



LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1998

CHAPTER:106

NJSA: 54:10A-15.4

"Taxpayers deficiencies; nonresident investors, et al"

BILL NO: A1730 (Substituted for S674 1st Reprint)

SPONSOR(S):Kramer

DATE INTRODUCED: February 23, 1998

COMMITTEE:

ASSEMBLY: Appropriations

SENATE: ~~~~

AMENDED DURING PASSAGE:Yes

DATE OF PASSAGE:

ASSEMBLY: June 29, 1998

SENATE: June 29, 1998

DATE OF APPROVAL: September 14, 1998

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: 1st Reprint Enacted
(Amendments during passage denoted by superscript numbers)

A1730

SPONSORS STATEMENT: *Yes* (Begins on page 16 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY:*Yes*

SENATE:*No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *Yes*

S674

SPONSORS STATEMENT: *Yes* (Begins on page 16 of original bill)
(Bill and Sponsors Statement identical to A1730)

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *Yes*

(Identical to Assembly Statement for A1730)

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *Yes*

(Identical to Legislative Fiscal Estimate for A1730)

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

Tax Advisory Group, cited in several statements, does not publish their recommendations.

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

[First Reprint]

ASSEMBLY, No. 1730

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED FEBRUARY 23, 1998

Sponsored by:

Assemblyman PAUL KRAMER

District 14 (Mercer and Middlesex)

Co-Sponsored by:

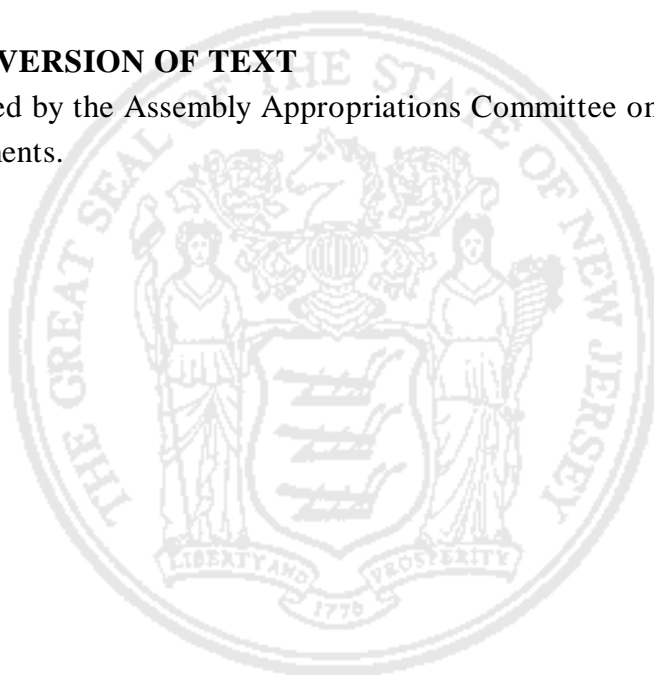
Senators Inverso and Lesniak

SYNOPSIS

Provides alternate remedy for State taxpayers assessed deficiencies, clarifies State gross income taxation of nonresident hedge fund partners, affects certain State tax penalty provisions.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 4, 1998, with amendments.



(Sponsorship Updated As Of: 6/30/1998)

1 AN ACT concerning State tax assessments and liabilities, amending
2 various sections of statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 5 of P.L.1981, c.184 (C.54:10A-15.4) is amended to
8 read as follows:

9 5. a. In case of any underpayment of an installment payment by a
10 taxpayer, there shall be added to the tax for the fiscal or calendar
11 accounting year an amount determined by applying the rate established
12 in this section to the amount of the underpayment for the period of the
13 underpayment.

14 b. For purposes of subsection a., the amount of underpayment shall
15 be the excess of:

16 (1) The lesser of the amount of the installment payment which
17 would be required to be paid if all installment payments were equal to
18 90% of the tax shown on the return for the fiscal or calendar
19 accounting year, or if no return was filed, 90% of the tax for that year,
20 or 100% of the tax shown on the tax return of the taxpayer for the
21 preceding taxable year over

22 (2) The amount, if any, of the installment payment paid on or
23 before the last date prescribed for payment.

24 c. For purposes of subsection a., the period of the underpayment
25 shall run from the date the installment payment was required to be paid
26 to whichever of the following dates is the earlier:

27 (1) The fifteenth day of the fourth month after the close of the
28 fiscal or calendar accounting year.

29 (2) With respect to any portion of the underpayment, the date on
30 which that portion is paid.

31 For purposes of this subsection, a payment of any installment
32 payment shall be considered a payment of any previous underpayment
33 only to the extent that payment exceeds the amount of the installment
34 payment determined under subsection b. (1) for that installment
35 payment.

36 d. Notwithstanding the provisions of the preceding subsections, the
37 addition to the tax with respect to any underpayment of any
38 installment payment shall not be imposed if the total amount of all
39 installment payments made on or before the last date prescribed for the
40 payment of that installment equals or exceeds the amount which would
41 have been required to be paid on or before that date if the total amount
42 of all installment payments were the lesser of (1) or (2) as follows:

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted June 4, 1998.

1 (1) An amount equal to the tax computed at the rates applicable to
2 the current fiscal or calendar accounting year but otherwise on the
3 basis of the facts shown on the return of the taxpayer for, and the law
4 applicable to, the preceding fiscal or calendar accounting year; or

5 (2) An amount equal to 90% of the tax for the current fiscal or
6 calendar accounting year computed by placing on an annualized basis
7 the taxable entire net income and entire net worth:

8 (a) For the first three months of the current fiscal or calendar
9 accounting year, in the case of the installment payment required to be
10 paid in the fourth month,

11 (b) For the first three months or for the first five months of the
12 current fiscal or calendar accounting year, in the case of the
13 installment payment required to be paid in the sixth month,

14 (c) For the first six months or for the first eight months of the
15 current fiscal or calendar accounting year, in the case of the
16 installment payment required to be paid in the ninth month,

17 (d) For the first nine months or for the first 11 months of the
18 current fiscal or calendar accounting year, in the case of the
19 installment payment required to be paid in the 12th month, and

20 (e) For the last three months of the preceding taxable year, in the
21 case of the installment payment required to be paid in the first month
22 of the current fiscal or calendar accounting year.

23 e. Any taxpayer who shall fail to pay, or shall underpay by more
24 than 10% of the amount due, any installment payment required
25 pursuant to this act, shall pay, in addition to the tax, interest on the
26 amount of underpayment as provided in the State Tax Uniform
27 Procedure Law, R.S. 54:48-1 et seq.

28 (cf: P.L.1987, c.76, s.50)

29

30 2. Section 19 of P.L.1945, c.162 (C.54:10A-19) is amended to
31 read as follows:

32 19. The director may grant a reasonable extension of time for the
33 filing of returns or the payment of tax or both, under such rules and
34 regulations as he shall prescribe, which rules and regulations may
35 require the filing of a tentative return and the payment of an estimated
36 tax. If the time for filing the return shall be extended, the payment of
37 the portion of the tax remaining to be paid, if any, shall be postponed
38 to the date fixed by the extension of the time for the filing of the
39 return, but in every such case the corporation shall pay, in addition to
40 the unpaid portion of the tax, interest thereon at the rate as provided
41 in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., from
42 the time when the return originally was required to be filed to the date
43 of actual payment under the extension; provided, that if such unpaid
44 portion of the tax is not paid within the time fixed under the extension,
45 the interest on such unpaid portion shall be computed at the rate as
46 provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et

1 seq., from the date the tax was originally due to the date of actual
2 payment and if the amounts paid up to and including the time of the
3 filing of the tentative return total less than the lesser of: 90% of the
4 amount due; or for a taxpayer that had a preceding fiscal or calendar
5 accounting year of 12 months and filed a return for that year showing
6 a liability for tax, an amount equal to the tax computed at the rates
7 applicable to the current fiscal or calendar accounting year but
8 otherwise on the basis of the facts shown on the return of the taxpayer
9 for, and the law applicable to, the preceding fiscal or calendar
10 accounting year, the taxpayer shall be liable for a penalty of 5% per
11 month or fraction thereof on the amount of underpayment, not to
12 exceed 25% of that underpayment, which shall be in addition to the
13 interest charges provided above.

14 (cf: P.L.1992, c.175, s.20)

15

16 3. Section 11 of P.L.1947, c.50 (C.54:10A-19.2) is amended to
17 read as follows:

18 11. a. Any aggrieved taxpayer may, within 90 days after any action
19 of the director made pursuant to the provisions of this act, appeal
20 therefrom to the tax court in accordance with the provisions of the
21 State Tax Uniform Procedure Law, R.S. 54:48-1 et seq.

22 b. Any aggrieved taxpayer that has neither protested or appealed
23 from an additional assessment of tax may, pursuant to subsection (b)
24 of R.S.54:49-14, file a claim for refund of the assessment paid.

25 (cf: P.L.1983, c.36, s.23)

26

27 4. Section 18 of P.L.1973, c.31 (C.54:10D-17) is amended to read
28 as follows:

29 18. a. Any aggrieved taxpayer may, within 90 days after any
30 decision, order, finding, assessment or action of the director made
31 pursuant to the provisions of this act, appeal therefrom to the tax
32 court in accordance with the provisions of the State Tax Uniform
33 Procedure Law, R.S.54:48-1 et seq.

34 b. Any aggrieved taxpayer that has neither protested or appealed
35 from an additional assessment of tax may, pursuant to subsection (b)
36 of R.S.54:49-14 file a claim for refund of the assessment paid.

37 (cf: P.L.1983, c.36, s.24)

38

39 5. Section 21 of P.L.1973, c.170 (C.54:10E-21) is amended to
40 read as follows:

41 21. a. Any aggrieved taxpayer may, within 90 days after any
42 decision, order, finding, assessment or action of the director made
43 pursuant to the provisions of this act, appeal therefrom to the tax
44 court in accordance with the provisions of the State Tax Uniform
45 Procedure Law, R.S.54:48-1 et seq.

46 b. Any aggrieved taxpayer that has neither protested or appealed

1 from an additional assessment of tax may, pursuant to subsection (b)
2 of R.S.54:49-14, file a claim for refund of the assessment paid.
3 (cf: P.L.1983, c.36, s.25)

4
5 6. Section 8 of P.L.1990, c.42 (C.54:15B-8) is amended to read as
6 follows:

7 8. a. (1) If a return required by this act is not filed, or if a return
8 when filed is incorrect or insufficient in the opinion of the director, the
9 amount of tax due shall be determined by the director from the
10 information available.

11 (2) If because of an affiliation of interests between a company
12 subject to tax under this act and any purchaser the gross receipts from
13 sale transactions are not indicative of or representative of market
14 price, the director may at the director's discretion, utilize external
15 indices to establish gross receipts.

16 (3) (a) Notice of a determination pursuant to this subsection shall
17 be given to the company liable for the payment of the tax. Such
18 determination shall finally and irrevocably fix the tax unless the
19 company against which it is assessed, within 30 days after receiving
20 notice of the determination, shall apply to the director for a hearing,
21 or unless the director on the director's own motion shall redetermine
22 the same. After such hearing the director shall give notice of the
23 determination to the company to which the tax is assessed.

24 (b) Any aggrieved taxpayer that has neither protested or appealed
25 from an additional assessment of tax may, pursuant to subsection (b)
26 of R.S.54:49-14, file a claim for refund of the assessment paid.

27 b. The certificate of the director to the effect that a tax has not
28 been paid, that a return has not been filed, that a prescribed certificate
29 has not been issued, that information has not been supplied or that
30 inaccurate information has been supplied pursuant to the provisions of
31 this act or rules or regulations adopted hereunder shall be prima facie
32 evidence thereof.

33 c. In addition to the other powers granted to the director in this
34 section, the director is hereby authorized and empowered:

35 (1) To delegate to any officer or employee of the division such
36 powers and duties as the director may deem necessary to carry out the
37 provisions of this act, and the person or persons to whom such power
38 has been delegated shall possess and may exercise all of said powers
39 and perform all of the duties delegated by the director;

40 (2) To prescribe and distribute all necessary forms and certificates
41 for the implementation of this act; and

42 (3) To administer and enforce the tax imposed by this act and to
43 make and adopt such rules and regulations and to require such facts
44 and information to be reported as the director may deem necessary to
45 enforce the provisions of this act.

46 d. The tax imposed by this act shall be governed in all respects by

1 the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1
2 et seq., except only to the extent that a specific provision of this act
3 may be in conflict therewith.

4 (cf: P.L.1991, c.181, s.5)

5
6 7. Section 20 of P.L.1966, c.30 (C.54:32B-20) is amended to read
7 as follows:

8 20. (a) In the manner provided in this section the director shall
9 refund or credit any tax, penalty or interest erroneously, illegally or
10 unconstitutionally collected or paid if application to the director for
11 such refund shall be made within four years from the payment thereof.
12 Such application may be made by a customer who has actually paid the
13 tax. Such application may also be made by a person required to
14 collect the tax, who has collected and paid over such tax to the
15 director, provided that the application is made within four years of the
16 payment to him by the customer, but no actual refund of moneys shall
17 be made to such person until ~~he~~ the person shall first establish to the
18 satisfaction of the director, under such regulations as ~~he~~ the director
19 may prescribe, that ~~he~~ the person has repaid to the customer the
20 amount for which the application for refund is made. The director
21 may, in lieu of any refund, allow credit on payments due from the
22 applicant.

23 (b) A person shall not be entitled to a revision, refund or credit
24 under this section of a tax, interest or penalty which had been
25 determined to be due pursuant to the provisions of section 19 of
26 P.L.1966, c.30 (C.54:32B-19) where ~~he~~ the person has had a
27 hearing or an opportunity for a hearing as provided in said section or
28 has failed to ~~avail himself of~~ use the remedies therein provided
29 unless the person otherwise meets the requirements of subsection (b)
30 of R.S.54:49-14. No refund or credit shall be made of a tax, interest
31 or penalty paid after a determination by the director made pursuant to
32 section 19 of P.L.1966, c.30 (C.54:32B-19) unless it be found that
33 such determination was erroneous, illegal or unconstitutional or
34 otherwise improper, pursuant to law, in which event refund or credit
35 shall be made of the tax, interest or penalty found to have been
36 overpaid.

37 (cf: P.L.1992, c.175, s.32)

38
39 8. R.S.54:34-13 is amended to read as follows:

40 54:34-13. a. Any interested person dissatisfied with the
41 appraisal or assessment so made may appeal therefrom to the tax
42 court within 90 days after the making and entering of the assessment,
43 in accordance with the provisions of the State Tax Uniform Procedure
44 Law, R.S.54:48-1 et seq.

45 b. Any aggrieved taxpayer that has neither protested or appealed
46 from an additional assessment of tax may, pursuant to subsection (b)

1 of R.S.54:49-14, file a claim for refund of the assessment paid.
2 (cf: P.L.1983, c.36, s.38)

3
4 9. R.S.54:38-10 is amended to read as follows:

5 54:38-10. a. The tax court on appeal shall have jurisdiction to
6 hear and determine all questions in relation to any tax imposed under
7 the provisions of this chapter. Any executor, administrator, trustee,
8 person or corporation liable for the payment of any tax imposed by this
9 chapter may appeal to the tax court for a review thereof within 90
10 days of the date of notice assessing the tax complained of, in
11 accordance with the provisions of the State Tax Uniform Procedure
12 Law, R.S.54:48-1 et seq.

13 b. Any aggrieved taxpayer that has neither protested or appealed
14 from an additional assessment of tax may, pursuant to subsection (b)
15 of R.S.54:49-14, file a claim for refund of the assessment paid.
16 (cf: P.L.1983, c.36, s.39)

17
18 10. Section 14 of P.L.1990, c.39 (C.54:40B-14) is amended to
19 read as follows:

20 14. a. Any aggrieved taxpayer may, within 90 days after any
21 decision, order, finding, assessment or action of the director made
22 pursuant to the provisions of this act, appeal therefrom to the tax
23 court in accordance with the provisions of the State Tax Uniform
24 Procedure Law, R.S.54:48-1 et seq.

25 b. Any aggrieved executor, administrator, trustee, person or
26 corporation liable for the payment of any tax imposed by this chapter
27 that has neither protested or appealed from an additional assessment
28 of tax may, pursuant to subsection (b) of R.S.54:49-14, file a claim for
29 refund of the assessment paid.

30 c. The appeal provided by this section shall be the exclusive
31 remedy available to any taxpayer for review of a decision of the
32 director in respect of the determination of the liability of the taxpayer
33 for the taxes imposed by this act.

34 (cf: P.L.1990, c.39, s.14)

35

36 11. R.S.54:45-6 is amended to read as follows:

37 54:45-6. Any taxpayer, at any time within four years after the
38 payment of any original or additional tax assessed against **[him]** the
39 taxpayer may file with the director a claim under oath for refund, in
40 such form as the director may prescribe, stating the ground therefor,
41 but no claim for refund shall be required or permitted to be filed with
42 respect to a tax paid after protest has been filed with the director or
43 after proceedings on appeal have been commenced as provided in this
44 subtitle until after the protest or appeal has been finally determined.

45 (cf: P.L.1992, c.175, s.39)

1 12. R.S.54:49-4 is amended to read as follows:

2 54:49-4. In addition thereto any taxpayer failing to file a return
3 with the director within the time prescribed under the act imposing
4 such tax shall be liable to a late filing penalty of \$100 for each month
5 or fraction thereof that such return is delinquent, plus a penalty of 5%
6 per month or fraction thereof of the **total tax liability** underpayment
7 not to exceed 25% of such **tax liability** underpayment¹. except that
8 if no return has been filed within 30 days of the date on which the first
9 notice of delinquency in filing the return was sent to the taxpayer, the
10 penalty shall accrue at 5% per month or fraction thereof of the total
11 tax liability not to exceed 25% of such tax liability¹. Unless any part
12 of any underpayment of tax required to be shown on a return or report
13 is shown to be due to reasonable cause, there shall be added to the tax
14 an amount equal to 5% of the underpayment.

15 (cf: P.L.1992, c.175, s.2)

16

17 13. R.S.54:49-14 is amended to read as follows:

18 54:49-14. a. Any taxpayer, at any time within four years after the
19 payment of any original or additional tax assessed against him, unless
20 a shorter limit is fixed by the law imposing the tax, may file with the
21 director a claim under oath for refund, in such form as the director
22 may prescribe, stating the grounds therefor, but no claim for refund
23 shall be required or permitted to be filed with respect to a tax paid,
24 after protest has been filed with the director or after proceedings on
25 appeal have been commenced as provided in this subtitle, until such
26 protest or appeal has been finally determined. The signing of an
27 agreement by the taxpayer and the director extending the period for
28 assessment shall likewise extend the period for filing a claim for
29 refund.

30 b. No taxpayer shall be precluded from claiming a refund of
31 additional tax assessed solely on the ground that the taxpayer neither
32 protested or appealed from¹ any part of¹ the assessment. A taxpayer
33 that neither protested or appealed from an additional assessment of
34 tax¹ may, pursuant to this subsection, file a claim for the refund of
35 the assessment¹ of additional tax if (1) the taxpayer neither protested
36 nor appealed from the assessment, (2) the taxpayer paid the
37 assessment in full¹ within one year after the¹ payment thereof;
38 provided however, that the payment must have been timely made, as
39 provided in the notice of deficiency assessment or by an extended due
40 date as agreed to in writing by the director. The expiration of the
41 period allowed for filing a protest of the assessment, (3) the taxpayer
42 files the claim for the refund within 450 days of the expiration of the
43 period allowed for filing such a protest, and (4) the¹ amount of¹ a
44 the¹ refund¹ made¹ claimed¹ pursuant to this subsection¹ shall
45 does¹ not exceed the¹ portion¹ amount¹ of the¹ tax¹ assessment¹

1 paid ¹ [during the one-year period preceding the filing of the claim] ¹ .
2 ¹ The time periods provided shall apply solely for purposes of refund
3 claims under this subsection and shall be inapplicable with respect to
4 any penalty and interest payments that may be due. ¹ A refund claim
5 shall be filed under oath, in a form as the director may prescribe, and
6 shall state the grounds therefor, which grounds shall be limited to
7 those issues raised by the deficiency assessment itself and shall not
8 include any additional issues with respect to the original assessment of
9 tax. The filing of a claim for refund by the taxpayer under this
10 subsection shall neither extend or toll the time to request a hearing or
11 appeal an additional assessment of tax as otherwise provided by law.
12 The denial of a claim for refund shall be an action of the director
13 subject to review pursuant to section 54:51A-14 of P.L.1983, c.45.

14 c. Each taxpayer shall file a separate refund claim. A refund claim
15 on behalf of a class is not permitted.

16 [c.] d. If a tax is declared to be discriminatory in a final judicial
17 decision from which all appeals have been exhausted, the director may,
18 within the director's sole discretion, refund or credit only the
19 discriminatory portion of the tax.

20 (cf: P.L.1992, c.175, s.5)

21

22 14. N.J.S.54A:5-8 is amended to read as follows:

23 54A:5-8. a. Income from sources within this State for a
24 nonresident individual, estate or trust means the income from the
25 categories of gross income enumerated and classified under chapter 5
26 of this act to the extent that it is earned, received or acquired from
27 sources within this State:

28 (1) By reason of ownership or disposition of any interest in real or
29 tangible personal property in this State; or

30 (2) In connection with a trade, profession, occupation carried on
31 in this State or for the rendition of personal services performed in this
32 State; or

33 (3) As a distributive share of the income of an unincorporated
34 business, profession, enterprise, undertaking or other activity as the
35 result of work done, services rendered or other business activities
36 conducted in this State except as allocated to another state pursuant
37 to regulations promulgated by the director under this act; or

38 (4) From intangible personal property employed in a trade,
39 profession, occupation or business carried on in this State; or

40 (5) As a result of any lottery or wagering transaction in this State
41 other than that excluded from taxation pursuant to N.J.S.54A:6-11; or

42 (6) As S corporation income allocated to this State of a New
43 Jersey S corporation.

44 b. Income from sources within this State for a nonresident
45 individual shall not include income from pensions and annuities as set
46 forth in subsection j. of N.J.S.54A:5-1.

1 c. For purposes of paragraphs (2) through (4) of subsection a. of
 2 this section, a nonresident ¹ [individual, estate, trust or partnership]
 3 taxpayer¹ shall not be deemed to be carrying on a trade, profession,
 4 occupation, business, enterprise, undertaking or other activity in this
 5 State, or to be rendering personal services in this State, solely as a
 6 result of the purchase¹, holding¹ and sale of intangible personal
 7 property by the ¹ [individual, estate, trust or partnership] trade,
 8 profession, occupation, business, enterprise or undertaking¹, to the
 9 extent that (1) the ¹ [individual's, estate's, trust's or partnership's]¹
 10 activities related to the intangible personal property are for the
 11 account of the ¹ [individual, estate, trust or partnership] trade,
 12 profession, occupation, business, enterprise, or undertaking¹ and (2)
 13 the ¹ [individual, estate, trust or partnership] trade, profession,
 14 occupation, business, enterprise, or undertaking¹ does not hold the
 15 intangible personal property for sale to customers ¹ [in the ordinary
 16 course of a trade, profession, occupation, business, enterprise,
 17 undertaking or other activity]¹. For the purposes of this subsection¹ [,
 18 intangible personal property shall not include options, other than
 19 options to purchase or sell intangible personal property]: "intangible
 20 personal property" includes, but is not limited to, "commodities", as
 21 defined in paragraph (2) of subsection (e), and "securities," as defined
 22 in paragraph (2) of subsection (c), of section 475 of the federal
 23 Internal Revenue Code of 1986, 26 U.S.C. s.475; and "purchase,
 24 holding and sale of intangible personal property" includes activities
 25 incidental thereto giving rise to income, including commitment fees,
 26 breakup fees, income from securities lending, and any other incidental
 27 activities as prescribed or authorized by the director. The director
 28 shall adopt such regulations as the director deems necessary to
 29 accomplish the purposes of this section¹.

30 (cf: P.L.1993, c.173, s.10)

31

32 15. N.J.S.54A:8-4 is amended to read as follows:

33 54A:8-4. Declarations of estimated tax. (a) Requirement of filing.
 34 Every resident and nonresident individual shall make a declaration of
 35 **[his]** the individual's estimated New Jersey personal income tax for
 36 each taxable year beginning after June 30, 1976, if **[his]** the
 37 individual's estimated New Jersey personal income tax can reasonably
 38 be expected to be more than **[\$100.00]** \$400 in excess of any credits
 39 allowable against **[his]** the individual's tax, whether or not **[he]** the
 40 individual is required to file a federal declaration of estimated tax for
 41 such year.

42 (b) Definition of estimated tax. The term "estimated tax" means
 43 the amount which an individual estimates to be **[his]** the individual's
 44 income tax under this act for the taxable year, less the amount which
 45 **[he]** the individual estimates to be the sum of any credits allowable

1 against the tax.

2 (c) Joint declaration of husband and wife. A husband and wife may
3 make a joint declaration of estimated tax as if they were one taxpayer,
4 in which case the liability with respect to the estimated tax shall be
5 joint and several. No joint declaration may be made if husband and
6 wife are separated under a decree of divorce or of separate
7 maintenance, or if they have different taxable years. If a joint
8 declaration is made but husband and wife elect to determine their
9 taxes under this act separately, the estimated tax for such year may be
10 treated as the estimated tax of either husband or wife, or may be
11 divided between them, as they may elect.

12 (d) Time for filing declaration. Beginning in the taxable year 1976
13 and every taxable year thereafter a declaration of estimated tax of an
14 individual other than a farmer shall be filed on or before April 15 of
15 the taxable year, except that if the requirements of subsection (a) are
16 first met:

17 (1) After April 1 and before June 2 of the taxable year, the
18 declaration shall be filed on or before June 15; or

19 (2) After June 1 and before September 2 of the taxable year the
20 declaration shall be filed on or before September 15; or

21 (3) After September 1 of the taxable year, the declaration shall be
22 filed on or before January 15 of the succeeding year.

23 (e) Declaration of estimated tax by a farmer. A declaration of
24 estimated tax of an individual having an estimated New Jersey income
25 from farming (including oyster farming) for the taxable year which is
26 at least two-thirds of ~~his~~ the individual's total estimated New Jersey
27 income for the taxable year may be filed at any time on or before
28 January 15 of the succeeding year, in lieu of the time otherwise
29 prescribed.

30 (f) Declaration of estimated tax of ~~[\$100.00]~~ \$400 or less. A
31 declaration of estimated tax of an individual having a total estimated
32 tax for the taxable year of ~~[\$100.00]~~ \$400 or less may be filed at any
33 time on or before January 15 of the succeeding year under regulations
34 of the director.

35 (g) Amendments of declaration. An individual may amend a
36 declaration under regulations of the director.

37 (h) Return as declaration or amendment. If on or before February
38 15 of the succeeding taxable year an individual files his return for the
39 taxable year for which the declaration is required, and pays therewith
40 the full amount of the tax shown to be due on the return:

41 (1) Such return shall be considered as his declaration if no
42 declaration was required to be filed during the taxable year, but is
43 otherwise required to be filed on or before January 15;

44 (2) Such return shall be considered as the amendment permitted by
45 subsection (g) to be filed on or before January 15 if the tax shown on
46 the return is greater than the estimated tax shown in a declaration

1 previously made.

2 (i) Fiscal year. This section shall apply to a taxable year other than
3 a calendar year by the substitution of the months of such fiscal year for
4 the corresponding months specified in this section.

5 (j) Short taxable year. An individual having a taxable year of less
6 than 12 months shall make a declaration in accordance with
7 regulations of the director.

8 (k) Declaration for individual under a disability. The declaration
9 of estimated tax for an individual who is unable to make a declaration
10 by reason of minority or other disability shall be made and filed by
11 ~~his~~ the individual's guardian, committee, fiduciary or other person
12 charged with the care of ~~his~~ the individual's person or property
13 (other than a receiver in possession of only a part of ~~his~~ the
14 individual's property), or by ~~his~~ the individual's duly authorized
15 agent.

16 (l) In the taxable year 1976, no declaration shall be required until
17 the lapse of at least one full calendar quarter following enactment of
18 this act.

19 ~~(m) This section shall also apply to an estate or trust taxpayer~~
20 ~~other than an estate or trust that meets the two year limitation and~~
21 ~~other criteria of paragraph (2) of subsection (l) of section 6654 of the~~
22 ~~federal Internal Revenue Code of 1986, 26 U.S.C. s.6654.~~
23 (cf: N.J.S.54A:8-4)

24

25 16. N.J.S.54A:9-6 is amended to read as follows:

26 54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax
27 return. In case of failure to file a tax return under this act on or before
28 the prescribed date (determined with regard to any extension of time
29 for filing), unless it is shown that such failure is due to reasonable
30 cause and not due to willful neglect, there shall be added to the
31 amount required to be shown as tax on such return such amount as is
32 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
33 seq. For this purpose, the amount of tax required to be shown on the
34 return shall be reduced by the amount of any part of the tax which is
35 paid on or before the date prescribed for payment of the tax and by the
36 amount of any credit against the tax which may be claimed upon the
37 return.

38 (b) Deficiency due to negligence. If any part of a deficiency is due
39 to negligence or intentional disregard of this act or rules or regulations
40 hereunder (but without intent to defraud), there shall be added to the
41 tax an amount equal to 10% of the deficiency.

42 (c) Failure to file declaration or underpayment of estimated tax.
43 If any taxpayer fails to file a declaration of estimated tax or fails to pay
44 all or any part of an installment of estimated tax, ~~he~~ the taxpayer
45 shall be deemed to have made an underpayment of estimated tax
46 except as provided pursuant to subsection (d) of this section. There

1 shall be added to the tax for the taxable year an amount at the rate as
2 is required under the State Tax Uniform Procedure Law, R.S.54:48-1
3 et seq., upon the amount of the underpayment for the period of the
4 underpayment but not beyond the 15th day of the fourth month
5 following the close of the taxable year. The amount of underpayment
6 shall be the excess of the lesser of: (1) the amount of the installment
7 which would be required to be paid if the estimated tax were equal to
8 80% of the tax (two-thirds of the tax for farmers referred to in
9 subsection (e) of section 54A:8-4) shown on the return for the taxable
10 year (or if no return was filed, of the tax for such year), or (2) 100%
11 of the tax shown on the tax return of the taxpayer for the preceding
12 taxable year; over the amount, if any, of the installment paid on or
13 before the last day prescribed for such payment. No underpayment
14 shall be deemed to exist with respect to a declaration or installment
15 otherwise due on or after the taxpayer's death.

16 (d) Exception to addition for underpayment of estimated tax. The
17 addition to tax under subsection (c) with respect to any underpayment
18 of any installment shall not be imposed if the total amount of all
19 payments of estimated tax made on or before the last date prescribed
20 for the payment of such installment equals or exceeds whichever of the
21 following set forth in paragraphs (1) and (2) and subject to paragraph
22 (3) is the lesser--

23 (1) The amount which would have been required to be paid on or
24 before such date if the estimated tax were whichever of the following
25 is the least--

26 (A) **【The】** An amount equal to 100% of the tax shown on the
27 return of the 【individual】 taxpayer for the preceding taxable year ,
28 except as provided pursuant to pursuant to paragraph (3) of this
29 subsection, if a return showing a liability for tax was filed by the
30 【individual】 taxpayer for the preceding taxable year and such
31 preceding year was a taxable year of 12 months, or

32 (B) An amount equal to 100% of the tax computed, except as
33 provided pursuant to pursuant to paragraph (3) of this subsection, at
34 the rates applicable to the taxable year, on the basis of the taxpayer's
35 status with respect to 【his】 the taxpayer's personal exemptions for the
36 taxable year, but otherwise on the basis of the facts shown on 【his】
37 the taxpayer's return for, and the law applicable to, the preceding
38 taxable year, or

39 (C) An amount equal to 80% of the tax for the taxable year
40 (two-thirds of the tax for farmers referred to in subsection (e) of
41 section 54A:8-4) computed by placing on an annualized basis the
42 income for the months in the taxable year ending before the month in
43 which the installment is required to be paid (or, in the case of a trust
44 or estate, the income for the months ending before the date one month
45 before the month in which the installment is required). For purposes
46 of this subparagraph, the income shall be placed on an annualized basis

1 by--

2 (i) Multiplying by 12 (or, in the case of a taxable year of less than
3 12 months, the number of months in the taxable year) the income for
4 the months in the taxable year ending before the month in which the
5 installment is required to be paid (or, in the case of a trust or estate,
6 the income for the months ending before the date one month before
7 the month in which the installment is required),

8 (ii) Dividing the resulting amount by the number of months in the
9 taxable year ending before the month in which such installment date
10 falls (or, in the case of a trust or estate, the number of months ending
11 before the date one month before the month in which such installment
12 date falls), and

13 (iii) Deducting from such amount the deductions for personal
14 exemptions allowable for the taxable year (such personal exemptions
15 being determined as of the last date prescribed for payment of the
16 installment); or

17 (2) An amount equal to 90% of the tax computed, at the rates
18 applicable to the taxable year, on the basis of the actual income for the
19 months in the taxable year ending before the month in which the
20 installment is required to be paid.

21 (3) If the taxable gross income shown on the return of the taxpayer
22 for the preceding taxable year exceeds \$150,000 (\$75,000 in the case
23 of a married individual within the meaning of section 7703 of the
24 federal Internal Revenue Code of 1986, 26 U.S.C. s.7703, filing
25 separately for the taxable year for which the amount of the installment
26 is being determined) subparagraphs (A) and (B) of paragraph (1) of
27 this subsection shall be applied by substituting "110%" for "100%".
28 For purposes of this paragraph, "taxable gross income" means gross
29 income after any allowable deductions under chapters 3 or 3A of the
30 "New Jersey Gross Income Tax Act" (C.54A:3-1 et seq and 54A:3A-1
31 et seq); or, in the case of a trust or estate, gross income after any
32 allowable deductions or exemptions, income commissions and amounts
33 distributed or credited to beneficiaries; and "gross income" for a
34 nonresident means gross income calculated as if such nonresident were
35 a resident.

36 (e) Deficiency due to fraud. If any part of a deficiency is due to
37 fraud, there shall be added to the tax an amount equal to 50% of the
38 deficiency. This amount shall be in lieu of any other addition to tax
39 imposed by subsection (a) or (b).

40 (f) Nonwillful failure to pay withholding tax. If any employer,
41 without intent to evade or defeat any tax imposed by this act or the
42 payment thereof, shall fail to make a return and pay a tax withheld by
43 him at the time required by or under the provisions of section 54A:7-4,
44 such employer shall be liable for such tax and shall pay the same
45 together with interest thereon and the addition to tax provided in
46 subsection (a), and such interest and addition to tax shall not be

1 charged to or collected from the employee by the employer. The
2 director shall have the same rights and powers for the collection of
3 such tax, interest and addition to tax against such employer as are now
4 prescribed by this act for the collection of tax against an individual
5 taxpayer.

6 (g) Willful failure to collect and pay over tax. Any person required
7 to collect, truthfully account for, and pay over the tax imposed by this
8 act who willfully fails to collect such tax or truthfully account for and
9 pay over such tax or willfully attempts in any manner to evade or
10 defeat the tax or the payment thereof, shall, in addition to other
11 penalties provided by law, be liable to a penalty equal to the total
12 amount of the tax evaded, or not collected, or not accounted for and
13 paid over. No addition to tax under subsection (b) or (c) shall be
14 imposed for any offense to which this subsection applies.

15 (h) Failure to file certain information returns. In case of each
16 failure to file a statement of a payment to another person, required
17 under authority of subsection (c) of section 54A:8-6 (relating to
18 information at source, including the duplicate statement of tax
19 withheld on wages) on the date prescribed therefor (determined with
20 regard to any extension of time for filing), unless it is shown that such
21 failure is due to reasonable cause and not to willful neglect, there shall,
22 upon notice and demand by the director and in the same manner as tax,
23 be paid by the person so failing to file the statement, a penalty of \$2.00
24 for each statement not so filed, but the total amount imposed on the
25 delinquent person for all such failures during any calendar year shall
26 not exceed \$2,000.00.

27 (i) Additional penalty. Any person who with fraudulent intent shall
28 fail to pay, or to deduct or withhold and pay, any tax, or to make,
29 render, sign or certify any return or declaration of estimated tax or to
30 supply any information within the time required by or under this act,
31 shall be liable to penalty of not more than \$5,000.00, in addition to any
32 other amounts required under this act, to be imposed, assessed and
33 collected by the director. The director shall have the power, in his
34 discretion, to waive, reduce or compromise any penalty under this
35 subsection.

36 (j) Additions treated as tax. The additions to tax and penalties
37 provided by this section shall be paid upon notice and demand and
38 shall be assessed, collected and paid in the same manner as taxes and
39 any reference in this act to income tax or tax imposed by this act, shall
40 be deemed also to refer to the additions to tax and penalties provided
41 by this section. For purposes of section 54A:9-2, this subsection shall
42 not apply to:

43 (1) Any addition to tax under subsection (a) except as to that
44 portion attributable to a deficiency;

45 (2) Any addition to tax under subsection (e); and

46 (3) Any additional penalty under subsection (i).

1 (k) Determination of deficiency. For purposes of subsections (b)
2 and (c), the amount shown as the tax by the taxpayer upon his return
3 shall be taken into account in determining the amount of the deficiency
4 only if such return was filed on or before the last day prescribed for
5 the filing of such return, determined with regard to any extension of
6 time for such filing.

7 (l) Person defined. For purposes of subsections (f), (g), (h) and (i),
8 the term person or employer includes an individual, corporation or
9 partnership or an officer or employee of any corporation (including a
10 dissolved corporation) or a member or employee of any partnership,
11 who as such officer, employee, or member is under a duty to perform
12 the act in respect of which the violation occurs.

13 (cf: P.L.1987, c.76, s.59)

14
15 17. N.J.S.54A:9-10 is amended to read as follows

16 54A:9-10. (a) Appeal to tax court. Any aggrieved taxpayer may,
17 within 90 days after any decision, order, finding, assessment or action
18 of the Director of the Division of Taxation made pursuant to the
19 provisions of this act, appeal therefrom to the tax court in accordance
20 with the provisions of the State Tax Uniform Procedure Law, R.S.
21 54:48-1 et seq.

22 (b) Any aggrieved taxpayer that has neither protested or appealed
23 from an additional assessment of tax may, pursuant to subsection (b)
24 of R.S.54:49-14, file a claim for refund of the assessment paid.

25 (c) Appeal exclusive remedy of taxpayer. The appeal provided by
26 this section shall be the exclusive remedy available to any taxpayer for
27 review of a decision of the director in respect of the determination of
28 the liability of the taxpayer for the taxes imposed by this act.

29 ~~[(c)]~~(d) Credit, refund or abatement after review. If the amount
30 of a deficiency determined by the director is disallowed in whole or in
31 part, the amount so disallowed shall be credited or refunded to the
32 taxpayer, without the making of claim therefor, or, if payment has not
33 been made, shall be abated.

34 ~~[(d)]~~ (e) Date of finality of director's decision. A decision of the
35 director shall become final upon the expiration of the period specified
36 in subsection (a) for filing a complaint with the tax court, if no such
37 complaint has been filed within such time, or if such complaint has
38 been duly made, upon expiration of the time for all further appeals, or
39 upon the rendering by the director of a decision in accordance with
40 the mandate of the tax court or the courts on appeal. Notwithstanding
41 the foregoing, for the purpose of forming a complaint, the decision of
42 the director shall be deemed final on the date the notice of decision is
43 sent by mail to the taxpayer.

44 (cf: P.L.1983, c.36, s.48)

1 18. This act shall take effect immediately and apply to return
2 periods beginning on or after January 1 next following enactment;
3 provided however, that section 14 shall apply to taxable years ending
4 after enactment.

ASSEMBLY, No. 1730

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED FEBRUARY 23, 1998

Sponsored by:

Assemblyman PAUL KRAMER

District 14 (Mercer and Middlesex)

SYNOPSIS

Provides alternate remedy for State taxpayers assessed deficiencies, clarifies State gross income taxation of nonresident hedge fund partners, affects certain State tax penalty provisions.

CURRENT VERSION OF TEXT

As introduced.



A1730 KRAMER

2

1 AN ACT concerning State tax assessments and liabilities, amending
2 various sections of statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 5 of P.L.1981, c.184 (C.54:10A-15.4) is amended to
8 read as follows:

9 5. a. In case of any underpayment of an installment payment by a
10 taxpayer, there shall be added to the tax for the fiscal or calendar
11 accounting year an amount determined by applying the rate established
12 in this section to the amount of the underpayment for the period of the
13 underpayment.

14 b. For purposes of subsection a., the amount of underpayment
15 shall be the excess of:

16 (1) The lesser of the amount of the installment payment which
17 would be required to be paid if all installment payments were equal to
18 90% of the tax shown on the return for the fiscal or calendar
19 accounting year, or if no return was filed, 90% of the tax for that year,
20 or 100% of the tax shown on the tax return of the taxpayer for the
21 preceding taxable year over

22 (2) The amount, if any, of the installment payment paid on or
23 before the last date prescribed for payment.

24 c. For purposes of subsection a., the period of the underpayment
25 shall run from the date the installment payment was required to be paid
26 to whichever of the following dates is the earlier:

27 (1) The fifteenth day of the fourth month after the close of the
28 fiscal or calendar accounting year.

29 (2) With respect to any portion of the underpayment, the date on
30 which that portion is paid.

31 For purposes of this subsection, a payment of any installment
32 payment shall be considered a payment of any previous underpayment
33 only to the extent that payment exceeds the amount of the installment
34 payment determined under subsection b. (1) for that installment
35 payment.

36 d. Notwithstanding the provisions of the preceding subsections,
37 the addition to the tax with respect to any underpayment of any
38 installment payment shall not be imposed if the total amount of all
39 installment payments made on or before the last date prescribed for the
40 payment of that installment equals or exceeds the amount which would
41 have been required to be paid on or before that date if the total amount
42 of all installment payments were the lesser of (1) or (2) as follows:

43 (1) An amount equal to the tax computed at the rates applicable to

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

Matter underlined thus is new matter.

1 the current fiscal or calendar accounting year but otherwise on the
2 basis of the facts shown on the return of the taxpayer for, and the law
3 applicable to, the preceding fiscal or calendar accounting year; or

4 (2) An amount equal to 90% of the tax for the current fiscal or
5 calendar accounting year computed by placing on an annualized basis
6 the taxable entire net income and entire net worth:

7 (a) For the first three months of the current fiscal or calendar
8 accounting year, in the case of the installment payment required to be
9 paid in the fourth month,

10 (b) For the first three months or for the first five months of the
11 current fiscal or calendar accounting year, in the case of the
12 installment payment required to be paid in the sixth month,

13 (c) For the first six months or for the first eight months of the
14 current fiscal or calendar accounting year, in the case of the
15 installment payment required to be paid in the ninth month,

16 (d) For the first nine months or for the first 11 months of the
17 current fiscal or calendar accounting year, in the case of the
18 installment payment required to be paid in the 12th month, and

19 (e) For the last three months of the preceding taxable year, in the
20 case of the installment payment required to be paid in the first month
21 of the current fiscal or calendar accounting year.

22 e. Any taxpayer who shall fail to pay, or shall underpay by more
23 than 10% of the amount due, any installment payment required
24 pursuant to this act, shall pay, in addition to the tax, interest on the
25 amount of underpayment as provided in the State Tax Uniform
26 Procedure Law, R.S. 54:48-1 et seq.

27 (cf: P.L.1987, c.76, s.50)

28

29 2. Section 19 of P.L.1945, c.162 (C.54:10A-19) is amended to
30 read as follows:

31 19. The director may grant a reasonable extension of time for the
32 filing of returns or the payment of tax or both, under such rules and
33 regulations as he shall prescribe, which rules and regulations may
34 require the filing of a tentative return and the payment of an estimated
35 tax. If the time for filing the return shall be extended, the payment of
36 the portion of the tax remaining to be paid, if any, shall be postponed
37 to the date fixed by the extension of the time for the filing of the
38 return, but in every such case the corporation shall pay, in addition to
39 the unpaid portion of the tax, interest thereon at the rate as provided
40 in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., from
41 the time when the return originally was required to be filed to the date
42 of actual payment under the extension; provided, that if such unpaid
43 portion of the tax is not paid within the time fixed under the extension,
44 the interest on such unpaid portion shall be computed at the rate as
45 provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et
46 seq., from the date the tax was originally due to the date of actual

1 payment and if the amounts paid up to and including the time of the
2 filing of the tentative return total less than the lesser of: 90% of the
3 amount due; or for a taxpayer that had a preceding fiscal or calendar
4 accounting year of 12 months and filed a return for that year showing
5 a liability for tax, an amount equal to the tax computed at the rates
6 applicable to the current fiscal or calendar accounting year but
7 otherwise on the basis of the facts shown on the return of the taxpayer
8 for, and the law applicable to, the preceding fiscal or calendar
9 accounting year, the taxpayer shall be liable for a penalty of 5% per
10 month or fraction thereof on the amount of underpayment, not to
11 exceed 25% of that underpayment, which shall be in addition to the
12 interest charges provided above.

13 (cf: P.L.1992, c.175, s.20)

14

15 3. Section 11 of P.L.1947, c.50 (C.54:10A-19.2) is amended to
16 read as follows:

17 11. a. Any aggrieved taxpayer may, within 90 days after any action
18 of the director made pursuant to the provisions of this act, appeal
19 therefrom to the tax court in accordance with the provisions of the
20 State Tax Uniform Procedure Law, R.S. 54:48-1 et seq.

21 b. Any aggrieved taxpayer that has neither protested or appealed
22 from an additional assessment of tax may, pursuant to subsection (b)
23 of R.S.54:49-14, file a claim for refund of the assessment paid.

24 (cf: P.L.1983, c.36, s.23)

25

26 4. Section 18 of P.L.1973, c.31 (C.54:10D-17) is amended to read
27 as follows:

28 18. a. Any aggrieved taxpayer may, within 90 days after any
29 decision, order, finding, assessment or action of the director made
30 pursuant to the provisions of this act, appeal therefrom to the tax
31 court in accordance with the provisions of the State Tax Uniform
32 Procedure Law, R.S.54:48-1 et seq.

33 b. Any aggrieved taxpayer that has neither protested or appealed
34 from an additional assessment of tax may, pursuant to subsection (b)
35 of R.S.54:49-14 file a claim for refund of the assessment paid.

36 (cf: P.L.1983, c.36, s.24)

37

38 5. Section 21 of P.L.1973, c.170 (C.54:10E-21) is amended to
39 read as follows:

40 21. a. Any aggrieved taxpayer may, within 90 days after any
41 decision, order, finding, assessment or action of the director made
42 pursuant to the provisions of this act, appeal therefrom to the tax
43 court in accordance with the provisions of the State Tax Uniform
44 Procedure Law, R.S. 54:48-1 et seq.

45 b. Any aggrieved taxpayer that has neither protested or appealed
46 from an additional assessment of tax may, pursuant to subsection (b)

1 of R.S.54:49-14, file a claim for refund of the assessment paid.
2 (cf: P.L.1983, c.36, s.25)

3
4 6. Section 8 of P.L.1990, c.42 (C.54:15B-8) is amended to read as
5 follows:

6 8. a. (1) If a return required by this act is not filed, or if a return
7 when filed is incorrect or insufficient in the opinion of the director, the
8 amount of tax due shall be determined by the director from the
9 information available.

10 (2) If because of an affiliation of interests between a company
11 subject to tax under this act and any purchaser the gross receipts from
12 sale transactions are not indicative of or representative of market
13 price, the director may at the director's discretion, utilize external
14 indices to establish gross receipts.

15 (3) (a) Notice of a determination pursuant to this subsection shall
16 be given to the company liable for the payment of the tax. Such
17 determination shall finally and irrevocably fix the tax unless the
18 company against which it is assessed, within 30 days after receiving
19 notice of the determination, shall apply to the director for a hearing,
20 or unless the director on the director's own motion shall redetermine
21 the same. After such hearing the director shall give notice of the
22 determination to the company to which the tax is assessed.

23 (b) Any aggrieved taxpayer that has neither protested or
24 appealed from an additional assessment of tax may, pursuant to
25 subsection (b) of R.S.54:49-14, file a claim for refund of the
26 assessment paid.

27 b. The certificate of the director to the effect that a tax has not
28 been paid, that a return has not been filed, that a prescribed certificate
29 has not been issued, that information has not been supplied or that
30 inaccurate information has been supplied pursuant to the provisions of
31 this act or rules or regulations adopted hereunder shall be prima facie
32 evidence thereof.

33 c. In addition to the other powers granted to the director in this
34 section, the director is hereby authorized and empowered:

35 (1) To delegate to any officer or employee of the division such
36 powers and duties as the director may deem necessary to carry out the
37 provisions of this act, and the person or persons to whom such power
38 has been delegated shall possess and may exercise all of said powers
39 and perform all of the duties delegated by the director;

40 (2) To prescribe and distribute all necessary forms and certificates
41 for the implementation of this act; and

42 (3) To administer and enforce the tax imposed by this act and to
43 make and adopt such rules and regulations and to require such facts
44 and information to be reported as the director may deem necessary to
45 enforce the provisions of this act.

46 d. The tax imposed by this act shall be governed in all respects by

1 the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1
2 et seq., except only to the extent that a specific provision of this act
3 may be in conflict therewith.

4 (cf: P.L.1991, c.181, s.5)

5
6 7. Section 20 of P.L.1966, c.30 (C.54:32B-20) is amended to read
7 as follows:

8 20. (a) In the manner provided in this section the director shall
9 refund or credit any tax, penalty or interest erroneously, illegally or
10 unconstitutionally collected or paid if application to the director for
11 such refund shall be made within four years from the payment thereof.
12 Such application may be made by a customer who has actually paid the
13 tax. Such application may also be made by a person required to
14 collect the tax, who has collected and paid over such tax to the
15 director, provided that the application is made within four years of the
16 payment to him by the customer, but no actual refund of moneys shall
17 be made to such person until ~~he~~the person shall first establish to the
18 satisfaction of the director, under such regulations as ~~he~~ the director
19 may prescribe, that ~~he~~ the person has repaid to the customer the
20 amount for which the application for refund is made. The director
21 may, in lieu of any refund, allow credit on payments due from the
22 applicant.

23 (b) A person shall not be entitled to a revision, refund or credit
24 under this section of a tax, interest or penalty which had been
25 determined to be due pursuant to the provisions of section 19 of
26 P.L.1966, c.30 (C.54:32B-19) where ~~he~~ the person has had a
27 hearing or an opportunity for a hearing as provided in said section or
28 has failed to ~~avail himself of~~ use the remedies therein provided
29 unless the person otherwise meets the requirements of subsection (b)
30 of R.S.54:49-14. No refund or credit shall be made of a tax, interest
31 or penalty paid after a determination by the director made pursuant to
32 section 19 of P.L.1966, c.30 (C.54:32B-19) unless it be found that
33 such determination was erroneous, illegal or unconstitutional or
34 otherwise improper, pursuant to law, in which event refund or credit
35 shall be made of the tax, interest or penalty found to have been
36 overpaid.

37 (cf: P.L.1992, c.175, s.32)

38
39 8. R.S.54:34-13 is amended to read as follows:

40 54:34-13. a. Any interested person dissatisfied with the
41 appraisalment or assessment so made may appeal therefrom to the tax
42 court within 90 days after the making and entering of the assessment,
43 in accordance with the provisions of the State Tax Uniform Procedure
44 Law, R.S.54:48-1 et seq.

45 b. Any aggrieved taxpayer that has neither protested or appealed
46 from an additional assessment of tax may, pursuant to subsection (b)

1 of R.S.54:49-14, file a claim for refund of the assessment paid.

2 (cf: P.L.1983, c.36, s.38)

3

4 9. R.S.54:38-10 is amended to read as follows:

5 54:38-10. a. The tax court on appeal shall have jurisdiction to
6 hear and determine all questions in relation to any tax imposed under
7 the provisions of this chapter. Any executor, administrator, trustee,
8 person or corporation liable for the payment of any tax imposed by this
9 chapter may appeal to the tax court for a review thereof within 90
10 days of the date of notice assessing the tax complained of, in
11 accordance with the provisions of the State Tax Uniform Procedure
12 Law, R.S.54:48-1 et seq.

13 b. Any aggrieved taxpayer that has neither protested or appealed
14 from an additional assessment of tax may, pursuant to subsection (b)
15 of R.S.54:49-14, file a claim for refund of the assessment paid.

16 (cf: P.L.1983, c.36, s.39)

17

18 10. Section 14 of P.L.1990, c.39 (C.54:40B-14) is amended to
19 read as follows:

20 14. a. Any aggrieved taxpayer may, within 90 days after any
21 decision, order, finding, assessment or action of the director made
22 pursuant to the provisions of this act, appeal therefrom to the tax
23 court in accordance with the provisions of the State Tax Uniform
24 Procedure Law, R.S.54:48-1 et seq.

25 b. Any aggrieved executor, administrator, trustee, person or
26 corporation liable for the payment of any tax imposed by this chapter
27 that has neither protested or appealed from an additional assessment
28 of tax may, pursuant to subsection (b) of R.S.54:49-14, file a claim for
29 refund of the assessment paid.

30 c. The appeal provided by this section shall be the exclusive
31 remedy available to any taxpayer for review of a decision of the
32 director in respect of the determination of the liability of the taxpayer
33 for the taxes imposed by this act.

34 (cf: P.L.1990, c.39, s.14)

35

36 11. R.S.54:45-6 is amended to read as follows:

37 54:45-6. Any taxpayer, at any time within four years after the
38 payment of any original or additional tax assessed against **[him]** the
39 taxpayer may file with the director a claim under oath for refund, in
40 such form as the director may prescribe, stating the ground therefor,
41 but no claim for refund shall be required or permitted to be filed with
42 respect to a tax paid after protest has been filed with the director or
43 after proceedings on appeal have been commenced as provided in this
44 subtitle until after the protest or appeal has been finally determined.

45 (cf: P.L.1992, c.175, s.39)

1 12. R.S.54:49-4 is amended to read as follows:

2 54:49-4. In addition thereto any taxpayer failing to file a return
3 with the director within the time prescribed under the act imposing
4 such tax shall be liable to a late filing penalty of \$100 for each month
5 or fraction thereof that such return is delinquent, plus a penalty of 5%
6 per month or fraction thereof of the **【total tax liability】** underpayment
7 not to exceed 25% of such **【tax liability】** underpayment. Unless any
8 part of any underpayment of tax required to be shown on a return or
9 report is shown to be due to reasonable cause, there shall be added to
10 the tax an amount equal to 5% of the underpayment.

11 (cf: P.L.1992, c.175, s.2)

12

13 13. R.S.54:49-14 is amended to read as follows:

14 54:49-14. a. Any taxpayer, at any time within four years after the
15 payment of any original or additional tax assessed against him, unless
16 a shorter limit is fixed by the law imposing the tax, may file with the
17 director a claim under oath for refund, in such form as the director
18 may prescribe, stating the grounds therefor, but no claim for refund
19 shall be required or permitted to be filed with respect to a tax paid,
20 after protest has been filed with the director or after proceedings on
21 appeal have been commenced as provided in this subtitle, until such
22 protest or appeal has been finally determined. The signing of an
23 agreement by the taxpayer and the director extending the period for
24 assessment shall likewise extend the period for filing a claim for
25 refund.

26 b. No taxpayer shall be precluded from claiming a refund of
27 additional tax assessed solely on the ground that the taxpayer neither
28 protested or appealed from the assessment. A taxpayer that neither
29 protested or appealed from an additional assessment of tax may,
30 pursuant to this subsection, file a claim for the refund of the
31 assessment within one year after the payment thereof; provided
32 however, that the payment must have been timely made, as provided
33 in the notice of deficiency assessment or by an extended due date as
34 agreed to in writing by the director. The amount of a refund made
35 pursuant to this subsection shall not exceed the portion of the tax paid
36 during the one-year period preceding the filing of the claim. A refund
37 claim shall be filed under oath, in a form as the director may prescribe,
38 and shall state the grounds therefor, which grounds shall be limited to
39 those issues raised by the deficiency assessment itself and shall not
40 include any additional issues with respect to the original assessment of
41 tax. The filing of a claim for refund by the taxpayer under this
42 subsection shall neither extend or toll the time to request a hearing or
43 appeal an additional assessment of tax as otherwise provided by law.
44 The denial of a claim for refund shall be an action of the director
45 subject to review pursuant to section 54:51A-14 of P.L.1983, c.45.

46 c. Each taxpayer shall file a separate refund claim. A refund claim

1 on behalf of a class is not permitted.

2 **[c.] d.** If a tax is declared to be discriminatory in a final judicial
3 decision from which all appeals have been exhausted, the director may,
4 within the director's sole discretion, refund or credit only the
5 discriminatory portion of the tax.

6 (cf: P.L.1992, c.175, s.5)

7

8 14. N.J.S.54A:5-8 is amended to read as follows:

9 54A:5-8. **a.** Income from sources within this State for a
10 nonresident individual, estate or trust means the income from the
11 categories of gross income enumerated and classified under chapter 5
12 of this act to the extent that it is earned, received or acquired from
13 sources within this State:

14 (1) By reason of ownership or disposition of any interest in real or
15 tangible personal property in this State; or

16 (2) In connection with a trade, profession, occupation carried on
17 in this State or for the rendition of personal services performed in this
18 State; or

19 (3) As a distributive share of the income of an unincorporated
20 business, profession, enterprise, undertaking or other activity as the
21 result of work done, services rendered or other business activities
22 conducted in this State except as allocated to another state pursuant
23 to regulations promulgated by the director under this act; or

24 (4) From intangible personal property employed in a trade,
25 profession, occupation or business carried on in this State; or

26 (5) As a result of any lottery or wagering transaction in this State
27 other than that excluded from taxation pursuant to N.J.S.54A:6-11; or

28 (6) As S corporation income allocated to this State of a New
29 Jersey S corporation.

30 **b.** Income from sources within this State for a nonresident
31 individual shall not include income from pensions and annuities as set
32 forth in subsection j. of N.J.S.54A:5-1.

33 **c.** For purposes of paragraphs (2) through (4) of subsection a. of
34 this section, a nonresident individual, estate, trust or partnership shall
35 not be deemed to be carrying on a trade, profession, occupation,
36 business, enterprise, undertaking or other activity in this State, or to
37 be rendering personal services in this State, solely as a result of the
38 purchase and sale of intangible personal property by the individual,
39 estate, trust or partnership, to the extent that (1) the individual's,
40 estate's, trust's or partnership's activities related to the intangible
41 personal property are for the account of the individual, estate, trust or
42 partnership and (2) the individual, estate, trust or partnership does not
43 hold the intangible personal property for sale to customers in the
44 ordinary course of a trade, profession, occupation, business,
45 enterprise, undertaking or other activity. For the purposes of this
46 subsection, intangible personal property shall not include options.

1 other than options to purchase or sell intangible personal property.
2 (cf: P.L.1993, c.173, s.10)

3
4 15. N.J.S.54A:8-4 is amended to read as follows:

5 54A:8-4. Declarations of estimated tax. (a) Requirement of filing.
6 Every resident and nonresident individual shall make a declaration of
7 ~~his~~ the individual's estimated New Jersey personal income tax for
8 each taxable year beginning after June 30, 1976, if ~~his~~ the
9 individual's estimated New Jersey personal income tax can reasonably
10 be expected to be more than ~~[\$100.00]~~ \$400 in excess of any credits
11 allowable against ~~his~~ the individual's tax, whether or not ~~he~~ the
12 individual is required to file a federal declaration of estimated tax for
13 such year.

14 (b) Definition of estimated tax. The term "estimated tax" means
15 the amount which an individual estimates to be ~~his~~ the individual's
16 income tax under this act for the taxable year, less the amount which
17 ~~he~~ the individual estimates to be the sum of any credits allowable
18 against the tax.

19 (c) Joint declaration of husband and wife. A husband and wife may
20 make a joint declaration of estimated tax as if they were one taxpayer,
21 in which case the liability with respect to the estimated tax shall be
22 joint and several. No joint declaration may be made if husband and
23 wife are separated under a decree of divorce or of separate
24 maintenance, or if they have different taxable years. If a joint
25 declaration is made but husband and wife elect to determine their
26 taxes under this act separately, the estimated tax for such year may be
27 treated as the estimated tax of either husband or wife, or may be
28 divided between them, as they may elect.

29 (d) Time for filing declaration. Beginning in the taxable year 1976
30 and every taxable year thereafter a declaration of estimated tax of an
31 individual other than a farmer shall be filed on or before April 15 of
32 the taxable year, except that if the requirements of subsection (a) are
33 first met:

34 (1) After April 1 and before June 2 of the taxable year, the
35 declaration shall be filed on or before June 15; or

36 (2) After June 1 and before September 2 of the taxable year the
37 declaration shall be filed on or before September 15; or

38 (3) After September 1 of the taxable year, the declaration shall be
39 filed on or before January 15 of the succeeding year.

40 (e) Declaration of estimated tax by a farmer. A declaration of
41 estimated tax of an individual having an estimated New Jersey income
42 from farming (including oyster farming) for the taxable year which is
43 at least two-thirds of ~~his~~ the individual's total estimated New Jersey
44 income for the taxable year may be filed at any time on or before
45 January 15 of the succeeding year, in lieu of the time otherwise
46 prescribed.

1 (f) Declaration of estimated tax of ~~[\$100.00]~~ \$400 or less. A
2 declaration of estimated tax of an individual having a total estimated
3 tax for the taxable year of ~~[\$100.00]~~ \$400 or less may be filed at any
4 time on or before January 15 of the succeeding year under regulations
5 of the director.

6 (g) Amendments of declaration. An individual may amend a
7 declaration under regulations of the director.

8 (h) Return as declaration or amendment. If on or before February
9 15 of the succeeding taxable year an individual files his return for the
10 taxable year for which the declaration is required, and pays therewith
11 the full amount of the tax shown to be due on the return:

12 (1) Such return shall be considered as his declaration if no
13 declaration was required to be filed during the taxable year, but is
14 otherwise required to be filed on or before January 15;

15 (2) Such return shall be considered as the amendment permitted by
16 subsection (g) to be filed on or before January 15 if the tax shown on
17 the return is greater than the estimated tax shown in a declaration
18 previously made.

19 (i) Fiscal year. This section shall apply to a taxable year other than
20 a calendar year by the substitution of the months of such fiscal year for
21 the corresponding months specified in this section.

22 (j) Short taxable year. An individual having a taxable year of less
23 than 12 months shall make a declaration in accordance with
24 regulations of the director.

25 (k) Declaration for individual under a disability. The declaration
26 of estimated tax for an individual who is unable to make a declaration
27 by reason of minority or other disability shall be made and filed by
28 ~~his~~ the individual's guardian, committee, fiduciary or other person
29 charged with the care of ~~his~~ the individual's person or property
30 (other than a receiver in possession of only a part of ~~his~~ the
31 individual's property), or by ~~his~~ the individual's duly authorized
32 agent.

33 (l) In the taxable year 1976, no declaration shall be required until
34 the lapse of at least one full calendar quarter following enactment of
35 this act.

36 This section shall also apply to an estate or trust taxpayer
37 other than an estate or trust that meets the two year limitation and
38 other criteria of paragraph (2) of subsection (l) of section 6654 of the
39 federal Internal Revenue Code of 1986, 26 U.S.C. s.6654.

40 (cf: N.J.S.54A:8-4)

41
42 16. N.J.S.54A:9-6 is amended to read as follows:

43 54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax
44 return. In case of failure to file a tax return under this act on or before
45 the prescribed date (determined with regard to any extension of time
46 for filing), unless it is shown that such failure is due to reasonable

1 cause and not due to willful neglect, there shall be added to the
2 amount required to be shown as tax on such return such amount as is
3 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
4 seq. For this purpose, the amount of tax required to be shown on the
5 return shall be reduced by the amount of any part of the tax which is
6 paid on or before the date prescribed for payment of the tax and by the
7 amount of any credit against the tax which may be claimed upon the
8 return.

9 (b) Deficiency due to negligence. If any part of a deficiency is due
10 to negligence or intentional disregard of this act or rules or regulations
11 hereunder (but without intent to defraud), there shall be added to the
12 tax an amount equal to 10% of the deficiency.

13 (c) Failure to file declaration or underpayment of estimated tax.
14 If any taxpayer fails to file a declaration of estimated tax or fails to pay
15 all or any part of an installment of estimated tax, ~~he~~the taxpayer
16 shall be deemed to have made an underpayment of estimated tax
17 except as provided pursuant to subsection (d) of this section. There
18 shall be added to the tax for the taxable year an amount at the rate as
19 is required under the State Tax Uniform Procedure Law, R.S.54:48-1
20 et seq., upon the amount of the underpayment for the period of the
21 underpayment but not beyond the 15th day of the fourth month
22 following the close of the taxable year. The amount of underpayment
23 shall be the excess of the lesser of: (1) the amount of the installment
24 which would be required to be paid if the estimated tax were equal to
25 80% of the tax (two-thirds of the tax for farmers referred to in
26 subsection (e) of section 54A:8-4) shown on the return for the taxable
27 year (or if no return was filed, of the tax for such year), or (2) 100%
28 of the tax shown on the tax return of the taxpayer for the preceding
29 taxable year; over the amount, if any, of the installment paid on or
30 before the last day prescribed for such payment. No underpayment
31 shall be deemed to exist with respect to a declaration or installment
32 otherwise due on or after the taxpayer's death.

33 (d) Exception to addition for underpayment of estimated tax. The
34 addition to tax under subsection (c) with respect to any underpayment
35 of any installment shall not be imposed if the total amount of all
36 payments of estimated tax made on or before the last date prescribed
37 for the payment of such installment equals or exceeds whichever of the
38 following set forth in paragraphs (1) and (2) and subject to paragraph
39 (3) is the lesser--

40 (1) The amount which would have been required to be paid on or
41 before such date if the estimated tax were whichever of the following
42 is the least--

43 (A) ~~The~~ An amount equal to 100% of the tax shown on the
44 return of the [individual] taxpayer for the preceding taxable year ,
45 except as provided pursuant to pursuant to paragraph (3) of this
46 subsection, if a return showing a liability for tax was filed by the

1 **[individual]** taxpayer for the preceding taxable year and such
2 preceding year was a taxable year of 12 months, or

3 (B) An amount equal to 100% of the tax computed, except as
4 provided pursuant to paragraph (3) of this subsection, at
5 the rates applicable to the taxable year, on the basis of the taxpayer's
6 status with respect to **[his]** the taxpayer's personal exemptions for the
7 taxable year, but otherwise on the basis of the facts shown on **[his]**
8 the taxpayer's return for, and the law applicable to, the preceding
9 taxable year, or

10 (C) An amount equal to 80% of the tax for the taxable year
11 (two-thirds of the tax for farmers referred to in subsection (e) of
12 section 54A:8-4) computed by placing on an annualized basis the
13 income for the months in the taxable year ending before the month in
14 which the installment is required to be paid (or, in the case of a trust
15 or estate, the income for the months ending before the date one month
16 before the month in which the installment is required). For purposes
17 of this subparagraph, the income shall be placed on an annualized basis
18 by--

19 (i) Multiplying by 12 (or, in the case of a taxable year of less than
20 12 months, the number of months in the taxable year) the income for
21 the months in the taxable year ending before the month in which the
22 installment is required to be paid (or, in the case of a trust or estate,
23 the income for the months ending before the date one month before
24 the month in which the installment is required),

25 (ii) Dividing the resulting amount by the number of months in the
26 taxable year ending before the month in which such installment date
27 falls (or, in the case of a trust or estate, the number of months ending
28 before the date one month before the month in which such installment
29 date falls), and

30 (iii) Deducting from such amount the deductions for personal
31 exemptions allowable for the taxable year (such personal exemptions
32 being determined as of the last date prescribed for payment of the
33 installment); or

34 (2) An amount equal to 90% of the tax computed, at the rates
35 applicable to the taxable year, on the basis of the actual income for the
36 months in the taxable year ending before the month in which the
37 installment is required to be paid.

38 (3) If the taxable gross income shown on the return of the taxpayer
39 for the preceding taxable year exceeds \$150,000 (\$75,000 in the case
40 of a married individual within the meaning of section 7703 of the
41 federal Internal Revenue Code of 1986, 26 U.S.C. s.7703, filing
42 separately for the taxable year for which the amount of the installment
43 is being determined) subparagraphs (A) and (B) of paragraph (1) of
44 this subsection shall be applied by substituting "110%" for "100%".
45 For purposes of this paragraph, "taxable gross income" means gross
46 income after any allowable deductions under chapters 3 or 3A of the

1 "New Jersey Gross Income Tax Act" (C.54A:3-1 et seq and 54A:3A-
2 1 et seq); or, in the case of a trust or estate, gross income after any
3 allowable deductions or exemptions, income commissions and amounts
4 distributed or credited to beneficiaries; and "gross income" for a
5 nonresident means gross income calculated as if such nonresident were
6 a resident.

7 (e) Deficiency due to fraud. If any part of a deficiency is due to
8 fraud, there shall be added to the tax an amount equal to 50% of the
9 deficiency. This amount shall be in lieu of any other addition to tax
10 imposed by subsection (a) or (b).

11 (f) Nonwillful failure to pay withholding tax. If any employer,
12 without intent to evade or defeat any tax imposed by this act or the
13 payment thereof, shall fail to make a return and pay a tax withheld by
14 him at the time required by or under the provisions of section 54A:7-4,
15 such employer shall be liable for such tax and shall pay the same
16 together with interest thereon and the addition to tax provided in
17 subsection (a), and such interest and addition to tax shall not be
18 charged to or collected from the employee by the employer. The
19 director shall have the same rights and powers for the collection of
20 such tax, interest and addition to tax against such employer as are now
21 prescribed by this act for the collection of tax against an individual
22 taxpayer.

23 (g) Willful failure to collect and pay over tax. Any person required
24 to collect, truthfully account for, and pay over the tax imposed by this
25 act who willfully fails to collect such tax or truthfully account for and
26 pay over such tax or willfully attempts in any manner to evade or
27 defeat the tax or the payment thereof, shall, in addition to other
28 penalties provided by law, be liable to a penalty equal to the total
29 amount of the tax evaded, or not collected, or not accounted for and
30 paid over. No addition to tax under subsection (b) or (c) shall be
31 imposed for any offense to which this subsection applies.

32 (h) Failure to file certain information returns. In case of each
33 failure to file a statement of a payment to another person, required
34 under authority of subsection (c) of section 54A:8-6 (relating to
35 information at source, including the duplicate statement of tax
36 withheld on wages) on the date prescribed therefor (determined with
37 regard to any extension of time for filing), unless it is shown that such
38 failure is due to reasonable cause and not to willful neglect, there shall,
39 upon notice and demand by the director and in the same manner as tax,
40 be paid by the person so failing to file the statement, a penalty of \$2.00
41 for each statement not so filed, but the total amount imposed on the
42 delinquent person for all such failures during any calendar year shall
43 not exceed \$2,000.00.

44 (i) Additional penalty. Any person who with fraudulent intent shall
45 fail to pay, or to deduct or withhold and pay, any tax, or to make,
46 render, sign or certify any return or declaration of estimated tax or to

1 supply any information within the time required by or under this act,
2 shall be liable to penalty of not more than \$5,000.00, in addition to any
3 other amounts required under this act, to be imposed, assessed and
4 collected by the director. The director shall have the power, in his
5 discretion, to waive, reduce or compromise any penalty under this
6 subsection.

7 (j) Additions treated as tax. The additions to tax and penalties
8 provided by this section shall be paid upon notice and demand and
9 shall be assessed, collected and paid in the same manner as taxes and
10 any reference in this act to income tax or tax imposed by this act, shall
11 be deemed also to refer to the additions to tax and penalties provided
12 by this section. For purposes of section 54A:9-2, this subsection shall
13 not apply to:

14 (1) Any addition to tax under subsection (a) except as to that
15 portion attributable to a deficiency;

16 (2) Any addition to tax under subsection (e); and

17 (3) Any additional penalty under subsection (i).

18 (k) Determination of deficiency. For purposes of subsections (b)
19 and (c), the amount shown as the tax by the taxpayer upon his return
20 shall be taken into account in determining the amount of the deficiency
21 only if such return was filed on or before the last day prescribed for
22 the filing of such return, determined with regard to any extension of
23 time for such filing.

24 (l) Person defined. For purposes of subsections (f), (g), (h) and (i),
25 the term person or employer includes an individual, corporation or
26 partnership or an officer or employee of any corporation (including a
27 dissolved corporation) or a member or employee of any partnership,
28 who as such officer, employee, or member is under a duty to perform
29 the act in respect of which the violation occurs.

30 (cf: P.L.1987, c.76, s.59)

31

32 17. N.J.S.54A:9-10 is amended to read as follows

33 54A:9-10. (a) Appeal to tax court. Any aggrieved taxpayer may,
34 within 90 days after any decision, order, finding, assessment or action
35 of the Director of the Division of Taxation made pursuant to the
36 provisions of this act, appeal therefrom to the tax court in accordance
37 with the provisions of the State Tax Uniform Procedure Law, R.S.
38 54:48-1 et seq.

39 (b) Any aggrieved taxpayer that has neither protested or appealed
40 from an additional assessment of tax may, pursuant to subsection (b)
41 of R.S.54:49-14, file a claim for refund of the assessment paid.

42 (c) Appeal exclusive remedy of taxpayer. The appeal provided by
43 this section shall be the exclusive remedy available to any taxpayer for
44 review of a decision of the director in respect of the determination of
45 the liability of the taxpayer for the taxes imposed by this act.

46 ~~[(c)]~~(d) Credit, refund or abatement after review. If the amount

1 of a deficiency determined by the director is disallowed in whole or in
2 part, the amount so disallowed shall be credited or refunded to the
3 taxpayer, without the making of claim therefor, or, if payment has not
4 been made, shall be abated.

5 ~~[(d)]~~ (e) Date of finality of director's decision. A decision of the
6 director shall become final upon the expiration of the period specified
7 in subsection (a) for filing a complaint with the tax court, if no such
8 complaint has been filed within such time, or if such complaint has
9 been duly made, upon expiration of the time for all further appeals, or
10 upon the rendering by the director of a decision in accordance with
11 the mandate of the tax court or the courts on appeal.
12 Notwithstanding the foregoing, for the purpose of forming a
13 complaint, the decision of the director shall be deemed final on the
14 date the notice of decision is sent by mail to the taxpayer.

15 (cf: P.L.1983, c.36, s.48)

16
17 18. This act shall take effect immediately and apply to return
18 periods beginning on or after January 1 next following enactment;
19 provided however, that section 14 shall apply to taxable years ending
20 after enactment.

21 22 23 STATEMENT 24

25 This bill implements changes to various provisions of the New
26 Jersey tax codes that were recommended by the Tax Advisory Group
27 established by the State Treasurer in 1994 to study State tax issues.
28 These changes allow an alternate remedy for taxpayers that disagree
29 with deficiency assessments, clarify the taxation of nonresidents to
30 promote New Jersey economic activity, and adjust or reduce penalty
31 provisions to encourage tax fairness.

32 Currently, taxpayers that are assessed a deficiency have, in most
33 cases, 90 days in which to either protest a deficiency assessment or
34 pay the deficiency assessed. Under the federal Internal Revenue Code
35 and the tax laws of most other states taxpayers have an additional
36 alternative: they may pay the amount of the assessed deficiency and
37 file for a refund. This bill would allow a taxpayer that has paid an
38 assessed deficiency but has not protested or appealed that assessment
39 a period of one year from the time of the payment to file a claim for
40 refund.

41 This bill clarifies that nonresidents will not be subject to New Jersey
42 gross income tax solely on the grounds that they buy and sell securities
43 for their own investment purposes. Under current law, a nonresident
44 partner of a partnership that buys and sells securities from an office in
45 this State is presumed to be subject to New Jersey tax on any income
46 from that trading. The private investment partnerships known as

1 "hedge funds" that trade large blocks of stock on behalf of their
2 partners are discouraged from locating in New Jersey because
3 neighboring states do not automatically tax nonresident partners on the
4 income of hedge funds with office located in those states. This bill will
5 remove a tax disincentive to locating hedge funds in New Jersey,
6 making New Jersey an equally attractive business location for hedge
7 funds, effective for the current taxable year.

8 Currently, the State Tax Uniform Procedure Law penalty for the
9 failure to file a tax return is based on a percentage of the total tax
10 liability of the taxpayer. This is true even if the taxpayer, through
11 estimated payments or withholding, has already paid over the entire
12 tax liability. This bill amends the penalty statute so that the penalty is
13 based on the amount of the underpayment of tax rather than the entire
14 tax liability. The bill also amends the corporation business tax
15 underpayment penalty to cap it at 25% of the underpayment in
16 conformity with the State Tax Uniform Procedure Law penalty for
17 underpayments.

18 New Jersey, like most states, is a "pay as you go" state for income
19 tax purposes: individuals with gross income tax liability and businesses
20 with corporation business tax liability are required to make estimated
21 tax payments throughout the year (although most individuals make
22 their payments through wage and salary withholding). This bill makes
23 several changes to the requirements, "safe harbors" and penalties
24 concerning estimated tax payments.

25 Currently, individuals must make quarterly estimated payments if
26 their tax liability for the current year is expected to exceed their
27 withholding or other prepayments by more than \$100. This bill
28 increases the threshold to \$400. That change is expected to eliminate
29 the processing of about 350,000 tax estimated payments annually of
30 less than \$100 each. This bill also extends the estimated payment
31 requirements to certain decedent estates and trusts.

32 Because of the complexity of exactly estimating tax payments, the
33 income taxes provide "safe harbor" estimated payment amounts,
34 alternative amounts of payment based on percentages of current or
35 previous year liability which, if paid, protect the taxpayer from the
36 imposition of penalties for underpayment of estimated taxes.
37 Currently, one of the safe harbors for individual taxpayers protects
38 them from estimated tax underpayment penalty if they make estimated
39 payments equal to their tax liability for the previous year. This bill
40 increases that requirement for taxpayers with taxable income for the
41 preceding taxable year of more than \$150,000 (\$75,000 for married
42 taxpayers filing separately) to 110% of the tax liability for the previous
43 year.

44 This bill also allows the payment of a smaller penalty for the
45 underpayment of estimated taxes. If a taxpayer fails to meet one of
46 the estimated tax safe harbors and underpays estimated taxes, the

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1 amount of the underpayment (on which penalties are assessed) is
2 determined as the difference between the estimated payments made
3 and 90% of the corporate tax actually due (or 80% of the gross
4 income tax due for individual taxpayers). This bill allows an
5 alternative calculation of the underpayment amount based on 100% of
6 the previous year's tax due.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1730

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 4, 1998

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1730 with committee amendments.

Assembly Bill No. 1730, as amended, implements changes to various provisions of the New Jersey tax codes that were recommended by the Tax Advisory Group established by the State Treasurer in 1994 to study State tax issues. These changes (1) allow an alternate remedy for taxpayers that disagree with deficiency assessments, (2) clarify the taxation of certain nonresidents to promote New Jersey economic activity, and (3) adjust or reduce penalty provisions to encourage tax fairness.

New deficiency assessment remedy: pay, then claim refund. Currently, taxpayers that are assessed a deficiency have, in most cases, 90 days in which to either protest a deficiency assessment or pay the deficiency assessed. Under the federal Internal Revenue Code and the tax laws of most other states, taxpayers have an additional alternative: they may pay the amount of the assessed deficiency and file for a refund. This bill would allow a taxpayer that has not protested or appealed any part of that assessment, but instead paid the assessed deficiency in full within one year after expiration of the time allowed for protesting the assessment, to file a claim for refund of the assessment paid at any time within 450 days of the date of expiration.

Taxation of nonresident "hedge fund" taxpayers. Under current law, a nonresident partner of a partnership that buys and sells securities from an office in this State is presumed to be subject to New Jersey tax on any income from that trading. The private investment partnerships known as "hedge funds" that trade large blocks of stock on behalf of their partners are discouraged from locating in New Jersey because neighboring states do not automatically tax nonresident partners on the income of hedge funds with offices located in those states. The bill provides that nonresidents will not be subject to New Jersey gross income tax solely on the grounds that they buy and sell securities for their own investment purposes.

Mitigation of tax penalty rules. Currently, the State Tax Uniform Procedure Law penalty for failure to file a tax return is based

on a percentage of the taxpayer's total tax liability. This rule applies even if the taxpayer, through estimated payments or withholding, has already paid the entire tax liability. The bill amends the penalty statute so that, provided the return is filed within 30 days of the date on which the first notice of delinquency in filing the return was sent to the taxpayer, the penalty would be based on the amount of the underpayment of tax rather than the amount of the total tax liability. The bill also amends the corporation business tax underpayment penalty to cap it at 25% of the underpayment in conformity with the State Tax Uniform Procedure Law penalty for underpayments.

New Jersey, like most states, requires individuals with gross income tax liability and businesses with corporation business tax liability to make estimated tax payments throughout the year (although most individuals make their payments through wage and salary withholding). The bill makes several changes to the requirements, "safe harbors", and penalties concerning estimated tax payments.

Currently, individuals must make quarterly estimated payments if their tax liability for the current year is expected to exceed their withholding or other prepayments by more than \$100. The bill increases the threshold to \$400. That change is expected to eliminate in each year the processing of about 350,000 quarterly estimated tax payments of less than \$100 each. The bill also extends the estimated payment requirements to certain decedent estates and trusts.

Because of the complexity of exactly estimating tax payments, the income taxes provide "safe harbor" estimated payment amounts: that is, alternative amounts of payment based on percentages of current or previous year liability which, if paid, protect the taxpayer from the imposition of penalties for underpayment of estimated tax. Currently, one of the safe harbors for individual taxpayers protects them from estimated tax underpayment penalty if they make estimated payments equal to 100% of their tax liability for the previous year. The bill increases that requirement for taxpayers with taxable income for the preceding taxable year of more than \$150,000 (\$75,000 for married taxpayers filing separately) to 110% of the tax liability for the previous year.

The bill also provides for an alternative calculation of the amount of the penalty for the underpayment of estimated taxes. Currently, if a taxpayer fails to meet one of the estimated tax safe harbors and underpays estimated taxes, the amount of the underpayment used as the basis for the assessment of penalties is the difference between the estimated payments made and 90% of the corporate tax actually due (or 80% of the gross income tax due for individual taxpayers). The bill allows the calculation of the underpayment amount to be based instead on 100% of the previous year's tax due.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) incorporate the provision limiting use of the amount of any underpayment of tax, rather than the amount of the entire tax liability, in computing the penalty for late filing of a return to taxpayers who file the return within 30 days of transmittal of the first notice of delinquency;

(2) revise the new refund request remedy for deficiency assessments to: (a) require that payment of the assessment have been made within one year of the date on which the deficiency protest period expires, rather than that the payment have been "timely" made; (b) require that the taxpayer file the refund claim within 450 days of the date on which the deficiency protest period expires rather, than within one year of the time the deficiency assessment was paid; and (c) specify that the deficiency must have been paid in full and that the limit on the refund is the amount of deficiency assessment paid, rather than the amount of tax paid;

(3) clarify the wording of the provision concerning "hedge funds".

FISCAL IMPACT:

The Department of the Treasury is unable to estimate the fiscal impact of this bill because the necessary data are not available. The Treasury notes that most of the provisions of the legislation would have little if any revenue impact.

FISCAL NOTE

ASSEMBLY, No. 1730

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: JUNE 24, 1998

BILL SUMMARY

Assembly Bill No. 1730 of 1998 implements changes to various provisions of the New Jersey tax codes that were recommended by the Tax Advisory Group established by the State Treasurer in 1994 to study State tax issues. These changes allow an alternate remedy for taxpayers that disagree with deficiency assessments, clarify the taxation of nonresidents to promote New Jersey economic activity, and adjust or reduce penalty provisions to encourage tax fairness. Specifically, the bill:

- allows a taxpayer that has paid an assessed deficiency but has not protested or appealed that assessment a period of one year from the time of the payment to file a claim for refund;
- clarifies that nonresidents will not be subject to New Jersey gross income tax solely on the grounds that they buy and sell securities for their own investment purposes. Under current law, private investment partnerships known as "hedge funds" that trade large blocks of stock on behalf of their partners are discouraged from locating in New Jersey because neighboring states do not automatically tax nonresident partners on the income of hedge funds with offices located in those states;
- amends the State Tax Uniform Procedure Law penalty for the failure to file a tax return so that the penalty is based on the amount of the underpayment of tax rather than the entire tax liability;
- amends the corporation business tax underpayment penalty to cap it at 25% of the underpayment in conformity with the State Tax Uniform Procedure Law penalty for underpayments;
- increases from \$100 to \$400 the threshold at which individuals must make quarterly estimated payments if their tax liability for the current year is expected to exceed their withholding or other prepayments, and extends the estimated payment requirements to certain decedent estates and trusts;
- increases the "safe harbor" estimated payment amounts for taxpayers with taxable income for the preceding taxable year of

more than \$150,000 (\$75,000 for married taxpayers filing separately) from 100 percent to 110 percent of the tax liability for the previous year; and

- allows the payment of a smaller penalty for the underpayment of estimated taxes, if a taxpayer fails to meet one of the estimated tax safe harbors.

AGENCY COMMENTS

The Department of the Treasury is unable to estimate the fiscal impact of this bill because the necessary data are not available. The Treasury notes that most of the provisions of the bill would have little if any revenue impact.

In particular, Treasury notes that no data exist on the number of assessed deficiencies that are successfully appealed and reversed, but that the extension of a one-year appeal period will not result in a large revenue loss. The provisions clarifying that nonresident partners in "hedge funds" will not be subject to New Jersey income tax also would have a minimal fiscal impact if such partnerships are discouraged from locating in the State under current law. The number of such partnerships is unknown. The revenue impact of changes in penalties for the underpayment of tax are also unknown due to a lack of data.

Lastly, the provisions regarding estimated tax payment thresholds and the "safe harbor" levels of estimated tax payments are primarily a timing issue, not a revenue issue. Tax payments would be shifted from quarterly estimated payments to final payments. According to the Treasury, the bulk of estimated payments for any tax year come in during the third and fourth payments, which occur during the same fiscal year as final payments for that tax year. Therefore, the timing of the payments, not the total amount of tax payments would be primarily affected.

OFFICE OF LEGISLATIVE SERVICES COMMENTS

The Office of Legislative Services (OLS) accepts the Department of the Treasury's estimate that this bill would have an unknown, but relatively small fiscal impact on State revenue collections. The OLS has no independent source of data to estimate the cost of these provisions.

This fiscal note has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 674

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED FEBRUARY 23, 1998

Sponsored by:

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

Senator RAYMOND J. LESNIAK

District 20 (Union)

SYNOPSIS

Provides alternate remedy for State taxpayers assessed deficiencies, clarifies State gross income taxation of nonresident hedge fund partners, affects certain State tax penalty provisions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/20/1998)

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2

1 AN ACT concerning State tax assessments and liabilities, amending
2 various sections of statutory law.

3

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

6

7 1. Section 5 of P.L.1981, c.184 (C.54:10A-15.4) is amended to
8 read as follows:

9 5. a. In case of any underpayment of an installment payment by a
10 taxpayer, there shall be added to the tax for the fiscal or calendar
11 accounting year an amount determined by applying the rate established
12 in this section to the amount of the underpayment for the period of the
13 underpayment.

14 b. For purposes of subsection a., the amount of underpayment
15 shall be the excess of:

16 (1) The lesser of the amount of the installment payment which
17 would be required to be paid if all installment payments were equal to
18 90% of the tax shown on the return for the fiscal or calendar
19 accounting year, or if no return was filed, 90% of the tax for that year,
20 or 100% of the tax shown on the tax return of the taxpayer for the
21 preceding taxable year over

22 (2) The amount, if any, of the installment payment paid on or
23 before the last date prescribed for payment.

24 c. For purposes of subsection a., the period of the underpayment
25 shall run from the date the installment payment was required to be paid
26 to whichever of the following dates is the earlier:

27 (1) The fifteenth day of the fourth month after the close of the
28 fiscal or calendar accounting year.

29 (2) With respect to any portion of the underpayment, the date on
30 which that portion is paid.

31 For purposes of this subsection, a payment of any installment
32 payment shall be considered a payment of any previous underpayment
33 only to the extent that payment exceeds the amount of the installment
34 payment determined under subsection b. (1) for that installment
35 payment.

36 d. Notwithstanding the provisions of the preceding subsections,
37 the addition to the tax with respect to any underpayment of any
38 installment payment shall not be imposed if the total amount of all
39 installment payments made on or before the last date prescribed for the
40 payment of that installment equals or exceeds the amount which would
41 have been required to be paid on or before that date if the total amount
42 of all installment payments were the lesser of (1) or (2) as follows:

43 (1) An amount equal to the tax computed at the rates applicable to

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

Matter underlined thus is new matter.

1 the current fiscal or calendar accounting year but otherwise on the
2 basis of the facts shown on the return of the taxpayer for, and the law
3 applicable to, the preceding fiscal or calendar accounting year; or

4 (2) An amount equal to 90% of the tax for the current fiscal or
5 calendar accounting year computed by placing on an annualized basis
6 the taxable entire net income and entire net worth:

7 (a) For the first three months of the current fiscal or calendar
8 accounting year, in the case of the installment payment required to be
9 paid in the fourth month,

10 (b) For the first three months or for the first five months of the
11 current fiscal or calendar accounting year, in the case of the
12 installment payment required to be paid in the sixth month,

13 (c) For the first six months or for the first eight months of the
14 current fiscal or calendar accounting year, in the case of the
15 installment payment required to be paid in the ninth month,

16 (d) For the first nine months or for the first 11 months of the
17 current fiscal or calendar accounting year, in the case of the
18 installment payment required to be paid in the 12th month, and

19 (e) For the last three months of the preceding taxable year, in the
20 case of the installment payment required to be paid in the first month
21 of the current fiscal or calendar accounting year.

22 e. Any taxpayer who shall fail to pay, or shall underpay by more
23 than 10% of the amount due, any installment payment required
24 pursuant to this act, shall pay, in addition to the tax, interest on the
25 amount of underpayment as provided in the State Tax Uniform
26 Procedure Law, R.S.54:48-1 et seq.

27 (cf: P.L.1987, c.76, s.50)

28

29 2. Section 19 of P.L.1945, c.162 (C.54:10A-19) is amended to
30 read as follows:

31 19. The director may grant a reasonable extension of time for the
32 filing of returns or the payment of tax or both, under such rules and
33 regulations as he shall prescribe, which rules and regulations may
34 require the filing of a tentative return and the payment of an estimated
35 tax. If the time for filing the return shall be extended, the payment of
36 the portion of the tax remaining to be paid, if any, shall be postponed
37 to the date fixed by the extension of the time for the filing of the
38 return, but in every such case the corporation shall pay, in addition to
39 the unpaid portion of the tax, interest thereon at the rate as provided
40 in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., from
41 the time when the return originally was required to be filed to the date
42 of actual payment under the extension; provided, that if such unpaid
43 portion of the tax is not paid within the time fixed under the extension,
44 the interest on such unpaid portion shall be computed at the rate as
45 provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et
46 seq., from the date the tax was originally due to the date of actual

1 payment and if the amounts paid up to and including the time of the
2 filing of the tentative return total less than the lesser of: 90% of the
3 amount due; or for a taxpayer that had a preceding fiscal or calendar
4 accounting year of 12 months and filed a return for that year showing
5 a liability for tax, an amount equal to the tax computed at the rates
6 applicable to the current fiscal or calendar accounting year but
7 otherwise on the basis of the facts shown on the return of the taxpayer
8 for, and the law applicable to, the preceding fiscal or calendar
9 accounting year, the taxpayer shall be liable for a penalty of 5% per
10 month or fraction thereof on the amount of underpayment, not to
11 exceed 25% of that underpayment, which shall be in addition to the
12 interest charges provided above.

13 (cf: P.L.1992, c.175, s.20)

14

15 3. Section 11 of P.L.1947, c.50 (C.54:10A-19.2) is amended to
16 read as follows:

17 11. a. Any aggrieved taxpayer may, within 90 days after any action
18 of the director made pursuant to the provisions of this act, appeal
19 therefrom to the tax court in accordance with the provisions of the
20 State Tax Uniform Procedure Law, R.S. 54:48-1 et seq.

21 b. Any aggrieved taxpayer that has neither protested or appealed
22 from an additional assessment of tax may, pursuant to subsection (b)
23 of R.S.54:49-14, file a claim for refund of the assessment paid.

24 (cf: P.L.1983, c.36, s.23)

25

26 4. Section 18 of P.L.1973, c.31 (C.54:10D-17) is amended to read
27 as follows:

28 18. a. Any aggrieved taxpayer may, within 90 days after any
29 decision, order, finding, assessment or action of the director made
30 pursuant to the provisions of this act, appeal therefrom to the tax
31 court in accordance with the provisions of the State Tax Uniform
32 Procedure Law, R.S.54:48-1 et seq.

33 b. Any aggrieved taxpayer that has neither protested or appealed
34 from an additional assessment of tax may, pursuant to subsection (b)
35 of R.S.54:49-14 file a claim for refund of the assessment paid.

36 (cf: P.L.1983, c.36, s.24)

37

38 5. Section 21 of P.L.1973, c.170 (C.54:10E-21) is amended to
39 read as follows:

40 21. a. Any aggrieved taxpayer may, within 90 days after any
41 decision, order, finding, assessment or action of the director made
42 pursuant to the provisions of this act, appeal therefrom to the tax
43 court in accordance with the provisions of the State Tax Uniform
44 Procedure Law, R.S. 54:48-1 et seq.

45 b. Any aggrieved taxpayer that has neither protested or appealed
46 from an additional assessment of tax may, pursuant to subsection (b)

1 of R.S.54:49-14, file a claim for refund of the assessment paid.
2 (cf: P.L.1983, c.36, s.25)

3
4 6. Section 8 of P.L.1990, c.42 (C.54:15B-8) is amended to read as
5 follows:

6 8. a. (1) If a return required by this act is not filed, or if a return
7 when filed is incorrect or insufficient in the opinion of the director, the
8 amount of tax due shall be determined by the director from the
9 information available.

10 (2) If because of an affiliation of interests between a company
11 subject to tax under this act and any purchaser the gross receipts from
12 sale transactions are not indicative of or representative of market
13 price, the director may at the director's discretion, utilize external
14 indices to establish gross receipts.

15 (3) (a) Notice of a determination pursuant to this subsection shall
16 be given to the company liable for the payment of the tax. Such
17 determination shall finally and irrevocably fix the tax unless the
18 company against which it is assessed, within 30 days after receiving
19 notice of the determination, shall apply to the director for a hearing,
20 or unless the director on the director's own motion shall redetermine
21 the same. After such hearing the director shall give notice of the
22 determination to the company to which the tax is assessed.

23 (b) Any aggrieved taxpayer that has neither protested or appealed
24 from an additional assessment of tax may, pursuant to subsection (b)
25 of R.S.54:49-14, file a claim for refund of the assessment paid.

26 b. The certificate of the director to the effect that a tax has not
27 been paid, that a return has not been filed, that a prescribed certificate
28 has not been issued, that information has not been supplied or that
29 inaccurate information has been supplied pursuant to the provisions of
30 this act or rules or regulations adopted hereunder shall be prima facie
31 evidence thereof.

32 c. In addition to the other powers granted to the director in this
33 section, the director is hereby authorized and empowered:

34 (1) To delegate to any officer or employee of the division such
35 powers and duties as the director may deem necessary to carry out the
36 provisions of this act, and the person or persons to whom such power
37 has been delegated shall possess and may exercise all of said powers
38 and perform all of the duties delegated by the director;

39 (2) To prescribe and distribute all necessary forms and certificates
40 for the implementation of this act; and

41 (3) To administer and enforce the tax imposed by this act and to
42 make and adopt such rules and regulations and to require such facts
43 and information to be reported as the director may deem necessary to
44 enforce the provisions of this act.

45 d. The tax imposed by this act shall be governed in all respects by
46 the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1

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6

1 et seq., except only to the extent that a specific provision of this act
2 may be in conflict therewith.
3 (cf: P.L.1991, c.181, s.5)

4
5 7. Section 20 of P.L.1966, c.30 (C.54:32B-20) is amended to read
6 as follows:

7 20. (a) In the manner provided in this section the director shall
8 refund or credit any tax, penalty or interest erroneously, illegally or
9 unconstitutionally collected or paid if application to the director for
10 such refund shall be made within four years from the payment thereof.
11 Such application may be made by a customer who has actually paid the
12 tax. Such application may also be made by a person required to
13 collect the tax, who has collected and paid over such tax to the
14 director, provided that the application is made within four years of the
15 payment to him by the customer, but no actual refund of moneys shall
16 be made to such person until ~~he~~the person shall first establish to the
17 satisfaction of the director, under such regulations as ~~he~~ the director
18 may prescribe, that ~~he~~ the person has repaid to the customer the
19 amount for which the application for refund is made. The director
20 may, in lieu of any refund, allow credit on payments due from the
21 applicant.

22 (b) A person shall not be entitled to a revision, refund or credit
23 under this section of a tax, interest or penalty which had been
24 determined to be due pursuant to the provisions of section 19 of
25 P.L.1966, c.30 (C.54:32B-19) where ~~he~~ the person has had a
26 hearing or an opportunity for a hearing as provided in said section or
27 has failed to ~~avail himself of~~ use the remedies therein provided
28 unless the person otherwise meets the requirements of subsection (b)
29 of R.S.54:49-14. No refund or credit shall be made of a tax, interest
30 or penalty paid after a determination by the director made pursuant to
31 section 19 of P.L.1966, c.30 (C.54:32B-19) unless it be found that
32 such determination was erroneous, illegal or unconstitutional or
33 otherwise improper, pursuant to law, in which event refund or credit
34 shall be made of the tax, interest or penalty found to have been
35 overpaid.

36 (cf: P.L.1992, c.175, s.32)

37

38 8. R.S.54:34-13 is amended to read as follows:

39 54:34-13. a. Any interested person dissatisfied with the
40 appraisalment or assessment so made may appeal therefrom to the tax
41 court within 90 days after the making and entering of the assessment,
42 in accordance with the provisions of the State Tax Uniform Procedure
43 Law, R.S. 54:48-1 et seq.

44 b. Any aggrieved taxpayer that has neither protested or appealed
45 from an additional assessment of tax may, pursuant to subsection (b)

1 of R.S.54:49-14, file a claim for refund of the assessment paid.

2 (cf: P.L.1983, c.36, s.38)

3

4 9. R.S.54:38-10 is amended to read as follows:

5 54:38-10. a. The tax court on appeal shall have jurisdiction to
6 hear and determine all questions in relation to any tax imposed under
7 the provisions of this chapter. Any executor, administrator, trustee,
8 person or corporation liable for the payment of any tax imposed by this
9 chapter may appeal to the tax court for a review thereof within 90
10 days of the date of notice assessing the tax complained of, in
11 accordance with the provisions of the State Tax Uniform Procedure
12 Law, R.S.54:48-1 et seq.

13 b. Any aggrieved taxpayer that has neither protested or appealed
14 from an additional assessment of tax may, pursuant to subsection (b)
15 of R.S.54:49-14, file a claim for refund of the assessment paid.

16 (cf: P.L.1983, c.36, s.39)

17

18 10. Section 14 of P.L1990, c.39 (C.54:40B-14) is amended to read
19 as follows:

20 14. a. Any aggrieved taxpayer may, within 90 days after any
21 decision, order, finding, assessment or action of the director made
22 pursuant to the provisions of this act, appeal therefrom to the tax
23 court in accordance with the provisions of the State Tax Uniform
24 Procedure Law, R.S.54:48-1 et seq.

25 b. Any aggrieved executor, administrator, trustee, person or
26 corporation liable for the payment of any tax imposed by this chapter
27 that has neither protested or appealed from an additional assessment
28 of tax may, pursuant to subsection (b) of R.S.54:49-14, file a claim for
29 refund of the assessment paid.

30 c. The appeal provided by this section shall be the exclusive
31 remedy available to any taxpayer for review of a decision of the
32 director in respect of the determination of the liability of the taxpayer
33 for the taxes imposed by this act.

34 (cf: P.L.1990, c.39, s.14)

35

36 11. R.S.54:45-6 is amended to read as follows:

37 54:45-6. Any taxpayer, at any time within four years after the
38 payment of any original or additional tax assessed against **[him]** the
39 taxpayer may file with the director a claim under oath for refund, in
40 such form as the director may prescribe, stating the ground therefor,
41 but no claim for refund shall be required or permitted to be filed with
42 respect to a tax paid after protest has been filed with the director or
43 after proceedings on appeal have been commenced as provided in this
44 subtitle until after the protest or appeal has been finally determined.

45 (cf: P.L.1992, c.175, s.39)

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1 12. R.S.54:49-4 is amended to read as follows:

2 54:49-4. In addition thereto any taxpayer failing to file a return
3 with the director within the time prescribed under the act imposing
4 such tax shall be liable to a late filing penalty of \$100 for each month
5 or fraction thereof that such return is delinquent, plus a penalty of 5%
6 per month or fraction thereof of the **【total tax liability】** underpayment
7 not to exceed 25% of such **【tax liability】** underpayment. Unless any
8 part of any underpayment of tax required to be shown on a return or
9 report is shown to be due to reasonable cause, there shall be added to
10 the tax an amount equal to 5% of the underpayment.
11 (cf: P.L.1992, c.175, s.2)

12

13 13. R.S.54:49-14 is amended to read as follows:

14 54:49-14. a. Any taxpayer, at any time within four years after the
15 payment of any original or additional tax assessed against him, unless
16 a shorter limit is fixed by the law imposing the tax, may file with the
17 director a claim under oath for refund, in such form as the director
18 may prescribe, stating the grounds therefor, but no claim for refund
19 shall be required or permitted to be filed with respect to a tax paid,
20 after protest has been filed with the director or after proceedings on
21 appeal have been commenced as provided in this subtitle, until such
22 protest or appeal has been finally determined. The signing of an
23 agreement by the taxpayer and the director extending the period for
24 assessment shall likewise extend the period for filing a claim for
25 refund.

26 b. No taxpayer shall be precluded from claiming a refund of
27 additional tax assessed solely on the ground that the taxpayer neither
28 protested or appealed from the assessment. A taxpayer that neither
29 protested or appealed from an additional assessment of tax may,
30 pursuant to this subsection, file a claim for the refund of the
31 assessment within one year after the payment thereof; provided
32 however, that the payment must have been timely made, as provided
33 in the notice of deficiency assessment or by an extended due date as
34 agreed to in writing by the director. The amount of a refund made
35 pursuant to this subsection shall not exceed the portion of the tax paid
36 during the one-year period preceding the filing of the claim. A refund
37 claim shall be filed under oath, in a form as the director may prescribe,
38 and shall state the grounds therefor, which grounds shall be limited to
39 those issues raised by the deficiency assessment itself and shall not
40 include any additional issues with respect to the original assessment of
41 tax. The filing of a claim for refund by the taxpayer under this
42 subsection shall neither extend or toll the time to request a hearing or
43 appeal an additional assessment of tax as otherwise provided by law.
44 The denial of a claim for refund shall be an action of the director
45 subject to review pursuant to section 54:51A-14 of P.L.1983, c.45.

46 c. Each taxpayer shall file a separate refund claim. A refund claim

1 on behalf of a class is not permitted.

2 **[c.] d.** If a tax is declared to be discriminatory in a final judicial
3 decision from which all appeals have been exhausted, the director may,
4 within the director's sole discretion, refund or credit only the
5 discriminatory portion of the tax.

6 (cf: P.L.1992, c.175, s.5)

7

8 14. N.J.S.54A:5-8 is amended to read as follows:

9 54A:5-8. **a.** Income from sources within this State for a
10 nonresident individual, estate or trust means the income from the
11 categories of gross income enumerated and classified under chapter 5
12 of this act to the extent that it is earned, received or acquired from
13 sources within this State:

14 (1) By reason of ownership or disposition of any interest in real or
15 tangible personal property in this State; or

16 (2) In connection with a trade, profession, occupation carried on
17 in this State or for the rendition of personal services performed in this
18 State; or

19 (3) As a distributive share of the income of an unincorporated
20 business, profession, enterprise, undertaking or other activity as the
21 result of work done, services rendered or other business activities
22 conducted in this State except as allocated to another state pursuant
23 to regulations promulgated by the director under this act; or

24 (4) From intangible personal property employed in a trade,
25 profession, occupation or business carried on in this State; or

26 (5) As a result of any lottery or wagering transaction in this State
27 other than that excluded from taxation pursuant to N.J.S.54A:6-11; or

28 (6) As S corporation income allocated to this State of a New
29 Jersey S corporation.

30 **b.** Income from sources within this State for a nonresident
31 individual shall not include income from pensions and annuities as set
32 forth in subsection j. of N.J.S.54A:5-1.

33 **c.** For purposes of paragraphs (2) through (4) of subsection a. of
34 this section, a nonresident individual, estate, trust or partnership shall
35 not be deemed to be carrying on a trade, profession, occupation,
36 business, enterprise, undertaking or other activity in this State, or to
37 be rendering personal services in this State, solely as a result of the
38 purchase and sale of intangible personal property by the individual,
39 estate, trust or partnership, to the extent that (1) the individual's,
40 estate's, trust's or partnership's activities related to the intangible
41 personal property are for the account of the individual, estate, trust or
42 partnership and (2) the individual, estate, trust or partnership does not
43 hold the intangible personal property for sale to customers in the
44 ordinary course of a trade, profession, occupation, business,
45 enterprise, undertaking or other activity. For the purposes of this
46 subsection, intangible personal property shall not include options.

1 other than options to purchase or sell intangible personal property.
2 (cf: P.L.1993, c.173, s.10)

3
4 15. N.J.S.54A:8-4 is amended to read as follows:

5 54A:8-4. Declarations of estimated tax. (a) Requirement of filing.
6 Every resident and nonresident individual shall make a declaration of
7 ~~his~~ the individual's estimated New Jersey personal income tax for
8 each taxable year beginning after June 30, 1976, if ~~his~~ the
9 individual's estimated New Jersey personal income tax can reasonably
10 be expected to be more than ~~[\$100.00]~~ \$400 in excess of any credits
11 allowable against ~~his~~ the individual's tax, whether or not ~~he~~ the
12 individual is required to file a federal declaration of estimated tax for
13 such year.

14 (b) Definition of estimated tax. The term "estimated tax" means
15 the amount which an individual estimates to be ~~his~~ the individual's
16 income tax under this act for the taxable year, less the amount which
17 ~~he~~ the individual estimates to be the sum of any credits allowable
18 against the tax.

19 (c) Joint declaration of husband and wife. A husband and wife may
20 make a joint declaration of estimated tax as if they were one taxpayer,
21 in which case the liability with respect to the estimated tax shall be
22 joint and several. No joint declaration may be made if husband and
23 wife are separated under a decree of divorce or of separate
24 maintenance, or if they have different taxable years. If a joint
25 declaration is made but husband and wife elect to determine their
26 taxes under this act separately, the estimated tax for such year may be
27 treated as the estimated tax of either husband or wife, or may be
28 divided between them, as they may elect.

29 (d) Time for filing declaration. Beginning in the taxable year 1976
30 and every taxable year thereafter a declaration of estimated tax of an
31 individual other than a farmer shall be filed on or before April 15 of
32 the taxable year, except that if the requirements of subsection (a) are
33 first met:

34 (1) After April 1 and before June 2 of the taxable year, the
35 declaration shall be filed on or before June 15; or

36 (2) After June 1 and before September 2 of the taxable year the
37 declaration shall be filed on or before September 15; or

38 (3) After September 1 of the taxable year, the declaration shall be
39 filed on or before January 15 of the succeeding year.

40 (e) Declaration of estimated tax by a farmer. A declaration of
41 estimated tax of an individual having an estimated New Jersey income
42 from farming (including oyster farming) for the taxable year which is
43 at least two-thirds of ~~his~~ the individual's total estimated New Jersey
44 income for the taxable year may be filed at any time on or before
45 January 15 of the succeeding year, in lieu of the time otherwise
46 prescribed.

1 (f) Declaration of estimated tax of ~~[\$100.00]~~ \$400 or less. A
2 declaration of estimated tax of an individual having a total estimated
3 tax for the taxable year of ~~[\$100.00]~~ \$400 or less may be filed at any
4 time on or before January 15 of the succeeding year under regulations
5 of the director.

6 (g) Amendments of declaration. An individual may amend a
7 declaration under regulations of the director.

8 (h) Return as declaration or amendment. If on or before February
9 15 of the succeeding taxable year an individual files his return for the
10 taxable year for which the declaration is required, and pays therewith
11 the full amount of the tax shown to be due on the return:

12 (1) Such return shall be considered as his declaration if no
13 declaration was required to be filed during the taxable year, but is
14 otherwise required to be filed on or before January 15;

15 (2) Such return shall be considered as the amendment permitted by
16 subsection (g) to be filed on or before January 15 if the tax shown on
17 the return is greater than the estimated tax shown in a declaration
18 previously made.

19 (i) Fiscal year. This section shall apply to a taxable year other than
20 a calendar year by the substitution of the months of such fiscal year for
21 the corresponding months specified in this section.

22 (j) Short taxable year. An individual having a taxable year of less
23 than 12 months shall make a declaration in accordance with
24 regulations of the director.

25 (k) Declaration for individual under a disability. The declaration
26 of estimated tax for an individual who is unable to make a declaration
27 by reason of minority or other disability shall be made and filed by
28 ~~his~~ the individual's guardian, committee, fiduciary or other person
29 charged with the care of ~~his~~ the individual's person or property
30 (other than a receiver in possession of only a part of ~~his~~ the
31 individual's property), or by ~~his~~ the individual's duly authorized
32 agent.

33 (l) In the taxable year 1976, no declaration shall be required until
34 the lapse of at least one full calendar quarter following enactment of
35 this act.

36 (m) This section shall also apply to an estate or trust taxpayer
37 other than an estate or trust that meets the two year limitation and
38 other criteria of paragraph (2) of subsection (l) of section 6654 of the
39 federal Internal Revenue Code of 1986, 26 U.S.C. s.6654.

40 (cf: N.J.S.54A:8-4)

41
42 16. N.J.S.54A:9-6 is amended to read as follows:

43 54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax
44 return. In case of failure to file a tax return under this act on or before
45 the prescribed date (determined with regard to any extension of time
46 for filing), unless it is shown that such failure is due to reasonable

1 cause and not due to willful neglect, there shall be added to the
2 amount required to be shown as tax on such return such amount as is
3 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
4 seq. For this purpose, the amount of tax required to be shown on the
5 return shall be reduced by the amount of any part of the tax which is
6 paid on or before the date prescribed for payment of the tax and by the
7 amount of any credit against the tax which may be claimed upon the
8 return.

9 (b) Deficiency due to negligence. If any part of a deficiency is due
10 to negligence or intentional disregard of this act or rules or regulations
11 hereunder (but without intent to defraud), there shall be added to the
12 tax an amount equal to 10% of the deficiency.

13 (c) Failure to file declaration or underpayment of estimated tax.
14 If any taxpayer fails to file a declaration of estimated tax or fails to pay
15 all or any part of an installment of estimated tax, ~~he~~ the taxpayer
16 shall be deemed to have made an underpayment of estimated tax
17 except as provided pursuant to subsection (d) of this section. There
18 shall be added to the tax for the taxable year an amount at the rate as
19 is required under the State Tax Uniform Procedure Law, R.S. 54:48-1
20 et seq., upon the amount of the underpayment for the period of the
21 underpayment but not beyond the 15th day of the fourth month
22 following the close of the taxable year. The amount of underpayment
23 shall be the excess of the lesser of: (1) the amount of the installment
24 which would be required to be paid if the estimated tax were equal to
25 80% of the tax (two-thirds of the tax for farmers referred to in
26 subsection (e) of section 54A:8-4) shown on the return for the taxable
27 year (or if no return was filed, of the tax for such year), or (2) 100%
28 of the tax shown on the tax return of the taxpayer for the preceding
29 taxable year; over the amount, if any, of the installment paid on or
30 before the last day prescribed for such payment. No underpayment
31 shall be deemed to exist with respect to a declaration or installment
32 otherwise due on or after the taxpayer's death.

33 (d) Exception to addition for underpayment of estimated tax. The
34 addition to tax under subsection (c) with respect to any underpayment
35 of any installment shall not be imposed if the total amount of all
36 payments of estimated tax made on or before the last date prescribed
37 for the payment of such installment equals or exceeds whichever of the
38 following set forth in paragraphs (1) and (2) and subject to paragraph
39 (3) is the lesser--

40 (1) The amount which would have been required to be paid on or
41 before such date if the estimated tax were whichever of the following
42 is the least--

43 (A) ~~The~~ An amount equal to 100% of the tax shown on the
44 return of the [individual] taxpayer for the preceding taxable year ,
45 except as provided pursuant to pursuant to paragraph (3) of this
46 subsection, if a return showing a liability for tax was filed by the

1 **[individual]** taxpayer for the preceding taxable year and such
2 preceding year was a taxable year of 12 months, or

3 (B) An amount equal to 100% of the tax computed, except as
4 provided pursuant to paragraph (3) of this subsection, at
5 the rates applicable to the taxable year, on the basis of the taxpayer's
6 status with respect to **[his]** the taxpayer's personal exemptions for the
7 taxable year, but otherwise on the basis of the facts shown on **[his]**
8 the taxpayer's return for, and the law applicable to, the preceding
9 taxable year, or

10 (C) An amount equal to 80% of the tax for the taxable year
11 (two-thirds of the tax for farmers referred to in subsection (e) of
12 section 54A:8-4) computed by placing on an annualized basis the
13 income for the months in the taxable year ending before the month in
14 which the installment is required to be paid (or, in the case of a trust
15 or estate, the income for the months ending before the date one month
16 before the month in which the installment is required). For purposes
17 of this subparagraph, the income shall be placed on an annualized basis
18 by--

19 (i) Multiplying by 12 (or, in the case of a taxable year of less than
20 12 months, the number of months in the taxable year) the income for
21 the months in the taxable year ending before the month in which the
22 installment is required to be paid (or, in the case of a trust or estate,
23 the income for the months ending before the date one month before
24 the month in which the installment is required).

25 (ii) Dividing the resulting amount by the number of months in the
26 taxable year ending before the month in which such installment date
27 falls (or, in the case of a trust or estate, the number of months ending
28 before the date one month before the month in which such installment
29 date falls), and

30 (iii) Deducting from such amount the deductions for personal
31 exemptions allowable for the taxable year (such personal exemptions
32 being determined as of the last date prescribed for payment of the
33 installment); or

34 (2) An amount equal to 90% of the tax computed, at the rates
35 applicable to the taxable year, on the basis of the actual income for the
36 months in the taxable year ending before the month in which the
37 installment is required to be paid.

38 (3) If the taxable gross income shown on the return of the taxpayer
39 for the preceding taxable year exceeds \$150,000 (\$75,000 in the case
40 of a married individual within the meaning of section 7703 of the
41 federal Internal Revenue Code of 1986, 26 U.S.C. s.7703, filing
42 separately for the taxable year for which the amount of the installment
43 is being determined) subparagraphs (A) and (B) of paragraph (1) of
44 this subsection shall be applied by substituting "110%" for "100%".
45 For purposes of this paragraph, "taxable gross income" means gross
46 income after any allowable deductions under chapters 3 or 3A of the

1 "New Jersey Gross Income Tax Act" (C.54A:3-1 et seq and
2 54A:3A-1 et seq); or, in the case of a trust or estate, gross income
3 after any allowable deductions or exemptions, income commissions
4 and amounts distributed or credited to beneficiaries; and "gross
5 income" for a nonresident means gross income calculated as if such
6 nonresident were a resident.

7 (e) Deficiency due to fraud. If any part of a deficiency is due to
8 fraud, there shall be added to the tax an amount equal to 50% of the
9 deficiency. This amount shall be in lieu of any other addition to tax
10 imposed by subsection (a) or (b).

11 (f) Nonwillful failure to pay withholding tax. If any employer,
12 without intent to evade or defeat any tax imposed by this act or the
13 payment thereof, shall fail to make a return and pay a tax withheld by
14 him at the time required by or under the provisions of section 54A:7-4,
15 such employer shall be liable for such tax and shall pay the same
16 together with interest thereon and the addition to tax provided in
17 subsection (a), and such interest and addition to tax shall not be
18 charged to or collected from the employee by the employer. The
19 director shall have the same rights and powers for the collection of
20 such tax, interest and addition to tax against such employer as are now
21 prescribed by this act for the collection of tax against an individual
22 taxpayer.

23 (g) Willful failure to collect and pay over tax. Any person required
24 to collect, truthfully account for, and pay over the tax imposed by this
25 act who willfully fails to collect such tax or truthfully account for and
26 pay over such tax or willfully attempts in any manner to evade or
27 defeat the tax or the payment thereof, shall, in addition to other
28 penalties provided by law, be liable to a penalty equal to the total
29 amount of the tax evaded, or not collected, or not accounted for and
30 paid over. No addition to tax under subsection (b) or (c) shall be
31 imposed for any offense to which this subsection applies.

32 (h) Failure to file certain information returns. In case of each
33 failure to file a statement of a payment to another person, required
34 under authority of subsection (c) of section 54A:8-6 (relating to
35 information at source, including the duplicate statement of tax
36 withheld on wages) on the date prescribed therefor (determined with
37 regard to any extension of time for filing), unless it is shown that such
38 failure is due to reasonable cause and not to willful neglect, there shall,
39 upon notice and demand by the director and in the same manner as tax,
40 be paid by the person so failing to file the statement, a penalty of \$2.00
41 for each statement not so filed, but the total amount imposed on the
42 delinquent person for all such failures during any calendar year shall
43 not exceed \$2,000.00.

44 (i) Additional penalty. Any person who with fraudulent intent shall
45 fail to pay, or to deduct or withhold and pay, any tax, or to make,
46 render, sign or certify any return or declaration of estimated tax or to

1 supply any information within the time required by or under this act,
2 shall be liable to penalty of not more than \$5,000.00, in addition to any
3 other amounts required under this act, to be imposed, assessed and
4 collected by the director. The director shall have the power, in his
5 discretion, to waive, reduce or compromise any penalty under this
6 subsection.

7 (j) Additions treated as tax. The additions to tax and penalties
8 provided by this section shall be paid upon notice and demand and
9 shall be assessed, collected and paid in the same manner as taxes and
10 any reference in this act to income tax or tax imposed by this act, shall
11 be deemed also to refer to the additions to tax and penalties provided
12 by this section. For purposes of section 54A:9-2, this subsection shall
13 not apply to:

14 (1) Any addition to tax under subsection (a) except as to that
15 portion attributable to a deficiency;

16 (2) Any addition to tax under subsection (e); and

17 (3) Any additional penalty under subsection (i).

18 (k) Determination of deficiency. For purposes of subsections (b)
19 and (c), the amount shown as the tax by the taxpayer upon his return
20 shall be taken into account in determining the amount of the deficiency
21 only if such return was filed on or before the last day prescribed for
22 the filing of such return, determined with regard to any extension of
23 time for such filing.

24 (l) Person defined. For purposes of subsections (f), (g), (h) and (i),
25 the term person or employer includes an individual, corporation or
26 partnership or an officer or employee of any corporation (including a
27 dissolved corporation) or a member or employee of any partnership,
28 who as such officer, employee, or member is under a duty to perform
29 the act in respect of which the violation occurs.

30 (cf: P.L.1987, c.76, s.59)

31

32 17. N.J.S.54A:9-10 is amended to read as follows

33 54A:9-10. (a) Appeal to tax court. Any aggrieved taxpayer may,
34 within 90 days after any decision, order, finding, assessment or action
35 of the Director of the Division of Taxation made pursuant to the
36 provisions of this act, appeal therefrom to the tax court in accordance
37 with the provisions of the State Tax Uniform Procedure Law,
38 R.S.54:48-1 et seq.

39 (b) Any aggrieved taxpayer that has neither protested or appealed
40 from an additional assessment of tax may, pursuant to subsection (b)
41 of R.S.54:49-14, file a claim for refund of the assessment paid.

42 (c) Appeal exclusive remedy of taxpayer. The appeal provided by
43 this section shall be the exclusive remedy available to any taxpayer for
44 review of a decision of the director in respect of the determination of
45 the liability of the taxpayer for the taxes imposed by this act.

46 ~~[(c)]~~(d) Credit, refund or abatement after review. If the amount

1 of a deficiency determined by the director is disallowed in whole or in
2 part, the amount so disallowed shall be credited or refunded to the
3 taxpayer, without the making of claim therefor, or, if payment has not
4 been made, shall be abated.

5 **[(d)] (e)** Date of finality of director's decision. A decision of the
6 director shall become final upon the expiration of the period specified
7 in subsection (a) for filing a complaint with the tax court, if no such
8 complaint has been filed within such time, or if such complaint has
9 been duly made, upon expiration of the time for all further appeals, or
10 upon the rendering by the director of a decision in accordance with
11 the mandate of the tax court or the courts on appeal.
12 Notwithstanding the foregoing, for the purpose of forming a
13 complaint, the decision of the director shall be deemed final on the
14 date the notice of decision is sent by mail to the taxpayer.

15 (cf: P.L.1983, c.36, s.48)

16
17 18. This act shall take effect immediately and apply to return
18 periods beginning on or after January 1 next following enactment;
19 provided however, that section 14 shall apply to taxable years ending
20 after enactment.

21 22 23 STATEMENT 24

25 This bill implements changes to various provisions of the New
26 Jersey tax codes that were recommended by the Tax Advisory Group
27 established by the State Treasurer in 1994 to study State tax issues.
28 These changes allow an alternate remedy for taxpayers that disagree
29 with deficiency assessments, clarify the taxation of nonresidents to
30 promote New Jersey economic activity, and adjust or reduce penalty
31 provisions to encourage tax fairness.

32 Currently, taxpayers that are assessed a deficiency have, in most
33 cases, 90 days in which to either protest a deficiency assessment or
34 pay the deficiency assessed. Under the federal Internal Revenue Code
35 and the tax laws of most other states taxpayers have an additional
36 alternative: they may pay the amount of the assessed deficiency and
37 file for a refund. This bill would allow a taxpayer that has paid an
38 assessed deficiency but has not protested or appealed that assessment
39 a period of one year from the time of the payment to file a claim for
40 refund.

41 This bill clarifies that nonresidents will not be subject to New Jersey
42 gross income tax solely on the grounds that they buy and sell securities
43 for their own investment purposes. Under current law, a nonresident
44 partner of a partnership that buys and sells securities from an office in
45 this State is presumed to be subject to New Jersey tax on any income
46 from that trading. The private investment partnerships known as

1 "hedge funds" that trade large blocks of stock on behalf of their
2 partners are discouraged from locating in New Jersey because
3 neighboring states do not automatically tax nonresident partners on the
4 income of hedge funds with office located in those states. This bill will
5 remove a tax disincentive to locating hedge funds in New Jersey,
6 making New Jersey an equally attractive business location for hedge
7 funds, effective for the current taxable year.

8 Currently, the State Tax Uniform Procedure Law penalty for the
9 failure to file a tax return is based on a percentage of the total tax
10 liability of the taxpayer. This is true even if the taxpayer, through
11 estimated payments or withholding, has already paid over the entire
12 tax liability. This bill amends the penalty statute so that the penalty is
13 based on the amount of the underpayment of tax rather than the entire
14 tax liability. The bill also amends the corporation business tax
15 underpayment penalty to cap it at 25% of the underpayment in
16 conformity with the State Tax Uniform Procedure Law penalty for
17 underpayments.

18 New Jersey, like most states, is a "pay as you go" state for income
19 tax purposes: individuals with gross income tax liability and businesses
20 with corporation business tax liability are required to make estimated
21 tax payments throughout the year (although most individuals make
22 their payments through wage and salary withholding). This bill makes
23 several changes to the requirements, "safe harbors" and penalties
24 concerning estimated tax payments.

25 Currently, individuals must make quarterly estimated payments if
26 their tax liability for the current year is expected to exceed their
27 withholding or other prepayments by more than \$100. This bill
28 increases the threshold to \$400. That change is expected to eliminate
29 the processing of about 350,000 tax estimated payments annually of
30 less than \$100 each. This bill also extends the estimated payment
31 requirements to certain decedent estates and trusts.

32 Because of the complexity of exactly estimating tax payments, the
33 income taxes provide "safe harbor" estimated payment amounts,
34 alternative amounts of payment based on percentages of current or
35 previous year liability which, if paid, protect the taxpayer from the
36 imposition of penalties for underpayment of estimated taxes.
37 Currently, one of the safe harbors for individual taxpayers protects
38 them from estimated tax underpayment penalty if they make estimated
39 payments equal to their tax liability for the previous year. This bill
40 increases that requirement for taxpayers with taxable income for the
41 preceding taxable year of more than \$150,000 (\$75,000 for married
42 taxpayers filing separately) to 110% of the tax liability for the previous
43 year.

44 This bill also allows the payment of a smaller penalty for the
45 underpayment of estimated taxes. If a taxpayer fails to meet one of
46 the estimated tax safe harbors and underpays estimated taxes, the

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1 amount of the underpayment (on which penalties are assessed) is
2 determined as the difference between the estimated payments made
3 and 90% of the corporate tax actually due (or 80% of the gross
4 income tax due for individual taxpayers). This bill allows an
5 alternative calculation of the underpayment amount based on 100% of
6 the previous year's tax due.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 674

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 21, 1998

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 674.

This bill implements changes to various provisions of the New Jersey tax codes that were recommended by the Tax Advisory Group established by the State Treasurer in 1994 to study State tax issues. These changes (1) allow an alternate remedy for taxpayers that disagree with deficiency assessments, (2) clarify the taxation of certain nonresidents to promote New Jersey economic activity, and (3) adjust or reduce penalty provisions to encourage tax fairness.

New deficiency assessment remedy: pay, then claim refund. Currently, taxpayers that are assessed a deficiency have, in most cases, 90 days in which to either protest a deficiency assessment or pay the deficiency assessed. Under the federal Internal Revenue Code and the tax laws of most other states, taxpayers have an additional alternative: they may pay the amount of the assessed deficiency and file for a refund. This bill would allow a taxpayer that has not protested or appealed any part of that assessment, but instead paid the assessed deficiency in full within one year after expiration of the time allowed for protesting the assessment, to file a claim for refund of the assessment paid at any time within 450 days of the date of expiration.

Taxation of nonresident "hedge fund" taxpayers. Under current law, a nonresident partner of a partnership that buys and sells securities from an office in this State is presumed to be subject to New Jersey tax on any income from that trading. The private investment partnerships known as "hedge funds" that trade large blocks of stock on behalf of their partners are discouraged from locating in New Jersey because neighboring states do not automatically tax nonresident partners on the income of hedge funds with offices located in those states. The bill provides that nonresidents will not be subject to New Jersey gross income tax solely on the grounds that they buy and sell securities for their own investment purposes.

Mitigation of tax penalty rules. Currently, the State Tax Uniform Procedure Law penalty for failure to file a tax return is based on a percentage of the taxpayer's total tax liability. This rule applies

even if the taxpayer, through estimated payments or withholding, has already paid the entire tax liability. The bill amends the penalty statute so that, provided the return is filed within 30 days of the date on which the first notice of delinquency in filing the return was sent to the taxpayer, the penalty would be based on the amount of the underpayment of tax rather than the amount of the total tax liability. The bill also amends the corporation business tax underpayment penalty to cap it at 25% of the underpayment in conformity with the State Tax Uniform Procedure Law penalty for underpayments.

New Jersey, like most states, requires individuals with gross income tax liability and businesses with corporation business tax liability to make estimated tax payments throughout the year (although most individuals make their payments through wage and salary withholding). The bill makes several changes to the requirements, "safe harbors", and penalties concerning estimated tax payments.

Currently, individuals must make quarterly estimated payments if their tax liability for the current year is expected to exceed their withholding or other prepayments by more than \$100. The bill increases the threshold to \$400. That change is expected to eliminate in each year the processing of about 350,000 quarterly estimated tax payments of less than \$100 each. The bill also extends the estimated payment requirements to certain decedent estates and trusts.

Because of the complexity of exactly estimating tax payments, the income taxes provide "safe harbor" estimated payment amounts, i.e., alternative amounts of payment based on percentages of current or previous year liability which, if paid, protect the taxpayer from the imposition of penalties for underpayment of estimated tax. Currently, one of the safe harbors for individual taxpayers protects them from estimated tax underpayment penalty if they make estimated payments equal to 100% of their tax liability for the previous year. The bill increases that requirement for taxpayers with taxable income for the preceding taxable year of more than \$150,000 (\$75,000 for married taxpayers filing separately) to 110% of the tax liability for the previous year.

The bill also provides for an alternative calculation of the amount of the penalty for the underpayment of estimated taxes. Currently, if a taxpayer fails to meet one of the estimated tax safe harbors and underpays estimated taxes, the amount of the underpayment used as the basis for the assessment of penalties is the difference between the estimated payments made and 90% of the corporate tax actually due (or 80% of the gross income tax due for individual taxpayers). The bill allows the calculation of the underpayment amount to be based instead on 100% of the previous year's tax due.

COMMITTEE AMENDMENTS:

The committee adopted amendments to this bill to:

(1) incorporate the provision limiting use of the amount of any underpayment of tax, rather than the amount of the entire tax liability, in computing the penalty for late filing of a return to taxpayers who file the return within 30 days of transmittal of the first notice of delinquency;

(2) revise the new deficiency assessment remedy provision to (a) require that payment of the assessment have been made within one year of the date on which the assessment became final rather than one year after the assessment was paid, and (b) add the requirement that the taxpayer file the claim within 450 days of the date on which the assessment became final; and

(3) clarify the wording of the provision concerning "hedge funds".

FISCAL IMPACT:

The Department of the Treasury is unable to estimate the fiscal impact of this bill because the necessary data are not available. The Treasury notes that most of the provisions of the legislation would have little if any impact.

FISCAL NOTE

SENATE, No. 674

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: JUNE 24, 1998

BILL SUMMARY

Senate Bill No.674 of 1998 implements changes to various provisions of the New Jersey tax codes that were recommended by the Tax Advisory Group established by the State Treasurer in 1994 to study State tax issues. These changes allow an alternate remedy for taxpayers that disagree with deficiency assessments, clarify the taxation of nonresidents to promote New Jersey economic activity, and adjust or reduce penalty provisions to encourage tax fairness. Specifically, the bill:

- allows a taxpayer that has paid an assessed deficiency but has not protested or appealed that assessment a period of one year from the time of the payment to file a claim for refund;
- clarifies that nonresidents will not be subject to New Jersey gross income tax solely on the grounds that they buy and sell securities for their own investment purposes. Under current law, private investment partnerships known as "hedge funds" that trade large blocks of stock on behalf of their partners are discouraged from locating in New Jersey because neighboring states do not automatically tax nonresident partners on the income of hedge funds with offices located in those states;
- amends the State Tax Uniform Procedure Law penalty for the failure to file a tax return so that the penalty is based on the amount of the underpayment of tax rather than the entire tax liability;
- amends the corporation business tax underpayment penalty to cap it at 25 percent of the underpayment in conformity with the State Tax Uniform Procedure Law penalty for underpayments;
- increases from \$100 to \$400 the threshold at which individuals must make quarterly estimated payments if their tax liability for the current year is expected to exceed their withholding or other prepayments, and extends the estimated payment requirements to certain decedent estates and trusts;

- increases the "safe harbor" estimated payment amounts for taxpayers with taxable income for the preceding taxable year of more than \$150,000 (\$75,000 for married taxpayers filing separately) from 100 percent to 110 percent of the tax liability for the previous year; and
- allows the payment of a smaller penalty for the underpayment of estimated taxes, if a taxpayer fails to meet one of the estimated tax safe harbors.

AGENCY COMMENTS

The Department of the Treasury is unable to estimate the fiscal impact of this bill because the necessary data are not available. The Treasury notes that most of the provisions of the bill would have little if any revenue impact.

In particular, Treasury notes that no data exist on the number of assessed deficiencies that are successfully appealed and reversed, but that the extension of a one-year appeal period will not result in a large revenue loss. The provisions clarifying that nonresident partners in "hedge funds" will not be subject to New Jersey income tax also would have a minimal fiscal impact if such partnerships are discouraged from locating in the State under current law. The number of such partnerships is unknown. The revenue impact of changes in penalties for the underpayment of tax are also unknown due to a lack of data.

Lastly, the provisions regarding estimated tax payment thresholds and the "safe harbor" levels of estimated tax payments are primarily a timing issue, not a revenue issue. Tax payments would be shifted from quarterly estimated payments to final payments. According to the Treasury, the bulk of estimated payments for any tax year come in during the third and fourth payments, which occur during the same fiscal year as final payments for that tax year. Therefore, the timing of the payments, not the total amount of tax payments would be primarily affected.

OFFICE OF LEGISLATIVE SERVICES COMMENTS

The Office of Legislative Services (OLS) accepts the Department of the Treasury's estimate that this bill would have an unknown, but relatively small fiscal impact on State revenue collections. The OLS has no independent source of data to estimate the cost of these provisions.

This fiscal note has been prepared pursuant to P.L.1980, c.67.

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Jayne O'Connor
Wendi Patella 609-777-2600

RELEASE: September 14, 1998

Governor Christie Whitman today signed the following:

Assembly Joint Resolution 48, sponsored by Assembly Members Clare Farragher (R-Monmouth) and Samuel Thompson (R- Middlesex/Monmouth) and Senators Joseph Kyrillos (R- Middlesex/Monmouth) and Donald DiFrancesco (R- Middlesex/Morris/ Somerset/Union), designates a portion of Route 9 in Old Bridge as the Joann H. Smith Memorial Highway. The highway is named to honor the late Assemblywoman for her valuable service as a legislator and local official.

A-1730, sponsored by Assemblyman Paul Kramer (R- Mercer/Middlesex) and Senators Peter Inverso (R- Mercer/Middlesex) and Raymond Lesniak (D-Union), clarifies exemption from gross income tax of nonresident earnings from hedge fund investments. The law also provides additional remedy for taxpayers assessed deficiencies, affects certain state tax penalty provisions, and changes the requirements for estimated quarterly payments.

A-261, sponsored by Assembly Members Guy Talarico (R- Bergen), Ken LeFevre (R-Atlantic) and John Kelly (R- Bergen/Essex/Passaic) and Senators Andrew Ciesla (R- Monmouth/Ocean) and Louis Kosco (R-Bergen), which clarifies that state Lottery prizes may be assigned to persons other than the winner in certain circumstances. Under the bill, a person wishing to assign a lottery prize to another individual would have to obtain permission from state or federal court.

A-754, sponsored by Assembly Members Nicholas Asselta (R- Cape May/Atlantic/ Cumberland) and Neil Cohen (D-Union), provides for the sale of check cashing businesses under certain circumstances. The bill clarifies that owners of check cashing businesses may sell their businesses even though the office is within 2,500 feet of another check cashing business or is engaging in a business other than primarily check cashing. The previous law was unclear on this issue.

A-848, sponsored by Assembly Members Clare Farragher (R- Monmouth) and Michael Arnone (R-Monmouth), which regulates sales of horses and prohibits mistreatment of horses. The bill is intended to address concerns raised by a horse owner regarding the maltreatment of horses at a local auction. The bill amends existing law to ensure that all types of horses are protected from abuse. Previous law protected only horses as work" animals, and failed to address horses used in recreation, shows and as pets. The bill provides for monetary penalties of between \$200 to \$500 for violations of its provisions.

A-1750, sponsored by Assembly Members Merkt (R-Morris) and Murphy (R- Essex/Morris/Passaic) and Senators Bucco (R-Morris) and Donald DiFrancesco (R-Middlesex/Morris/Somerset/Union), appropriates an additional \$2 million to the Department of Community Affairs for expansion and refurbishment of fire training facilities at the Morris County Fire and Police Academy Life Safety Complex. Volunteer firefighters in the 39 municipalities of Morris County will use the complex. The facility will also be available for use by police and fire organizations throughout the state.