

54:10A-4

LEGISLATIVE HISTORY CHECKLIST

(Financial business corporations - deduct certain interest payments from corporation business tax)

HJSA 54:10A-4

LAWS OF 1979

CHAPTER 76

Bill No. S988

Sponsor(s) Yates

Date Introduced March 17, 1978

Committee: Assembly Taxation

Senate Revenue, Finance and Appropriations

Amended during passage XXX No

Date of Passage: Assembly December 4, 1978

Senate October 5, 1978

Date of approval April 11, 1979

Following statements are attached if available:

Sponsor statement Yes ~~XX~~ (Below)

Committee Statement: Assembly Yes ~~XX~~

Senate Yes ~~XX~~

Fiscal Note ~~XXX~~ No

Veto message ~~XXX~~ No

Message on signing ~~XXX~~ No

Following were printed:

Reports ~~XXX~~ No

Hearings ~~XXX~~ No

Sponsor's statement:

This bill will adjust the method for determining the net worth of financial business corporations which are funded through debt to parent or affiliated corporations.

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SENATE, No. 988

STATE OF NEW JERSEY

INTRODUCED MARCH 17, 1978

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. *In the case*
24 *of financial business corporations which are funded through debt*
25 *from affiliated corporations, the debt to the affiliated corporations*
26 *is not to be considered as "net worth."* The foregoing aggregate
27 of values shall be reduced by 50% of the amount disclosed by the

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

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

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

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

70 or other securities or consisting of cash on deposit during the
71 period covered by its report or (3) is a banking corporation or a
72 financial business corporation as defined in the Corporation
73 Business Tax Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

130 (iii) *In full to the extent that it relates to debt of a financial*
131 *business corporation owed to an affiliate corporation; pro-*
131A *vided that such interest rate does not exceed 2% over prime*
131B *rate; the prime rate to be determined by the Commissioner of*
131C *Banking.*

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

137 (1) "Real estate investment trust" shall mean any unincor-
138 porated trust or unincorporated association qualifying and electing
139 to be taxed as a real estate investment trust under Federal law.

140 (m) "Financial business corporation" shall mean any corporate
141 enterprise which is (1) in substantial competition with the business
142 of national banks and which (2) employs moneyed capital with the
143 object of making profit by its use as money through discounting and
144 negotiating promissory notes, drafts, bills of exchange and other
145 evidences or debt; buying and selling exchange, making of or deal-
146 ing in secured or unsecured loans and discounts; dealing in securi-
147 ties and shares of corporate stock by purchasing and selling such
148 securities and stock without recourse, solely upon the order and for
149 the account of customers; or investing and reinvesting in market-
150 able obligations evidencing indebtedness of any person, copartner-
151 ship, association or corporation in the form of bonds, notes or de-
152 bentures commonly known as investment securities; or dealing in

153 or underwriting obligations of the United States, any State or any
154 political subdivision thereof, or of a corporate instrumentality of
155 any of them. This shall include, without limitation of the foregoing
156 business commonly known as industrial banks, dealers in commer-
157 cial paper and acceptances, sales finance, personal finance, small
158 loan and mortgage financing businesses, as well as any other enter-
159 prise employing moneyed capital coming into competition with the
160 business of national banks; provided, that the holding of bonds,
161 notes, or other evidences of indebtedness by individual persons not
162 employed or engaged in the banking or investment business and rep-
163 resenting merely personal investments not made in competition
164 with the business of national banks, shall not be deemed financial
165 business. Nor shall "financial business" include national banks,
166 production credit associations organized under the Farm Credit
167 Act of 1933, stock and mutual insurance companies duly autho-
168 rized to transact business in this State, security brokers or dealers
169 or investment companies or bankers not employing moneyed capital
170 coming into competition with the business of national banks, real
171 estate investment trusts, or any of the following entities organized
172 under the laws of this State: credit unions, savings banks, savings
173 and loan and building and loan associations, pawnbrokers, and
174 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, 1978.

STATEMENT

This bill will adjust the method for determining the net worth of financial business corporations which are funded through debt to parent or affiliated corporations.

ASSEMBLY TAXATION COMMITTEE

STATEMENT TO

SENATE, No. 988

STATE OF NEW JERSEY

DATED: NOVEMBER 13, 1978

The Taxation Committee released Senate Bill No. 988 favorably without amendment. This bill passed both houses in the previous session but was vetoed by the Governor because of the date of enactment. This has been changed in the bill and, therefore, meets the Governor's objection.

SENATE REVENUE, FINANCE AND
APPROPRIATIONS COMMITTEE

STATEMENT TO
SENATE, No. 988

STATE OF NEW JERSEY

DATED: JULY 19, 1978

This bill amends the "Corporation Business Tax Act" as it applies to financial business corporations, excluding from "net worth" any debt to an affiliated corporation, and excluding from "entire net income" the interest cost on such debt, with interest cost to be not in excess of 2% of the prime rate as determined by the Commissioner of Banking.

FROM THE OFFICE OF THE GOVERNOR

APRIL 12, 1979

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

KATHRYN FORSYTH

Governor Brendan Byrne has signed into law the following bill:

S-988, sponsored by Senator Charles B. Yates (D-Burlington) which amends the Corporation Business Tax to permit a financial business corporation to exclude debts owed to its affiliated corporation from the computation of its net worth.

The measure also permits the deduction of the interest paid on such debt from net income.

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