

54:10A-4 and 9

LEGISLATIVE HISTORY CHECKLIST

NJSA 54:10A-4; 54:10A-9

Laws of 1976 Chapter 28

Bill No. S1015

Sponsor(s) Merlino

Date Introduced January 19, 1976

Committee: Assembly -

Senate Revenue, Finance & Appropriations

Amended during passage Yes  No

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Following statements are attached if available:

Sponsor statement Yes  No

Committee Statement: Assembly Yes  No

Senate Yes  No

Fiscal Note Yes  No

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Message on signing Yes  No

Following were printed:

Reports Yes  No

Hearings Yes  No

10/4/76  
SEP 1977

SENATE, No. 1015

STATE OF NEW JERSEY

INTRODUCED JANUARY 19, 1976

By Senator MERLINO

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  
6 of 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. The fore-  
24 going aggregate of values shall be reduced by 50% of the amount  
25 disclosed by the books of the corporation for investment in 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.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1     2. Section 9 of P. L. 1945, c. 162 (C. 54:10A-9) is amended to  
 2 read as follows:

3     9. Any taxpayer which holds capital stock of a subsidiary during  
 4 all or part of any year may, for the purposes of the tax imposed  
 5 by this act, deduct from its net worth, the following amount:

6     (a) In the case of a subsidiary which is taxable under this act,  
 7 such proportion of the average value of such holdings, less net  
 8 liabilities (if any) to such subsidiary, as corresponds to 50% of  
 9 the ratio of the subsidiary's taxable net worth, for the same year  
 10 under this act, to its entire net worth; or

11     (b) In the case of a subsidiary subject to a franchise tax  
 12 measured by gross receipts under any other law of this State, such  
 13 proportion of the average value of such holdings, less net liabilities  
 14 (if any) to such subsidiary, as corresponds to 50% of the ratio of  
 15 the subsidiary's business within the State to its business every-  
 16 where during its next preceding taxable year under such law; or

17     (c) In the case of a subsidiary which is a bank as defined in  
 18 R. S. 54:9-1, 50% of the difference between the average value of  
 19 such holdings for the same year and net liabilities (if any) to such  
 20 subsidiary; or

21 (d) In the case of a subsidiary which is a financial business as  
 22 defined in section 2 of P. L. 1946, c. 174 (C. 54:10B-2 (b)), such  
 23 proportion of the average value of such holdings, less net liabilities  
 24 (if any) to such subsidiary, as corresponds to 50% of the sub-  
 25 sidiary's allocation fraction for the same year determined under  
 26 section 8 of P. L. 1946, c. 174 (C. 54:10B-8); or

27 (e) In the case of a subsidiary which is a stock, mutual or assess-  
 28 ment insurance company organized or existing under the laws of  
 29 this State or under the laws of another state or foreign country,  
 30 such proportion of the average value of such holdings, less net  
 31 liabilities (if any) to such subsidiary, as corresponds to 50% of the  
 32 ratio which the amount of taxable premiums, as defined in sections  
 33 4 and 5 of P. L. 1945, c. 132 and section 1 of P. L. 1950, c. 186  
 34 (C. 54:18A-4, 54:18A-5, and 54:18A-5.1), collected by the sub-  
 35 sidiary in the same year, bears to the total amount of all premiums  
 36 collected by the subsidiary in the same year which would be taxable  
 37 premiums if all such premiums were on account of business in  
 38 this State; or

39 (f) In the case of a subsidiary which is a railroad as defined in  
 40 section 2 of P. L. 1941, c. 291 (C. 54:29A-2), such proportion of  
 41 the average value of such holdings, less net liabilities (if any) to  
 42 such subsidiary, as corresponds to 50% of the ratio which the  
 43 number of miles of all track over which the subsidiary operates  
 44 in this State in the same year bears to the total number of miles  
 45 of all track over which the subsidiary operates everywhere in the  
 46 same year.

47 For the purpose of this section, a subsidiary shall be deemed to be  
 48 any corporation in which a taxpayer is the owner of at least 80% of  
 49 the total combined voting power of all classes of stock entitled to  
 50 vote and of at least 80% of **[each class, if any, of nonvoting stock]**  
 51 *the total number of shares of all other classes of stock except non-*  
 52 *voting stock which is limited and preferred as to dividends.*

1 3. This act shall take effect immediately and shall be applicable  
 2 to taxpayers whose accounting periods end after June 30, 1976.

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#### STATEMENT

Under existing law, the definition of "subsidiary" in the Corporation Business Tax Act requires a parent company to own at least 80% of the subsidiary's voting stock and also at least 80% of the total number of shares of all other classes of stock. This bill would

amend the latter provision by requiring ownership of at least 80% of the total number of shares of all classes of nonvoting stock except that which is limited and preferred as to dividends. The parent company must continue, as heretofore, to own at least 80% of the subsidiary's voting stock in order to avoid "double taxation" of its subsidiary investment and income from its subsidiary.

This amendment would restore the law to the form in which it existed prior to the 1968 amendments.



SENATE REVENUE, FINANCE AND  
APPROPRIATIONS COMMITTEE

STATEMENT TO  
**SENATE, No. 1015**

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**STATE OF NEW JERSEY**

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DATED: FEBRUARY 19, 1976

From the inception of the Corporation Business Tax Act in 1946 until 1968, Section 9 of the Act defined a subsidiary as follows:

“For the purpose of this section, a subsidiary shall be deemed to be any corporation in which a taxpayer is the beneficial owner of at least eighty per centum (80%) of the total combined voting power of all classes of stock except nonvoting stock which is limited and preferred as to dividends.”

The amendatory legislation in 1968 changed the definition of subsidiary to its present form. This definition appears in Sections 4(d) and 9 of the bill.

Senate Bill No. 1015 would return the definition of a subsidiary to that which it was from 1946 to 1968. The S-1015 definition would still require that a taxpayer own at least 80% of the voting stock of a subsidiary and at least 80% of the total number of shares of all other classes of stock; however, the taxpayer would not have to own nonvoting stock which is limited and preferred as to dividends.