

54:10A-4

LEGISLATIVE HISTORY CHECKLIST

NJSA: 54:10A-4

(Corporation Income Tax--permit carry over of net operating losses as a deduction)

LAWS OF: 1985

CHAPTER: 143

Bill No: A165, A264, A587, A2144 and A2243

Sponsor(s): Kalik

Date Introduced: Pre-filed

Committee: Assembly: Revenue, Finance and Appropriations

Senate: Revenue, Finance and Appropriations

Amended during passage: Yes Assembly Committee Substitute enacted.

Date of Passage: Assembly: January 24, 1985

Senate: September 20, 1984

Date of Approval: April 17, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: Yes

Hearings: No

See newspaper clippings--attached:

(OVER)

"New tax break expected to save business millions..."4-23-85 Star Ledger.
"Tax loss bill waits for Kean's answer, 4-21-85 Star Ledger.

974.90 New Jersey Governor's Commission on Science and Technology.
I42 Report...December, 1983. Trenton, 1983.
1983q (See recommendation 14, p.28)

974.90 Reznick, Scott
I42 High technology enterprise development areas for New Jersey...
1983d Academic-Industrial Innovation Centers Task Force, Governor's Commission on
Sciences and Technology. April, 1983.
(See especially pp. 8-11)

974.90 Vaughan, Roger J.
I42 Tax policies to encourage high-technology development in New
1983b Jersey. Task Force on Improving New Jersey's Economic and Regulatory
Climate. March, 1983.
(See especially p.17)

173 85
4-17-85

ASSEMBLY COMMITTEE SUBSTITUTE FOR
**ASSEMBLY, Nos. 165, 264, 587,
2144 and 2243**

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 20, 1984

AN ACT concerning the corporation business tax and amending
P. L. 1945, c. 162.

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

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

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

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

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

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

14 (d) "Net worth" shall mean the aggregate of the values dis-
15 closed by the books of the corporation for (1) issued and outstand-
16 ing capital stock, (2) paid-in or capital surplus, (3) earned surplus
17 and undivided profits, and (4) surplus reserves which can reason-
18 ably be expected to accrue to holders or owners of equitable shares,
19 not including reasonable valuation reserves, such as reserves for
20 depreciation or obsolescence or depletion. Notwithstanding the
21 foregoing, net worth shall not include any deduction for the amount
22 of the excess depreciation described in paragraph (2) (F) of sub-
23 section (k) of this section. The foregoing aggregate of values shall
24 be reduced by 50% of the amount disclosed by the books of 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 printed in italics thus is new matter.**

25 corporation for investment in the capital stock of one or more
26 subsidiaries, which investment is defined as ownership (1) of at
27 least 80% of the total combined voting power of all classes of
28 stock of the subsidiary entitled to vote and (2) of at least 80%
29 of the total number of shares of all other classes of stock except
30 nonvoting stock which is limited and preferred as to dividends.
31 In the case of investment in an entity organized under the laws
32 of a foreign country, the foregoing requisite degree of ownership
33 shall effect a like reduction of such investment from net worth of
34 the taxpayer, if the foreign entity is considered a corporation for
35 any purpose under the United States federal income tax laws,
36 such as (but not by way of sole examples) for the purpose of
37 supplying deemed paid foreign tax credits or for the purpose of
38 status as a controlled foreign corporation. In calculating the net
39 worth of a taxpayer entitled to reduction for investment in sub-
40 sidiaries, the amount of liabilities of the taxpayer shall be reduced
41 by such proportion of the liabilities as corresponds to the ratio
42 which the excluded portion of the subsidiary values bears to the
43 total assets of the taxpayer.

44 In the case of banking corporations which have international
45 banking facilities as defined in subsection (n), the foregoing aggre-
46 gate of values shall also be reduced by retained earnings of the
47 international banking facility. Retained earnings mean the earn-
48 ings accumulated over the life of such facility and shall not include
49 the pro rata share of dividends paid and federal income taxes paid
50 or payable during the tax year.

51 If in the opinion of the commissioner, the corporation's books
52 do not disclose fair valuations the commissioner may make a rea-
53 sonable determination of the net worth which, in his opinion, would
54 reflect the fair value of the assets, exclusive of subsidiary invest-
55 ments as defined aforesaid, carried on the books of the corporation,
56 in accordance with sound accounting principles, and such determi-
57 nation shall be used as net worth for the purpose of this act.

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

64 (f) "Investment company" shall mean any corporation whose
65 business during the period covered by its report consisted, to the
66 extent of at least 90% thereof of holding, investing and reinvesting
67 in stocks, bonds, notes, mortgages, debentures, patents, patent

68 rights and other securities for its own account, but this shall not
69 include any corporation which: (1) is a merchant or a dealer of
70 stocks, bonds and other securities, regularly engaged in buying the
71 same and selling the same to customers: or (2) had less than 90%
72 of its average gross assets in New Jersey, at cost, invested in
73 stocks, bonds, debentures, mortgages, notes, patents, patent rights
74 or other securities or consisting of cash on deposit during the period
75 covered by its report, or (3) is a banking corporation or a financial
76 business corporation as defined in the Corporation Business Tax
77 Act.

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

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

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

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

90 (k) "Entire net income" shall mean total net income from all
91 sources, whether within or without the United States, and shall
92 include the gain derived from the employment of capital or labor,
93 or from both combined, as well as profit gained through a sale or
94 conversion of capital assets. For the purpose of this act, the
95 amount of a taxpayer's entire net income shall be deemed prima
96 facie to be equal in amount to the taxable income, before net operat-
97 ing loss deduction and special deductions, which the taxpayer is
98 required to report to the United States Treasury Department for
99 the purpose of computing its federal income tax: provided, how-
100 ever, that in the determination of such entire net income,

101 (1) [Entire net income shall exclude 100% of dividends which
102 were included in computing such taxable income for federal income
103 tax purposes, paid to the taxpayer by one or more subsidiaries
104 owned by the taxpayer to the extent of the 80% or more owner-
105 ship of investment described in subsection (d) of this section. With
106 respect to other dividends, entire net income shall not include 50%
107 of the total included in computing such taxable income for federal
108 income tax purposes.] Entire net income shall exclude for the
109 periods set forth in paragraph (2) (F) (i) of this subsection, any
110 amount, except with respect to [property] *qualified mass commut-*

111 *ing vehicles as described in section 168 (f) (8) (D) [(iii)] (v) of*
 112 *the Internal Revenue Code as in effect immediately prior to Janu-*
 113 *ary 1, 1984, which is included in a taxpayer's federal taxable income*
 114 *solely as a result of an election made pursuant to the provisions*
 115 *of paragraph (8) of that section.*

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

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

121 (B) Any part of any income from dividends or interest on any
 122 kind of stock, securities or indebtedness, except as provided in
 123 *paragraph (5) of subsection (k) [(1)] of this section;*

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

129 (D) ~~Net operating losses sustained during any year or period~~
 130 ~~other than that covered by the report] (*Deleted by amendment,*~~
 131 ~~*P.L. ; c.)*~~;

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

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

137 (ii) In full to the extent that it relates to bonds or other
 138 evidences of indebtedness issued, with stock, pursuant to a
 139 bona fide plan of reorganization, to persons who, prior to
 140 such reorganization, were bona fide creditors of the corpora-
 141 tion or its predecessors, but were not stockholders or share-
 142 holders thereof;

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

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

152 (v) In full to the extent it relates to debt of a banking
 153 corporation to a bank holding company, as defined in 12 U.S.C.
 154 § 1841, of which the banking corporation is a subsidiary;

155 (F) (i) The amount by which depreciation reported to the
 156 United State Treasury Department for property placed in ser-
 157 vice on and after January 1, 1981, for purposes of computing
 158 federal taxable income in accordance with section 168 of the
 159 Internal Revenue Code in effect after December 31, 1980, exceeds
 160 the amount of depreciation determined in accordance with the
 161 Internal Revenue Code provisions in effect prior to January 1,
 162 1981, but only with respect to a taxpayer's accounting period
 163 ending after December 31, 1981; provided, however, that where a
 164 taxpayer's accounting period begins in 1981 and ends in 1982, no
 165 modification shall be required with respect to this paragraph (F)
 166 for the report filed for such period with respect to property placed
 167 in service during that part of the accounting period which occurs
 168 in 1981.

169 (ii) For the periods set forth in subparagraph (F) (i) of this
 170 subsection, any amount, except with respect to **[property]** *qualified*
 171 *mass commuting vehicles* as described in section 168 (f) (8) (D)
 172 **[(iii)]** (v) of the Internal Revenue Code *as in effect immediately*
 173 *prior to January 1, 1984*, which the taxpayer claimed as a deduc-
 174 tion in computing federal income tax pursuant to a qualified lease
 175 agreement under paragraph (8) of that section.

176 The director shall promulgate rules and regulations necessary
 177 to carry out the provisions of this section, which rules shall pro-
 178 vide, among others, the manner in which the remaining life of
 179 property shall be reported.

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

185 (4) There shall be allowed as a deduction from entire net income
 186 of a banking corporation, to the extent not deductible in deter-
 187 mining federal taxable income, the eligible net income of an inter-
 188 national banking facility determined as follows:

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

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

195 (i) Making, arranging for, placing or carrying loans to
 196 foreign persons, provided, however, that in the case of a foreign
 197 person which is an individual, or which is a foreign branch

198 of a domestic corporation (other than a bank), or which is a
199 foreign corporation or foreign partnership which is controlled
200 by one or more domestic corporations (other than banks),
201 domestic partnerships or resident individuals, all the proceeds
202 of the loan are for use outside of the United States:

203 (ii) Making or placing deposits with foreign persons which
204 are banks or foreign branches of banks (including foreign sub-
205 sidiaries) or foreign branches of the taxpayers or with other
206 international banking facilities; or

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

210 (iv) Such other activities **[of]** as an international banking
211 facility may, from time to time, be authorized to engage in:

212 (C) Applicable expenses shall be any expense or other deduc-
213 tions attributable, directly or indirectly, to the eligible gross
214 income described in paragraph (B) of this subsection.

215 (5) *Entire net income shall exclude 100% of dividends which*
216 *were included in computing such taxable income for federal income*
217 *tax purposes, paid to the taxpayer by one or more subsidiaries*
218 *owned by the taxpayer to the extent of the 50% or more owner-*
219 *ship of investment described in subsection (d) of this section. With*
220 *respect to other dividends, entire net income shall not include 50%*
221 *of the total included in computing such taxable income for federal*
222 *income tax purposes.*

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

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

238 (C) *Net operating loss. For purposes of this paragraph the*
239 *term "net operating loss" means the excess of the deductions over*
240 *the gross income used in computing entire net income without the*

241 *net operating loss deduction provided for in paragraph (A) of this*
242 *paragraph and the exclusions in paragraphs (4) and (5) of this*
243 *subsection.*

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

253 (l) "Real estate investment trust" shall mean any unincorpo-
254 rated trust or unincorporated association qualifying and electing
255 to be taxed as a real estate investment trust under federal law.

256 (m) "Financial business corporation" shall mean any corporate
257 enterprise which is (1) in substantial competition with the business
258 of national banks and which (2) employs moneyed capital with the
259 object of making profit by its use as money, through discounting and
260 negotiating promissory notes, drafts, bills of exchange and other
261 evidences of debt; buying and selling exchange; making of or deal-
262 ing in secured or unsecured loans and discounts; dealing in securi-
263 ties and shares of corporate stock by purchasing and selling such
264 securities and stock without recourse, solely upon the order and for
265 the account of customers; or investing and reinvesting in market-
266 able obligations evidencing indebtedness of any person, copartner-
267 ship, association or corporation in the form of bonds, notes or de-
268 bentures commonly known as investment securities; or dealing in
269 or underwriting obligations of the United States, any state or any
270 political subdivision thereof, or of a corporate instrumentality of
271 any of them. This shall include, without limitation of the foregoing,
272 business commonly known as industrial banks, dealers in commer-
273 cial paper and acceptances, sales finance, personal finance, small
274 loan and mortgage financing businesses, as well as any other enter-
275 prise employing money capital coming into competition with the
276 business of national banks; provided, that the holding of bonds,
277 notes, or other evidences of indebtedness by individual persons not
278 employed or engaged in the banking or investment business and
279 representing merely personal investments not made in competition
280 with the business of national banks, shall not be deemed financial
281 business. Nor shall "financial business" include national banks,
282 production credit associations organized under the Farm Credit
283 Act of 1933 or the Farm Credit Act of 1971, Pub. L. 92-181 (12

284 *U.S.C. § 2091 et seq.*), stock and mutual insurance companies duly
285 authorized to transact business in this State, security brokers or
286 dealers or investment companies or bankers not employing moneyed
287 capital coming into competition with the business of national banks,
288 real estate investment trusts, or any of the following entities or-
289 ganized under the laws of this State: credit unions, savings banks,
290 savings and loan and building and loan associations, pawnbrokers,
291 and State banks and trust companies.

292 (n) "International banking facility" shall mean a set of asset
293 and liability accounts segregated on the books and records of a
294 depository institution, United States branch or agency of a foreign
295 bank, or an Edge or Agreement Corporation that includes only
296 international banking facility time deposits and international
297 banking facility extensions of credit as such terms are defined in
298 section 204.8(a)(2) of section 204.8(a)(3) of Regulation D of the
299 board of governors of the Federal Reserve System, 12 CFR Part
300 204, effective December 3, 1981. In the event that the United States
301 enacts a law, or the board of governors of the Federal Reserve Sys-
302 tem adopts a regulation which amends the present definition of
303 international banking facility or of such facilities' time deposits or
304 extensions of credit, the Commissioner of Banking shall forthwith
305 adopt regulations defining such terms in the same manner as such
306 terms are set forth in the laws of the United States or the regula-
307 tions of the board of governors of the Federal Reserve System. The
308 regulations of the Commissioner of Banking shall thereafter pro-
309 vide the applicable definitions.

1 2. This act shall take effect immediately.

ASSEMBLY REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
**ASSEMBLY, Nos. 165, 264, 587,
2144 and 2243**

STATE OF NEW JERSEY

DATED: SEPTEMBER 20, 1984

PROVISIONS:

The Assembly Committee Substitute for Assembly Bill Nos. 165, 264, 587, 2144 and 2243 amends the "Corporation Business Tax Act" to provide for a carryforward of net operating losses as a deduction from taxpayer's entire net income.

A taxpayer may carryforward the net operating loss deduction for up to seven years. Current law restricts recognition of a net operating loss to the year in which sustained. The loss deduction, as carried forward, may be applied to the profits of the next succeeding year. Should the loss still exceed net income, it may be carried forward until it is entirely utilized.

FISCAL IMPACT:

This proposal is applicable to companies fiscal years ending after June 30, 1984. The first fiscal year for State revenue to be affected by the carryforward would be 1986. Revenue losses for that year are estimated between \$15 million and \$18 million. The next fiscal year, 1987, the loss is estimated to be between \$25 million and \$30 million. Annual losses thereafter are estimated at approximately \$38 million.

BACKGROUND:

This committee substitute was released after study, review and discussion of the concept to allow a deduction for net operating losses coupled with a carryforward provision. In addition to amending the corporate tax law to allow this deduction, definitions were included and a section concerning corporate takeovers and possible abuse of buying companies with losses to solely take advantage of this provision.

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
**ASSEMBLY, Nos. 165, 264, 587,
2144 and 2243**

STATE OF NEW JERSEY

DATED: FEBRUARY 25, 1985

This bill amends P. L. 1945, c. 162, the "Corporation Business Tax Act," to allow a taxpayer to carry forward net operating losses into future years as a deduction from entire net income. Under the bill's provisions, a net operating loss may be carried over for up to seven years. The net loss in a given tax year may be applied against the profits of the next succeeding year, and, should the loss carryover still exceed net income, the remainder may be carried forward until it is entirely utilized.

The bill contains a safeguard against the possibility of corporate acquisitions and other changes in ownership done solely or primarily for the purpose of taking advantage of loss carryover benefits.

BACKGROUND:

Currently under P. L. 1945, c. 162, a net operating loss is recognized only in the year in which it is sustained. New Jersey is one of four states that do not permit either a loss carryback or carryforward or both. Federal tax law permits a loss to be carried three years back and 15 years forward.

FISCAL IMPACT:

The fiscal implications of a corporate tax loss carryover are dependent on general economic and business conditions. In the current expansionary environment, most large taxpayers are enjoying net profits and would not be accruing loss carryovers. Smaller, developing corporations, on the other hand, often incur start-up losses which would be mitigated somewhat by the provisions of this bill.

Since this legislation applies to corporate tax years ending after June 30, 1984, the first State fiscal year which would be affected by the carryover provision would be 1985-86. Revenue losses in that year are estimated to be between \$15 million and \$18 million. For fiscal year 1986-87, this would increase to a range of \$25 million to \$30 million. Annual losses thereafter are estimated at approximately \$38 million.

For comparative purposes, the Governor's budget proposal for fiscal year 1985-86 anticipates corporate business tax revenues of \$1,015,000,000.

ASSEMBLY, No. 165

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblywoman KALIK, Assemblymen SHUSTED
and SCHWARTZ

AN ACT to amend the Corporation Income Tax Act (1972), approved June 7, 1973 (P. L. 1973, c. 170).

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

1 1. Section 4 of P. L. 1973, c. 170 (C. 54:10E-4) is amended to
2 read as follows:

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

5 a. "Director" means the Director of the Division of Taxation
6 of the State Department of the Treasury;

7 b. "Allocation factor" means the proportionate part of the tax-
8 payer's entire net income used to determine a measure of its tax
9 under this act;

10 c. "Corporation" means any corporation, joint-stock company
11 or association and any business conducted by a trustee or trustees
12 wherein interest or ownership is evidenced by a certificate of in-
13 terest or ownership or similar written instrument;

14 d. "Indebtedness owing directly or indirectly" includes, with-
15 out limitation thereto, all indebtedness owing to any stockholder
16 or shareholder and to members of his immediate family where a
17 stockholder and members of his immediate family together or in
18 the aggregate own 10% or more of the aggregate outstanding
19 shares of the taxpayer's capital stock of all classes;

20 e. "Taxpayer" means any corporation required to report or to
21 pay taxes, interest or penalties under this act;

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 printed in italics *thus* is new matter.

22 f. "Calendar year" means an accounting period ending on the
23 last day of December on the basis of which the taxpayer is required
24 to report for federal income tax purposes;

25 g. "Fiscal year" means an accounting period ending on any day
26 other than the last day of December on the basis of which the tax-
27 payer is required to report for federal income tax purposes;

28 h. "Accounting period" means the calendar or fiscal year, or
29 part thereof, for which a tax is payable under this act;

30 i. "Entire net income" means total net income from all sources,
31 whether within or without the United States, and shall include
32 the gain derived from the employment of capital or labor, or from
33 both combined, as well as profit gained through a sale or conver-
34 sion of capital assets. For the purpose of this act, the amount of
35 a taxpayer's entire net income shall be deemed prima facie to be
36 equal in amount to the taxable income, before net operating loss
37 deduction and special deductions, which the taxpayer is required
38 to report to the United States Treasury Department for the pur-
39 pose of computing its federal income tax; provided, however, that
40 in the determination of such entire net income:

41 (1) Entire net income shall exclude 100% of dividends which
42 were included in computing such taxable income for federal in-
43 come tax purposes, paid to the taxpayer by one or more subsidi-
44 aries owned by the taxpayer. For the purposes of this section, a
45 subsidiary shall be deemed to be any corporation in which a tax-
46 payer is the owner of at least 80% of the total combined voting
47 power of all classes of stock entitled to vote and of at least 80%
48 of each class, if any, of nonvoting stock. With respect to other
49 dividends, entire net income shall not include 50% of the total
50 included in computing such taxable income for federal income
51 tax purposes;

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

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

57 (b) Any part of any income from dividends or interest on
58 any kind of stock, securities or indebtedness, except as pro-
59 vided in subsection i. (1) of this section;

60 (c) Taxes paid or accrued to the United States on or mea-
61 sured by profits or income, or the tax imposed by this act, or
62 any tax paid or accrued with respect to subsidiary dividends
63 excluded from entire net income as provided in subsection i.
64 (1) of this section;

65 (d) **Net operating losses sustained during any year or**
66 **period other than that covered by the report;** Deleted by
67 *amendment (P. L., c. . . .).*

68 (e) 90% of interest on indebtedness owing directly or in-
69 directly to holders of 10% or more of the aggregate outstand-
70 ing shares of the taxpayer's capital stock of all classes; except
71 that such interest may, in any event, be deducted.

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

73 (ii) In full to the extent that it relates to bonds or other
74 evidences of indebtedness issued, with stock, pursuant to a
75 bona fide plan of reorganization, to persons, who, prior to
76 such reorganization, were bona fide creditors of the corpora-
77 tion or its predecessors, but were not stockholders or share-
78 holders thereof;

79 (3) The director may, whenever necessary to properly reflect
80 the entire net income of any taxpayer, determine the year or period
81 in which any item of income or deduction shall be included, with-
82 out being limited to the method of accounting employed by the
83 taxpayer.

84 (4) *If a taxpayer is allowed by the United States Treasury in*
85 *the computation of the taxpayer's federal income tax to carry*
86 *over a net operating loss to years other than the year in which such*
87 *loss was received, the taxpayer shall be allowed to carry the*
88 *loss to each of the three years preceding the loss year for which the*
89 *taxpayer was taxable under the act and to each of the seven taxable*
90 *years following the loss year, as a deduction against the entire*
91 *net income determined under the act. The entire amount of any*
92 *net operating loss for any loss year, shall be carried to the earliest*
93 *of the taxable years to which the loss may be carried, and the*
94 *portion of the loss which shall be carried to each of the other tax-*
95 *able years to which the loss may be carried shall be the excess,*
96 *only, if any, of the loss over the total of the entire net income for*
97 *each of the prior taxable years to which the loss has been carried.*
98 *In no case shall a net operating loss, which was actually received*
99 *by a taxpayer in a year preceding the year in which this amenda-*
100 *tory act becomes effective be carried over to any other year; and,*
101 *in no case shall a net operating loss actually received by a taxpayer*
102 *in a year following the year in which this amendatory act becomes*
103 *effective be carried back to a year preceding the year in which this*
104 *amendatory act becomes effective.*

1 2. This act shall take effect immediately.

F 165

A165(1984)

4

STATEMENT

This bill amends the Corporation Income Tax Act to provide for a carryover of net operating losses as a deduction from the taxpayer's entire net income. Consistent with the treatment of net operating losses for federal income tax purposes, this bill permits a net operating loss carryback of three years and carryforward of seven years.

ASSEMBLY, No. 264

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen GALLO, ALBOHN, ZIMMER and WEIDEL

AN ACT to amend the "Corporation Business Tax Act (1945)," approved April 13, 1945 (P. L. 1945, c. 162).

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

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

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

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

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

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

14 (d) "Net worth" shall mean the aggregate of the values dis-
15 closed by the books of the corporation for (1) issued and outstand-
16 ing capital stock, (2) paid-in or capital surplus, (3) earned surplus
17 and undivided profits, and (4) surplus reserves which can reason-
18 ably be expected to accrue to holders or owners of equitable shares,
19 not including reasonable valuation reserves, such as reserves for
20 depreciation or obsolescence or depletion. Notwithstanding the
21 foregoing, net worth shall not include any deduction for the amount
22 of the excess depreciation described in paragraph (2) (F) of sub-

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 printed in italics *thus* is new matter.

23 section (k) of this section. The foregoing aggregate of values shall
24 be reduced by 50% of the amount disclosed by the books of the
25 corporation for investment in the capital stock of one or more
26 subsidiaries, which investment is defined as ownership (1) of at
27 least 80% of the total combined voting power of all classes of stock
28 of the subsidiary entitled to vote and (2) of at least 80% of the
29 total number of shares of all other classes of stock except non-
30 voting stock which is limited and preferred as to dividends. In the
31 case of investment in an entity organized under the laws of a
32 foreign country, the foregoing requisite degree of ownership shall
33 effect a like reduction of such investment from net worth of the
34 taxpayer, if the foreign entity is considered a corporation for any
35 purpose under the United States federal income tax laws, such as
36 (but not by way of sole examples) for the purpose of supplying
37 deemed-paid foreign tax credits or for the purpose of status as
38 a controlled foreign corporation. In calculating the net worth of
39 a taxpayer entitled to reduction for investment in subsidiaries,
40 the amount of liabilities of the taxpayer shall be reduced by such
41 proportion of the liabilities as corresponds to the ratio which the
42 excluded portion of the subsidiary values bears to the total assets
43 of the taxpayer.

44 If in the opinion of the commissioner, the corporation's books
45 do not disclose fair valuations the commissioner may make a rea-
46 sonable determination of the net worth which, in his opinion, would
47 reflect the fair value of the assets, exclusive of subsidiary invest-
48 ments as defined aforesaid, carried on the books of the corporation,
49 in accordance with sound accounting principles, and such determi-
50 nation shall be used as net worth for the purpose of this act.

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

57 (f) "Investment company" shall mean any corporation whose
58 business during the period covered by its report consisted, to the
59 extent of at least 90% thereof of holding, investing and reinvest-
60 ing in stocks, bonds, notes, mortgages, debentures, patents, patent
61 rights and other securities for its own account, but this shall not
62 include any corporation which: (1) is a merchant or a dealer of
63 stocks, bonds and other securities, regularly engaged in buying the
64 same and selling the same to customers; or (2) had less than 90%
65 of its average gross assets in New Jersey, at cost, invested in

66 stocks, bonds, debentures, mortgages, notes, patents, patent rights
67 or other securities or consisting of cash on deposit during the
68 period covered by its report or (3) is a banking corporation or a
69 financial business corporation as defined in the Corporation Busi-
70 ness Tax Act.

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

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

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

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

83 (k) "Entire net income" shall mean total net income from all
84 sources, whether within or without the United States, and shall
85 include the gain derived from the employment of capital or labor,
86 or from both combined, as well as profit gained through a sale or
87 conversion of capital assets. For the purpose of this act, the
88 amount of a taxpayer's entire net income shall be deemed prima
89 facie to be equal in amount to the taxable income, before net oper-
90 ating loss deduction and special deductions, which the taxpayer
91 is required to report to the United States Treasury Department
92 for the purpose of computing its federal income tax; provided,
93 however, that in the determination of such entire net income,

94 (1) Entire net income shall exclude 100% of dividends which
95 were included in computing such taxable income for federal income
96 tax purposes, paid to the taxpayer by one or more subsidiaries
97 owned by the taxpayer to the extent of the 80% or more owner-
98 ship of investment described in subsection (d) of this section.
99 With respect to other dividends, entire net income shall not include
100 50% of the total included in computing such taxable income for
101 federal income tax purposes. Entire net income shall exclude for
102 the periods set forth in paragraph (2) (F) (i) of this subsection,
103 any amount, except with respect to property described in section
104 168 (f) (8) (D) **[(iii)]** (v) of the Internal Revenue Code, which is
105 included in a taxpayer's federal taxable income solely as a result
106 of an election made pursuant to the provisions of paragraph (8)
107 of that section;

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

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

113 (B) Any part of any income from dividends or interest on any
114 kind of stock, securities or indebtedness, except as provided in
115 subsection (k) (1) of this section;

116 (C) Taxes paid or accrued to the United States on or measured
117 by profits or income, or the tax imposed by this act, or any tax
118 paid or accrued with respect to subsidiary dividends excluded from
119 entire net income as provided in subsection (k) (1) of this section;

120 (D) ~~Net operating losses sustained during any year or period~~
121 ~~other than that covered by the report;~~ (*Deleted by amendment,*
122 *P. L. , c. .*)

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

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

128 (ii) In full to the extent that it relates to bonds or other
129 evidences of indebtedness issued, with stock, pursuant to a
130 bona fide plan of reorganization, to persons, who, prior to
131 such reorganization, were bona fide creditors of the corpora-
132 tion or its predecessors, but were not stockholders or share-
133 holders thereof;

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

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

143 (v) In full to the extent it relates to debt of a banking
144 corporation to a bank holding company, as defined in 12 U. S. C.
145 § 1841, of which the banking corporation is a subsidiary~~;~~;

146 (F) (i) The amount by which depreciation reported to the
147 United States Treasury Department for property placed in service
148 on and after January 1, 1981, for purposes of computing federal
149 taxable income in accordance with section 168 of the Internal
150 Revenue Code in effect after December 31, 1980, exceeds the amount

151 of depreciation determined in accordance with the Internal Revenue
152 Code provisions in effect prior to January 1, 1981, but only with
153 respect to a taxpayer's accounting period ending after December
154 31, 1981; provided, however, that where a taxpayer's accounting
155 period begins in 1981 and ends in 1982, no modification shall be
156 required with respect to this paragraph (F) for the report filed for
157 such period with respect to property placed in service during that
158 part of the accounting period which occurs in 1981.

159 (ii) For the periods set forth in subparagraph (F) (i) of this
160 subsection, any amount, except with respect to property described
161 in section 168 (f) (8) (D) ~~[(iii)]~~ (v) of the Internal Revenue Code,
162 which the taxpayer claimed as a deduction in computing federal
163 income tax pursuant to a qualified lease agreement under para-
164 graph (8) of that section.

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

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

174 (4) *If a taxpayer is allowed by the United States Treasury in*
175 *the computation of the taxpayer's federal income tax to carry over*
176 *a net operating loss to years other than the year in which that loss*
177 *was received, that taxpayer shall be allowed to carry that loss to*
178 *each of the three years preceding the loss year for which the tax-*
179 *payer was taxable under P. L. 1945, c. 162 (C. 54:10A-1 et seq.),*
180 *and to each of the seven taxable years following the loss year, as*
181 *a deduction against the entire net income determined under that*
182 *act. If a taxpayer is allowed by the United States Treasury in the*
183 *computation of the taxpayer's federal income tax to carry over a*
184 *net capital loss to years other than the year in which that loss was*
185 *received, that taxpayer shall be allowed to carry that loss to each*
186 *of the three years preceding the loss year for which the taxpayer*
187 *was taxable under P. L. 1945, c. 162 (C. 54:10A-1 et seq.), and to*
188 *each of the five taxable years following the loss year, as a deduc-*
189 *tion against the entire net income determined under that act. The*
190 *entire amount of any net operating loss, or net capital loss, for*
191 *any loss year shall be carried to the earliest of the taxable years*
192 *to which that loss may be carried, and the portion of that loss*
193 *which shall be carried to each of the other taxable years to which*

194 *that loss may be carried shall be the excess, only, if any, of that*
195 *loss over the total of the entire net income for each of the prior*
196 *taxable years to which that loss has been carried. In no case shall*
197 *a net operating loss, or a capital loss, which was actually received*
198 *by a taxpayer in a year preceding the year in which this 1983*
199 *amendatory act becomes effective be carried over to any other year;*
200 *and, in no case shall a net operating loss, or a capital loss, actually*
201 *received by a taxpayer in a year following the year in which this*
202 *1984 amendatory act becomes effective be carried back to a year*
203 *preceding the year in which this 1984 amendatory act becomes*
204 *effective.*

205 (l) "Real estate investment trust" shall mean any unincor-
206 porated trust or unincorporated association qualifying and electing
207 to be taxed as a real estate investment trust under federal law.

208 (m) "Financial business corporation" shall mean any corporate
209 enterprise which is (1) in substantial competition with the business
210 of national banks and which (2) employs moneyed capital with the
211 object of making profit by its use as money, through discounting and
212 negotiating promissory notes, drafts, bills of exchange and other
213 evidences of debt; buying and selling exchange; making of or deal-
214 ing in secured or unsecured loans and discounts; dealing in securi-
215 ties and shares of corporate stock by purchasing and selling such
216 securities and stock without recourse, solely upon the order and for
217 the account of customers; or investing and reinvesting in market-
218 able obligations evidencing indebtedness of any person, copartner-
219 ship, association or corporation in the form of bonds, notes or de-
220 bentures commonly known as investment securities; or dealing in
221 or underwriting obligations of the United States, any state or any
222 political subdivision thereof, or of a corporate instrumentality of
223 any of them. This shall include, without limitation of the foregoing,
224 business commonly known as industrial banks, dealers in commer-
225 cial paper and acceptances, sales finance, personal finance, small
226 loan and mortgage financing businesses, as well as any other enter-
227 prise employing moneyed capital coming into competition with the
228 business of national banks; provided, that the holding of bonds,
229 notes, or other evidences of indebtedness by individual persons not
230 employed or engaged in the banking or investment business and
231 representing merely personal investments not made in competition
232 with the business of national banks, shall not be deemed financial
233 business. Nor shall "financial business" include national banks,
234 production credit associations organized under the Farm Credit
235 Act of 1933, stock and mutual insurance companies duly autho-
236 rized to transact business in this State, security brokers or dealers

237 or investment companies or bankers not employing moneyed capital
238 coming into competition with the business of national banks, real
239 estate investment trusts, or any of the following entities organized
240 under the laws of this State: credit unions, savings banks, savings
241 and loan and building and loan associations, pawnbrokers, and
242 State banks and trust companies.

1 2. This act shall take effect immediately.

Sponsor's

STATEMENT

This bill amends the corporation business tax to provide for a carryover of both capital losses and net operating losses as a deduction from the taxpayer's entire net income. In the case of capital losses the taxpayer could carry back three years and forward five years. In the case of net operating losses the taxpayer could carry back three years and forward seven years. In each instance, these allowed carryover periods are the same as those allowed to most corporations under the federal law.

ASSEMBLY, No. 587

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen BOCCHINI, PATERO and ZIMMER

AN ACT to amend the "Corporation Business Tax Act (1945)," approved April 13, 1945 (P. L. 1945, c. 162).

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

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

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

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

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

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

14 (d) "Net worth" shall mean the aggregate of the values dis-
15 closed by the books of the corporation for (1) issued and outstand-
16 ing capital stock, (2) paid-in or capital surplus, (3) earned surplus
17 and undivided profits, and (4) surplus reserves which can reason-
18 ably be expected to accrue to holders or owners of equitable shares,
19 not including reasonable valuation reserves, such as reserves for
20 depreciation or obsolescence or depletion. Notwithstanding the
21 foregoing, net worth shall not include any deduction for the
22 amount of the excess depreciation described in paragraph (2) (F)
23 of subsection (k) of this section. The foregoing aggregate of values

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 printed in italics thus is new matter.

24 shall be reduced by 50% of the amount disclosed by the books of
25 the corporation for investment in the capital stock of one or more
26 subsidiaries, which investment is defined as ownership (1) of at
27 least 80% of the total combined voting power of all classes of
28 stock of the subsidiary entitled to vote and (2) of at least 80%
29 of the total number of shares of all other classes of stock except
30 nonvoting stock which is limited and preferred as to dividends. In
31 the case of investment in an entity organized under the laws of a
32 foreign country, the foregoing requisite degree of ownership shall
33 effect a like reduction of such investment from net worth of the
34 taxpayer, if the foreign entity is considered a corporation for any
35 purpose under the United States federal income tax laws, such
36 as (but not by way of sole examples) for the purpose of supplying
37 deemed-paid foreign tax credits or for the purpose of status as a
38 controlled foreign corporation. In calculating the net worth of a
39 taxpayer entitled to reduction for investment in subsidiaries, the
40 amount of liabilities of the taxpayer shall be reduced by such
41 proportion of the liabilities as corresponds to the ratio which the
42 excluded portion of the subsidiary values bears to the total assets
43 of the taxpayer.

44 If in the opinion of the commissioner, the corporation's books
45 do not disclose fair valuations the commissioner may make a rea-
46 sonable determination of the net worth which, in his opinion, would
47 reflect the fair value of the assets, exclusive of subsidiary invest-
48 ments as defined aforesaid, carried on the books of the corporation,
49 in accordance with sound accounting principles, and such determi-
50 nation shall be used as net worth for the purpose of this act.

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

57 (f) "Investment company" shall mean any corporation whose
58 business during the period covered by its report consisted, to the
59 extent of at least 90% thereof of holding, investing and reinvest-
60 ing in stocks, bonds, notes, mortgages, debentures, patents, patent
61 rights and other securities for its own account, but this shall not
62 include any corporation which: (1) is a merchant or a dealer of
63 stocks, bonds and other securities, regularly engaged in buying the
64 same and selling the same to customers; or (2) had less than 90%
65 of its average gross assets in New Jersey, at cost, invested in
66 stocks, bonds, debentures, mortgages, notes, patents, patent rights

67 or other securities or consisting of cash on deposit during the
68 period covered by its report or (3) is a banking corporation or a
69 financial business corporation as defined in the Corporation Busi-
70 ness Tax Act.

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

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

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

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

83 (k) "Entire net income" shall mean total net income from all
84 sources, whether within or without the United States, and shall
85 include the gain derived from the employment of capital or labor,
86 or from both combined, as well as profit gained through a sale or
87 conversion of capital assets. For the purpose of this act, the
88 amount of a taxpayer's entire net income shall be deemed prima
89 facie to be equal in amount to the taxable income, before net oper-
90 ating loss deduction and special deductions, which the taxpayer
91 is required to report to the United States Treasury Department
92 for the purpose of computing its federal income tax; provided,
93 however, that in the determination of such entire net income,

94 (1) Entire net income shall exclude 100% of dividends which
95 were included in computing such taxable income for federal income
96 tax purposes, paid to the taxpayer by one or more subsidiaries
97 owned by the taxpayer to the extent of the 80% or more owner-
98 ship of investment described in subsection (d) of this section.
99 With respect to other dividends, entire net income shall not include
100 50% of the total included in computing such taxable income for
101 federal income tax purposes. Entire net income shall exclude for the
102 periods set forth in paragraph (2) (F) (i) of this subsection, any
103 amount, except with respect to property described in section
104 108 (f) (8) (D) (iii) of the Internal Revenue Code, which is
105 included in a taxpayer's federal taxable income solely as a result
106 of an election made pursuant to the provisions of paragraph (8)
107 of that section;

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

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

113 (B) Any part of any income from dividends or interest on any
114 kind of stock, securities or indebtedness, except as provided in
115 subsection (k) (1) of this section;

116 (C) Taxes paid or accrued to the United States on or measured
117 by profits or income, or the tax imposed by this act, or any tax
118 paid or accrued with respect to subsidiary dividends excluded from
119 entire net income as provided in subsection (k) (1) of this section;

120 (D) **Net operating losses sustained during any year or period**
121 **other than that covered by the report** (*Deleted by amendment,*
122 *P. L. , c.*);

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

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

128 (ii) In full to the extent that it relates to bonds or other
129 evidences of indebtedness issued, with stock, pursuant to a
130 bona fide plan of reorganization, to persons, who, prior to
131 such reorganization, were bona fide creditors of the corpora-
132 tion or its predecessors, but were not stockholders or share-
133 holders thereof;

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

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

143 (v) In full to the extent it relates to debt of a banking
144 corporation to a bank holding company, as defined in 12 U. S. C.
145 § 1841, of which the banking corporation is a subsidiary.

146 (F) (i) The amount by which depreciation reported to the
147 United States Treasury Department for property placed in service
148 on and after January 1, 1981, for purposes of computing federal
149 taxable income in accordance with section 108 of the Internal
150 Revenue Code in effect after December 31, 1980, exceeds the amount
151 of depreciation determined in accordance with the Internal Revenue
152 Code provisions in effect prior to January 1, 1981, but only with

153 respect to a taxpayer's accounting period ending after December
154 31, 1981; provided, however, that where a taxpayer's accounting
155 period begins in 1981 and ends in 1982, no modification shall be
156 required with respect to this paragraph (F) for the report filed for
157 such period with respect to property placed in service during that
158 part of the accounting period which occurs in 1981.

159 (ii) For the periods set forth in subparagraph (F) (i) of this
160 subsection, any amount, except with respect to property described
161 in section 108 (f) (8) (D) (iii) of the Internal Revenue Code, which
162 the taxpayer claimed as a deduction in computing federal income
163 tax pursuant to a qualified lease agreement under paragraph (8)
164 of that section.

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

169 *(3) A taxpayer shall be allowed an exclusion from net income*
170 *for any net operating loss and shall be allowed to carry over a net*
171 *operating loss to each of the five privilege periods following the*
172 *privilege period during which the loss was realized as a deduction*
173 *against entire net income determined under this act in each of the*
174 *five privilege periods. The entire amount of any net operating loss*
175 *shall be carried to the earliest of the privilege periods to which the*
176 *loss may be carried, and the portion of the loss which shall be*
177 *carried to each of the succeeding privilege periods shall be the*
178 *excess only, if any, of such loss over the total of the entire net*
179 *income for each of the privilege periods to which the loss has been*
180 *carried. In no case shall a net operating loss realized by a taxpayer*
181 *in any privilege period preceding the first privilege period for*
182 *which this 1984 amendatory act is effective be carried over to any*
183 *other privilege period.*

184 **[3]** (4) The commissioner may, whenever necessary to properly
185 reflect the entire net income of any taxpayer, determine the year or
186 period in which any item of income or deduction shall be included,
187 without being limited to the method of accounting employed by
188 the taxpayer.

189 (l) "Real estate investment trust" shall mean any unincor-
190 porated trust or unincorporated association qualifying and electing
191 to be taxed as a real estate investment trust under federal law.

192 (m) "Financial business corporation" shall mean any corporate
193 enterprise which is (1) in substantial competition with the business
194 of national banks and which (2) employs moneyed capital with the
195 object of making profit by its use as money, through discounting and

155 /

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196 negotiating promissory notes, drafts, bills of exchange and other
197 evidences of debt; buying and selling exchange; making of or deal-
198 ing in secured or unsecured loans and discounts; dealing in securi-
199 ties and shares of corporate stock by purchasing and selling such
200 securities and stock without recourse, solely upon the order and for
201 the account of customers; or investing and reinvesting in market-
202 able obligations evidencing indebtedness of any person, copartner-
203 ship, association or corporation in the form of bonds, notes or de-
204 bentures commonly known as investment securities; or dealing in
205 or underwriting obligations of the United States, any state or any
206 political subdivision thereof, or of a corporate instrumentality of
207 any of them. This shall include, without limitation of the foregoing
208 business commonly known as industrial banks, dealers in commer-
209 cial paper and acceptances, sales finance, personal finance, small
210 loan and mortgage financing businesses, as well as any other enter-
211 prise employing moneyed capital coming into competition with the
212 business of national banks; provided, that the holding of bonds,
213 notes, or other evidences of indebtedness by individual persons not
214 employed or engaged in the banking or investment business and rep-
215 resenting merely personal investments not made in competition
216 with the business of national banks, shall not be deemed financial
217 business. Nor shall "financial business" include national banks,
218 production credit associations, organized under the Farm Credit
219 Act of 1933, stock and mutual insurance companies duly author-
219A ized to transact business in this State, security brokers or dealers
220 or investment companies or bankers not employing moneyed capital
221 coming into competition with the business of national banks, real
222 estate investment trusts, or any of the following entities organized
223 under the laws of this State: credit unions, savings banks, savings
224 and loan and building and loan associations, pawnbrokers, and
225 State banks and trust companies.

1 2. This act shall take effect immediately and shall be applicable
2 with respect to all accounting or tax years ending on and after
3 December 31, 1984.

Sponson's STATEMENT

This bill amends the "Corporation Business Tax Act (1945)" to allow a five year carryforward of any net operating loss. Current law restricts recognition of net operating loss to the year in which sustained. Because the net operating loss is recognized only as a carryforward there would be no revenue loss in the first year.

ASSEMBLY, No. 2144

STATE OF NEW JERSEY

INTRODUCED JUNE 21, 1984

By Assemblyman FOY

AN ACT to amend the "Corporation Business Tax Act (1945)," approved April 13, 1945 (P. L. 1945, c. 162).

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

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

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

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

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

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

14 (d) "Net worth" shall mean the aggregate of the values dis-
15 closed by the books of the corporation for (1) issued and outstand-
16 ing capital stock, (2) paid-in or capital surplus, (3) earned surplus
17 and undivided profits, and (4) surplus reserves which can reason-
18 ably be expected to accrue to holders or owners of equitable shares,
19 not including reasonable valuation reserves, such as reserves for
20 depreciation or obsolescence or depletion. Notwithstanding the fore-
21 going, net worth shall not include any deduction for the amount of
22 the excess depreciation described in paragraph (2) (F) of subsec-

Matter printed in italics *thus is new matter.*

23 tion (k) of this section. The foregoing aggregate of values shall be
24 reduced by 50% of the amount disclosed by the books of the
25 corporation for investment in the capital stock of one or more
26 subsidiaries, which investment is defined as ownership (1) of at
27 least 80% of the total combined voting power of all classes of
28 stock of the subsidiary entitled to vote and (2) of at least 80%
29 of the total number of shares of all other classes of stock except
30 nonvoting stock which is limited and preferred as to dividends.
31 In the case of investment in an entity organized under the laws
32 of a foreign country, the foregoing requisite degree of owner-
33 ship shall effect a like reduction of such investment from net
34 worth of the taxpayer, if the foreign entity is considered a
35 corporation for any purpose under the United States federal
36 income tax laws, such as (but not by way of sole examples) for the
37 purpose of supplying deemed paid foreign tax credits or for the
38 purpose of status as a controlled foreign corporation. In calculat-
39 ing the net worth of a taxpayer entitled to reduction for investment
40 in subsidiaries, the amount of liabilities of the taxpayer shall be
41 reduced by such proportion of the liabilities as corresponds to the
42 ratio which the excluded portion of the subsidiary values bears
43 to the total assets of the taxpayer.

44 In the case of banking corporations which have international
45 banking facilities as defined in subsection (n), the foregoing aggre-
46 gate of values shall also be reduced by retained earnings of the
47 international banking facility. Retained earnings mean the earn-
48 ings accumulated over the life of such facility and shall not include
49 the pro rata share of dividends paid and federal income taxes paid
50 or payable during the tax year.

51 If in the opinion of the commissioner, the corporation's books
52 do not disclose fair valuations the commissioner may make a rea-
53 sonable determination of the net worth which, in his opinion, would
54 reflect the fair value of the assets, exclusive of subsidiary invest-
55 ments as defined aforesaid, carried on the books of the corporation,
56 in accordance with sound accounting principles, and such determi-
57 nation shall be used as net worth for the purpose of this act.

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

64 (f) "Investment company" shall mean any corporation whose
65 business during the period covered by its report consisted, to the

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

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

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

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

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

90 (k) "Entire net income" shall mean total net income from all
91 sources, whether within or without the United States, and shall
92 include the gain derived from the employment of capital or labor,
93 or from both combined, as well as profit gained through a sale or
94 conversion of capital assets. For the purpose of this act, the
95 amount of a taxpayer's entire net income shall be deemed prima
96 facie to be equal in amount to the taxable income, before net operat-
97 ing loss deduction and special deductions, which the taxpayer
98 is required to report to the United States Treasury Department
99 for the purpose of computing its federal income tax; provided,
100 however, that in the determination of such entire net income,

101 (1) Entire net income shall exclude 100% of dividends which
102 were included in computing such taxable income for federal income
103 tax purposes, paid to the taxpayer by one or more subsidiaries
104 owned by the taxpayer to the extent of the 80% or more owner-
105 ship of investment described in subsection (d) of this section. With
106 respect to other dividends, entire net income shall not include 50%
107 of the total included in computing such taxable income for federal
108 income tax purposes. Entire net income shall exclude for the

109 periods set forth in paragraph (2) (F) (i) of this subsection, any
110 amount, except with respect to property described in section 168
111 (f) (8) (D) (iii) of the Internal Revenue Code, which is included
112 in a taxpayer's federal taxable income solely as a result of an
113 election made pursuant to the provisions of paragraph (8) of that
114 section.

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

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

120 (B) Any part of any income from dividends or interest on any
121 kind of stock, securities or indebtedness, except as provided in
122 subsection (k) (1) of this section;

123 (C) Taxes paid or accrued to the United States on or measured
124 by profits or income, or the tax imposed by this act, or any tax
125 paid or accrued with respect to subsidiary dividends excluded from
126 entire net income as provided in subsection (k) (1) of this section;

127 (D) Net operating losses sustained during any year or period
128 other than that covered by the report;

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

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

134 (ii) In full to the extent that it relates to bonds or other
135 evidences of indebtedness issued, with stock, pursuant to a
136 bona fide plan of reorganization, to persons who, prior to
137 such reorganization, were bona fide creditors of the corpora-
138 tion or its predecessors, but were not stockholders or share-
139 holders thereof;

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

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

149 (v) In full to the extent it relates to debt of a banking
150 corporation to a bank holding company, as defined in 12 U. S. C.
151 § 1841, of which the banking corporation is a subsidiary;

152 (F) (i) The amount by which depreciation reported to the
153 United States Treasury Department for property placed in ser-
154 vice on and after January 1, 1981, for purposes of computing
155 federal taxable income in accordance with section 168 of the
156 Internal Revenue Code in effect after December 31, 1980, exceeds
157 the amount of depreciation determined in accordance with the
158 Internal Revenue Code provisions in effect prior to January 1,
159 1981, but only with respect to a taxpayer's accounting period
160 ending after December 31, 1981; provided, however, that where a
161 taxpayer's accounting period begins in 1981 and ends in 1982, no
162 modification shall be required with respect to this paragraph (F)
163 for the report filed for such period with respect to property
164 placed in service during that part of the accounting period which
165 occurs in 1981.

166 (ii) For the periods set forth in subparagraph (F) (i) of this
167 subsection, any amount, except with respect to property described
168 in section 168 (f) (8) (D) (iii) of the Internal Revenue Code,
169 which the taxpayer claimed as a deduction in computing federal
170 income tax pursuant to a qualified lease agreement under para-
171 graph (8) of that section.

172 The director shall promulgate rules and regulations necessary
173 to carry out the provisions of this section, which rules shall pro-
174 vide, among others, the manner in which the remaining life of
175 property shall be reported.

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

181 (4) There shall be allowed as a deduction from entire net income
182 of a banking corporation, to the extent not deductible in deter-
183 mining federal taxable income, the eligible net income of an inter-
184 national banking facility determined as follows:

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

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

191 (i) Making, arranging for, placing or carrying loans to
192 foreign persons, provided, however, that in the case of a foreign
193 person which is an individual, or which is a foreign branch of
194 a domestic corporation (other than a bank), or which is a

195 foreign corporation or foreign partnership which is controlled
196 by one or more domestic corporations (other than banks),
197 domestic partnerships or resident individuals, all the proceeds
198 of the loan are for use outside of the United States;

199 (ii) Making or placing deposits with foreign persons which
200 are banks or foreign branches of banks (including foreign sub-
201 sidiaries) or foreign branches of the taxpayers or with other
202 international banking facilities; or

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

206 (iv) Such other activities of an international banking facil-
207 ity may, from time to time, be authorized to engage in;

208 (C) Applicable expenses shall be any expense or other deduc-
209 tions attributable, directly or indirectly, to the eligible gross
210 income described in paragraph (B) of this subsection.

211 *(5) A taxpayer shall be allowed an exclusion from net income*
212 *for any net operating loss and shall be allowed to carry over a net*
213 *operating loss to each of the 15 privilege periods following the*
214 *privilege period during which the loss was realized as a deduction*
215 *against entire net income determined under this act in each of the*
216 *15 privilege periods. The entire amount of any net operating loss*
217 *shall be carried to the earliest of the privilege periods to which the*
218 *loss may be carried, and the portion of the loss which shall be car-*
219 *ried to each of the succeeding privilege periods shall be the excess*
220 *only, if any, of such loss over the total of the entire net income for*
221 *each of the privilege periods to which the loss has been carried.*

222 (l) "Real estate investment trust" shall mean any unincor-
223 porated trust or unincorporated association qualifying and electing
224 to be taxed as a real estate investment trust under federal law.

225 (m) "Financial business corporation" shall mean any corporate
226 enterprise which is (1) in substantial competition with the business
227 of national banks and which (2) employs moneyed capital with the
228 object of making profit by its use as money, through discounting and
229 negotiating promissory notes, drafts, bills of exchange and other
230 evidences of debt; buying and selling exchange; making of or deal-
231 ing in secured or unsecured loans and discounts; dealing in securi-
232 ties and shares of corporate stock by purchasing and selling such
233 securities and stock without recourse, solely upon the order and for
234 the account of customers; or investing and reinvesting in market-
235 able obligations evidencing indebtedness of any person, copartner-
236 ship, association or corporation in the form of bonds, notes or de-
237 bentures commonly known as investment securities; or dealing in or
238 underwriting obligations of the United States, any state or any

239 political subdivision thereof, or of a corporate instrumentality of
240 any of them. This shall include, without limitation of the foregoing,
241 business commonly known as industrial banks, dealers in commer-
242 cial paper and acceptances, sales finance, personal finance, small
243 loan and mortgage financing businesses, as well as any other enter-
244 prise employing moneyed capital coming into competition with the
245 business of national banks; provided, that the holding of bonds,
246 notes, or other evidences of indebtedness by individual persons not
247 employed or engaged in the banking or investment business and
248 representing merely personal investments not made in competition
249 with the business of national banks, shall not be deemed financial
250 business. Nor shall "financial business" include national banks,
251 production credit associations organized under the Farm Credit
252 Act of 1933 or the Farm Credit Act of 1971, Pub. L. 92-181 (12
253 U. S. C. § 2091 et seq.), stock and mutual insurance companies
254 duly authorized to transact business in this State, security brokers
255 or dealers or investment companies or bankers not employing
256 moneyed capital coming into competition with the business of na-
257 tional banks, real estate investment trusts, or any of the following
258 entities organized under the laws of this State: credit unions,
259 savings banks, savings and loan and building and loan associations,
260 pawnbrokers, and State banks and trust companies.

261 (n) "International banking facility" shall mean a set of asset
262 and liability accounts segregated on the books and records of a
263 depository institution, United States branch or agency of a foreign
264 bank, or an Edge or Agreement Corporation that includes only
265 international banking facility time deposits and international
266 banking facility extensions of credit as such terms are defined in
267 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
268 board of governors of the Federal Reserve System, 12 CFR Part
269 204, effective December 3, 1981. In the event that the United States
270 enacts a law, or the board of governors of the Federal Reserve Sys-
271 tem adopts a regulation which amends the present definition of
272 international banking facility or of such facilities' time deposits or
273 extensions of credit, the Commissioner of Banking shall forthwith
274 adopt regulations defining such terms in the same manner as such
275 terms are set forth in the laws of the United States or the regula-
276 tions of the board of governors of the Federal Reserve System. The
277 regulations of the Commissioner of Banking shall thereafter pro-
278 vide the applicable definitions.

1 2. This act shall take effect immediately and shall be applicable
2 with respect to accounting or privilege periods ending on or after
3 December 31 next following enactment.

A2144

A2144

STATEMENT

This bill amends the "Corporation Business Tax Act (1945)" to allow a 15 year carryforward of any net operating loss. Current law restricts recognition of net operating loss to the year in which sustained. The 15 year carryforward period is the same period allowed by the Internal Revenue Code. 26 U. S. C. § 172(b)(1)(B). A 15 year period is selected as a period long enough to allow a new corporation to exclude net operating losses. This exclusion from net income allows a carryforward of net operating losses incurred during the early years of a corporation's business to offset the profits in later years. This bill makes available a tax advantage for new businesses granted in other states, such as New York. A carryback provision, although provided for in the Internal Revenue Code, is not needed to generate new businesses within the State. Also, a carryback provision is not included in this bill as it increases the administrative burden by necessitating another form for filing.

ASSEMBLY, No. 2243

STATE OF NEW JERSEY

INTRODUCED JUNE 25, 1984

By Assemblymen MARSELLA, ZANGARI and ROCCO

AN ACT concerning the corporation business tax and amending and
supplementing P. L. 1945, c. 162.

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

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

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

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

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

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

14 (d) "Net worth" shall mean the aggregate of the values dis-
15 closed by the books of the corporation for (1) issued and outstand-
16 ing capital stock, (2) paid-in or capital surplus, (3) earned surplus
17 and undivided profits, and (4) surplus reserves which can reason-
18 ably be expected to accrue to holders or owners of equitable shares,
19 not including reasonable valuation reserves, such as reserves for
20 depreciation or obsolescence or depletion. Notwithstanding the
21 foregoing, net worth shall not include any deduction for the amount
22 of the excess depreciation described in paragraph (2) (F) of sub-

**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 printed in italics thus is new matter.

23 section (k) of this section. The foregoing aggregate of values shall
24 be reduced by 50% of the amount disclosed by the books of the
25 corporation for investment in the capital stock of one or more
26 subsidiaries, which investment is defined as ownership (1) of at
27 least 80% of the total combined voting power of all classes of
28 stock of the subsidiary entitled to vote and (2) of at least 80%
29 of the total number of shares of all other classes of stock except
30 nonvoting stock which is limited and preferred as to dividends.
31 In the case of investment in an entity organized under the laws
32 of a foreign country, the foregoing requisite degree of owner-
33 ship shall effect a like reduction of such investment from net
34 worth of the taxpayer, if the foreign entity is considered a
35 corporation for any purpose under the United States federal
36 income tax laws, such as (but not by way of sole examples) for the
37 purpose of supplying deemed paid foreign tax credits or for the
38 purpose of status as a controlled foreign corporation. In calculat-
39 ing the net worth of a taxpayer entitled to reduction for investment
40 in subsidiaries, the amount of liabilities of the taxpayer shall be
41 reduced by such proportion of the liabilities as corresponds to the
42 ratio which the excluded portion of the subsidiary values bears
43 to the total assets of the taxpayer.

44 In the case of banking corporations which have international
45 banking facilities as defined in subsection (n), the foregoing aggre-
46 gate of values shall also be reduced by retained earnings of the
47 international banking facility. Retained earnings mean the earn-
48 ings accumulated over the life of such facility and shall not include
49 the pro rata share of dividends paid and federal income taxes paid
50 or payable during the tax year.

51 If in the opinion of the commissioner, the corporation's books
52 do not disclose fair valuations the commissioner may make a rea-
53 sonable determination of the net worth which, in his opinion, would
54 reflect the fair value of the assets, exclusive of subsidiary invest-
55 ments as defined aforesaid, carried on the books of the corporation,
56 in accordance with sound accounting principles, and such determi-
57 nation shall be used as net worth for the purpose of this act.

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

64 (f) "Investment company" shall mean any corporation whose
65 business during the period covered by its report consisted, to the

66 extent of at least 90% thereof of holding, investing and reinvesting
67 in stocks, bonds, notes, mortgages, debentures, patents, patent
68 rights and other securities for its own account. but this shall not
69 include any corporation which: (1) is a merchant or a dealer of
70 stocks, bonds and other securities, regularly engaged in buying the
71 same and selling the same to customers; or (2) had less than 90%
72 of its average gross assets in New Jersey, at cost, invested in
73 stocks, bonds, debentures, mortgages, notes, patents, patent rights
74 or other securities or consisting of cash on deposit during the period
75 covered by its reports; or (3) is a banking corporation or a financial
76 business corporation as defined in the Corporation Business Tax
77 Act.

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

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

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

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

90 (k) "Entire net income" shall mean total net income from all
91 sources, whether within or without the United States, and shall
92 include the gain derived from the employment of capital or labor,
93 or from both combined, as well as profit gained through a sale or
94 conversion of capital assets. For the purpose of this act, the
95 amount of a taxpayer's entire net income shall be deemed prima
96 facie to be equal in amount to the taxable income, before net operat-
97 ing loss deduction and special deductions, which the taxpayer
98 is required to report to the United States Treasury Department
99 for the purpose of computing its federal income tax; provided,
100 however, that in the determination of such entire net income,

101 (1) Entire net income shall exclude 100% of dividends which
102 were included in computing such taxable income for federal income
103 tax purposes, paid to the taxpayer by one or more subsidiaries
104 owned by the taxpayer to the extent of the 80% or more owner-
105 ship of investment described in subsection (d) of this section. With
106 respect to other dividends, entire net income shall not include 50%
107 of the total included in computing such taxable income for federal
108 income tax purposes. Entire net income shall exclude for the

109 periods set forth in paragraph (2) (F) (i) of this subsection, any
110 amount, except with respect to property described in section 168
111 (f) (8) (D) ~~[(iii)]~~ (v) of the Internal Revenue Code, which is
112 included in a taxpayer's federal taxable income solely as a result of
113 an election made pursuant to the provisions of paragraph (8) of
114 that section.

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

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

120 (B) Any part of any income from dividends or interest on any
121 kind of stock, securities or indebtedness, except as provided in
122 subsection (k) (1) of this section;

123 (C) Taxes paid or accrued to the United States on or measured
124 by profits or income, or the tax imposed by this act, or any tax
125 paid or accrued with respect to subsidiary dividends excluded from
126 entire net income as provided in subsection (k) (1) of this section;

127 (D) ~~Net operating losses sustained during any year or period~~
128 ~~other than that covered by the report~~ (*Deleted by amendment,*
129 *P. L. , c. .*);

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

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

135 (ii) In full to the extent that it relates to bonds or other
136 evidences of indebtedness issued, with stock, pursuant to a
137 bona fide plan of reorganization, to persons who, prior to
138 such reorganization, were bona fide creditors of the corpora-
139 tion or its predecessors, but were not stockholders or share-
140 holders thereof;

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

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

150 (v) In full to the extent it relates to debt of a banking
151 corporation to a bank holding company, as defined in 12 U.S.C.
152 § 1841, of which the banking corporation is a subsidiary;

153 (F) (i) The amount by which depreciation reported to the
 154 United States Treasury Department for property placed in ser-
 155 vice on and after January 1, 1981, for purposes of computing
 156 federal taxable income in accordance with section 168 of the
 157 Internal Revenue Code in effect after December 31, 1980, exceeds
 158 the amount of depreciation determined in accordance with the
 159 Internal Revenue Code provisions in effect prior to January 1,
 160 1981, but only with respect to a taxpayer's accounting period
 161 ending after December 31, 1981; provided, however, that where a
 162 taxpayer's accounting period begins in 1981 and ends in 1982, no
 163 modification shall be required with respect to this paragraph (F)
 164 for the report filed for such period with respect to property
 165 placed in service during that part of the accounting period which
 166 occurs in 1981.

167 (ii) For the periods set forth in subparagraph (F) (i) of this
 168 subsection, any amount, except with respect to property described
 169 in section 168 (f) (8) (D) ~~[(iii)]~~ (v) of the Internal Revenue Code,
 170 which the taxpayer claimed as a deduction in computing federal
 171 income tax pursuant to a qualified lease agreement under para-
 172 graph (8) of that section.

173 The director shall promulgate rules and regulations necessary
 174 to carry out the provisions of this section, which rules shall pro-
 175 vide, among others, the manner in which the remaining life of
 176 property shall be reported.

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

182 (4) There shall be allowed as a deduction from entire net income
 183 of a banking corporation, to the extent not deductible in deter-
 184 mining federal taxable income, the eligible net income of an inter-
 185 national banking facility determined as follows:

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

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

192 (i) Making, arranging for, placing or carrying loans to
 193 foreign persons, provided, however, that in the case of a foreign
 194 person which is an individual, or which is a foreign branch of
 195 a domestic corporation (other than a bank), or which is a

196 foreign corporation or foreign partnership which is controlled
197 by one or more domestic corporations (other than banks),
198 domestic partnerships or resident individuals, all the proceeds
199 of the loan are for use outside of the United States;

200 (ii) Making or placing deposits with foreign persons which
201 are banks or foreign branches of banks (including foreign sub-
202 sidiaries) or foreign branches of the taxpayers or with other
203 international banking facilities; or

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

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

209 (C) Applicable expenses shall be any expense or other deduc-
210 tions attributable, directly or indirectly, to the eligible gross
211 income described in paragraph (B) of this subsection.

212 (5) *If a taxpayer is allowed by federal law in computing the*
213 *taxpayer's federal income tax to carryback or carryover a net oper-*
214 *ating loss to years other than the year in which the loss was in-*
215 *curring, the taxpayer shall be allowed to carry the loss back to each*
216 *of the three years preceding the loss year for which the taxpayer*
217 *was taxable under the "Corporation Business Tax Act (1945),"*
218 *P. L. 1945, c. 162 (C. 54:10A-1 et seq.) and carry it over to each of*
219 *the 15 taxable years following the loss year, as a deduction against*
220 *the entire net income determined under that act. If a taxpayer is al-*
221 *lowed by federal law in computing the taxpayer's federal income*
222 *tax to carryback or carryover a net capital loss to years other than*
223 *the year in which such loss was incurred, the taxpayer shall be*
224 *allowed to carry the loss back to each of the three years preceding*
225 *the loss year for which the taxpayer was taxable under the "Corpo-*
226 *ration Business Tax Act (1945)," P. L. 1945, c. 162 (C. 54:10A-1*
227 *et seq.) and carry it over to each of the five taxable years following*
228 *the loss year, as a deduction against the entire net income deter-*
229 *mined under that act. The entire amount of any net operating loss,*
230 *or net capital loss, for any loss year shall be carried to the earliest*
231 *of the taxable years to which the loss may be carried, and the por-*
232 *tion of the loss which shall be carried to each of the other taxable*
233 *years to which the loss may be carried shall be the excess, if any,*
234 *of the loss over the total of the entire net income for each of the*
235 *prior taxable years to which the loss has been carried. In no case*
236 *shall a net operating loss, or a capital loss, which was actually re-*
237 *ceived by a taxpayer in a year preceding the year in which this*
238 *paragraph becomes effective be carried over to any other year; and,*

239 *in no case shall a net operating loss, or a capital loss, actually re-*
240 *ceived by a taxpayer in a year following the year in which this sub-*
241 *section becomes effective be carried back to a year preceding the*
242 *year in which this paragraph becomes effective.*

243 (l) "Real estate investment trust" shall mean any unincor-
244 porated trust or unincorporated association qualifying and electing
245 to be taxed as a real estate investment trust under federal law.

246 (m) "Financial business corporation" shall mean any corporate
247 enterprise which is (1) in substantial competition with the business
248 of national banks and which (2) employs moneyed capital with the
249 object of making profit by its use as money, through discounting and
250 negotiating promissory notes, drafts, bills of exchange and other
251 evidences of debt; buying and selling exchange; making of or deal-
252 ing in secured or unsecured loans and discounts; dealing in securi-
253 ties and shares of corporate stock by purchasing and selling such
254 securities and stock without recourse, solely upon the order and for
255 the account of customers; or investing and reinvesting in market-
256 able obligations evidencing indebtedness of any person, copartner-
257 ship, association or corporation in the form of bonds, notes or de-
258 bentures commonly known as investment securities; or dealing in or
259 underwriting obligations of the United States, any state or any
260 political subdivision thereof, or of a corporate instrumentality of
261 any of them. This shall include, without limitation of the foregoing,
262 business commonly known as industrial banks, dealers in commer-
263 cial paper and acceptances, sales finance, personal finance, small
264 loan and mortgage financing businesses, as well as any other enter-
265 prise employing moneyed capital coming into competition with the
266 business of national banks; provided, that the holding of bonds,
267 notes, or other evidences of indebtedness by individual persons not
268 employed or engaged in the banking or investment business and
269 representing merely personal investments not made in competition
270 with the business of national banks, shall not be deemed financial
271 business. Nor shall "financial business" include national banks,
272 production credit associations organized under the Farm Credit
273 Act of 1933 or the Farm Credit Act of 1971, Pub. L. 92-181
274 (12 U.S.C. §2091 et seq.), stock and mutual insurance companies
275 duly authorized to transact business in this State, security brokers
276 or dealers or investment companies or bankers not employing
277 moneyed capital coming into competition with the business of
278 national banks, real estate investment trusts, or any of the follow-
279 ing entities organized under the laws of this State: credit unions,
280 savings banks, savings and loan and building and loan associations,
281 pawnbrokers, and State banks and trust companies.

282 (n) "International banking facility" shall mean a set of asset
 283 and liability accounts segregated on the books and records of a
 284 depository institution, United States branch or agency of a foreign
 285 bank, or an Edge or Agreement Corporation that includes only
 286 international banking facility time deposits and international
 287 banking facility extensions of credit as such terms are defined in
 288 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
 289 board of governors of the Federal Reserve System, 12 CFR Part
 290 204, effective December 3, 1981. In the event that the United States
 291 enacts a law, or the board of governors of the Federal Reserve Sys-
 292 tem adopts a regulation which amends the present definition of
 293 international banking facility or of such facilities' time deposits or
 294 extensions of credit, the Commissioner of Banking shall forthwith
 295 adopt regulations defining such terms in the same manner as such
 296 terms as set forth in the laws of the United States or the regula-
 297 tions of the board of governors of the Federal Reserve System. The
 298 regulations of the Commissioner of Banking shall thereafter pro-
 299 vide the applicable definitions.

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

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

8 (a) That portion of its entire net worth as may be allocable to
 9 this State as provided in section 6 multiplied by the following
 10 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
 11 worth; $\frac{1}{10}$ of a mill per dollar on the second \$100,000,000.00;
 12 $\frac{3}{10}$ of a mill per dollar on the third \$100,000,000.00; and $\frac{2}{10}$ of a
 13 mill per dollar on all amounts of allocated net worth in excess of
 14 \$300,000,000.00; provided, however, that with respect to reports
 15 covering accounting or privilege periods set forth below, the rate
 16 shall be that percentage of the rate set forth in this subsection for
 17 the appropriate year:

Accounting or Privilege Periods Beginning on or After:	The Percentage of the Rate to be Imposed Shall Be:
18 April 1, 1983	75%
19 July 1, 1984	50%
20 July 1, 1985	25%
21 July 1, 1986	0
22 (b) (Deleted by amendment, P. L. 1968, c. 250, s. 2.)	

23 (c) $3\frac{1}{4}\%$ of its entire net income or such portion thereof as may
 24 be allocable to this State as provided in section 6; provided, how-
 25 ever, that with respect to reports covering accounting or privilege
 26 periods or parts thereof ending after December 31, 1967, the rate
 27 shall be $4\frac{1}{4}\%$; and, that with respect to reports covering account-
 28 ing or privilege periods or parts thereof ending after December 31,
 29 1971, the rate shall be $5\frac{1}{2}\%$; and, that with respect to reports cov-
 30 ering accounting or privilege periods or parts thereof ending after
 31 December 31, 1974, the rate shall be $7\frac{1}{2}\%$; and, that with respect
 32 to reports covering accounting or privilege periods or parts thereof
 33 ending after December 31, 1979, the rate shall be 9%; *and, that with*
 34 *respect to reports covering accounting or privilege periods or parts*
 35 *thereof ending after December 31, 1984, the rate shall be 8%.*

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
 39 its return in the form and within the time provided in this act and
 40 the rules and regulations promulgated in connection therewith,
 41 shall, in the case of an investment company, be measured by 25%
 42 of its entire net income and 25% of its entire net worth, and, in the
 43 case of a real estate investment trust, by 4% of its entire net
 44 income and 15% of its entire net worth, at the rates hereinbefore
 45 set forth for the computation of tax on net income and net worth,
 46 respectively, but in no case less than \$250.00, and further provided,
 47 however, that the franchise tax to be annually assessed to and
 48 paid by a regulated investment company which for a period covered
 49 by its report satisfies the requirements of Chapter 1, Subchapter
 50 M., Part I, Section 852(a) of the Federal Internal Revenue Code
 51 shall be \$250.00.

52 (e) The tax assessed to any taxpayer pursuant to this section
 53 shall not be less than \$25.00 in the case of a domestic corporation,
 54 \$50.00 in the case of a foreign corporation, or \$250.00 in the case
 55 of an investment company or regulated investment company.

56 (f) In lieu of the portion of the tax based on net worth and to
 57 be computed under subsection (a) of this section, any taxpayer,
 58 the value of whose total assets everywhere, less reasonable reserves
 59 for depreciation, as of the close of the period covered by its report,
 60 amounts to less than \$150,000.00, may elect to pay the tax shown
 61 in a table which shall be promulgated by the director.

1 3. (New section) Where the accounting or privilege period cov-
 2 ered by a report includes any period prior to January 1, 1985, then
 3 (1) tentative taxes on taxable net income shall be separately com-
 4 puted by applying both the rate for the period before January 1,

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5 1985 and the rate for the period on and after that date to the tax-
6 able income for the entire accounting or privilege period; and (2)
7 the tax for that accounting or privilege period shall be the sum of
8 that proportion of each tentative tax which the number of months
9 in each period bears to the total number of months in the entire
10 accounting or privilege period. For the purposes of this computa-
11 tion, more than one-half the number of days in a calendar month
12 shall be deemed to be a full month.

1 4. This act shall take effect immediately.

STATEMENT

This bill amends the "Corporation Business Tax Act" to provide for a carryback and carryover of both capital losses and net operating losses as a deduction from the taxpayer's entire net income. In the case of capital losses the taxpayer could carryback three years and carryforward five years. In the case of net operating losses the taxpayer could carryback three years and forward 15 years. In each instance, these carryback and carryforward periods are the same as those allowed to most corporations under the federal law.

The bill also reduces by 1% the rate of taxation under the "Corporation Business Tax Act (1945)," effective January 1, 1985. For accounting or privilege periods ending on or after that date, the tax rate under the act will be 8%, rather than the current 9%.

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Release: MONDAY, APRIL 22, 1985

Governor Thomas H. Kean today signed legislation providing for a carryforward of net operating losses as a deduction from the taxpayer's entire net income.

"The loss-carryforward bill puts New Jersey in a better competitive position with our neighbor states in competing for new businesses," Kean said. "It sends a signal to the business community, particularly small businesses, that New Jersey recognizes the difficulties that arise when businesses seek to grow and expand.

"In its simplest terms, this bill means more jobs for New Jerseyans," Kean said.

The bill, A-165, was sponsored by Assemblywoman Barbara F. Kalik, D-Burlington.

It amends the Corporation Business Tax Act definition of entire net income to allow a new operating loss carryforward deduction, permitting such losses to be used to offset net income as earned in the next seven tax years. The carryforward must be applied in the earliest year in which net income is reported.

The bill restricts the carryforward deduction in instances where there has been a change of ownership of the corporation of 50 percent or more of the interest in the company, coupled with a change in the trade or business of the company, in such instances only losses incurred after the change of ownership may be carried forward.

- more -

A-165 - NET INCOME

Monday, April 22, 1985

Page Two

Additionally, the Division of Taxation may disallow the carryforward deduction in instances where the fact support the premise that the corporation was acquired for the primary purpose of the use of the net operating loss carryforward.

Prior to enactment of A-165 New Jersey was one of only four states which allow no form of loss carryforward. The remaining states are Alabama, California and New Hampshire.

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