54:10A-4

# LEGISLATIVE HISTORY CHECKLIST

NJSA 54:10A-4 (Corporation Business Tax--allow deduction from "net worth" of financing of certain automobile inventories)

LAWS 1981 CHAPTER 259

Bill No. A3143

Sponsor(s) Van Wagner

Date Introduced Feb. 19, 1981

Committee: Assembly Revenue, Finance and Appropriations

Senate Revenue, Finance and Appropriations

Amended during passage ~~Yes~~ No

Date of Passage: Assembly May 4, 1981

Senate June 29, 1981

Date of approval Aug. 12, 1981

Following statements are attached if available:

| | | |
|---|---|---|
| Sponsor statement | Yes | ~~No~~ |
| Committee Statement: Assembly | Yes | ~~No~~ |
| Committee Statement: Senate | Yes | ~~No~~ |
| Fiscal Note | ~~Yes~~ | No |
| Veto Message | ~~Yes~~ | No |
| Message on signing | Yes | ~~No~~ |

Following were printed:

| | | |
|---|---|---|
| Reports | ~~Yes~~ | No |
| Hearings | ~~Yes~~ | No |

6/22/81

CHAPTER 259 LAWS OF N. J. 1981
APPROVED 8-12-81

# ASSEMBLY, No. 3143

# STATE OF NEW JERSEY

INTRODUCED FEBRUARY 19, 1981

By Assemblyman VAN WAGNER

Referred to Committee on Revenue, Finance and Appropriations

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

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

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

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

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

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

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

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion, and (5) the amount of all indebtedness owing directly or indirectly to holders of 10% or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes, as of the close of a calendar or fiscal year *other than indebtedness which is a result of a bona fide financing of motor vehicle inventory held for sale to customers which financing is pro-*

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

*vided by a taxpayer customarily and routinely providing for this type of financing.* In the case of financial business corporations which are funded through debt from affiliated corporations, the debt to the affiliated corporations is not to be considered as "net worth." The foregoing aggregate of value shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States Federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed-paid foreign tax credits or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

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

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

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

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

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

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

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

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

(1) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for Federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section. With respect to other dividends, entire net income shall not exclude 50% of the total included in computing such taxable income for Federal income tax purposes;

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

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

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

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

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

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

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

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

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

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

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

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

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

2. This act shall take effect immediately and shall be applicable to taxpayers with accounting periods commencing on and after January 1, 1981.

---

STATEMENT

A major factor in encouraging new enterprises in automobile retailing is manufacturer-assistance programs, sometimes called "dealer development" or "dealer initiative" plans. The manufacturer provides all or most of the financing for a fledgling dealer, whether he is building a new dealership or has purchased an established facility. The manufacturer, generally through its real estate subsidiary, initially will own all or most of the dealership; the dealer will enlarge his holding by payment out of profit over a period of years, eventually gaining full ownership.

Such programs are the prime means of entry into the dealership ranks of member of minority groups.

Because of two provisions in the New Jersey corporate tax laws, these dealers—who, ironically, are financially weaker than established retailers—are penalized. Many dealers, manufacturer-assisted or not, finance or "floor plan" their new car inventory through the financial subsidiary of their manufacturer. The non-assisted dealer can deduct the value of notes outstanding for inventory from his taxable net worth and can deduct from his net income the interest paid on his indebtedness. The factory-assisted dealer, however, cannot make the same deductions because they are based on an obligation to a company (the manufacturer) which, at least temporarily, holds 10% or more of the stock in the corporation through another of its subsidiaries.

Thus, the new, often-struggling dealer often must pay substantially higher corporate net worth and net income taxes than older, better-established dealers.

This is an unintended inequity in the corporate tax laws. Its only result is to financially burden those automotive retailers who are least able to pay. Its repeal, as proposed in this bill, would encourage expansion of individual enterprise in this important field of retailing.

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

2. This act shall take effect immediately and shall be applicable to taxpayers with accounting periods commencing on and after January 1, 1981.

---

STATEMENT

A major factor in encouraging new enterprises in automobile retailing is manufacturer-assistance programs, sometimes called "dealer development" or "dealer initiative" plans. The manufacturer provides all or most of the financing for a fledgling dealer,

A3143 (1981)

ASSEMBLY REVENUE, FINANCE AND APPROPRIATIONS COMMITTEE

STATEMENT TO

# ASSEMBLY, No. 3143

# STATE OF NEW JERSEY

DATED: APRIL 27, 1981

Assembly Bill No. 3143 amends the Corporation Business Tax. The intent of the bill is to give car dealers who finance their inventories through the financial subsidiaries of their manufacturers, the same tax treatment as those who finance their inventories through other commercial banking enterprises.

To accomplish this purpose, the definition of net worth is amended to exclude indebtedness of financing motor vehicle inventories which financing is provided by a taxpayer customarily and routinely providing for this type of financing. Secondly, the definition of net income is amended to provide that such indebtedness may be deducted in its entirety in determining net worth.

The sponsor's statement submitted with the bill provides a further statement of intent.

SENATE REVENUE, FINANCE AND APPROPRIATIONS COMMITTEE

STATEMENT TO

# ASSEMBLY, No. 3143

# STATE OF NEW JERSEY

DATED: JUNE 22, 1981

Assembly Bill No. 3143 amends the Corporation Business Tax. The intent of the bill is to give car dealers who finance their inventories through the financial subsidiaries of their manufacturers, the same tax treatment as those who finance their inventories through other commercial banking enterprises.

To accomplish this purpose, the definition of net worth is amended to exclude indebtedness of financing motor vehicle inventories which financing is provided by a taxpayer customarily and routinely providing for this type of financing. Secondly, the definition of net income is amended to provide that such indebtedness may be deducted in its entirety in determining net worth.

The sponsor's statement submitted with the bill provides a further statement of intent.

A-3515, sponsored by Assemblyman Richard Van Wagner (D-Monmouth), extending the Agent Orange Act for 12 additional months, to expire on August 21, 1982. The original Agent Orange Act appropriated $25,000 and established a commission to study the effects of the chemical defoliant on Vietnam veterans, as well as coordinating legal, medical and social services for exposed veterans. Additional funding of $75,000 for the program was approved earlier this year.

A-3143, sponsored by Assemblyman Richard Van Wagner (D-Monmouth), amending the Corporation Business Tax Act to allow automobile dealers owing certain debts to manufacturers to deduct the amount of the indebtedness, thereby lowering the net worth tax paid by these dealers.

The automobile industry in New Jersey is currently involved in a unique situation where certain dealers, particularly in minority areas, finance their cars predominantly through manufacturers, making the manufacturers, in effect, stockholders in the dealership.

Current law does not recognize the manufacturer's "stock ownership" as a legitimate debt owed by the dealer, and, as such, the dealer's net worth becomes overstated. The bill provides for a more accurate reflection of a dealer's liabilities for tax purposes.

# # # # #