

54:10D-2 to 54:10D-4

LEGISLATIVE HISTORY CHECKLIST

WISA 54:10D-2 to 54:10D-4 (Savings institutions--change excise tax)

LAWS OF 1979 CHAPTER 160

Bill No. A3326

Sponsor(s) Van Wagner

Date Introduced May 7, 1979

Committee: Assembly Taxation

Senate -----

Amended during passage xxx No

Date of Passage: Assembly June 18, 1979

Senate June 25, 1979

Date of approval July 19, 1979

Following statements are attached if available:

Sponsor statement Yes xxx

Committee Statement: Assembly Yes xxx

Senate xxx No

Fiscal Note xxx No

Veto message xxx No

Message on signing xxx No

Following were printed:

Reports xxx No

Hearings xxx No

Attorney General Opinion cited in Sponsor's statement:
M77-3504 (March 6, 1979)-attached

9/1/79

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CORRECTED COPY
ASSEMBLY, No. 3326

STATE OF NEW JERSEY

INTRODUCED MAY 7, 1979

By Assemblyman VAN WAGNER

Referred to Committee on Taxation

AN ACT to amend and supplement "An act imposing an excise tax upon savings banks, savings and loan associations and building and loan associations; defining certain words for the purpose of the act; prescribing the method of collecting the tax imposed; providing penalties for violations; and making an appropriation therefor," approved February 16, 1973 (P. L. 1973, c. 31).

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

1 1. Section 2 of P. L. 1973, c. 31 (C. 54:10D-2) is amended to
2 read as follows:

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

5 a. "Director" means the Director of the Division of Taxation
6 of the Department of Treasury, State of New Jersey.

7 b. "Savings institution" means any State or Federally-char-
8 tered building and loan association, savings and loan association
9 or savings bank.

10 c. "Subsidiary investment" means ownership (1) of at least
11 80% of the total combined voting power of all classes of stock of
12 the subsidiary entitled to vote and (2) of at least 80% of each class,
13 if any, of nonvoting stock.

14 d. "Net income" means total income from all sources, whether
15 within or without the United States, and shall include the gain or
16 loss derived from the employment of capital or labor, or from both
17 combined, as well as profits gained or losses realized through sale
18 or conversion of capital assets, less costs, bad debts, ordinary and
19 necessary business expenses or other expenses incurred in the pro-
20 duction of such income. For the purpose of this act, the amount of
21 a taxpayer's net income shall be deemed prima facie to be equal in
22 amount to the taxable income, before net operating loss deduction
23 and special deductions, which the taxpayer is required to report

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

24 to the United States Treasury Department for the purpose of
25 computing its Federal income tax; provided, however, that in the
26 determination of such net income,

27 (1) (a) Net income shall exclude 100% of dividends which were
28 included in computing such taxable income for Federal income tax
29 purposes, paid to the taxpayer by one or more subsidiaries owned
30 by the taxpayer to the extent of 80% or more ownership of invest-
31 ment described in subsection c. of this section. With respect to
32 other dividends, net income shall not include 50% of gross divi-
33 dends included in computing such taxable income for Federal
34 income tax purposes.

35 (b) [Net income shall also exclude

36 (i) Interest or dividends on obligations or securities of the
37 State of New Jersey, its political subdivisions and authorities;
38 and

39 (ii) Interest or dividends on obligations of any authority,
40 commission, instrumentality, territorial possessions of the
41 United States which by the laws of the United States are
42 exempt from State income taxes.] *Deleted by amendment.*

43 (2) In arriving at net income for purposes of this act, savings
44 institutions shall be allowed the same deductions for bad debts as
45 allowed in computing their Federal taxable income.

46 (3) Net income shall be determined without the exclusion, deduc-
47 tion or credit of:

48 (a) The amount of any specific exemption or credit allowed in
49 any law of the United States imposing any tax on or measured by
50 the income of savings institutions;

51 (b) Any part of any income from dividends or interest on any
52 kind of stock, securities or indebtedness, except as provided in sub-
53 section d.(1) of this section;

54 (c) Taxes paid or accrued to the United States on or measured
55 by profits or income, or the tax imposed by this act, or any tax
56 paid or accrued with respect to subsidiary dividends excluded from
57 net income as provided in subsection d.(1) of this section;

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

60 (4) The director may, whenever necessary to properly reflect the
61 net income of any taxpayer, determine the year or period in which
62 any item of income or deduction shall be included, without being
63 limited to the method of accounting employed by the taxpayer.

64 e. "Tax year" means the calendar or fiscal year on the basis
65 of which the taxpayer is required to report for Federal income
66 tax purposes.

67 f. "Taxpayer" means savings institution, as herein defined, sub-
68 ject to taxation under this act.

69 g. "Financial business" means all business enterprise which
70 employs moneyed capital with the object of making profit by its
71 use as money; buying and selling exchange; making of or dealing
72 in secured loans and [or] discounts *or either of them*; dealing in
73 securities and shares of corporate stock by purchasing and selling
74 such securities and stock without recourse, either upon the order
75 and for the account of customers or for its own account; receiving
76 moneys for deposit and payment of interest thereon; and all other
77 business in which financial institutions as such generally engage in.

1 2. Section 3 of P. L. 1973, c. 31 (C. 54:10D-3) is amended to
2 read as follows:

3 3. Excise tax imposed. There is hereby imposed upon every
4 savings institution, as herein defined, for the privilege of doing
5 a financial business, in this State, an annual excise tax, payable
6 in the [year] *years 1973 through 1979 [and each year thereafter,]*
7 *at the rate of 5% and payable in the year 1980 and in each year*
8-9 *thereafter at the rate of 3%* upon its net income as of the close of its
10 preceding tax year, but in no event less than \$50.00 for savings
11 institutions with assets under one million dollars and no less than
12 \$250.00 for savings institutions with assets of one million dollars
13 or more. Such tax shall be in lieu of any State franchise tax or
14 of any State or local taxation of, upon or measured by tangible
15 personal property.

1 3. Section 4 of P. L. 1973, c. 31 (C. 54:10D-4) is amended to
2 read as follows:

3 4. a. When tax payable; returns. The tax imposed by this act
4 upon savings banks, savings and loan associations and building and
5 loan associations, shall be due and payable with respect to any
6 fiscal or calendar accounting years ending in 1973 and thereafter
7 to be computed as herein provided, on a report which shall be filed
8 on or before the fifteenth day of the fourth month after the close
9 of such fiscal or calendar accounting year or 105 days after the
10 effective date of this act whichever is later. In the case of a tax-
11 payer whose fiscal accounting period ends at any time during the
12 calendar year 1973, its first return due under this act, shall be
13 based upon its net income from January 1, 1973 to the end of said
14 fiscal year, and shall be filed on or before the fifteenth day of the
15 fourth month after the close of such fiscal year and the tax there-
16 under shall be due and payable at said time. Each taxpayer shall,
17 together with the payment of tax due hereunder, duly execute and

18 file a tax return with the director, in such form and containing such
19 information as he may prescribe, which return shall truly and
20 accurately set forth its liability under this act.

21 *b. Partial payments. With respect to its fiscal or calendar ac-*
22 *counting years ending after September 30, 1979, every taxpayer*
23 *shall annually pay as a partial payment of excise tax in addition*
24 *to the tax payable under subsection a. of this section, an amount*
25 *equal to 80% of the tax payable under said subsection a. In the*
26 *calculation of the tax pertaining to each succeeding accounting*
27 *period, due in accordance with subsection a. hereof, every taxpayer*
28 *shall be entitled to a credit in the amount of the tax paid under this*
29 *subsection b. as a partial payment and shall be entitled to the re-*
30 *turn of any amount so paid which shall be found to be in excess of*
31 *the total amount payable in accordance with said subsection a. and*
32 *this subsection b.*

1 4. Transition provisions. For purposes of this act, the Director
2 of the Division of Taxation shall be empowered to promulgate such
3 rules and regulations as may be necessary to assure the proper
4 calculation of tax with respect to those taxpayers which have ac-
5 counting period which begin before and end after the effective
6 dates of sections 1 and 2.

1 5. This act shall take effect immediately except that section 1
2 shall be retroactive to January 1, 1979.

STATEMENT

This bill would amend the Savings Institution Tax Act to meet the objections raised by a recent opinion of the Attorney General of New Jersey that the present law violates the Federal Public Debt Statute in discriminating against the United States Treasury obligations. To avoid such taxation, this bill would include, in a tax base, income from both Federal and State obligations. Because of the increase in the tax base caused by the inclusion of this income, the rate of taxation is reduced from 5% to 3% and provision is made for an 80% tax pre-payment beginning in April for returns filed in calendar year 1980. As a result of these amendments, all savings banks and savings and loan associations will continue to pay at least the same total amount of tax to the State, in most cases more, and the State will suffer no revenue loss. Without these amendments there would be a revenue loss to the State that would exceed \$3 million annually. This bill will not only insure against such revenue loss, but also will provide through the pre-payment mechanism, sufficient funds to pay any possible refund claim that may arise because of the Attorney General's opinion.

ASSEMBLY, No. 3326

STATE OF NEW JERSEY

INTRODUCED MAY 7, 1979

By Assemblyman VAN WAGNER

Referred to Committee on Taxation

AN ACT to amend and supplement "An act imposing an excise tax upon savings banks, savings and loan associations and building and loan associations; defining certain words for the purpose of the act; prescribing the method of collecting the tax imposed; providing penalties for violations; and making an appropriation therefor," approved February 16, 1973 (P. L. 1973, c. 31).

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20 duction of such income. For the purpose of this act, the amount of
21 a taxpayer's net income shall be deemed prima facie to be equal in
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A3326 (1979)

ASSEMBLY TAXATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3326

STATE OF NEW JERSEY

DATED: MAY 14, 1979

This bill would amend the Savings Institution Tax Act to meet the objections raised by a recent opinion of the Attorney General of New Jersey that the present law violates the Federal Public Debt Statute in discriminating against the United States Treasury obligations. To avoid such taxation, this bill would include, in a tax base, income from both Federal and State obligations. Because of the increase in the tax base caused by the inclusion of this income, the rate of taxation is reduced from 5% to 3% and provision is made for an 80% tax prepayment beginning in April for returns filed in calendar year 1980. As a result of these amendments, all savings banks and savings and loan associations will continue to pay at least the same total amount of tax to the State, in most cases more, and the State will suffer no revenue loss. Without these amendments there would be a revenue loss to the State that would exceed \$3 million annually. This bill will not only insure against such revenue loss, but also will provide through the prepayment mechanism, sufficient funds to pay any possible refund claim that may arise because of the Attorney General's opinion.

June 19, 1979

3

A-3326, sponsored by Assemblyman Richard Van Wagner (D-Monmouth) which amends the Savings Institution Tax Act to eliminate income from federal and state obligations from an institution's tax base.

The bill also lowers the rate of taxation on the obligations from 5 per cent to 3 per cent.

A-1311, sponsored by Assemblyman Raymond Lesniak (D-Union), which permits counties specifically to contribute funds to the County Officers Association of New Jersey for membership dues and services. Counties are now statutorily authorized to contribute to the New Jersey Association of Counties.

Under prior law, the counties could pay the Association of Counties directly. However, because there was no specific authorization for counties to contribute to the County Officers Association, the members were paid on a reimbursable basis.

###



State of New Jersey
 DEPARTMENT OF LAW AND PUBLIC SAFETY
 DIVISION OF LAW
 FINANCIAL SECTION
 36 WEST STATE STREET
 TRENTON 08625
 TELEPHONE (609) 292-1519

STEPHEN SKILLMAN
 ASSISTANT ATTORNEY GENERAL
 DIRECTOR

HERBERT K. GLICKMAN
 DEPUTY ATTORNEY GENERAL
 SECTION CHIEF

JOHN J. DEGNAN
 ATTORNEY GENERAL

March 6, 1979

Sidney Glaser, Director
 Division of Taxation
 State and Willow Streets
 Trenton, New Jersey 08625

Re: Whether interest derived from U.S. Treasury notes and bonds, Commonwealth of Puerto Rico bonds, and Federal National Mortgage Association notes is to be included in the net income tax base under the New Jersey Savings Institution Tax Act, N.J.S.A. 54:10D-1 et seq.-M77-3509

Dear Director Glaser:

You have inquired whether interest income derived from United States Treasury notes and bonds, Commonwealth of Puerto Rico bonds, and Federal National Mortgage Association (FNMA) notes is to be included in the net income tax base under the New Jersey Savings Institution Tax Act, N.J.S.A. 54:10D-1 et seq. You are advised that interest income derived from U.S. Treasury notes and bonds and from Commonwealth of Puerto Rico bonds is not properly includable in the net income tax base under the Savings Institution Tax Act, but that interest income derived from FNMA notes is properly includable in the net income tax base under this statute.

The Savings Institution Tax Act imposes an annual excise tax upon every savings institution¹ for the privilege of doing a financial business in New Jersey.

1. Savings institution is defined as any state or federally-chartered building and loan association, savings and loan association or savings bank. N.J.S.A. 54:10D-2(b).

This excise tax upon savings institutions is imposed in lieu of any State franchise tax or of any State or local taxation of, upon or measured by tangible personal property. N.J.S.A. 54:10D-3. The tax is payable at the rate of 5% of the net income of the savings institution as of the close of the preceding tax year. N.J.S.A. 54:10D-3. Net income is defined under the Act as:

" . . . total income from all sources, whether within or without the United States, and shall include the gain or loss derived from the employment of capital or labor, or from both combined, as well as profits gained or losses realized through sale or conversion of capital assets, less costs, bad debts, ordinary and necessary business expenses or other expenses incurred in the production of such income. For the purpose of this act, the amount of a taxpayer's net incomes 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;" N.J.S.A. 54:10D-2(d).

The Act further provides that net income shall exclude:

"Interest or dividends on obligations of any authority, commission, instrumentality, territorial possession of the United States which by the laws of the United States are exempt from State income taxes."
N.J.S.A. 54:10D-2(d)(1)(b)(ii) (Emphasis added).

Accordingly, to determine whether interest income from United States Treasury notes and bonds, FNMIA notes, and Puerto Rico bonds is to be included or excluded from the net income tax base under the savings institution tax, reference must be made to federal law. Pursuant to N.J.S.A. 54:10D-2(d)(1)(b)(ii), if the income is exempt from state income tax under the laws of the United States, it must be excluded from the tax base under the Savings Institution Tax Act.

United States Treasury notes and bonds

31 U.S.C.A. §742 provides:

"Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or interest thereon, or both, be considered, directly or indirectly, in the computation of the tax, except nondiscriminatory franchise or other nonproperty taxes in lieu thereof imposed on corporations and except estate taxes or inheritance taxes."

Thus, by federal law, United States Treasury notes and bonds and interest income derived therefrom are clearly exempt from state income taxation. Pursuant to N.J.S.A. 54:10D-2 (d)(1)(b)(ii), such interest income is therefore excluded from the net income tax base of the savings institution tax.

Commonwealth of Puerto Rico bonds

48 U.S.C.A. §745 exempts all bonds issued by the Government of Puerto Rico, or by its authority, from taxation by any state. Therefore, pursuant to N.J.S.A. 54:10D-2 (d)(1)(b)(ii), the interest income derived from Commonwealth of Puerto Rico bonds is not includable in the net income tax base of the savings institution tax.²

2. It appears that for interest on a United States obligation to be excluded, N.J.S.A. 54:10D-2(d)(1)(b)(ii) only requires that the United States obligation be exempt by federal law from State income taxation. However, it may be that interest on the United States obligation is what N.J.S.A. 54:10D-2(d)(1)(b)(ii) requires to be exempt by federal law. 48 U.S.C.A. §745 does not specifically exempt interest on Commonwealth of Puerto Rico bonds. In New Jersey Realty Insurance Co. v. Division of Tax Appeals, 137 N.J.L. 444 (N.J. Sup. Ct. 1948), rev'd 1 N.J. 496 (1949); rev'd 338 U.S. 665, 676, 70 S. Ct. 413, 94 L.Ed. 439 (1950), the omission of the words "and the interest thereon" was not deemed to be significant with reference to a federal statute (an earlier version of 31 U.S.C.A. §742) exempting federal securities from state taxation. Similarly, the omission of "and the interest thereon" from 48 U.S.C. §745 should not be deemed to be significant, and therefore the statute should be deemed to also exempt income derived from Commonwealth of Puerto Rico bonds.

Federal National Mortgage Association notes

In its present form,³ FNMA is a government-sponsored private corporation designed by Congress to provide secondary market facilities for home mortgages. 12 U.S.C.A. §§1716, 1716b, 1719. FNMA is privately owned and financed (12 U.S.C.A. §1718); however, the Secretary of Housing and Urban Development does have general regulatory powers over FNMA in order to effectuate the intent of Congress to provide secondary market facilities for home mortgages. FNMA has therefore been held to be an "instrumentality" of the United States. Federal National Mortgage Association v. Lefkowitz 390 F. Supp. 1364, 1368 (S.D.N.Y. 1975); First National Bank of Washington v. District of Columbia CCH D.C. Tax Rep. 10.201 (D.C. Superior Ct., Tax Division 1978).

Even if FNMA is an "instrumentality" of the United States, to be excluded from the savings institution tax, FNMA notes or interest derived therefrom⁴ must be exempt by federal law from state income taxation. N.J.S.A. 54:10D-2(d)(1)(b)(ii). Significantly, while with the exception of real estate taxes, FNMA and its income are specifically excluded from state taxation by 12 U.S.C.A. §1723a(c)(2), no federal provision specifically exempts FNMA notes or interest income derived therefrom from state taxation. First National Bank of Washington v. District of Columbia, supra at 10.203.

3. For a thorough discussion of the background and history of FNMA, see Background and History of the Federal National Mortgage Association (1969). See also 12 U.S.C.A. §1716, 1717; Pub. L. 90-448, [1968] U.S. Code Cong. & Ad. News 2873-2875, 2943-2948.

4. See footnote 2, supra.

In the absence of a specific exemption, it must then be determined whether interest income derived from FNMA notes is exempt from state taxation by 31 U.S.C.A. §742, which, except as otherwise provided by law, exempts from state taxation "all stocks, bonds, Treasury notes, and other obligations of the United States."⁵ The term "other obligations" includes only government obligations similar in character to those specifically named and exempted because of the general power granted Congress by U.S. Const., Art. 1, §8, cl. 2, to borrow money on the credit of the United States and to issue in return therefor obligations of the United States. Hibernia Savings and Loan Soc. v. San Francisco 200 U.S. 310, 26 S. Ct. 265, 50 L.Ed. 495 (1906); Smith v. Davis 323 U.S. 111, 65 S. Ct. 157, 89 L. Ed. 107 (1944). See also Board of Commissioners of Montgomery County v. Elston 32 Ind. 27, 2 Am. Rep. 327 (1869), holding that national bank notes issued by banks under the authority of the United States which guaranteed their payment upon failure of the bank were not "other obligations of the United States" in that the notes did not rest primarily on the promise of the government to pay them. Notes issued by FNMA "are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than [FNMA]." 12 U.S.C.A. §§1719(b),(e). Therefore, the interest income derived from FNMA notes does not appear to be within the general exemption from state taxation provided by 31 U.S.C.A. §742. Indeed, Background and History of the Federal National Mortgage Association, the basic reference work on FNMA, indicates that obligations issued by FNMA to private investors are subject to state taxation. Background and History of the Federal National Mortgage Association

5. While First National Bank of Washington v. District of Columbia, CCH D.C. Tax Rep. D-201 (D.C. Superior Ct. Tax Division 1975), held that interest received by a bank on FNMA notes is exempt from the District of Columbia gross earnings tax on banks (47-1703, D.C. Code, 1967 ed.), the court, referring to Congress' exclusive power to legislate for the District of Columbia, declined to determine whether FNMA notes are "obligations of the United States" within the meaning of 31 U.S.C.A. §742 and hence constitutionally exempt from state taxation. Instead, the court based its holding on its determinations that FNMA is a federal instrumentality and that Congress did not intend to subject interest on securities and obligations issued by the United States and its agencies and instrumentalities to the District of Columbia's gross earnings tax.

A15, A19 (1969). Therefore, interest on FNMA notes is not exempt by N.J.S.A. 54:100-2(d)(1)(b)(ii) from the net income tax base of the savings institution tax.

Summary

You are therefore advised that the interest income derived from United States Treasury notes and bonds and from Commonwealth of Puerto Rico bonds is to be excluded from the net income tax base of the savings institution tax. The interest income derived from FNMA notes is to be included in the net income tax base of the savings institution tax.

Very truly yours,

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