

54:10A-4

LEGISLATIVE HISTORY CHECKLIST

NJSA 54:10A-4 (Corporation Business Tax Act - amendment - definition of net worth)

LAWS 1981 CHAPTER 467

Bill No. S3034

Sponsor(s) Yates

Date Introduced Jan. 22, 1981

Committee: Assembly Revenue, Finance & Appropriations

Senate " " "

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Jan. 7, 1982

Senate Nov. 16, 1981

Date of approval Jan. 11, 1982

Following statements are attached if available:

Sponsor statement	Yes	No
Committee Statement: Assembly	Yes	No
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

DEC 1982

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SENATE, No. 3034

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1981

By Senator YATES

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).

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, (4) surplus reserves which can reasonably
18 be expected to accrue to holders or owners of equitable shares, not
19 including reasonable valuation reserves, such as reserves for de-
20 preciation or obsolescence or depletion, and (5) the amount of all
21 indebtedness owing directly or indirectly to holders of 10% or more
22 of the aggregate outstanding shares of the taxpayer's capital stock
23 of all classes, as of the close of a calendar or fiscal year*, *other than*
24 *indebtedness which is a result of a bona fide financing of motor*
25 *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.

26 *vided by a taxpayer customarily and routinely providing for this*
27 *type of financing**. In the case of financial business corporations
27A which are funded through debt from affiliated corporations,
28 the debt to the affiliated corporations is not to be considered as
29 “net worth” *and in the case of banking corporations* ***[and other*
30 *corporations]*** *which are affiliates of bank holding companies, as*
31 *defined in 12 U. S. C. § 1841, and which are funded through debt*
32 *from such bank holding companies, the debt to those bank holding*
33 *companies from its* ***banking corporation*** *affiliates is not to be*
34 *considered as “net worth.”* The foregoing aggregate of values shall
35 be reduced by 50% of the amount disclosed by the books of the
36 corporation for investment in the captial stock of one or more sub-
37 sidiaries, which investment is defined as ownership (1) of at least
38 80% of the total combined voting power of all classes of stock of the
39 subsidiary entitled to vote and (2) of at least 80% of the total num-
40 ber of shares of all other classes of stock except nonvoting stock
41 which is limited and preferred as to dividends. In the case of invest-
42 ment in an entity organized under the laws of a foreign country, the
43 foregoing requisite degree of ownership shall effect a like reduction
44 of such investment from net worth of the taxpayer, if the foreign
45 entity is considered a corporation for any purpose under the United
46 States federal income tax laws, such as (but not by way of sole
47 examples) for the purpose of supplying deemed-paid foreign tax
48 credits or for the purpose of status as a controlled foreign corpo-
49 ration. In calculating the net worth of a taxpayer entitled to reduc-
50 tion for investment in subsidiaries, the amount of liabilities of the
51 taxpayer shall be reduced by such proportion of the liabilities as
51A corresponds to the ratio which the excluded portion of the sub-
51B sidiary values bears to the total assets of the taxpayer.

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

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

65 (f) “Investment company” shall mean any corporation whose

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

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

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

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

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

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

104 (1) Entire net income shall exclude 100% of dividends which
105 were included in computing such taxable income for Federal income
106 tax purposes, paid to the taxpayer by one or more subsidiaries
107 owned by the taxpayer to the extent of the 80% or more owner-
108 ship of investment described in subsection (d) of this section.
109 With respect to other dividends, entire net income shall not include
110 50% of the total included in computing such taxable income for
111 federal income tax purposes:

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

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

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

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

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

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

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

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

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

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

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

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

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

155 (m) "Financial business corporation" shall mean any corporate
156 enterprise which is (1) in substantial competition with the business
157 of national banks and which (2) employs moneyed capital with the
158 object of making profit by its use as money, through discounting and
159 negotiating promissory notes, drafts, bills of exchange and other
160 evidences of debt; buying and selling exchange; making of or deal-
161 ing in secured or unsecured loans and discounts; dealing in securi-
162 ties and shares of corporate stock by purchasing and selling such
163 securities and stock without recourse, solely upon the order and for
164 the account of customers; or investing and reinvesting in market-
165 able obligations evidencing indebtedness of any person, copartner-
165a ship, association or corporation in the form of bonds, notes or de-
166 bentures commonly known as investment securities; or dealing in
167 or underwriting obligations of the United States, any state or any
168 political subdivision thereof, or of a corporate instrumentality of
169 any of them. This shall include, without limitation of the foregoing
170 business commonly known as industrial banks, dealers in commer-
171 cial paper and acceptances, sales finance, personal finance, small
172 loan and mortgage financing businesses, as well as any other enter-
173 prise employing moneyed capital coming into competition with the
174 business of national banks; provided, that the holding of bonds,
175 notes, or other evidences of indebtedness by individual persons not
176 employed or engaged in the banking or investment business and rep-
177 resenting merely personal investments not made in competition
178 with the business of national banks, shall not be deemed financial
179 business. Nor shall "financial business" include national banks,
180 production credit associations organized under the Farm Credit
181 Act of 1933, stock and mutual insurance companies duly autho-
182 rized to transact business in this State, security brokers or dealers
183 or investment companies or bankers not employing moneyed capital
184 coming into competition with the business of national banks, real
185 estate investment trusts, or any of the following entities organized
186 under the laws of this State: credit unions, savings banks, savings
187 and loan and building and loan associations, pawnbrokers, and
188 State banks and trust companies.

1 2. This act shall take effect immediately and shall be applicable
2 to taxpayers whose accounting periods end on or after December
3 31, 1981.

160 evidences of debt; buying and selling exchange; making of or deal-
 161 ing in secured or unsecured loans and discounts; dealing in securi-
 162 ties and shares of corporate stock by purchasing and selling such
 163 securities and stock without recourse, solely upon the order and for
 164 the account of customers; or investing and reinvesting in market-
 165 able obligations evidencing indebtedness of any person, copartner-
 165A ship, association or corporation in the form of bonds, notes or de-
 166 bentures commonly known as investment securities; or dealing in
 167 or underwriting obligations of the United States, any state or any
 168 political subdivision thereof, or of a corporate instrumentality of
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 174 business of national banks; provided, that the holding of bonds,
 175 notes, or other evidences of indebtedness by individual persons not
 176 employed or engaged in the banking or investment business and rep-
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 186 under the laws of this State: credit unions, savings banks, savings
 187 and loan and building and loan associations, pawnbrokers, and
 188 State banks and trust companies.

- 1 2. This act shall take effect immediately and shall be applicable
- 2 to taxpayers whose accounting periods end on or after December
- 3 31, 1981.

STATEMENT

This bill provides that "net worth" for purposes of the "Corporation Business Tax Act" would not include any debt to an affiliated corporation or affiliates of bank holding companies.

Additionally, the bill provides that "entire cost income" would not include the interest cost as it relates to the debt of a banking corporation or other corporation to a bank holding company of which the banking corporation or other corporation is a subsidiary.

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ASSEMBLY REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
SENATE, No. 3034

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with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 17, 1981

This bill amends the Corporation Business Tax Act to exclude from consideration in determining net worth and net income any debt or interest on debt between a bank holding company and an affiliated or subsidiary banking corporation.

COMMITTEE AMENDMENTS

Committee amendments clarify the language in the bill regarding type of corporation affected to include only banking corporations as opposed to corporations generally.

FISCAL IMPACT

It is estimated by the Division of Taxation that a revenue loss of \$400,000.00 would be experienced, of which \$200,000.00 represents a loss to the State Treasury. This loss estimate is based on a review of actual returns for 1980.

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SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
SENATE, No. 3034
with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 1981

Senate Bill No. 3034 amends the Corporation Business Tax. The intent of this bill is to exclude from "net worth" any debt of a banking corporation funded through debt from bank holding companies.

To accomplish this purpose, the definition of net worth is amended to exclude such indebtedness of an affiliated corporation or affiliates of bank holding companies. Secondly, the bill provides that "entire cost income" would not include the interest cost as it relates to the debt of a banking corporation to a bank holding company where the corporation is a subsidiary.

The committee made certain technical amendments so as to preclude an inadvertant repeal of corporate tax law changes proposed by Assembly Bill No. 3143.