposed under this paragraph, [provided however that for] and

16 (iii) For a taxpayer that has entire net income of \$100,000 or less  
17 for [a] privilege [period] periods ending on or after July 1, 1998, but  
18 on or before June 30, 2000, the rate for that privilege period shall be  
19 0.5%, and for privilege periods ending on or after July 1, 2000 there  
20 shall be no rate 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)[; plus].

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

36  
 37 2. This act shall take effect immediately.

38  
 39  
 40 STATEMENT

41  
 42 This bill eliminates the New Jersey corporate level taxation of the  
 43 "regular" income of New Jersey S corporations.

44 Subchapter S of the federal Internal Revenue Code allows a  
 45 corporation with 75 or fewer shareholders to elect special tax  
 46 treatment, including the exemption of most of its income from taxation

1 at the corporate level.

2 The majority of states with personal income taxes have provisions  
3 similar to that federal treatment. The 1993 New Jersey legislation that  
4 first established special New Jersey tax treatment for S corporations  
5 retained a corporate level tax. Under current law, S corporations with  
6 annual income in excess of \$100,000 are subject to a 2% tax rate on  
7 corporate net income and those with \$100,000 or less of income are  
8 subject to a 0.5% tax rate.

9 This bill eliminates the New Jersey corporate level taxation of the  
10 "regular" income of New Jersey S corporations (federal tax laws  
11 impose the full federal tax on some special types of S corporation  
12 income and recaptures, and under this bill New Jersey will maintain  
13 parallel treatment) for tax years ending on or after July 1, 2000.

14 The bill also makes a technical amendment to the minimum tax  
15 provision, which currently requires that the \$200 minimum tax be  
16 recomputed each 5 years to account for 75 % of inflation, to provide  
17 that the recomputation shall be rounded up to the nearest \$10.

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

STATEMENT TO

**ASSEMBLY, No. 1846**

**STATE OF NEW JERSEY**

DATED: JANUARY 27, 2000

The Assembly Commerce, Tourism, Gaming and Military and Veterans' Affairs Committee reports favorably Assembly Bill No. 1846.

This bill eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations.

Subchapter S of the federal Internal Revenue Code allows a corporation with 75 or fewer shareholders to elect special tax treatment, including the exemption of most of its income from taxation at the corporate level.

The majority of states with personal income taxes have provisions similar to that federal treatment. The 1993 New Jersey legislation that first established special New Jersey tax treatment for S corporations retained a corporate level tax. Under current law, S corporations with annual income in excess of \$100,000 are subject to a 2% tax rate on corporate net income and those with \$100,000 or less of income are subject to a 0.5% tax rate.

This bill eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations (federal tax laws impose the full federal tax on some special types of S corporation income and recaptures, and under this bill New Jersey will maintain parallel treatment) for tax years ending on or after July 1, 2000.

The bill also makes a technical amendment to the minimum tax provision, which currently requires that the \$200 minimum tax be recomputed each 5 years to account for 75% of inflation, to provide that the recomputation is to be rounded up to the nearest \$10.



ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1846**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 7, 2000

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1846.

Assembly Bill No. 1846 eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations.

Subchapter S of the federal Internal Revenue Code allows a corporation with 75 or fewer shareholders to elect special tax treatment, including the exemption of most of its income from taxation at the corporate level.

The majority of states with personal income taxes have provisions similar to that federal treatment. The 1993 New Jersey legislation that first established special New Jersey tax treatment for S corporations retained a corporate level tax. Under current law, S corporations with annual income in excess of \$100,000 are subject to a 2% tax rate on corporate net income and those with \$100,000 or less of income are subject to a 0.5% tax rate.

This bill eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations (federal tax laws impose the full federal tax on some special types of S corporation income and recaptures, and under this bill New Jersey will maintain parallel treatment) for tax years ending on or after July 1, 2000.

The bill also makes a technical amendment to the minimum tax provision, which currently requires that the \$200 minimum corporation business tax amount be recomputed each 5 years to account for 75 % of inflation, to provide that the recomputation shall be rounded up to the nearest \$10.

**FISCAL IMPACT:**

The Department of the Treasury estimated for similar legislation in the previous session (Senate Bill No. 2107 (1R) of 1998) that the amount of revenue loss would be \$72 million annually.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY, No. 1846**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: MARCH 23, 2000

**SUMMARY**

**Synopsis:** Eliminates corporation business tax on regular income of S corporations.

**Type of Impact:** Decrease in corporation business tax revenue to the General Fund

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

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	\$70 Million Loss	\$70 Million Loss	\$70 Million Loss

! The Office of Legislative Services (OLS) concurs with the Department of the Treasury estimate that anticipated General Fund revenue loss from the change in the taxation of S corporations would, net of the continued taxation of the special income of S corporations and the continued responsibility of those corporations to pay the minimum tax, be \$70 million annually.

! The OLS anticipates that the effects of rounding the minimum corporation business tax inflation adjustments will, apart from taxpayer and administrative convenience, be minimal.

**BILL DESCRIPTION**

Assembly Bill No. 1846 of 2000 eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations. Subchapter S of the federal Internal Revenue Code allows a corporation with 75 or fewer shareholders to elect special tax treatment, including the exemption of most of its income from taxation at the corporate level. Under current law, S corporations with annual income in excess of \$100,000 are subject to a 2 percent tax rate on corporate net income and those with \$100,000 or less of income are subject to a 0.5 percent tax rate.

This bill eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations (federal tax laws impose the full federal tax on some special types of S corporation income and recaptures, and under this bill New Jersey will maintain parallel treatment) for tax years ending on or after July 1, 2000.



The bill also makes a technical amendment to the corporation business tax minimum tax provision. Currently the \$200 minimum corporation business tax amount must be recomputed each 5 years to account for 75 percent of inflation; the bill provides that the recomputation shall be rounded up to the nearest \$10.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

While no Executive Branch analysis was received for this bill, the Department of the Treasury estimated for similar legislation in the previous session (Senate Bill No. 2107 (1R) of 1998) that the amount of General Fund revenue loss anticipated from the change in the taxation of S corporations would, net of the continued taxation of the special income of S corporations and the continued responsibility of those corporations to pay the minimum tax, be \$70 million annually.

The department noted that the S Corporation component of corporation business tax liability was \$112 million in return years 1996 and in 1997, the most recent available full years. Those years the tax rate was 2.63 percent; had it been the current 2 percent, liability would have been \$85.2 million each year. The number of Subchapter S corporation taxpayers in each of the 1996 and 1997 return years was 73,000. As each S corporation will still be required to file a return and pay the minimum \$200 tax for return years 2000 and 2001 (and a minimum tax recomputed to partially compensate for inflation in return year 2002), the State will still receive \$14.6 million (or more) even after the tax rate on the regular income of S corporations becomes zero. Therefore, the department estimates revenue loss after the phase-out as the \$85.2 million liability under current law less the \$14.6 million that the State will receive from the minimum tax, or \$70.6 million. However, the "special" income of S corporations will continue to be taxed at the full corporation business tax rates under the bill. This type of special income yielded \$635,000 in tax revenue for return year 1997 and was assumed for purposes of the department's estimate to remain constant. Therefore, the department estimates annual revenue loss at \$70 million.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concurs with the Treasury estimate, and notes that the minimum corporation business tax amount is scheduled to be partially adjusted for inflation for return year 2002 and thereafter. Although the magnitude of the adjustment cannot be predicted with any accuracy at this time, an anticipated increase in the amount of the minimum tax would decrease the amount of revenue loss from the bill.

Section: *Revenue, Finance and Appropriations*  
Analyst: *Philip N. Liloia*  
*Lead Counsel*  
Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

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

SENATE COMMERCE COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1846**

**STATE OF NEW JERSEY**

DATED: MAY 22, 2000

The Senate Commerce Committee reports favorably Assembly Bill No. 1846.

This bill eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations.

Subchapter S of the federal Internal Revenue Code allows a corporation with 75 or fewer shareholders to elect special tax treatment, including the exemption of most of its income from taxation at the corporate level.

The majority of states with personal income taxes have provisions similar to that federal treatment. The 1993 New Jersey legislation that first established special New Jersey tax treatment for S corporations retained a corporate level tax. Under current law, S corporations with annual income in excess of \$100,000 are subject to a 2% tax rate on corporate net income and those with \$100,000 or less of income are subject to a 0.5% tax rate.

This bill eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations (federal tax laws impose the full federal tax on some special types of S corporation income and recaptures, and under this bill New Jersey will maintain parallel treatment) for tax years ending on or after July 1, 2000.

The bill also makes a technical amendment to the minimum tax provision, which currently requires that the \$200 minimum corporation business tax amount be recomputed each 5 years to account for 75 % of inflation, to provide that the recomputation shall be rounded up to the nearest \$10.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 1846

# STATE OF NEW JERSEY

DATED: JUNE 19, 2000

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1846.

This bill eliminates New Jersey's taxation, at the corporate level, of the "regular" income of New Jersey S corporations.

Subchapter S of the federal Internal Revenue Code allows a corporation with 75 or fewer shareholders to elect special federal tax treatment, including the exemption of most of its income from taxation at the corporate level.

The majority of states with personal income taxes have provisions similar to that federal treatment. The 1993 New Jersey legislation that first established special New Jersey tax treatment for S corporations retained a corporate-level tax. Under current law, S corporations with annual income in excess of \$100,000 are subject to a 2% tax rate on corporate net income and those with \$100,000 or less of income are subject to a 0.5% tax rate.

This bill eliminates the New Jersey corporate-level taxation of the "regular" income of New Jersey S corporations for tax years ending on or after July 1, 2000. Federal tax laws impose the full federal tax on some special types of S corporation income and recaptures, and under this bill New Jersey will maintain parallel treatment.

The bill also makes a technical amendment to the minimum tax provision, which currently requires that the \$200 minimum corporation business tax amount be recomputed each 5 years to account for 75% of inflation, to provide that the recomputation shall be rounded up to the nearest \$10.

The provisions of this bill are identical to those of Senate Bill No. 848, which the committee also reports this day.

#### FISCAL IMPACT

The Department of the Treasury has estimated for similar legislation in the previous session (Senate Bill No. 2107 (1R) of 1998) that the amount of General Fund revenue loss anticipated from the change in the taxation of S corporations would, net of the continued taxation of the special income of S corporations and the continued responsibility of those corporations to pay the minimum tax, be \$70 million annually.

The department noted that the S corporation component of

corporation business tax liability was \$112 million in return years 1996 and in 1997, the most recent available full years. In those years, the tax rate was 2.63 percent; had it been the current 2 percent, liability would have been \$85.2 million in each year. The number of subchapter S corporation taxpayers in each of the 1996 and 1997 return years was 73,000. As each S corporation will still be required to file a return and pay the minimum \$200 tax for return years 2000 and 2001 (and a minimum tax recomputed to partially compensate for inflation in return year 2002), the State will still receive \$14.6 million (or more) even after the tax rate on the regular income of S corporations becomes zero. Therefore, the department estimates revenue loss after the phase-out as the \$85.2 million liability under current law less the \$14.6 million that the State will receive from the minimum tax, or \$70.6 million. However, the "special" income of S corporations will continue to be taxed at the full corporation business tax rates under the bill. This type of special income yielded \$635,000 in tax revenue for return year 1997 and was assumed for purposes of the department's estimate to remain constant. Therefore, the department estimates annual revenue loss at \$70 million.

The Office of Legislative Services concurs with the Treasury estimate, and notes that the minimum corporation business tax amount is scheduled to be partially adjusted for inflation for return year 2002 and thereafter. Although the magnitude of the adjustment cannot be predicted with any accuracy at this time, an anticipated increase in the amount of the minimum tax would decrease the amount of revenue loss from the bill.

**STATEMENT TO**  
**ASSEMBLY, No. 1846**

with Senate Floor Amendments  
(Proposed By Senator BUCCO)

ADOPTED: DECEMBER 4, 2000

This amendment provides a three year phase-out of the corporate level taxation of the "regular" income of S corporations with annual income in excess of \$100,000.

Without the amendment, the bill eliminates the New Jersey corporate-level taxation of the "regular" income of New Jersey S corporations for New Jersey privilege periods ending after July 1, 2000( Federal tax laws impose the full federal tax on some special types of S corporation income, and the bill maintains a parallel treatment of full New Jersey rate taxation of that special income). For most taxpayers, that means that the tax would be eliminated for Tax Year 2000, the current tax year, affecting the liabilities paid in the current State fiscal year, Fiscal Year 2000-2001.

This amendment instead lowers the corporation business tax rate on S corporations with annual income in excess of \$100,000 to 1.33% for New Jersey privilege periods ending after July 1, 2001 and to 0.67% for New Jersey privilege periods ending on or after July 1, 2002 eliminating the tax completely for New Jersey privilege periods ending on or after July 1, 2003 For S corporations with annual income of \$100,000 or less, the bill eliminates the tax on "regular" income for tax years ending on or after July 1, 2001

[First Reprint]

**ASSEMBLY, No. 1846**

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

INTRODUCED JANUARY 24, 2000

**Sponsored by:**

**Assemblyman GUY R. GREGG**

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

**Assemblyman GUY F. TALARICO**

**District 38 (Bergen)**

**Co-Sponsored by:**

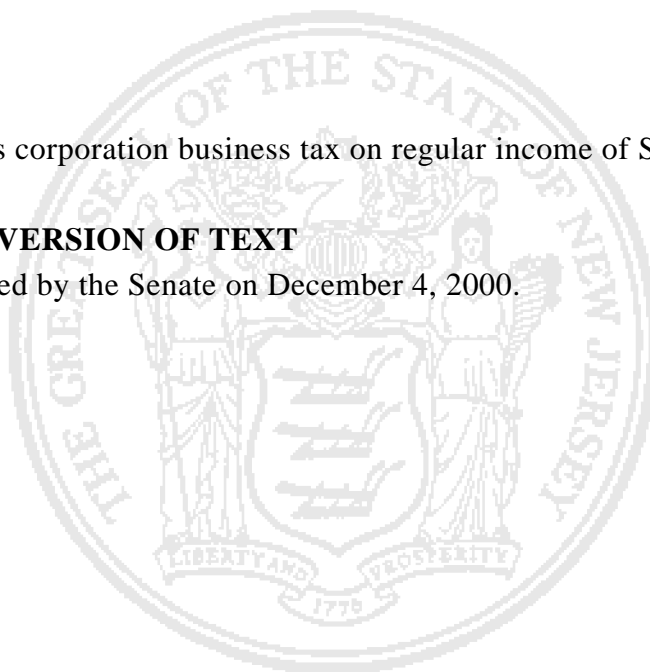
**Assemblymen LeFevre, Merkt, Barnes, Assemblywoman Buono,  
Assemblymen Garrett, Bateman, Arnone, Assemblywoman Greenstein,  
Assemblyman Thompson, Senators Bucco, Inverso, Cardinale, Bark,  
Bryant, Kyrillos, Littell, Robertson, Allen, Adler, Kosco, Singer, Sinagra,  
Matheussen, Turner and Assemblywoman Heck**

**SYNOPSIS**

Eliminates corporation business tax on regular income of S corporations.

**CURRENT VERSION OF TEXT**

As amended by the Senate on December 4, 2000.



**(Sponsorship Updated As Of: 1/30/2001)**



1 AN ACT eliminating certain taxation of New Jersey S corporations  
 2 under the corporation business tax, amending P.L.1945, c.162.

3  
 4 **BE IT ENACTED** by the Senate and General Assembly of the State  
 5 of New Jersey:

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

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

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

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

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

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

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate floor amendments adopted December 4, 2000.

1 or parts thereof ending after December 31, 1979, the rate shall be 9%;  
2 provided however, that for a taxpayer that has entire net income of  
3 \$100,000 or less for a privilege period the rate for that privilege period  
4 shall be 7 1/2%.

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

12 ~~(ii) For a taxpayer that has entire net income in excess of \$100,000~~  
13 ~~for the privilege period,~~ for privilege periods ending on or after  
14 July 1, 1998, ~~but on or before~~ <sup>1</sup>~~[June 30, 2000]~~ ~~June 30, 2001~~ <sup>1</sup>, the  
15 rate shall be 2%, <sup>1</sup>~~[and]~~<sup>1</sup>

16 ~~for privilege periods ending on or after~~ <sup>1</sup> ~~[July 1, 2000]~~ ~~July 1,~~  
17 ~~2001, but on or 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~~<sup>1</sup> ~~there shall be~~  
21 ~~no rate of tax imposed under this paragraph,~~ [provided however that  
22 for] and

23 ~~(iii) For a taxpayer that has entire net income of \$100,000 or less~~  
24 ~~for [a] privilege [period] periods ending on or after July 1, 1998, but~~  
25 ~~on or before~~ <sup>1</sup>~~[June 30, 2000,]~~ ~~June 30, 2001~~ <sup>1</sup> the rate for that  
26 privilege period shall be 0.5%, and ~~for privilege periods ending on or~~  
27 ~~after~~ <sup>1</sup>~~[July 1, 2000]~~ ~~July 1, 2001~~ <sup>1</sup> ~~there shall be no rate of tax~~  
28 ~~imposed under this paragraph.~~

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

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

43 (d) Provided, however, that the franchise tax to be annually  
44 assessed to and paid by any investment company or real estate  
45 investment trust, which has elected to report as such and has filed its

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

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

21	Period Beginning	Domestic	Foreign
22	In Calendar Year	Corporation	Corporation
23		Minimum Tax	Minimum
24	1994	\$ 50	\$100
25	1995	\$100	\$200
26	1996	\$150	\$200
27	1997	\$200	\$200

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

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

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

45

46 2. This act shall take effect immediately.

# SENATE, No. 848

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JANUARY 31, 2000

**Sponsored by:**

**Senator ANTHONY R. BUCCO**

**District 25 (Morris)**

**Senator PETER A. INVERSO**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

**Senators Cardinale, Bark, Bryant, Kyrillos, Littell, Robertson, Allen,  
Adler, Kosco, Singer, Sinagra and Matheussen**

**SYNOPSIS**

Eliminates corporation business tax on regular income of S corporations.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/5/2000)**

S848 BUCCO, INVERSO

1 AN ACT eliminating certain taxation of New Jersey S corporations  
2 under the corporation business tax, amending P.L.1945, c.162.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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

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

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

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

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

30 (c) (1) For a taxpayer that is not a New Jersey S corporation,  
31 3¼% of its entire net income or such portion thereof as may be  
32 allocable to this State as provided in section 6 of P.L.1945, c.162  
33 (C.54:10A-6); provided, however, that with respect to reports  
34 covering accounting or privilege periods or parts thereof ending after  
35 December 31, 1967, the rate shall be 41/4%; and that with respect to  
36 reports covering accounting or privilege periods or parts thereof  
37 ending after December 31, 1971, the rate shall be 51/2%; and that with  
38 respect to reports covering accounting or privilege periods or parts  
39 thereof ending after December 31, 1974, the rate shall be 71/2%; and  
40 that with respect to reports covering accounting or privilege periods  
41 or parts thereof ending after December 31, 1979, the rate shall be 9%;

**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 provided however, that for a taxpayer that has entire net income of  
2 \$100,000 or less for a privilege period the rate for that privilege period  
3 shall be 7 1/2%.

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

11 (ii) For a taxpayer that has entire net income in excess of \$100,000  
12 for the privilege period, for privilege periods ending on or after July  
13 1, 1998, but on or before June 30, 2000, the rate shall be 2%, and for  
14 privilege periods ending on or after July 1, 2000 there shall be no rate  
15 of tax imposed under this paragraph. [provided however that for] and

16 (iii) For a taxpayer that has entire net income of \$100,000 or less  
17 for [a] privilege [period] periods ending on or after July 1, 1998, but  
18 on or before June 30, 2000, the rate for that privilege period shall be  
19 0.5%, and for privilege periods ending on or after July 1, 2000 there  
20 shall be no rate 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)[; plus].

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

36  
 37 2. This act shall take effect immediately.

38  
 39  
 40 STATEMENT

41  
 42 This bill eliminates the New Jersey corporate level taxation of the  
 43 "regular" income of New Jersey S corporations.

44 Subchapter S of the federal Internal Revenue Code allows a  
 45 corporation with 75 or fewer shareholders to elect special tax

1 treatment, including the exemption of most of its income from taxation  
2 at the corporate level.

3 The majority of states with personal income taxes have provisions  
4 similar to that federal treatment. The 1993 New Jersey legislation that  
5 first established special New Jersey tax treatment for S corporations  
6 retained a corporate level tax. Under current law, S corporations with  
7 annual income in excess of \$100,000 are subject to a 2% tax rate on  
8 corporate net income and those with \$100,000 or less of income are  
9 subject to a 0.5% tax rate.

10 This bill eliminates the New Jersey corporate level taxation of the  
11 "regular" income of New Jersey S corporations (federal tax laws  
12 impose the full federal tax on some special types of S corporation  
13 income and recaptures, and under this bill New Jersey will maintain  
14 parallel treatment) for tax years ending on or after July 1, 2000.

15 The bill also makes a technical amendment to the minimum tax  
16 provision, which currently requires that the \$200 minimum tax be  
17 recomputed each 5 years to account for 75 % of inflation, to provide  
18 that the recomputation shall be rounded up to the nearest \$10.



**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 848**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: MARCH 21, 2000

**SUMMARY**

**Synopsis:** Eliminates corporation business tax on regular income of S corporations.

**Type of Impact:** Decrease in corporation business tax revenue to the General Fund

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

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	\$70 Million Loss	\$70 Million Loss	\$70 Million Loss

! The Office of Legislative Services (OLS) concurs with the Department of the Treasury estimate that anticipated General Fund revenue loss from the change in the taxation of S corporations would, net of the continued taxation of the special income of S corporations and the continued responsibility of those corporations to pay the minimum tax, be \$70 million annually.

! The OLS anticipates that the effects of rounding the minimum corporation business tax inflation adjustments will, apart from taxpayer and administrative convenience, be minimal.

**BILL DESCRIPTION**

Senate Bill No. 848 of 2000 eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations. Subchapter S of the federal Internal Revenue Code allows a corporation with 75 or fewer shareholders to elect special tax treatment, including the exemption of most of its income from taxation at the corporate level. Under current law, S corporations with annual income in excess of \$100,000 are subject to a 2 percent tax rate on corporate net income and those with \$100,000 or less of income are subject to a 0.5 percent tax rate.

This bill eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations (federal tax laws impose the full federal tax on some special types of S corporation income and recaptures, and under this bill New Jersey will maintain parallel treatment) for tax years ending on or after July 1, 2000.

The bill also makes a technical amendment to the corporation business tax minimum tax provision. Currently the \$200 minimum corporation business tax amount must be recomputed each 5 years to account for 75 percent of inflation; the bill provides that the recomputation shall be rounded up to the nearest \$10.

## FISCAL ANALYSIS

### *EXECUTIVE BRANCH*

While no Executive Branch analysis was received for this bill, the Department of the Treasury estimated for similar legislation in the previous session (Senate Bill No. 2107 (1R) of 1998) that the amount of General Fund revenue loss anticipated from the change in the taxation of S corporations would, net of the continued taxation of the special income of S corporations and the continued responsibility of those corporations to pay the minimum tax, be \$70 million annually.

The department noted that the S Corporation component of corporation business tax liability was \$112 million in return years 1996 and in 1997, the most recent available full years. Those years the tax rate was 2.63 percent; had it been the current 2 percent, liability would have been \$85.2 million in each year. The number of Subchapter S corporation taxpayers in each of the 1996 and 1997 return years was 73,000. As each S corporation will still be required to file a return and pay the minimum \$200 tax for return years 2000 and 2001 (and a minimum tax recomputed to partially compensate for inflation in return year 2002), the State will still receive \$14.6 million (or more) even after the tax rate on the regular income of S corporations becomes zero. Therefore, the department estimates revenue loss after the phase-out as the \$85.2 million liability under current law less the \$14.6 million that the State will receive from the minimum tax, or \$70.6 million. However, the "special" income of S corporations will continue to be taxed at the full corporation business tax rates under the bill. This type of special income yielded \$635,000 in tax revenue for return year 1997 and was assumed for purposes of the department's estimate to remain constant. Therefore, the department estimates annual revenue loss at \$70 million.

### *OFFICE OF LEGISLATIVE SERVICES*

The OLS concurs with the Treasury estimate, and notes that the minimum corporation business tax amount is scheduled to be partially adjusted for inflation for return year 2002 and thereafter. Although the magnitude of the adjustment cannot be predicted with any accuracy at this time, an anticipated increase in the amount of the minimum tax would decrease the amount of revenue loss from the bill.

Section: *Revenue, Finance and Appropriations*

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

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

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

SENATE COMMERCE COMMITTEE

STATEMENT TO

**SENATE, No. 848**

**STATE OF NEW JERSEY**

DATED: MAY 22, 2000

The Senate Commerce Committee reports favorably Senate Bill No. 848.

This bill eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations.

Subchapter S of the federal Internal Revenue Code allows a corporation with 75 or fewer shareholders to elect special tax treatment, including the exemption of most of its income from taxation at the corporate level.

The majority of states with personal income taxes have provisions similar to that federal treatment. The 1993 New Jersey legislation that first established special New Jersey tax treatment for S corporations retained a corporate level tax. Under current law, S corporations with annual income in excess of \$100,000 are subject to a 2% tax rate on corporate net income and those with \$100,000 or less of income are subject to a 0.5% tax rate.

This bill eliminates the New Jersey corporate level taxation of the "regular" income of New Jersey S corporations (federal tax laws impose the full federal tax on some special types of S corporation income and recaptures, and under this bill New Jersey will maintain parallel treatment) for tax years ending on or after July 1, 2000.

The bill also makes a technical amendment to the minimum tax provision, which currently requires that the \$200 minimum corporation business tax amount be recomputed each 5 years to account for 75 % of inflation, to provide that the recomputation shall be rounded up to the nearest \$10.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 848

# STATE OF NEW JERSEY

DATED: JUNE 19, 2000

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 848.

This bill eliminates New Jersey's taxation, at the corporate level, of the "regular" income of New Jersey S corporations.

Subchapter S of the federal Internal Revenue Code allows a corporation with 75 or fewer shareholders to elect special federal tax treatment, including the exemption of most of its income from taxation at the corporate level.

The majority of states with personal income taxes have provisions similar to that federal treatment. The 1993 New Jersey legislation that first established special New Jersey tax treatment for S corporations retained a corporate-level tax. Under current law, S corporations with annual income in excess of \$100,000 are subject to a 2% tax rate on corporate net income and those with \$100,000 or less of income are subject to a 0.5% tax rate.

This bill eliminates the New Jersey corporate-level taxation of the "regular" income of New Jersey S corporations for tax years ending on or after July 1, 2000. Federal tax laws impose the full federal tax on some special types of S corporation income and recaptures, and under this bill New Jersey will maintain parallel treatment.

The bill also makes a technical amendment to the minimum tax provision, which currently requires that the \$200 minimum corporation business tax amount be recomputed each five years to account for 75% of inflation, to provide that the recomputation shall be rounded up to the nearest \$10.

The provisions of this bill are identical to those of Assembly Bill No. 1846, which the committee also reports this day.

#### FISCAL IMPACT

The Department of the Treasury has estimated for similar legislation in the previous session (Senate Bill No. 2107 (1R) of 1998) that the amount of General Fund revenue loss anticipated from the change in the taxation of S corporations would, net of the continued taxation of the special income of S corporations and the continued responsibility of those corporations to pay the minimum tax, be \$70 million annually.

The department noted that the S corporation component of

corporation business tax liability was \$112 million in return years 1996 and in 1997, the most recent available full years. In those years, the tax rate was 2.63 percent; had it been the current 2 percent, liability would have been \$85.2 million in each year. The number of subchapter S corporation taxpayers in each of the 1996 and 1997 return years was 73,000. As each S corporation will still be required to file a return and pay the minimum \$200 tax for return years 2000 and 2001 (and a minimum tax recomputed to partially compensate for inflation in return year 2002), the State will still receive \$14.6 million (or more) even after the tax rate on the regular income of S corporations becomes zero. Therefore, the department estimates revenue loss after the phase-out as the \$85.2 million liability under current law less the \$14.6 million that the State will receive from the minimum tax, or \$70.6 million. However, the "special" income of S corporations will continue to be taxed at the full corporation business tax rates under the bill. This type of special income yielded \$635,000 in tax revenue for return year 1997 and was assumed for purposes of the department's estimate to remain constant. Therefore, the department estimates annual revenue loss at \$70 million.

The Office of Legislative Services concurs with the Treasury estimate, and notes that the minimum corporation business tax amount is scheduled to be partially adjusted for inflation for return year 2002 and thereafter. Although the magnitude of the adjustment cannot be predicted with any accuracy at this time, an anticipated increase in the amount of the minimum tax would decrease the amount of revenue loss from the bill.

STATEMENT TO  
**SENATE, No. 848**

with Senate Floor Amendments  
(Proposed By BUCCO)

ADOPTED: DECEMBER 4, 2000

This amendment provides a three year phase-out of the corporate level taxation of the "regular" income of S corporations with annual income in excess of \$100,000.

Without the amendment, the bill eliminates the New Jersey corporate-level taxation of the "regular" income of New Jersey S corporations for New Jersey privilege periods ending after July 1, 2000( Federal tax laws impose the full federal tax on some special types of S corporation income, and the bill maintains a parallel treatment of full New Jersey rate taxation of that special income). For most taxpayers, that means that the tax would be eliminated for Tax Year 2000, the current tax year, affecting the liabilities paid in the current State fiscal year, Fiscal Year 2000-2001.

This amendment instead lowers the corporation business tax rate on S corporations with annual income in excess of \$100,000 to 1.33% for New Jersey privilege periods ending after July 1, 2001 and to 0.67% for New Jersey privilege periods ending on or after July 1, 2002 eliminating the tax completely for New Jersey privilege periods ending on or after July 1, 2003 For S corporations with annual income of \$100,000 or less, the bill eliminates the tax on "regular" income for tax years ending on or after July 1, 2001

[First Reprint]

**SENATE, No. 848**

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

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INTRODUCED JANUARY 31, 2000

**Sponsored by:**

**Senator ANTHONY R. BUCCO**

**District 25 (Morris)**

**Senator PETER A. INVERSO**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

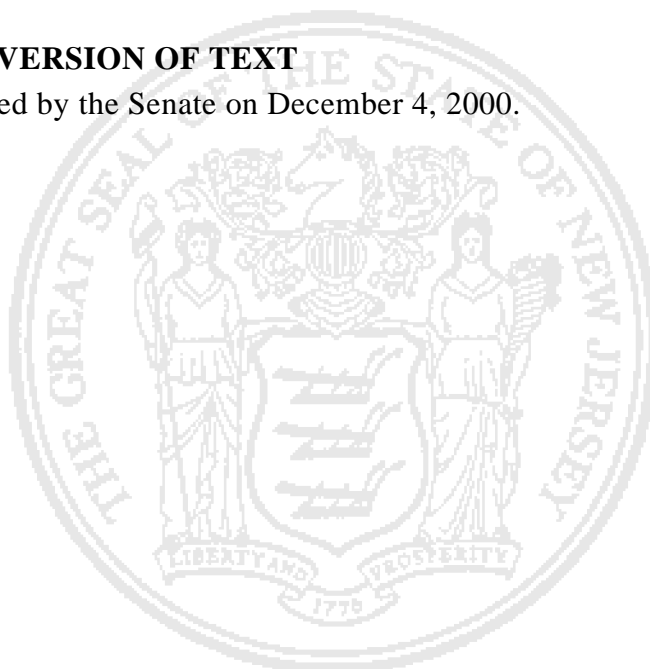
**Senators Cardinale, Bark, Bryant, Kyrillos, Littell, Robertson, Allen,  
Adler, Kosco, Singer, Sinagra, Matheussen and Turner**

**SYNOPSIS**

Eliminates corporation business tax on regular income of S corporations.

**CURRENT VERSION OF TEXT**

As amended by the Senate on December 4, 2000.



**(Sponsorship Updated As Of: 12/19/2000)**

1 AN ACT eliminating certain taxation of New Jersey S corporations  
2 under the corporation business tax, amending P.L.1945, c.162.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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

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

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

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

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

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

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Senate floor amendments adopted December 4, 2000.**



1 provided however, that for a taxpayer that has entire net income of  
2 \$100,000 or less for a privilege period the rate for that privilege period  
3 shall be 7 1/2%.

4 (2) <sup>1</sup>~~[(i)]~~<sup>1</sup> For a taxpayer that is a New Jersey S corporation <sup>1</sup>~~[.]~~;  
5 ~~(i)~~<sup>1</sup> for privilege periods ending on or before June 30, 1998 the  
6 rate determined by subtracting the maximum tax bracket rate provided  
7 under N.J.S.54A:2-1 for the privilege period from the tax rate that  
8 would otherwise be applicable to the taxpayer's entire net income for  
9 the privilege period if the taxpayer were not an S corporation provided  
10 under paragraph (1) of this subsection for the privilege period; and

11 ~~(ii) For a taxpayer that has entire net income in excess of \$100,000~~  
12 ~~for the privilege period, for privilege periods ending on or after July~~  
13 ~~1, 1998, but on or before~~ <sup>1</sup>~~[June 30, 2000]~~~~June 30, 2001~~ <sup>1</sup> , the rate  
14 shall be 2%, <sup>1</sup>~~[and]~~<sup>1</sup>

15 ~~for privilege periods ending on or after~~ <sup>1</sup> ~~[July 1, 2000]~~ ~~July 1,~~  
16 ~~2001, but on or before June 30, 2002, the rate shall be 1.33%,~~

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

19 ~~for privilege periods ending on or after July 1, 2003~~ <sup>1</sup> ~~there shall~~  
20 ~~be no rate of tax imposed under this paragraph.~~ ~~[provided however~~  
21 ~~that for]~~ ~~and~~

22 ~~(iii) For a taxpayer that has entire net income of \$100,000 or less~~  
23 ~~for [a] privilege [period]~~~~periods ending on or after July 1, 1998, but~~  
24 ~~on or before~~ <sup>1</sup>~~[June 30, 2000,]~~ ~~June 30, 2001~~ <sup>1</sup> the rate for that  
25 privilege period shall be 0.5%, ~~and for privilege periods ending on or~~  
26 ~~after~~ <sup>1</sup>~~[July 1, 2000]~~ ~~July 1, 2001~~ <sup>1</sup> ~~there shall be no rate of tax~~  
27 ~~imposed under this paragraph.~~

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

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

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

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

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

19	20	21	22
	Period Beginning	Domestic	Foreign
	In Calendar Year	Corporation	Corporation
		Minimum Tax	Minimum
23	1994	\$ 50	\$100
24	1995	\$100	\$200
25	1996	\$150	\$200
26	1997	\$200	\$200

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

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

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

44

45 2. This act shall take effect immediately.

P.L. 2001, CHAPTER 23, *approved February 2, 2001*  
Assembly, No. 1846 (*First Reprint*)

1 **AN ACT** eliminating certain taxation of New Jersey S corporations  
2 under the corporation business tax, amending P.L.1945, c.162.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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

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

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

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

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

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

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate floor amendments adopted December 4, 2000.

1 thereof ending after December 31, 1974, the rate shall be 7 1/2%; and  
2 that with respect to reports covering accounting or privilege periods  
3 or parts thereof ending after December 31, 1979, the rate shall be 9%;  
4 provided however, that for a taxpayer that has entire net income of  
5 \$100,000 or less for a privilege period the rate for that privilege period  
6 shall be 7 1/2%.

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

14 (ii) For a taxpayer that has entire net income in excess of \$100,000  
15 for the privilege period, for privilege periods ending on or after  
16 July 1, 1998, but on or before <sup>1</sup>[June 30, 2000]June 30, 2001<sup>1</sup>, the  
17 rate shall be 2%, <sup>1</sup>[and]<sup>1</sup>

18 for privilege periods ending on or after<sup>1</sup> [July 1, 2000] July 1,  
19 2001, but on or before June 30, 2002, the rate shall be 1.33%.

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

22 for privilege periods ending on or after July 1, 2003<sup>1</sup> there shall be  
23 no rate of tax imposed under this paragraph, [provided however that  
24 for] and

25 (iii) For a taxpayer that has entire net income of \$100,000 or less  
26 for [a] privilege [period]periods ending on or after July 1, 1998, but  
27 on or before <sup>1</sup>[June 30, 2000,] June 30, 2001 the rate for that  
28 privilege period shall be 0.5%, and for privilege periods ending on or  
29 after <sup>1</sup>[July 1, 2000] July 1, 2001<sup>1</sup> there shall be no rate of tax  
30 imposed under this paragraph.

31 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or  
32 (iii) of this paragraph shall be multiplied by its entire net income that  
33 is not 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)[; plus].

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

45 (d) Provided, however, that the franchise tax to be annually

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

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

23	Period Beginning	Domestic	Foreign
24	In Calendar Year	Corporation	Corporation
25		Minimum Tax	Minimum
26	1994	\$ 50	\$100
27	1995	\$100	\$200
28	1996	\$150	\$200
29	1997	\$200	\$200

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

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

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

1       2. This act shall take effect immediately.

2

3

4

\_\_\_\_\_

5

6 Eliminates corporation business tax on regular income of S  
7 corporations.

CHAPTER 23

AN ACT eliminating certain taxation of New Jersey S corporations under the corporation business tax, amending P.L.1945, c.162.

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

1. 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, 31/4% 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 41/4%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 51/2%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 71/2%; and that with respect to reports covering accounting or 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 the rate for that privilege period shall be 71/2%.

(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 Tax
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.

2. This act shall take effect immediately.

Approved February 2, 2001.



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

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RELEASE: February 2 , 2001

**Small Businesses to Reap Benefits of Tax Cut  
DiFrancesco Sets Tone With First Bill Signing**

Acting Governor Donald T. DiFrancesco today signed legislation giving small businesses in New Jersey a tax break. Noting that this is the first bill he has signed since becoming Acting Governor, DiFrancesco said the bill will phase-out the 2 percent corporate-level tax on the regular income of S corporations with incomes in excess of \$100,000 and eliminate it for those with incomes of \$100,000 or less this year.

"A Governor's first bill signing can set the tone for the administration," said DiFrancesco. "I certainly intend for mine to do that. The bill I sign today will put money back into the pockets of job-creating small businesses. This will mark the 52nd tax cut to become law since I became Senate President. This tax cut is a matter of fairness. It is also a matter of economic wisdom. We need small businesses to stay in New Jersey, creating jobs, and helping our economy grow."

"This legislation removes one headache for shareholders of small businesses known by the federal code as S corporations," said DiFrancesco. "These business people deserve credit for the jobs they have created and the opportunities they have given to hard-working New Jerseyans. These business people also deserve an end to the system of double taxation they now face: taxed once on their corporate income and then once again on their own income."

About 73,000 S corporations pay taxes in New Jersey. S corporations are corporations with 75 or fewer shareholders with each shareholder holding an equal share in the company. This bill, A-1846, sponsored by Assemblymen Gregg (R-Sussex/Hunterdon/Morris) and Talarico (R-Bergen) and Senators Bucco (R-Morris) and Inverso (R-Mercer/ Middlesex), will prevent them from being double taxed. Under the provisions of the bill the current 2 percent tax on regular income of New Jersey S corporations with income in excess of \$100,000 will be phased out over three years. For periods ending after July 1, 2001 the tax will be lowered to 1.33 percent and to .67 percent for periods ending on or after July 1, 2002. For periods ending on or after July 1, 2003 the tax will be eliminated completely. For those S corporations who have an income of \$100,000 or less, the bill signed today eliminates the tax on regular income for tax years beginning on or after July 1, 2001.