

LEGISLATIVE FISCAL NOTE:

Yes

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

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HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Bill gives break to investment club members," 1-15-2004 The Times, pC1

P.L. 2003, CHAPTER 256, *approved January 14, 2004*
Senate Committee Substitute (*First Reprint*) for
Senate, Nos. 1770 and 1773

1 AN ACT exempting certain investment clubs from certain partnership
2 fee and payment requirements, amending P.L.2002, c.40 and
3 N.J.S.54A:8-6.

4

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

7

8 1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to
9 read as follows:

10 12. a. A partnership that is not a qualified investment partnership
11 or an investment club and that is not listed on a United States national
12 stock exchange shall, on or before the 15th day of the fourth month
13 succeeding the close of each privilege period, remit a payment of tax.
14 The amount of tax shall be equal to the sum of: all of the share of the
15 entire net income of the partnership for that privilege period of all
16 nonresident noncorporate partners, multiplied by an allocation factor
17 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
18 based on the allocation fractions of the partnership for that privilege
19 period, and multiplied by .0637 plus all of the share of the entire net
20 income of the partnership for that privilege period of all nonresident
21 corporate partners, multiplied by an allocation factor determined,
22 pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the
23 allocation fractions of the partnership for that privilege period, and
24 multiplied by .09.

25 b. An amount of tax paid by a partnership pursuant to subsection
26 a. of this section shall be credited to accounts of its nonresident
27 partners in proportion to each nonresident partner's share of allocated
28 entire net income and the multiplier rate for that partner class under
29 subsection a. of this section as of the date of its receipt by the director,
30 and each amount of tax so credited shall be deemed to have been paid
31 by the respective partner in respect of the privilege period or taxable
32 year of the partner.

33 c. For the purposes of this section:

34 "Investment club" means an entity: that is classified as a
35 partnership for federal income tax purposes; all of the owners of which
36 are individuals; all of the assets of which are securities, cash, or cash
37 equivalents; the market value of the total assets of which do not
38 exceed, as measured on the last day of its ¹[taxable year] privilege
39 period¹, an amount equal to ¹the lesser of \$250,000 or¹ \$35,000 per

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 January 8, 2004.

1 owner of the entity; and which is not required to register itself or its
2 membership interests with the federal Securities and Exchange
3 Commission; provided that beginning with privilege periods
4 commencing on or after January 1, 2003 the director shall prescribe
5 the ¹[per-owner] total¹ asset ¹[amount] value amounts¹ which shall
6 apply by increasing the ¹\$250,000 total asset amount and the per
7 owner¹ \$35,000 amount hereinabove by an inflation adjustment
8 factor, which amounts shall be rounded to the next highest multiple
9 of \$100. The inflation adjustment factor shall be equal to the factor
10 calculated by dividing the consumer price index for urban wage
11 earners and clerical workers for the nation, as prepared by the United
12 States Department of Labor for September of the calendar year prior
13 to the calendar year in which the privilege period begins, by that index
14 for September of 2001;

15 "Nonresident noncorporate partner" means, an individual, an estate
16 or a trust subject to taxation pursuant to the "New Jersey Gross
17 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
18 taxpayer or a resident estate or trust under that act;

19 "Nonresident corporate partner" means a partner that is not an
20 individual, an estate or a trust subject to taxation pursuant to the "New
21 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
22 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
23 (C.54:10A-3), and that does not maintain a regular place of business
24 in this State other than a statutory office; and

25 "Partner" means an owner of an interest in the partnership, in
26 whatever manner that owner and ownership interest are designated.
27 (cf: P.L.2002, c.40, s.12)

28

29 2. N.J.S.54A:8-6 is amended to read as follows:

30 54A:8-6. Requirements concerning returns, notices, records and
31 statements. (a) General. The director may prescribe regulations as to
32 the keeping of records, the content and form of returns and
33 statements, and the filing of copies of federal income tax returns and
34 determinations. The director may require any person, by regulation or
35 notice served upon such person, to make such returns, render such
36 statements, or keep such records, as the director may deem sufficient
37 to show whether or not such person is liable under this act for tax or
38 for collection of tax.

39 (b) Partnerships. (1) Each entity classified as a partnership for
40 federal income tax purposes, including but not limited to a partnership,
41 a limited liability partnership, or a limited liability company, having a
42 resident owner of an interest in the entity or having any income
43 derived from New Jersey sources, shall make a return for the taxable
44 year setting forth all items of income, gain, loss and deduction and
45 such other pertinent information as the director may by regulations and
46 instructions prescribe. The director shall prescribe a State return form

1 that, at a minimum, includes the name and address of each partner,
2 member, or other owner of an interest in the entity however
3 designated, of the entity for taxable years ending on or after
4 December 31, 1994. Such return shall be filed on or before the
5 fifteenth day of the fourth month following the close of each taxable
6 year.

7 (2) (A) Each entity classified as a partnership for federal income
8 tax purposes, other than an investment club, having any income
9 derived from New Jersey sources, including but not limited to a
10 partnership, a limited liability partnership, or a limited liability
11 company, that has more than two owners shall at the prescribed time
12 for making the return required under this subsection make a payment
13 of a filing fee of \$150 for each owner of an interest in the entity, up to
14 a maximum of \$250,000. For the purposes of this paragraph,
15 "investment club" means an entity: that is classified as a partnership for
16 federal income tax purposes; all of the owners of which are
17 individuals; all of the assets of which are securities, cash, or cash
18 equivalents; the market value of the total assets of which do not
19 exceed, as measured on the last day of its taxable year, an amount
20 equal to ¹the lesser of \$250,000 or¹ \$35,000 per owner of the entity;
21 and which is not required to register itself or its membership interests
22 with the federal Securities and Exchange Commission; provided that
23 beginning with ¹[privilege periods] taxable years¹ commencing on or
24 after January 1, 2003 the director shall prescribe the ¹[per-owner]
25 total¹ asset ¹[amount] value amounts¹ which shall apply by
26 increasing the ¹\$250,000 total asset amount and the per owner ¹
27 \$35,000 amount hereinabove by an inflation adjustment factor, which
28 amounts shall be rounded to the next highest multiple of \$100. The
29 inflation adjustment factor shall be equal to the factor calculated by
30 dividing the consumer price index for urban wage earners and clerical
31 workers for the nation, as prepared by the United States Department
32 of Labor for September of the calendar year prior to the calendar year
33 in which the taxable year begins, by that index for September of 2001;

34 (B) Each entity required to make a payment pursuant to
35 subparagraph (A) of this paragraph shall also make, at the same time
36 as making its payment pursuant to subparagraph (A) of this paragraph,
37 an installment payment of its filing fee for the succeeding return period
38 in an amount equal to 50% of the amount required to be paid pursuant
39 to subparagraph (A). The amount of the installment payment shall be
40 credited against the amount of the filing fee due for the succeeding
41 return period, or, if the amount of the installment payment exceeds the
42 amount of the filing fee due for the succeeding return period,
43 successive return periods.

44 (C) Notwithstanding the provisions of R.S.54:48-2 and
45 R.S.54:48-4 to the contrary, the fee required pursuant to subparagraph
46 (A) of this paragraph and the installment payment required pursuant

1 to subparagraph (B) of this paragraph shall, for purposes of
2 administration, be payments to which the provisions of the State
3 Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable
4 and the collection thereof may be enforced by the director in the
5 manner therein provided.

6 (3) Each entity required to file a return under this subsection for
7 any taxable year shall, on or before the day on which the return for the
8 taxable year is required to be filed, furnish to each person who is a
9 partner or other owner of an interest in the entity however designated,
10 or who holds an interest in such entity as a nominee for another person
11 at any time during that taxable year a copy of such information
12 required to be shown on such return as the director may prescribe.

13 (4) For the purposes of this subsection, "taxable year" means a
14 year or period which would be a taxable year of the partnership if it
15 were subject to tax under this act.

16 (c) Information at source. The director may prescribe regulations
17 and instructions requiring returns of information to be made and filed
18 on or before February 15 of each year as to the payment or crediting
19 in any calendar year of amounts of \$100.00 or more to any taxpayer
20 under this act. Such returns may be required of any person, including
21 lessees or mortgagors of real or personal property, fiduciaries,
22 employers, and all officers and employees of this State, or of any
23 municipal corporation or political subdivision of this State, having the
24 control, receipt, custody, disposal or payment of interest, rents,
25 salaries, wages, premiums, annuities, compensations, remunerations,
26 emoluments or other fixed or determinable gains, profits or income,
27 except interest coupons payable to bearer. A duplicate of the
28 statement as to tax withheld on wages, required to be furnished by an
29 employer to an employee, shall constitute the return of information
30 required to be made under this section with respect to such wages.

31 (d) Notice of qualification as receiver, et cetera. Every receiver,
32 trustee in bankruptcy, assignee for benefit of creditors, or other like
33 fiduciary shall give notice of his qualification as such to the director,
34 as may be required by regulation.

35 (cf: P.L.2002, c.40, s.22)

36

37 3. This act shall take effect immediately and apply to taxable years
38 and privilege periods beginning on or after January 1, 2002.

39

40

41

42

43 Exempts certain investment clubs from certain partnership fee and
44 payment requirements.

SENATE, No. 1770

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED SEPTEMBER 12, 2002

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Senator MARTHA W. BARK

District 8 (Burlington)

Co-Sponsored by:

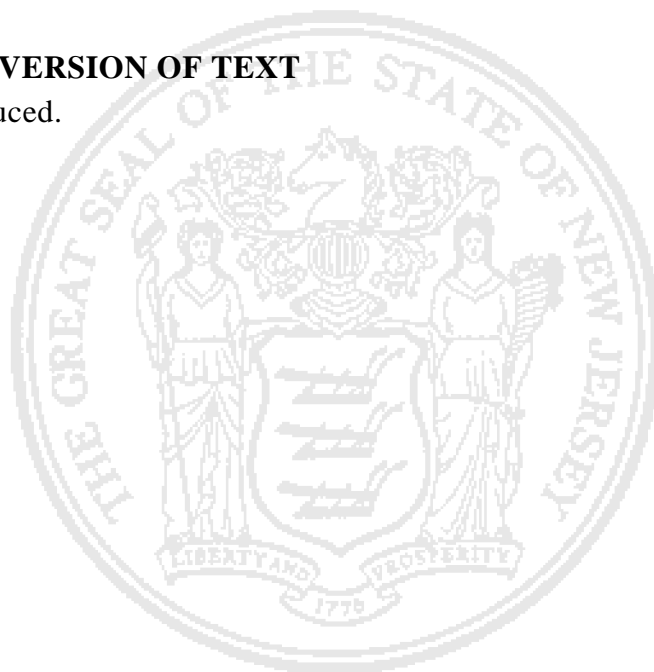
**Senators Kyrillos, Bagger, Ciesla, McNamara, Buono, Matheussen,
Inverso and Palaia**

SYNOPSIS

Exempts certain investment clubs from certain partnership fee and payment requirements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/17/2002)

S1770 SINGER, BARK

2

1 AN ACT exempting certain investment clubs from certain partnership
2 fee and payment requirements, amending P.L.2002, c.40 and
3 N.J.S.54A:8-6.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
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12 stock exchange shall, on or before the 15th day of the fourth month
13 succeeding the close of each privilege period, remit a payment of tax.
14 The amount of tax shall be equal to the sum of: all of the share of the
15 entire net income of the partnership for that privilege period of all
16 nonresident noncorporate partners, multiplied by an allocation factor
17 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
18 based on the allocation fractions of the partnership for that privilege
19 period, and multiplied by .0637 plus all of the share of the entire net
20 income of the partnership for that privilege period of all nonresident
21 corporate partners, multiplied by an allocation factor determined,
22 pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the
23 allocation fractions of the partnership for that privilege period, and
24 multiplied by .09.

25 b. An amount of tax paid by a partnership pursuant to subsection
26 a. of this section shall be credited to accounts of its nonresident
27 partners in proportion to each nonresident partner's share of allocated
28 entire net income and the multiplier rate for that partner class under
29 subsection a. of this section as of the date of its receipt by the director,
30 and each amount of tax so credited shall be deemed to have been paid
31 by the respective partner in respect of the privilege period or taxable
32 year of the partner.

33 c. For the purposes of this section:

34 "Investment club" means an entity: that is classified as a partnership
35 for federal income tax purposes; all of the owners of which are
36 individuals; all of the assets of which are securities, cash, or cash
37 equivalents; the market value of the total assets of which do not
38 exceed, as measured on the last day of its taxable year, an amount
39 equal to \$50,000 per owner of the entity; and which is not required to
40 register itself or its membership interests with the federal Securities
41 and Exchange Commission; provided that beginning with privilege
42 periods commencing on or after January 1, 2003 the director shall
43 prescribe the per-owner asset amount which shall apply by increasing

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 \$50,000 amount hereinabove by an inflation adjustment factor,
2 which amount shall be rounded to the next highest multiple of \$100.
3 The inflation adjustment factor shall be equal to the factor calculated
4 by dividing the consumer price index for urban wage earners and
5 clerical workers for the nation, as prepared by the United States
6 Department of Labor for September of the calendar year prior to the
7 calendar year in which the privilege period begins, by that index for
8 September of 2001;

9 "Nonresident noncorporate partner" means, an individual, an estate
10 or a trust subject to taxation pursuant to the "New Jersey Gross
11 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
12 taxpayer or a resident estate or trust under that act;

13 "Nonresident corporate partner" means a partner that is not an
14 individual, an estate or a trust subject to taxation pursuant to the "New
15 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
16 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
17 (C.54:10A-3), and that does not maintain a regular place of business
18 in this State other than a statutory office; and

19 "Partner" means an owner of an interest in the partnership, in
20 whatever manner that owner and ownership interest are designated.
21 (cf: P.L.2002, c.40, s.12)

22

23 2. N.J.S.54A:8-6 is amended to read as follows:

24 54A:8-6. Requirements concerning returns, notices, records and
25 statements. (a) General. The director may prescribe regulations as to
26 the keeping of records, the content and form of returns and
27 statements, and the filing of copies of federal income tax returns and
28 determinations. The director may require any person, by regulation or
29 notice served upon such person, to make such returns, render such
30 statements, or keep such records, as the director may deem sufficient
31 to show whether or not such person is liable under this act for tax or
32 for collection of tax.

33 (b) Partnerships. (1) Each entity classified as a partnership for
34 federal income tax purposes, including but not limited to a partnership,
35 a limited liability partnership, or a limited liability company, having a
36 resident owner of an interest in the entity or having any income
37 derived from New Jersey sources, shall make a return for the taxable
38 year setting forth all items of income, gain, loss and deduction and
39 such other pertinent information as the director may by regulations and
40 instructions prescribe. The director shall prescribe a State return form
41 that, at a minimum, includes the name and address of each partner,
42 member, or other owner of an interest in the entity however
43 designated, of the entity for taxable years ending on or after
44 December 31, 1994. Such return shall be filed on or before the
45 fifteenth day of the fourth month following the close of each taxable
46 year.

1 (2) (A) Each entity classified as a partnership for federal income
2 tax purposes, other than an investment club, having any income
3 derived from New Jersey sources, including but not limited to a
4 partnership, a limited liability partnership, or a limited liability
5 company, that has more than two owners shall at the prescribed time
6 for making the return required under this subsection make a payment
7 of a filing fee of \$150 for each owner of an interest in the entity, up to
8 a maximum of \$250,000. For the purposes of this paragraph,
9 "investment club" means an entity: that is classified as a partnership for
10 federal income tax purposes; all of the owners of which are
11 individuals; all of the assets of which are securities, cash, or cash
12 equivalents; the market value of the total assets of which do not
13 exceed, as measured on the last day of its taxable year, an amount
14 equal to \$50,000 per owner of the entity; and which is not required to
15 register itself or its membership interests with the federal Securities
16 and Exchange Commission; provided that beginning with privilege
17 periods commencing on or after January 1, 2003 the director shall
18 prescribe the per-owner asset amount which shall apply by increasing
19 the \$50,000 amount hereinabove by an inflation adjustment factor,
20 which amount shall be rounded to the next highest multiple of \$100.
21 The inflation adjustment factor shall be equal to the factor calculated
22 by dividing the consumer price index for urban wage earners and
23 clerical workers for the nation, as prepared by the United States
24 Department of Labor for September of the calendar year prior to the
25 calendar year in which the taxable year begins, by that index for
26 September of 2001;

27 (B) Each entity required to make a payment pursuant to
28 subparagraph (A) of this paragraph shall also make, at the same time
29 as making its payment pursuant to subparagraph (A) of this paragraph,
30 an installment payment of its filing fee for the succeeding return period
31 in an amount equal to 50% of the amount required to be paid pursuant
32 to subparagraph (A). The amount of the installment payment shall be
33 credited against the amount of the filing fee due for the succeeding
34 return period, or, if the amount of the installment payment exceeds the
35 amount of the filing fee due for the succeeding return period,
36 successive return periods.

37 (C) Notwithstanding the provisions of R.S.54:48-2 and
38 R.S.54:48-4 to the contrary, the fee required pursuant to subparagraph
39 (A) of this paragraph and the installment payment required pursuant
40 to subparagraph (B) of this paragraph shall, for purposes of
41 administration, be payments to which the provisions of the State
42 Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable
43 and the collection thereof may be enforced by the director in the
44 manner therein provided.

45 (3) Each entity required to file a return under this subsection for
46 any taxable year shall, on or before the day on which the return for the

1 taxable year is required to be filed, furnish to each person who is a
2 partner or other owner of an interest in the entity however designated,
3 or who holds an interest in such entity as a nominee for another person
4 at any time during that taxable year a copy of such information
5 required to be shown on such return as the director may prescribe.

6 (4) For the purposes of this subsection, "taxable year" means a year
7 or period which would be a taxable year of the partnership if it were
8 subject to tax under this act.

9 (c) Information at source. The director may prescribe regulations
10 and instructions requiring returns of information to be made and filed
11 on or before February 15 of each year as to the payment or crediting
12 in any calendar year of amounts of \$100.00 or more to any taxpayer
13 under this act. Such returns may be required of any person, including
14 lessees or mortgagors of real or personal property, fiduciaries,
15 employers, and all officers and employees of this State, or of any
16 municipal corporation or political subdivision of this State, having the
17 control, receipt, custody, disposal or payment of interest, rents,
18 salaries, wages, premiums, annuities, compensations, remunerations,
19 emoluments or other fixed or determinable gains, profits or income,
20 except interest coupons payable to bearer. A duplicate of the
21 statement as to tax withheld on wages, required to be furnished by an
22 employer to an employee, shall constitute the return of information
23 required to be made under this section with respect to such wages.

24 (d) Notice of qualification as receiver, et cetera. Every receiver,
25 trustee in bankruptcy, assignee for benefit of creditors, or other like
26 fiduciary shall give notice of his qualification as such to the director,
27 as may be required by regulation.

28 (cf: P.L.2002, c.40, s.22)

29

30 3. This act shall take effect immediately and apply to taxable years
31 beginning on or after January 1, 2002.

32

33

34

STATEMENT

35

36 This bill exempts certain investment clubs from the withholding and
37 fee requirements recently imposed on partnerships.

38 Investment clubs are usually small groups of individuals interested
39 in learning about and practicing investment in the stock market.
40 Usually, each member regularly contributes a small amount of money
41 to the club and the club meets regularly to discuss and make
42 investment decisions. The National Association of Investors
43 Corporation (NAIC), the national association of investment clubs,
44 suggests that club members invest in common stocks and that members
45 take turns researching and reporting on companies in which they might
46 invest.

1 According to the NAIC's 2001 calendar year survey data obtained
2 from its 400,000 individual members and its 32,000 member clubs, the
3 average club had 11 members, who invested about \$85 per month each
4 in common stocks. The average club had assets of \$63,000 in 2001.
5 The NAIC recommends that a starting club set monthly contributions
6 at \$20 or \$25 per month per member, and that the club members enter
7 into a business partnership to formalize the business arrangements
8 among the members.

9 P.L.2002, c.40 made extensive revisions to business taxes, mainly
10 to the corporation business tax (N.J.S.A.54:10A-1 et seq) but also
11 some changes to the duties of partnerships, including requirements that
12 partnerships pay a processing fee and make payments on behalf of their
13 owners. For taxable year 2002 and thereafter, a partnership that has
14 income from New Jersey sources and more than two members must
15 pay a \$150 per owner filing fee. Partnerships must also make a
16 payment on the share of the partnership income of each nonresident
17 owner at a 6.37% rate for individual owners; the payment is credited
18 to a separate account for each owner and may be credited against the
19 owner's tax liability.

20 This bill exempts investment clubs from the \$150 per owner annual
21 partnership processing fee and from the requirement that a partnership
22 make a payment on behalf of each nonresident owner. The bill defines
23 an exempt investment club as an entity that is classified for federal tax
24 purposes as a partnership and that: has all owners who are individuals;
25 has all of its assets in securities, cash, or cash equivalents; has a total
26 market value of all of its assets (measured on the last day of its taxable
27 year) not in excess of \$50,000 times the number of its owners; and is
28 not required to register itself or its membership interests with the
29 federal Securities and Exchange Commission. The bill provides an
30 inflation adjustment for the cap on the average assets of the owners.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 1770 and 1773**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 8, 2004

The Assembly Appropriations Committee reports favorably Senate Bill Nos. 1770 and 1773 (SCS), with committee amendments.

Senate Bill No. 1770 and 1773 (SCS), as amended, exempts certain investment clubs from the withholding and fee requirements recently imposed on partnerships.

P.L.2002, c.40 made extensive revisions to business taxes, mainly to the corporation business tax (N.J.S.A.54:10A-1 et seq.), but also to the duties of partnerships and other entities that are not themselves taxable, but "pass through" their income to their owners. These revisions included new requirements that partnerships pay a filing fee and make certain payments on behalf of the owners. More specifically, for taxable year 2002 and thereafter:

- * a partnership that has income from New Jersey sources and more than two owners must pay an annual filing fee of \$150 per owner, but not more than \$250,000; and
- * a partnership must make a payment on the share of the partnership income of each of its *nonresident* owners at a rate of 6.37% for individual owners and 9% for corporate owners; in a manner similar to withholding, the payments are credited to a separate account for each owner and may be credited against the owner's income tax liability for the owner's share of partnership income.

This substitute exempts "investment clubs" from the \$150 per owner annual partnership filing fee and from the "withholding" requirement that a partnership make payments on behalf of its nonresident owners. (1) is classified as a partnership for federal tax purposes;

- (2) has an ownership comprised only of individuals;
- (3) has all of its assets in securities, cash, or cash equivalents;
- (4) has assets, the total market value of which (measured on the last day of its tax period) does not exceed the lesser of \$250,000 or \$35,000 times the number of its owners; and
- (5) is not required to register itself or its membership interests with the federal Securities and Exchange Commission (SEC). Generally, a club is exempt from any requirement to register *itself* with

the SEC as an "investment company" if it has exempt status as, for instance, a "private investment company" (i.e., it has no more than 100 members *and* makes no public offering of securities). A club need not register its *offer and sale of membership interests* with the SEC if ownership interests in the club portfolio are not considered "securities." (Such ownership interests are usually not considered "securities" if all club members actively participate in deciding what investments the club will make.)

The substitute provides an inflation adjustment for the cap on the total and average assets of the owners.

As reported by the committee, this substitute is identical to Senate Bill Nos. 1770/1773 (SCS), as amended and reported by the committee.

FISCAL IMPACT:

Executive branch estimates using national data for 2001 that indicated that investment clubs had 400,000 individual members, and the assumption that 4% of the members are in New Jersey based clubs, conclude that 16,000 members of investment clubs at most are subject to the \$150 filing fee and that \$2.4 million in filing fees should be forthcoming from these investment clubs.

The executive branch estimates note that New Jersey regulations exempt investment clubs with total asset values less than \$60,000 from filing fee payments. The executive estimates that this exemption results in a loss of approximately \$1.4 million of the \$2.4 million total, so that this bill would cause a maximum further revenue loss of \$1 million annually to the Property Tax Relief Fund or the General Fund.

Using more recent data, the Office of Legislative Services (OLS) concludes that the revenue impact of this bill would be somewhat less than executive estimate. The national data from 2003 indicate that there are 298,000 investment clubs members nationwide (a 25 percent decline from two years earlier). Applying the same 4 percent allocation to New Jersey as was applied by the executive branch, OLS estimates that New Jersey has 11,920 investment club members and that the maximum possible liability for investment clubs would be \$1.8 million. After consideration of the impact of the November 26, 2002 announcement by the State Treasurer that the filing fee would be waived for all investment clubs with assets below \$60,000, that the executive branch analysis that this regulatory change reduced the liability by \$1.4 million, the additional Maximum revenue reduction that could result from this bill would be the remaining \$400,000.

However, absent an explanation of the executive \$1.4 million estimated cost for the waiver, OLS doubts that such a large proportion (more than 75%) of the members would have been in clubs with assets were less than \$60,000, when the national average for club assets is more than \$86,000. Alternatively, if half the members were excluded by the \$60,000 limit, the maximum impact of this bill would be \$900,000. This cost would be reduced further because some clubs - although probably not a large percentage - have assets above the bill's \$250,000 per club/\$35,000 per member level and would still be subject to the fee. An additional factor which would reduce the bill's fiscal impact is the opportunity for clubs to restructure or reorganize in

order to avoid the fee. Accordingly, OLS estimates that maximum cost from the bill at about \$800,000.

There will be no fiscal impact from the exemption for the "withholding" payment, because nonresident members of New Jersey investment clubs derive no income from the investment clubs that would be subject to New Jersey taxation.

COMMITTEE AMENDMENTS:

The amendments provide for the alternative \$250,000 total asset value cap for exemption qualification and make technical changes to tax period references.

SENATE, No. 1773

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED SEPTEMBER 12, 2002

Sponsored by:

Senator MARTHA W. BARK

District 8 (Burlington)

Co-Sponsored by:

Senator Inverso

SYNOPSIS

Exempts qualified investment clubs from certain partnership fee and payment requirements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/15/2002)

S1773 BARK

2

1 AN ACT exempting qualified investment clubs from certain partnership
2 fee and payment requirements, amending P.L.2002, c.40 and
3 N.J.S.54A:8-6.

4

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

7

8 1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to
9 read as follows:

10 12. a. A partnership that is not a qualified investment partnership
11 or a qualified investment club and that is not listed on a United States
12 national stock exchange shall, on or before the 15th day of the fourth
13 month succeeding the close of each privilege period, remit a payment
14 of tax. The amount of tax shall be equal to the sum of: all of the share
15 of the entire net income of the partnership for that privilege period of
16 all nonresident noncorporate partners, multiplied by an allocation
17 factor determined, pursuant to section 6 of P.L.1945, c.162
18 (C.54:10A-6), based on the allocation fractions of the partnership for
19 that privilege period, and multiplied by .0637 plus all of the share of
20 the entire net income of the partnership for that privilege period of all
21 nonresident corporate partners, multiplied by an allocation factor
22 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
23 based on the allocation fractions of the partnership for that privilege
24 period, and multiplied by .09.

25 b. An amount of tax paid by a partnership pursuant to subsection
26 a. of this section shall be credited to accounts of its nonresident
27 partners in proportion to each nonresident partner's share of allocated
28 entire net income and the multiplier rate for that partner class under
29 subsection a. of this section as of the date of its receipt by the director,
30 and each amount of tax so credited shall be deemed to have been paid
31 by the respective partner in respect of the privilege period or taxable
32 year of the partner.

33 c. For the purposes of this section:

34 "Nonresident noncorporate partner" means, an individual, an estate
35 or a trust subject to taxation pursuant to the "New Jersey Gross
36 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
37 taxpayer or a resident estate or trust under that act;

38 "Nonresident corporate partner" means a partner that is not an
39 individual, an estate or a trust subject to taxation pursuant to the "New
40 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
41 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
42 (C.54:10A-3), and that does not maintain a regular place of business
43 in this State other than a statutory office; **[and]**

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 "Partner" means an owner of an interest in the partnership, in
2 whatever manner that owner and ownership interest are designated;
3 and

4 "Qualified investment club" means an entity: that is classified as a
5 partnership for federal income tax purposes; all of the owners of which
6 are individuals; all of the assets of which are securities, derivatives of
7 securities, cash, or cash equivalents; the market value of the total
8 assets of which do not exceed, as measured on the last day of its
9 taxable year, an amount equal to \$25,000 multiplied by the number of
10 its owners; and which is not required to register itself or its
11 membership interests with the federal Securities and Exchange
12 Commission.

13 (cf: P.L.2002, c.40, s.12)

14
15 2. N.J.S.54A:8-6 is amended to read as follows:

16 54A:8-6. Requirements concerning returns, notices, records and
17 statements. (a) General. The director may prescribe regulations as to
18 the keeping of records, the content and form of returns and
19 statements, and the filing of copies of federal income tax returns and
20 determinations. The director may require any person, by regulation or
21 notice served upon such person, to make such returns, render such
22 statements, or keep such records, as the director may deem sufficient
23 to show whether or not such person is liable under this act for tax or
24 for collection of tax.

25 (b) Partnerships. (1) Each entity classified as a partnership for
26 federal income tax purposes, including but not limited to a partnership,
27 a limited liability partnership, or a limited liability company, having a
28 resident owner of an interest in the entity or having any income
29 derived from New Jersey sources, shall make a return for the taxable
30 year setting forth all items of income, gain, loss and deduction and
31 such other pertinent information as the director may by regulations and
32 instructions prescribe. The director shall prescribe a State return form
33 that, at a minimum, includes the name and address of each partner,
34 member, or other owner of an interest in the entity however
35 designated, of the entity for taxable years ending on or after
36 December 31, 1994. Such return shall be filed on or before the
37 fifteenth day of the fourth month following the close of each taxable
38 year.

39 (2) (A) Each entity classified as a partnership for federal income tax
40 purposes, other than a qualified investment club, having any income
41 derived from New Jersey sources, including but not limited to a
42 partnership, a limited liability partnership, or a limited liability
43 company, that has more than two owners shall at the prescribed time
44 for making the return required under this subsection make a payment
45 of a filing fee of \$150 for each owner of an interest in the entity, up to
46 a maximum of \$250,000. For the purposes of this paragraph,

1 "qualified investment club" means an entity: that is classified as a
2 partnership for federal income tax purposes; all of the owners of which
3 are individuals; all of the assets of which are securities, derivatives of
4 securities, cash, or cash equivalents; the market value of the total
5 assets of which do not exceed, as measured on the last day of its
6 taxable year, an amount equal to \$25,000 multiplied by the number of
7 its owners; and which is not required to register itself or its
8 membership interests with the federal Securities and Exchange
9 Commission.

10 (B) Each entity required to make a payment pursuant to
11 subparagraph (A) of this paragraph shall also make, at the same time
12 as making its payment pursuant to subparagraph (A) of this paragraph,
13 an installment payment of its filing fee for the succeeding return period
14 in an amount equal to 50% of the amount required to be paid pursuant
15 to subparagraph (A). The amount of the installment payment shall be
16 credited against the amount of the filing fee due for the succeeding
17 return period, or, if the amount of the installment payment exceeds the
18 amount of the filing fee due for the succeeding return period,
19 successive return periods.

20 (C) Notwithstanding the provisions of R.S.54:48-2 and
21 R.S.54:48-4 to the contrary, the fee required pursuant to subparagraph
22 (A) of this paragraph and the installment payment required pursuant
23 to subparagraph (B) of this paragraph shall, for purposes of
24 administration, be payments to which the provisions of the State
25 Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable
26 and the collection thereof may be enforced by the director in the
27 manner therein provided.

28 (3) Each entity required to file a return under this subsection for
29 any taxable year shall, on or before the day on which the return for the
30 taxable year is required to be filed, furnish to each person who is a
31 partner or other owner of an interest in the entity however designated,
32 or who holds an interest in such entity as a nominee for another person
33 at any time during that taxable year a copy of such information
34 required to be shown on such return as the director may prescribe.

35 (4) For the purposes of this subsection, "taxable year" means a year
36 or period which would be a taxable year of the partnership if it were
37 subject to tax under this act.

38 (c) Information at source. The director may prescribe regulations
39 and instructions requiring returns of information to be made and filed
40 on or before February 15 of each year as to the payment or crediting
41 in any calendar year of amounts of \$100.00 or more to any taxpayer
42 under this act. Such returns may be required of any person, including
43 lessees or mortgagors of real or personal property, fiduciaries,
44 employers, and all officers and employees of this State, or of any
45 municipal corporation or political subdivision of this State, having the
46 control, receipt, custody, disposal or payment of interest, rents,

1 salaries, wages, premiums, annuities, compensations, remunerations,
2 emoluments or other fixed or determinable gains, profits or income,
3 except interest coupons payable to bearer. A duplicate of the
4 statement as to tax withheld on wages, required to be furnished by an
5 employer to an employee, shall constitute the return of information
6 required to be made under this section with respect to such wages.

7 (d) Notice of qualification as receiver, et cetera. Every receiver,
8 trustee in bankruptcy, assignee for benefit of creditors, or other like
9 fiduciary shall give notice of his qualification as such to the director,
10 as may be required by regulation.

11 (cf: P.L.2002, c.40, s.22)

12

13 3. This act shall take effect immediately and apply to taxable years
14 beginning on or after January 1, 2002.

15

16

17

STATEMENT

18

19 This bill exempts certain investment clubs from the withholding and
20 fee requirements recently imposed on partnerships.

21 Investment clubs are usually small groups of individuals interested
22 in learning about and practicing investment in the stock market. As
23 these clubs have developed over the last 50 or so years, each member
24 regularly contributes a small amount of money to the club, which
25 meets regularly to discuss companies and make decisions about which
26 stocks to buy and sell. Members take turns researching and reporting
27 on promising companies in which they might invest or companies in
28 which the club is already invested.

29 The National Association of Investors Corporation (NAIC),
30 established in 1951, is the national association of investment clubs.
31 According to 2001 survey data from its 400,000 individual members
32 and its 32,000 member clubs, the average club has 11 members, who
33 invest about \$85 per month each in common stocks. The average club
34 had assets of \$63,000 in 2001. The NAIC recommends that a starting
35 club set monthly contributions at \$20 or \$25 per month per member,
36 and that the club members establish themselves as a partnership to
37 formalize the business arrangements among the members.

38 P.L.2002, c.40 made extensive revisions to business taxes, mainly
39 to the corporation business tax (N.J.S.A.54:10A-1 et seq) but also
40 some changes to the duties of partnerships, including requirements
41 that partnerships pay a processing fee and make payments on behalf of
42 their owners. For taxable year 2002 and thereafter, a partnership that
43 has income from New Jersey sources and more than two members
44 must pay a \$150 per owner filing fee. Partnerships must also make a
45 payment on the share of the partnership income of each nonresident
46 owner at a 6.37% rate for individual owners; the payment is credited

S1773 BARK

6

1 to a separate account for each owner and may be credited against the
2 owner's tax liability.

3 This bill exempts qualified investment clubs from the \$150 per
4 owner annual partnership processing fee and from the requirement that
5 a partnership make a payment on behalf of each nonresident owner.
6 The bill defines a qualified investment club as an entity that is
7 classified for federal tax purposes as a partnership and that meets the
8 following four requirements:

- 9 C all of the owners are individuals;
- 10 C all of the assets of the entity are securities, derivatives of securities,
11 cash, or cash equivalents;
- 12 C the market value of the total assets of the entity do not exceed, as
13 measured on the last day of its taxable year, an amount equal to
14 \$25,000 multiplied by the number of its owners (this is about four
15 times the reported average investment of NAIC members in their
16 investment clubs);
- 17 C the entity is not required to register itself or its membership
18 interests with the federal Securities and Exchange Commission (this
19 assures that no "investment club" interests can be marketed as
20 discount investment vehicles).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 1770 and 1773**

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2002

The Senate Budget and Appropriations Committee reports favorably a committee substitute for Senate Bill Nos. 1770 and 1773.

This substitute bill exempts certain investment clubs from the withholding and fee requirements recently imposed on partnerships.

P.L.2002, c.40 made extensive revisions to business taxes, mainly to the corporation business tax (N.J.S.A.54:10A-1 et seq.), but also to the duties of partnerships and other entities that are not themselves taxable, but "pass through" their income to their owners. These revisions included new requirements that partnerships pay a filing fee and make certain payments on behalf of the owners. More specifically, for taxable year 2002 and thereafter:

- < A partnership that has income from New Jersey sources and more than two owners must pay an annual filing fee of \$150 per owner, but not more than \$250,000; and
- < Partnerships must also make a payment on the share of the partnership income of each *nonresident* owner at a rate of 6.37% for individual owners and 9% for corporate owners; in a manner similar to withholding, the payment is credited to a separate account for each owner and may be credited against the owner's income tax liability for the owner's share of partnership income.

This bill exempts "investment clubs" from the \$150 per owner annual partnership filing fee and from the "withholding" requirement that a partnership make payments on behalf of nonresident owners. The bill defines an exempt investment club as an entity that:

- (1) Is classified as a partnership for federal tax purposes;
- (2) Has an ownership comprised only of individuals;
- (3) Has all of its assets in securities, cash, or cash equivalents;
- (4) Has assets, the total market value of which (measured on the last day of its taxable year) does not exceed \$35,000 times the number of its owners; and
- (5) Is not required to register itself or its membership interests with the federal Securities and Exchange Commission (SEC). Generally, a club is exempt from any requirement to register *itself* with the SEC as an "investment company" if it has exempt status as, for

instance, a "private investment company" (i.e., it has no more than 100 members *and* makes no public offering of securities). A club need not register its *offer and sale of membership interests* with the SEC if ownership interests in the club portfolio are not considered "securities." (Such ownership interests are usually not considered "securities" if all club members actively participate in deciding what investments the club will make.)

The bill provides an inflation adjustment for the cap on the average assets of the owners.

FISCAL IMPACT

The Office of Legislative Services (OLS) does not have the necessary data, specific to New Jersey, from which to determine the fiscal impact of the legislation. National data from private sources may, however, offer a basis for a general estimate of the upper limits of that impact.

The National Association of Investors Corporation, a national association of investment clubs, reports that survey data from 2001 indicate that there are 32,000 investment clubs nationwide, with an average membership of 11 and average holdings of \$63,000. If the number of investment clubs in New Jersey is proportional to the State's share of the national population (3%) and their average membership conforms to the national average, there would be about 1,000 clubs in the State with roughly 11,000 members. If all of these clubs are presently subject to the filing fee, and if the bill's exemption were applicable to all of them, implementation of the legislation would reduce potential revenue from the fee by \$1.65 million. This figure, however, is almost certainly in excess of the actual revenue loss that would result from the bill's impact on revenue from the presumed universe of New Jersey investment clubs, since (i) some of the clubs either already were organized, or since the imposition of the fee have reorganized, under a form other than a partnership, and thus are already exempt from the fee, and (ii) the bill's restriction of the exemption to clubs with assets of no more than \$35,000 per member would leave some number of clubs still liable for the fee.

The impact of the exemption from liability for the "withholding" payment is unlikely to be substantial, because investment clubs are generally local organizations, so that their nonresident members are likely to be few in number.

[Corrected Copy]

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1770 and 1773
STATE OF NEW JERSEY

DATED: FEBRUARY 19, 2003

SUMMARY

Synopsis: Exempts certain investment clubs from certain partnership fee and payment requirements.
Type of Impact: General Fund Revenue Loss
Agencies Affected: Division of Revenue

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Revenue	less than \$1,000,000	less than \$1,000,000	less than \$1,000,000

! While appropriate data are lacking, the cost of this bill is likely to be less \$1 million per year

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill Nos. 1770 and 1773 of 2002 exempts "investment clubs" from the \$150 per owner annual partnership filing fee and from the "withholding" requirement that a partnership make payments on behalf of nonresident owners.

P.L.2002, c.40 made extensive revisions to business taxes, mainly to the corporation business tax (N.J.S.A.54:10A-1 et seq.), but also to the duties of partnerships and other entities that are not themselves taxable, but "pass through" their income to their owners. These revisions included new requirements that partnerships pay a filing fee and make certain payments on behalf of the owners. More specifically, for taxable year 2002 and thereafter:

- < A partnership that has income from New Jersey sources and more than two owners must pay an annual filing fee of \$150 per owner, but not more than \$250,000; and
- < Partnerships must also make a payment on the share of the partnership income of each nonresident owner at a rate of 6.37 percent for individual owners and 9 percent for corporate owners; in a manner similar to withholding, the payment is credited to a separate account for each owner and may be credited against the owner's income tax liability for the owner's share of partnership income.

The bill defines an exempt investment club as an entity that:

- (1) Is classified as a partnership for federal tax purposes;
- (2) Has an ownership comprised only of individuals;

- (3) Has all of its assets in securities, cash, or cash equivalents;
- (4) Has assets, the total market value of which (measured on the last day of its taxable year) does not exceed \$35,000 times the number of its owners; and
- (5) Is not required to register itself or its membership interests with the federal Securities and Exchange Commission (SEC).

FISCAL ANALYSIS

EXECUTIVE BRANCH

None Received

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) does not have the necessary data, specific to New Jersey, from which to determine the fiscal impact of the legislation. National data from private sources may, however, offer a basis for a general estimate of the upper limits of that impact.

The National Association of Investors Corporation, a national association of investment clubs, reports that survey data from 2001 indicate that there are 32,000 investment clubs nationwide, with an average membership of 11 and average holdings of \$63,000. If the number of investment clubs in New Jersey is proportional to the State's share of the national population (3 percent) and their average membership conforms to the national average, there would be about 1,000 clubs in the State with roughly 11,000 members. If all of these clubs are presently subject to the filing fee, and if the bill's exemption were applicable to all of them, implementation of the legislation would reduce potential revenue from the fee by \$1.65 million.

However, on November 26, 2002, the State Treasurer announced that the filing fee would be waived for all investment clubs with assets below \$60,000. Based on the national data this exemption might exclude about one-half of the clubs. Accordingly the cost of the bill would probably not exceed one-half of the \$1.65 million. Additionally, some clubs - although probably not a large percentage - have assets above the bill's \$35,000 per member level and would still be subject to the fee. An additional factor which would reduce the bill's fiscal impact is the opportunity for clubs to restructure or reorganize in order to avoid the fee.

There will be no fiscal impact from the exemption for the "withholding" payment, because nonresident members of New Jersey investment clubs would derive no income from the investment clubs that would be subject to New Jersey taxation.

Section: *Revenue, Finance and Appropriations*

Analyst: *David Rosen*
Section Chief

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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

FISCAL NOTE
 [First Reprint]
 SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1770 and 1773
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: FEBRUARY 4, 2004

SUMMARY

Synopsis: Exempts certain investment clubs from certain partnership fee and payment requirements.

Type of Impact: General Fund Revenue Loss

Agencies Affected: Division of Revenue

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	(\$400,000-800,000)	(\$400,000-800,000)	(\$400,000-800,000)

- * The Executive estimates that the revenue loss from this bill be a \$1 million a year.
- * Using more recent data, the Office of Legislative Services estimates a substantially smaller revenue loss.

BILL DESCRIPTION

Senate Committee Substitute (1R) for Senate Bill Nos. 1770 and 1773 of 2002 exempts "investment clubs" from the \$150 per owner annual partnership filing fee and from the "withholding" requirement that a partnership make payments on behalf of nonresident owners.

P.L.2002, c.40 made extensive revisions to business taxes, mainly to the corporation business tax (N.J.S.A.54:10A-1 et seq.), but also to the duties of partnerships and other entities that are not themselves taxable, but "pass through" their income to their owners. These revisions



included new requirements that partnerships pay a filing fee and make certain payments on behalf of the owners. More specifically, for taxable year 2002 and thereafter:

- < A partnership that has income from New Jersey sources and more than two owners must pay an annual filing fee of \$150 per owner, but not more than \$250,000; and
- < Partnerships must also make a payment on the share of the partnership income of each *nonresident* owner at a rate of 6.37 percent for individual owners and 9 percent for corporate owners; in a manner similar to withholding, the payment is credited to a separate account for each owner and may be credited against the owner's income tax liability for the owner's share of partnership income.

This bill exempts "investment clubs" from the \$150 per owner annual partnership filing fee and from the "withholding" requirement that a partnership make payments on behalf of nonresident owners. The bill defines an exempt investment club as an entity that:

- (1) Is classified as a partnership for federal tax purposes;
- (2) Has an ownership comprised only of individuals;
- (3) Has all of its assets in securities, cash, or cash equivalents;
- (4) Has assets, the total market value of which (measured on the last day of its taxable year) does not exceed \$35,000 times the number of its owners or a total of \$250,000; and
- (5) Is not required to register itself or its membership interests with the federal Securities and Exchange Commission (SEC).

FISCAL ANALYSIS

EXECUTIVE BRANCH

National data for 2001 indicated that investment clubs had 400,000 individual members. The Executive has assumed that 4 percent of the members are in New Jersey based clubs, resulting in approximately 16,000 members at most that are subject to the \$150 filing fee and \$2.4 million in filing fee that should be forthcoming from these members. Also assuming that all investment clubs with income from New Jersey sources were exempt, the loss would be \$2.4 million.

New Jersey regulations exempt investment clubs with total asset values less than \$60,000 from filing fee payments. The regulations result in a loss of approximately \$1.4 million of the \$2.4 million total. This bill would extend the exemption to investment clubs based on asset values of \$35,000 multiplied by the number of its owners. This would result in a further loss of revenue of \$1 million annually to the Property tax Relief Fund or the General Fund.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) has utilized more recent data to conclude that the revenue impact of this bill would be somewhat less than executive estimate.

The National Association of Investors Corporation, a national association of investment clubs, reports that survey data from 2003 indicate that there are 298,000 investment clubs members nationwide (a 25 percent from two years earlier). An average club has a membership of 11.6 and holdings of \$87,000. OLS applied the same 4 percent allocation to New Jersey as was applied by the Executive, and estimates that New Jersey has 11,920 investment club members. Accordingly the maximum possible liability for investment clubs under the provisions of P.L.2002, c.40 would be \$1.8 million (11,920 x \$150).

However, on November 26, 2002, the State Treasurer announced that the filing fee would be waived for all investment clubs with assets below \$60,000. According to the Executive's fiscal analysis this regulatory change reduced the liability by \$1.4 million. Accordingly the additional revenue reduction that could result from this bill would be the remaining \$400,000 (\$1,800,00 - \$1,400,000)

The executive provided no explanation for the \$1.4 million estimate and OLS doubts that such a large proportion (more than 75 percent) of the members would have been in clubs who assets were less than \$60,000, when the national average for club assets is more than \$86,000. Alternatively, if half the members were excluded by the \$60,000 limit, the maximum impact of this bill would be \$900,000. This cost would be reduced further because some clubs - although probably not a large percentage - have assets above the bill's \$35,000 per member or \$250,000 level and would still be subject to the fee. An additional factor which would reduce the bill's fiscal impact is the opportunity for clubs to restructure or reorganize in order to avoid the fee. Accordingly, OLS estimates that maximum cost from the bill at about \$800,000.

There will be no fiscal impact from the exemption for the "withholding" payment, because nonresident members of New Jersey investment clubs would derive no income from the investment clubs that would be subject to New Jersey taxation.

OLS does not understand why the Executive estimate reflects a belief that the revenue loss from the bill might be experienced by the General Fund.

Section: *Revenue, Finance and Appropriations*
Analyst: *David J. Rosen*
Legislative Budget and Finance Officer
Approved: *David J. Rosen*
Legislative Budget and Finance Officer

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

ASSEMBLY, No. 2100

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED DECEMBER 11, 2003

Sponsored by:

Assemblyman ALBIO SIRES

District 33 (Hudson)

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

Co-Sponsored by:

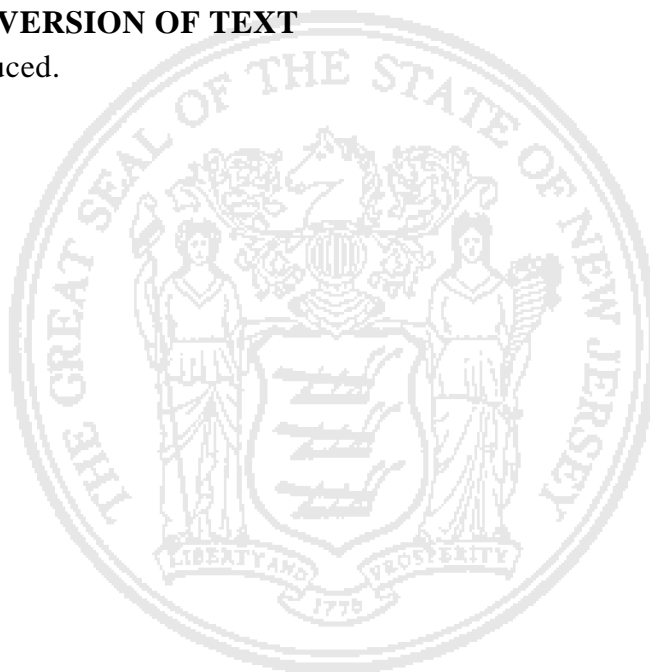
Assemblyman Eagler and Assemblywoman Greenstein

SYNOPSIS

Exempts certain investment clubs from certain partnership fee and payment requirements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/16/2003)

A2100 SIRES, ROBERTS

2

1 AN ACT exempting certain investment clubs from certain partnership
2 fee and payment requirements, amending P.L.2002, c.40 and
3 N.J.S.54A:8-6.

4

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

7

8 1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to
9 read as follows:

10 12. a. A partnership that is not a qualified investment partnership
11 or an investment club and that is not listed on a United States national
12 stock exchange shall, on or before the 15th day of the fourth month
13 succeeding the close of each privilege period, remit a payment of tax.
14 The amount of tax shall be equal to the sum of: all of the share of the
15 entire net income of the partnership for that privilege period of all
16 nonresident noncorporate partners, multiplied by an allocation factor
17 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
18 based on the allocation fractions of the partnership for that privilege
19 period, and multiplied by .0637 plus all of the share of the entire net
20 income of the partnership for that privilege period of all nonresident
21 corporate partners, multiplied by an allocation factor determined,
22 pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the
23 allocation fractions of the partnership for that privilege period, and
24 multiplied by .09.

25 b. An amount of tax paid by a partnership pursuant to subsection
26 a. of this section shall be credited to accounts of its nonresident
27 partners in proportion to each nonresident partner's share of allocated
28 entire net income and the multiplier rate for that partner class under
29 subsection a. of this section as of the date of its receipt by the director,
30 and each amount of tax so credited shall be deemed to have been paid
31 by the respective partner in respect of the privilege period or taxable
32 year of the partner.

33 c. For the purposes of this section:

34 "Investment club" means an entity: that is classified as a partnership
35 for federal income tax purposes; all of the owners of which are
36 individuals; all of the assets of which are securities, cash, or cash
37 equivalents; the market value of the total assets of which do not
38 exceed, as measured on the last day of its taxable year, an amount
39 equal to \$35,000 per owner of the entity; and which is not required to
40 register itself or its membership interests with the federal Securities
41 and Exchange Commission; provided that beginning with privilege
42 periods commencing on or after January 1, 2003 the director shall
43 prescribe the per-owner asset amount which shall apply by increasing

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

Matter underlined thus is new matter.

1 the \$35,000 amount hereinabove by an inflation adjustment factor,
2 which amount shall be rounded to the next highest multiple of \$100.
3 The inflation adjustment factor shall be equal to the factor calculated
4 by dividing the consumer price index for urban wage earners and
5 clerical workers for the nation, as prepared by the United States
6 Department of Labor for September of the calendar year prior to the
7 calendar year in which the privilege period begins, by that index for
8 September of 2001;

9 "Nonresident noncorporate partner" means, an individual, an estate
10 or a trust subject to taxation pursuant to the "New Jersey Gross
11 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
12 taxpayer or a resident estate or trust under that act;

13 "Nonresident corporate partner" means a partner that is not an
14 individual, an estate or a trust subject to taxation pursuant to the "New
15 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
16 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
17 (C.54:10A-3), and that does not maintain a regular place of business
18 in this State other than a statutory office; and

19 "Partner" means an owner of an interest in the partnership, in
20 whatever manner that owner and ownership interest are designated.
21 (cf: P.L.2002, c.40, s.12)

22

23 2. N.J.S.54A:8-6 is amended to read as follows:

24 54A:8-6. Requirements concerning returns, notices, records and
25 statements. (a) General. The director may prescribe regulations as to
26 the keeping of records, the content and form of returns and
27 statements, and the filing of copies of federal income tax returns and
28 determinations. The director may require any person, by regulation or
29 notice served upon such person, to make such returns, render such
30 statements, or keep such records, as the director may deem sufficient
31 to show whether or not such person is liable under this act for tax or
32 for collection of tax.

33 (b) Partnerships. (1) Each entity classified as a partnership for
34 federal income tax purposes, including but not limited to a partnership,
35 a limited liability partnership, or a limited liability company, having a
36 resident owner of an interest in the entity or having any income
37 derived from New Jersey sources, shall make a return for the taxable
38 year setting forth all items of income, gain, loss and deduction and
39 such other pertinent information as the director may by regulations and
40 instructions prescribe. The director shall prescribe a State return form
41 that, at a minimum, includes the name and address of each partner,
42 member, or other owner of an interest in the entity however
43 designated, of the entity for taxable years ending on or after
44 December 31, 1994. Such return shall be filed on or before the
45 fifteenth day of the fourth month following the close of each taxable
46 year.

A2100 SIRES, ROBERTS

1 (2) (A) Each entity classified as a partnership for federal income
2 tax purposes, other than an investment club, having any income
3 derived from New Jersey sources, including but not limited to a
4 partnership, a limited liability partnership, or a limited liability
5 company, that has more than two owners shall at the prescribed time
6 for making the return required under this subsection make a payment
7 of a filing fee of \$150 for each owner of an interest in the entity, up to
8 a maximum of \$250,000. For the purposes of this paragraph,
9 "investment club" means an entity: that is classified as a partnership for
10 federal income tax purposes; all of the owners of which are
11 individuals; all of the assets of which are securities, cash, or cash
12 equivalents; the market value of the total assets of which do not
13 exceed, as measured on the last day of its taxable year, an amount
14 equal to \$35,000 per owner of the entity; and which is not required to
15 register itself or its membership interests with the federal Securities
16 and Exchange Commission; provided that beginning with privilege
17 periods commencing on or after January 1, 2003 the director shall
18 prescribe the per-owner asset amount which shall apply by increasing
19 the \$35,000 amount hereinabove by an inflation adjustment factor,
20 which amount shall be rounded to the next highest multiple of \$100.
21 The inflation adjustment factor shall be equal to the factor calculated
22 by dividing the consumer price index for urban wage earners and
23 clerical workers for the nation, as prepared by the United States
24 Department of Labor for September of the calendar year prior to the
25 calendar year in which the taxable year begins, by that index for
26 September of 2001;

27 (B) Each entity required to make a payment pursuant to
28 subparagraph (A) of this paragraph shall also make, at the same time
29 as making its payment pursuant to subparagraph (A) of this paragraph,
30 an installment payment of its filing fee for the succeeding return period
31 in an amount equal to 50% of the amount required to be paid pursuant
32 to subparagraph (A). The amount of the installment payment shall be
33 credited against the amount of the filing fee due for the succeeding
34 return period, or, if the amount of the installment payment exceeds the
35 amount of the filing fee due for the succeeding return period,
36 successive return periods.

37 (C) Notwithstanding the provisions of R.S.54:48-2 and
38 R.S.54:48-4 to the contrary, the fee required pursuant to subparagraph
39 (A) of this paragraph and the installment payment required pursuant
40 to subparagraph (B) of this paragraph shall, for purposes of
41 administration, be payments to which the provisions of the State
42 Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable
43 and the collection thereof may be enforced by the director in the
44 manner therein provided.

45 (3) Each entity required to file a return under this subsection for
46 any taxable year shall, on or before the day on which the return for the

1 taxable year is required to be filed, furnish to each person who is a
2 partner or other owner of an interest in the entity however designated,
3 or who holds an interest in such entity as a nominee for another person
4 at any time during that taxable year a copy of such information
5 required to be shown on such return as the director may prescribe.

6 (4) For the purposes of this subsection, "taxable year" means a year
7 or period which would be a taxable year of the partnership if it were
8 subject to tax under this act.

9 (c) Information at source. The director may prescribe regulations
10 and instructions requiring returns of information to be made and filed
11 on or before February 15 of each year as to the payment or crediting
12 in any calendar year of amounts of \$100.00 or more to any taxpayer
13 under this act. Such returns may be required of any person, including
14 lessees or mortgagors of real or personal property, fiduciaries,
15 employers, and all officers and employees of this State, or of any
16 municipal corporation or political subdivision of this State, having the
17 control, receipt, custody, disposal or payment of interest, rents,
18 salaries, wages, premiums, annuities, compensations, remunerations,
19 emoluments or other fixed or determinable gains, profits or income,
20 except interest coupons payable to bearer. A duplicate of the
21 statement as to tax withheld on wages, required to be furnished by an
22 employer to an employee, shall constitute the return of information
23 required to be made under this section with respect to such wages.

24 (d) Notice of qualification as receiver, et cetera. Every receiver,
25 trustee in bankruptcy, assignee for benefit of creditors, or other like
26 fiduciary shall give notice of his qualification as such to the director,
27 as may be required by regulation.

28 (cf: P.L.2002, c.40, s.22)

29
30 3. This act shall take effect immediately and apply to taxable years
31 and privilege periods beginning on or after January 1, 2002.

32
33
34 STATEMENT

35
36 This bill exempts certain investment clubs from the withholding and
37 fee requirements recently imposed on partnerships.

38 P.L.2002, c.40 made extensive revisions to business taxes, mainly
39 to the corporation business tax (N.J.S.A.54:10A-1 et seq.), but also to
40 the duties of partnerships and other entities that are not themselves
41 taxable, but "pass through" their income to their owners. These
42 revisions included new requirements that partnerships pay a filing fee
43 and make certain payments on behalf of the owners. Under current
44 law, for taxable year 2002 and thereafter:

A2100 SIRES, ROBERTS

6

1 * a partnership that has income from New Jersey sources and more
2 than two owners must pay an annual filing fee of \$150 per owner,
3 but not more than \$250,000; and

4 * a partnership must make a payment on the share of the partnership
5 income of each of its *nonresident* owners at a rate of 6.37% for
6 individual owners and 9% for corporate owners; in a manner similar
7 to withholding, the payments are credited to a separate account for
8 each owner and may be credited against the owner's income tax
9 liability for the owner's share of partnership income.

10 This bill exempts "investment clubs" from the \$150 per owner
11 annual partnership filing fee and from the "withholding" requirement
12 that a partnership make payments on behalf of nonresident owners.

13 The bill defines an exempt investment club as an entity that:

14 (1) is classified as a partnership for federal tax purposes;

15 (2) has an ownership comprised only of individuals;

16 (3) has all of its assets in securities, cash, or cash equivalents;

17 (4) has assets, the total market value of which (measured on the
18 last day of its taxable year) does not exceed \$35,000 times the number
19 of its owners; and

20 (5) is not required to register itself or its membership interests with
21 the federal Securities and Exchange Commission (SEC). Generally, a
22 club is exempt from any requirement to register *itself* with the SEC as
23 an "investment company" if it has exempt status as, for instance, a
24 "private investment company" (i.e., it has no more than 100 members
25 *and* makes no public offering of securities). A club need not register
26 its *offer and sale of membership interests* with the SEC if ownership
27 interests in the club portfolio are not considered "securities." (Such
28 ownership interests are usually not considered "securities" if all club
29 members actively participate in deciding what investments the club will
30 make.)

31 The bill provides an inflation adjustment for the cap on the average
32 assets of the owners.

ASSEMBLY, No. 2666

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED SEPTEMBER 12, 2002

Sponsored by:

Assemblyman JOSEPH R. MALONE, III

District 30 (Burlington, Mercer, Monmouth and Ocean)

Assemblyman MELVIN COTTRELL

District 30 (Burlington, Mercer, Monmouth and Ocean)

Co-Sponsored by:

Assemblymen Bateman, Holzapfel, Russo, Wolfe, Blee, Gusciora, O'Toole,

D'Amato, DeCroce, Geist, Azzolina, Diegnan, S.Kean, Barnes, Munoz and

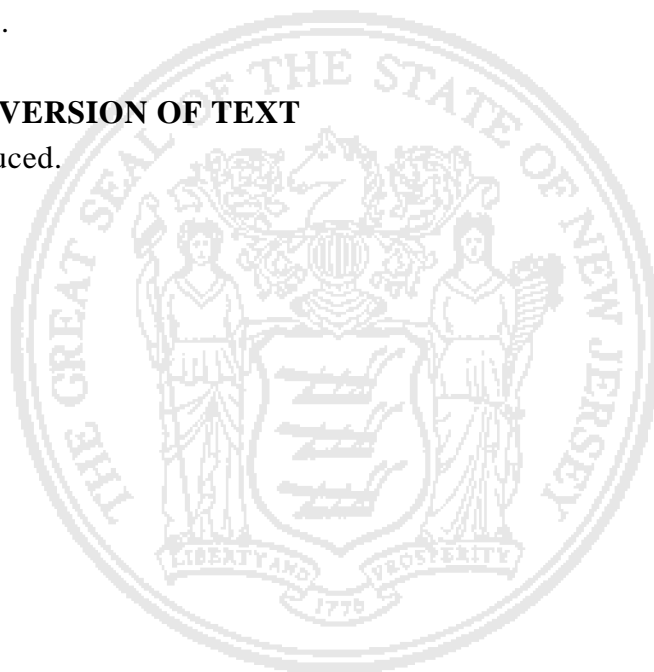
Assemblywoman Myers

SYNOPSIS

Exempts certain investment clubs from certain partnership fee and payment requirements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/12/2003)

1 AN ACT exempting certain investment clubs from certain partnership
2 fee and payment requirements, amending P.L.2002, c.40 and
3 N.J.S.54A:8-6.

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

7
8 1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to
9 read as follows:

10 12. a. A partnership that is not a qualified investment partnership
11 or an investment club and that is not listed on a United States national
12 stock exchange shall, on or before the 15th day of the fourth month
13 succeeding the close of each privilege period, remit a payment of tax.
14 The amount of tax shall be equal to the sum of: all of the share of the
15 entire net income of the partnership for that privilege period of all
16 nonresident noncorporate partners, multiplied by an allocation factor
17 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
18 based on the allocation fractions of the partnership for that privilege
19 period, and multiplied by .0637 plus all of the share of the entire net
20 income of the partnership for that privilege period of all nonresident
21 corporate partners, multiplied by an allocation factor determined,
22 pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the
23 allocation fractions of the partnership for that privilege period, and
24 multiplied by .09.

25 b. An amount of tax paid by a partnership pursuant to subsection
26 a. of this section shall be credited to accounts of its nonresident
27 partners in proportion to each nonresident partner's share of allocated
28 entire net income and the multiplier rate for that partner class under
29 subsection a. of this section as of the date of its receipt by the director,
30 and each amount of tax so credited shall be deemed to have been paid
31 by the respective partner in respect of the privilege period or taxable
32 year of the partner.

33 c. For the purposes of this section:

34 "Investment club" means an entity: that is classified as a partnership
35 for federal income tax purposes; all of the owners of which are
36 individuals; all of the assets of which are securities, cash, or cash
37 equivalents; the market value of the total assets of which do not
38 exceed, as measured on the last day of its taxable year, an amount
39 equal to \$50,000 per owner of the entity; and which is not required to
40 register itself or its membership interests with the federal Securities
41 and Exchange Commission; provided that beginning with privilege
42 periods commencing on or after January 1, 2003 the director shall
43 prescribe the per-owner asset amount which shall apply by increasing

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 \$50,000 amount hereinabove by an inflation adjustment factor,
2 which amount shall be rounded to the next highest multiple of \$100.
3 The inflation adjustment factor shall be equal to the factor calculated
4 by dividing the consumer price index for urban wage earners and
5 clerical workers for the nation, as prepared by the United States
6 Department of Labor for September of the calendar year prior to the
7 calendar year in which the privilege period begins, by that index for
8 September of 2001;

9 "Nonresident noncorporate partner" means, an individual, an estate
10 or a trust subject to taxation pursuant to the "New Jersey Gross
11 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
12 taxpayer or a resident estate or trust under that act;

13 "Nonresident corporate partner" means a partner that is not an
14 individual, an estate or a trust subject to taxation pursuant to the "New
15 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
16 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
17 (C.54:10A-3), and that does not maintain a regular place of business
18 in this State other than a statutory office; and

19 "Partner" means an owner of an interest in the partnership, in
20 whatever manner that owner and ownership interest are designated.
21 (cf: P.L.2002, c.40, s.12)

22

23 2. N.J.S.54A:8-6 is amended to read as follows:

24 54A:8-6. Requirements concerning returns, notices, records and
25 statements. (a) General. The director may prescribe regulations as
26 to the keeping of records, the content and form of returns and
27 statements, and the filing of copies of federal income tax returns and
28 determinations. The director may require any person, by regulation or
29 notice served upon such person, to make such returns, render such
30 statements, or keep such records, as the director may deem sufficient
31 to show whether or not such person is liable under this act for tax or
32 for collection of tax.

33 (b) Partnerships. (1) Each entity classified as a partnership for
34 federal income tax purposes, including but not limited to a partnership,
35 a limited liability partnership, or a limited liability company, having a
36 resident owner of an interest in the entity or having any income
37 derived from New Jersey sources, shall make a return for the taxable
38 year setting forth all items of income, gain, loss and deduction and
39 such other pertinent information as the director may by regulations and
40 instructions prescribe. The director shall prescribe a State return form
41 that, at a minimum, includes the name and address of each partner,
42 member, or other owner of an interest in the entity however
43 designated, of the entity for taxable years ending on or after December
44 31, 1994. Such return shall be filed on or before the fifteenth day of
45 the fourth month following the close of each taxable year.

46 (2) (A) Each entity classified as a partnership for federal income

1 tax purposes, other than an investment club, having any income
2 derived from New Jersey sources, including but not limited to a
3 partnership, a limited liability partnership, or a limited liability
4 company, that has more than two owners shall at the prescribed time
5 for making the return required under this subsection make a payment
6 of a filing fee of \$150 for each owner of an interest in the entity, up to
7 a maximum of \$250,000. For the purposes of this paragraph,
8 "investment club" means an entity: that is classified as a partnership for
9 federal income tax purposes; all of the owners of which are
10 individuals; all of the assets of which are securities, cash, or cash
11 equivalents; the market value of the total assets of which do not
12 exceed, as measured on the last day of its taxable year, an amount
13 equal to \$50,000 per owner of the entity; and which is not required to
14 register itself or its membership interests with the federal Securities
15 and Exchange Commission; provided that beginning with privilege
16 periods commencing on or after January 1, 2003 the director shall
17 prescribe the per-owner asset amount which shall apply by increasing
18 the \$50,000 amount hereinabove by an inflation adjustment factor,
19 which amount shall be rounded to the next highest multiple of \$100.
20 The inflation adjustment factor shall be equal to the factor calculated
21 by dividing the consumer price index for urban wage earners and
22 clerical workers for the nation, as prepared by the United States
23 Department of Labor for September of the calendar year prior to the
24 calendar year in which the taxable year begins, by that index for
25 September of 2001;

26 (B) Each entity required to make a payment pursuant to
27 subparagraph (A) of this paragraph shall also make, at the same time
28 as making its payment pursuant to subparagraph (A) of this paragraph,
29 an installment payment of its filing fee for the succeeding return period
30 in an amount equal to 50% of the amount required to be paid pursuant
31 to subparagraph (A). The amount of the installment payment shall be
32 credited against the amount of the filing fee due for the succeeding
33 return period, or, if the amount of the installment payment exceeds the
34 amount of the filing fee due for the succeeding return period,
35 successive return periods.

36 (C) Notwithstanding the provisions of R.S.54:48-2 and
37 R.S.54:48-4 to the contrary, the fee required pursuant to subparagraph
38 (A) of this paragraph and the installment payment required pursuant
39 to subparagraph (B) of this paragraph shall, for purposes of
40 administration, be payments to which the provisions of the State
41 Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable
42 and the collection thereof may be enforced by the director in the
43 manner therein provided.

44 (3) Each entity required to file a return under this subsection for
45 any taxable year shall, on or before the day on which the return for the
46 taxable year is required to be filed, furnish to each person who is a

1 partner or other owner of an interest in the entity however designated,
2 or who holds an interest in such entity as a nominee for another person
3 at any time during that taxable year a copy of such information
4 required to be shown on such return as the director may prescribe.

5 (4) For the purposes of this subsection, "taxable year" means a year
6 or period which would be a taxable year of the partnership if it were
7 subject to tax under this act.

8 (c) Information at source. The director may prescribe regulations
9 and instructions requiring returns of information to be made and filed
10 on or before February 15 of each year as to the payment or crediting
11 in any calendar year of amounts of \$100.00 or more to any taxpayer
12 under this act. Such returns may be required of any person, including
13 lessees or mortgagors of real or personal property, fiduciaries,
14 employers, and all officers and employees of this State, or of any
15 municipal corporation or political subdivision of this State, having the
16 control, receipt, custody, disposal or payment of interest, rents,
17 salaries, wages, premiums, annuities, compensations, remunerations,
18 emoluments or other fixed or determinable gains, profits or income,
19 except interest coupons payable to bearer. A duplicate of the
20 statement as to tax withheld on wages, required to be furnished by an
21 employer to an employee, shall constitute the return of information
22 required to be made under this section with respect to such wages.

23 (d) Notice of qualification as receiver, et cetera. Every receiver,
24 trustee in bankruptcy, assignee for benefit of creditors, or other like
25 fiduciary shall give notice of his qualification as such to the director,
26 as may be required by regulation.

27 (cf: P.L.2002, c.40, s.22)

28
29 3. This act shall take effect immediately and apply to taxable years
30 beginning on or after January 1, 2002.

31
32
33 STATEMENT

34
35 This bill exempts certain investment clubs from the withholding and
36 fee requirements recently imposed on partnerships.

37 Investment clubs are usually small groups of individuals interested
38 in learning about and practicing investment in the stock market.
39 Usually, each member regularly contributes a small amount of money
40 to the club and the club meets regularly to discuss and make
41 investment decisions. The National Association of Investors
42 Corporation (NAIC), the national association of investment clubs,
43 suggests that club members invest in common stocks and that members
44 take turns researching and reporting on companies in which they might
45 invest.

46 According to the NAIC's 2001 calendar year survey data obtained

1 from its 400,000 individual members and its 32,000 member clubs, the
2 average club had 11 members, who invested about \$85 per month each
3 in common stocks. The average club had assets of \$63,000 in 2001.
4 The NAIC recommends that a starting club set monthly contributions
5 at \$20 or \$25 per month per member, and that the club members enter
6 into a business partnership to formalize the business arrangements
7 among the members.

8 P.L.2002, c.40 made extensive revisions to business taxes, mainly
9 to the corporation business tax (N.J.S.A.54:10A-1 et seq) but also
10 some changes to the duties of partnerships, including requirements
11 that partnerships pay a processing fee and make payments on behalf of
12 their owners. For taxable year 2002 and thereafter, a partnership that
13 has income from New Jersey sources and more than two members
14 must pay a \$150 per owner filing fee. Partnerships must also make a
15 payment on the share of the partnership income of each nonresident
16 owner at a 6.37% rate for individual owners; the payment is credited
17 to a separate account for each owner and may be credited against the
18 owner's tax liability.

19 This bill exempts investment clubs from the \$150 per owner annual
20 partnership processing fee and from the requirement that a partnership
21 make a payment on behalf of each nonresident owner. The bill defines
22 an exempt investment club as an entity that is classified for federal tax
23 purposes as a partnership and that: has all owners who are individuals;
24 has all of its assets in securities, cash, or cash equivalents; has a total
25 market value of all of its assets (measured on the last day of its taxable
26 year) not in excess of \$50,000 times the number of its owners; and is
27 not required to register itself or its membership interests with the
28 federal Securities and Exchange Commission. The bill provides an
29 inflation adjustment for the cap on the average assets of the owners.

ASSEMBLY, No. 2690

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED SEPTEMBER 12, 2002

Sponsored by:

Assemblyman FRANCIS L. BODINE

District 8 (Burlington)

Assemblyman LARRY CHATZIDAKIS

District 8 (Burlington)

Co-Sponsored by:

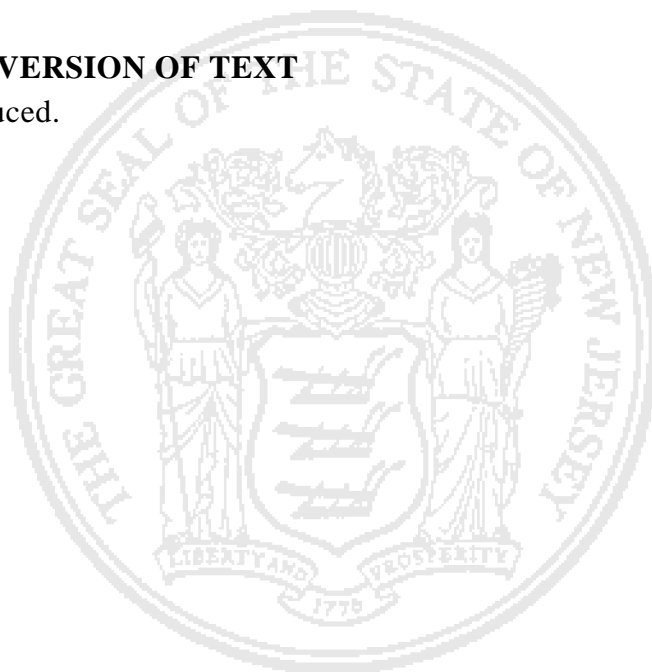
**Assemblymen Arnone, Blee, D'Amato, Assemblywoman Vandervalk,
Assemblymen T.Kean and Pennacchio**

SYNOPSIS

Exempts qualified investment clubs from certain partnership fee and payment requirements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/16/2003)

1 AN ACT exempting qualified investment clubs from certain partnership
2 fee and payment requirements, amending P.L.2002, c.40 and
3 N.J.S.54A:8-6.

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

7
8 1. Section 12 of P.L.2002, c. 40 (C.54:10A-15.11) is amended to
9 read as follows:

10 12. a. A partnership that is not a qualified investment partnership
11 or a qualified investment club and that is not listed on a United States
12 national stock exchange shall, on or before the 15th day of the fourth
13 month succeeding the close of each privilege period, remit a payment
14 of tax. The amount of tax shall be equal to the sum of: all of the share
15 of the entire net income of the partnership for that privilege period of
16 all nonresident noncorporate partners, multiplied by an allocation
17 factor determined, pursuant to section 6 of P.L.1945, c.162
18 (C.54:10A-6), based on the allocation fractions of the partnership for
19 that privilege period, and multiplied by .0637 plus all of the share of
20 the entire net income of the partnership for that privilege period of all
21 nonresident corporate partners, multiplied by an allocation factor
22 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
23 based on the allocation fractions of the partnership for that privilege
24 period, and multiplied by .09.

25 b. An amount of tax paid by a partnership pursuant to subsection
26 a. of this section shall be credited to accounts of its nonresident
27 partners in proportion to each nonresident partner's share of allocated
28 entire net income and the multiplier rate for that partner class under
29 subsection a. of this section as of the date of its receipt by the director,
30 and each amount of tax so credited shall be deemed to have been paid
31 by the respective partner in respect of the privilege period or taxable
32 year of the partner.

33 c. For the purposes of this section:

34 "Nonresident noncorporate partner" means, an individual, an estate
35 or a trust subject to taxation pursuant to the "New Jersey Gross
36 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
37 taxpayer or a resident estate or trust under that act;

38 "Nonresident corporate partner" means a partner that is not an
39 individual, an estate or a trust subject to taxation pursuant to the "New
40 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
41 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
42 (C.54:10A-3), and that does not maintain a regular place of business
43 in this State other than a statutory office; [and]

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 "Partner" means an owner of an interest in the partnership, in
2 whatever manner that owner and ownership interest are designated;
3 and

4 "Qualified investment club" means an entity: that is classified as a
5 partnership for federal income tax purposes; all of the owners of which
6 are individuals; all of the assets of which are securities, derivatives of
7 securities, cash, or cash equivalents; the market value of the total
8 assets of which do not exceed, as measured on the last day of its
9 taxable year, an amount equal to \$25,000 multiplied by the number of
10 its owners; and which is not required to register itself or its
11 membership interests with the federal Securities and Exchange
12 Commission.

13 (cf: P.L.2002, c.40, s.12)

14

15 2. N.J.S.54A:8-6 is amended to read as follows:

16 54A:8-6. Requirements concerning returns, notices, records and
17 statements. (a) General. The director may prescribe regulations as to
18 the keeping of records, the content and form of returns and
19 statements, and the filing of copies of federal income tax returns and
20 determinations. The director may require any person, by regulation or
21 notice served upon such person, to make such returns, render such
22 statements, or keep such records, as the director may deem sufficient
23 to show whether or not such person is liable under this act for tax or
24 for collection of tax.

25 (b) Partnerships. (1) Each entity classified as a partnership for
26 federal income tax purposes, including but not limited to a partnership,
27 a limited liability partnership, or a limited liability company, having a
28 resident owner of an interest in the entity or having any income
29 derived from New Jersey sources, shall make a return for the taxable
30 year setting forth all items of income, gain, loss and deduction and
31 such other pertinent information as the director may by regulations and
32 instructions prescribe. The director shall prescribe a State return form
33 that, at a minimum, includes the name and address of each partner,
34 member, or other owner of an interest in the entity however
35 designated, of the entity for taxable years ending on or after December
36 31, 1994. Such return shall be filed on or before the fifteenth day of
37 the fourth month following the close of each taxable year.

38 (2) (A) Each entity classified as a partnership for federal income
39 tax purposes, other than a qualified investment club, having any
40 income derived from New Jersey sources, including but not limited to
41 a partnership, a limited liability partnership, or a limited liability
42 company, that has more than two owners shall at the prescribed time
43 for making the return required under this subsection make a payment
44 of a filing fee of \$150 for each owner of an interest in the entity, up to
45 a maximum of \$250,000. For the purposes of this paragraph,
46 "qualified investment club" means an entity: that is classified as a

1 partnership for federal income tax purposes; all of the owners of which
2 are individuals; all of the assets of which are securities, derivatives of
3 securities, cash, or cash equivalents; the market value of the total
4 assets of which do not exceed, as measured on the last day of its
5 taxable year, an amount equal to \$25,000 multiplied by the number of
6 its owners; and which is not required to register itself or its
7 membership interests with the federal Securities and Exchange
8 Commission.

9 (B) Each entity required to make a payment pursuant to
10 subparagraph (A) of this paragraph shall also make, at the same time
11 as making its payment pursuant to subparagraph (A) of this paragraph,
12 an installment payment of its filing fee for the succeeding return period
13 in an amount equal to 50% of the amount required to be paid pursuant
14 to subparagraph (A). The amount of the installment payment shall be
15 credited against the amount of the filing fee due for the succeeding
16 return period, or, if the amount of the installment payment exceeds the
17 amount of the filing fee due for the succeeding return period,
18 successive return periods.

19 (C) Notwithstanding the provisions of R.S.54:48-2 and
20 R.S.54:48-4 to the contrary, the fee required pursuant to subparagraph
21 (A) of this paragraph and the installment payment required pursuant
22 to subparagraph (B) of this paragraph shall, for purposes of
23 administration, be payments to which the provisions of the State
24 Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable
25 and the collection thereof may be enforced by the director in the
26 manner therein provided.

27 (3) Each entity required to file a return under this subsection for
28 any taxable year shall, on or before the day on which the return for the
29 taxable year is required to be filed, furnish to each person who is a
30 partner or other owner of an interest in the entity however designated,
31 or who holds an interest in such entity as a nominee for another person
32 at any time during that taxable year a copy of such information
33 required to be shown on such return as the director may prescribe.

34 (4) For the purposes of this subsection, "taxable year" means a year
35 or period which would be a taxable year of the partnership if it were
36 subject to tax under this act.

37 (c) Information at source. The director may prescribe regulations
38 and instructions requiring returns of information to be made and filed
39 on or before February 15 of each year as to the payment or crediting
40 in any calendar year of amounts of \$100.00 or more to any taxpayer
41 under this act. Such returns may be required of any person, including
42 lessees or mortgagors of real or personal property, fiduciaries,
43 employers, and all officers and employees of this State, or of any
44 municipal corporation or political subdivision of this State, having the
45 control, receipt, custody, disposal or payment of interest, rents,
46 salaries, wages, premiums, annuities, compensations, remunerations,

1 emoluments or other fixed or determinable gains, profits or income,
2 except interest coupons payable to bearer. A duplicate of the
3 statement as to tax withheld on wages, required to be furnished by an
4 employer to an employee, shall constitute the return of information
5 required to be made under this section with respect to such wages.

6 (d) Notice of qualification as receiver, et cetera. Every receiver,
7 trustee in bankruptcy, assignee for benefit of creditors, or other like
8 fiduciary shall give notice of his qualification as such to the director,
9 as may be required by regulation.

10 (cf: P.L.2002, c.40, s.22)

11
12 3. This act shall take effect immediately and apply to taxable years
13 beginning on or after January 1, 2002.

14 15 16 STATEMENT

17
18 This bill exempts certain investment clubs from the withholding and
19 fee requirements recently imposed on partnerships.

20 Investment clubs are usually small groups of individuals interested
21 in learning about and practicing investment in the stock market. As
22 these clubs have developed over the last 50 or so years, each member
23 regularly contributes a small amount of money to the club, which
24 meets regularly to discuss companies and make decisions about which
25 stocks to buy and sell. Members take turns researching and reporting
26 on promising companies in which they might invest or companies in
27 which the club is already invested.

28 The National Association of Investors Corporation (NAIC),
29 established in 1951, is the national association of investment clubs.
30 According to 2001 survey data from its 400,000 individual members
31 and its 32,000 member clubs, the average club has 11 members, who
32 invest about \$85 per month each in common stocks. The average club
33 had assets of \$63,000 in 2001. The NAIC recommends that a starting
34 club set monthly contributions at \$20 or \$25 per month per member,
35 and that the club members establish themselves as a partnership to
36 formalize the business arrangements among the members.

37 P.L.2002, c.40 made extensive revisions to business taxes, mainly
38 to the corporation business tax (N.J.S.A.54:10A-1 et seq) but also
39 some changes to the duties of partnerships, including requirements
40 that partnerships pay a processing fee and make payments on behalf of
41 their owners. For taxable year 2002 and thereafter, a partnership that
42 has income from New Jersey sources and more than two members
43 must pay a \$150 per owner filing fee. Partnerships must also make a
44 payment on the share of the partnership income of each nonresident
45 owner at a 6.37% rate for individual owners; the payment is credited
46 to a separate account for each owner and may be credited against the

1 owner's tax liability.

2 This bill exempts qualified investment clubs from the \$150 per
3 owner annual partnership processing fee and from the requirement that
4 a partnership make a payment on behalf of each nonresident owner.

5 The bill defines a qualified investment club as an entity that is
6 classified for federal tax purposes as a partnership and that meets the
7 following four requirements:

8 C all of the owners are individuals;

9 C all of the assets of the entity are securities, derivatives of securities,
10 cash, or cash equivalents;

11 C the market value of the total assets of the entity do not exceed, as
12 measured on the last day of its taxable year, an amount equal to
13 \$25,000 multiplied by the number of its owners (this is about four
14 times the reported average investment of NAIC members in their
15 investment clubs);

16 C the entity is not required to register itself or its membership
17 interests with the federal Securities and Exchange Commission (this
18 assures that no "investment club" interests can be marketed as
19 discount investment vehicles).

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 2100, 2666 and 2690

STATE OF NEW JERSEY

DATED: JANUARY 8, 2004

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 2100, 2666 and 2690.

This Assembly Committee Substitute for Assembly Bill Nos. 2100, 2666 and 2690 exempts certain investment clubs from the withholding and fee requirements recently imposed on partnerships.

P.L.2002, c.40 made extensive revisions to business taxes, mainly to the corporation business tax (N.J.S.A.54:10A-1 et seq.), but also to the duties of partnerships and other entities that are not themselves taxable, but "pass through" their income to their owners. These revisions included new requirements that partnerships pay a filing fee and make certain payments on behalf of the owners. More specifically, for taxable year 2002 and thereafter:

- * a partnership that has income from New Jersey sources and more than two owners must pay an annual filing fee of \$150 per owner, but not more than \$250,000; and
- * a partnership must make a payment on the share of the partnership income of each of its *nonresident* owners at a rate of 6.37% for individual owners and 9% for corporate owners; in a manner similar to withholding, the payments are credited to a separate account for each owner and may be credited against the owner's income tax liability for the owner's share of partnership income.

This substitute exempts "investment clubs" from the \$150 per owner annual partnership filing fee and from the "withholding" requirement that a partnership make payments on behalf of its nonresident owners. (1) is classified as a partnership for federal tax purposes;

- (2) has an ownership comprised only of individuals;
- (3) has all of its assets in securities, cash, or cash equivalents;
- (4) has assets, the total market value of which (measured on the last day of its tax period) does not exceed the lesser of \$250,000 or \$35,000 times the number of its owners; and
- (5) is not required to register itself or its membership interests with the federal Securities and Exchange Commission (SEC). Generally, a club is exempt from any requirement to register *itself* with the SEC as an "investment company" if it has exempt status as, for instance, a "private investment company" (i.e., it has no more than 100

members *and* makes no public offering of securities). A club need not register its *offer and sale of membership interests* with the SEC if ownership interests in the club portfolio are not considered "securities." (Such ownership interests are usually not considered "securities" if all club members actively participate in deciding what investments the club will make.)

The substitute provides an inflation adjustment for the cap on the total and average assets of the owners.

As reported by the committee, this substitute is identical to Senate Bill Nos. 1770/1773 (SCS), as amended and reported by the committee.

FISCAL IMPACT:

Executive branch estimates using national data for 2001 that indicated that investment clubs had 400,000 individual members, and the assumption that 4% of the members are in New Jersey based clubs, conclude that 16,000 members of investment clubs at most are subject to the \$150 filing fee and that \$2.4 million in filing fees should be forthcoming from these investment clubs.

The executive branch estimates note that New Jersey regulations exempt investment clubs with total asset values less than \$60,000 from filing fee payments. The executive estimates that this exemption results in a loss of approximately \$1.4 million of the \$2.4 million total, so that this bill would cause a maximum further revenue loss of \$1 million annually to the Property Tax Relief Fund or the General Fund.

Using more recent data, the Office of Legislative Services (OLS) concludes that the revenue impact of this bill would be somewhat less than executive estimate. The national data from 2003 indicate that there are 298,000 investment clubs members nationwide (a 25 percent decline from two years earlier). Applying the same 4 percent allocation to New Jersey as was applied by the executive branch, OLS estimates that New Jersey has 11,920 investment club members and that the maximum possible liability for investment clubs would be \$1.8 million. After consideration of the impact of the November 26, 2002 announcement by the State Treasurer that the filing fee would be waived for all investment clubs with assets below \$60,000, that the executive branch analysis that this regulatory change reduced the liability by \$1.4 million, the additional Maximum revenue reduction that could result from this bill would be the remaining \$400,000.

However, absent an explanation of the executive \$1.4 million estimated cost for the waiver, OLS doubts that such a large proportion (more than 75%) of the members would have been in clubs with assets were less than \$60,000, when the national average for club assets is more than \$86,000. Alternatively, if half the members were excluded by the \$60,000 limit, the maximum impact of this bill would be \$900,000. This cost would be reduced further because some clubs - although probably not a large percentage - have assets above the bill's \$250,000 per club/\$35,000 per member level and would still be subject to the fee. An additional factor which would reduce the bill's fiscal impact is the opportunity for clubs to restructure or reorganize in order to avoid the fee. Accordingly, OLS estimates that maximum cost from the bill at about \$800,000.

There will be no fiscal impact from the exemption for the "withholding" payment, because nonresident members of New Jersey investment clubs derive no income from the investment clubs that would be subject to New Jersey taxation.

FISCAL NOTE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2100
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: FEBRUARY 4, 2004

SUMMARY

Synopsis: Exempts certain investment clubs from certain partnership fee and payment requirements.

Type of Impact: General Fund Revenue Loss

Agencies Affected: Division of Revenue

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	(\$400,000-800,000)	(\$400,000-800,000)	(\$400,000-800,000)

- * The Executive estimates that the revenue loss from this bill be a \$1 million a year.
- * Using more recent data, the Office of Legislative Services estimates a substantially smaller revenue loss.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill Nos. 2100, 2666 and 2690 of 2002 exempts "investment clubs" from the \$150 per owner annual partnership filing fee and from the "withholding" requirement that a partnership make payments on behalf of nonresident owners.

P.L.2002, c.40 made extensive revisions to business taxes, mainly to the corporation business tax (N.J.S.A.54:10A-1 et seq.), but also to the duties of partnerships and other entities that are not themselves taxable, but "pass through" their income to their owners. These revisions included new requirements that partnerships pay a filing fee and make certain payments on behalf of the owners. More specifically, for taxable year 2002 and thereafter:

- * A partnership that has income from New Jersey sources and more than two owners must

pay an annual filing fee of \$150 per owner, but not more than \$250,000; and

- * Partnerships must also make a payment on the share of the partnership income of each *nonresident* owner at a rate of 6.37 percent for individual owners and 9 percent for corporate owners; in a manner similar to withholding, the payment is credited to a separate account for each owner and may be credited against the owner's income tax liability for the owner's share of partnership income.

This bill exempts "investment clubs" from the \$150 per owner annual partnership filing fee and from the "withholding" requirement that a partnership make payments on behalf of nonresident owners. The bill defines an exempt investment club as an entity that:

- (1) Is classified as a partnership for federal tax purposes;
- (2) Has an ownership comprised only of individuals;
- (3) Has all of its assets in securities, cash, or cash equivalents;
- (4) Has assets, the total market value of which (measured on the last day of its taxable year) does not exceed \$35,000 times the number of its owners or a total of \$250,000; and
- (5) Is not required to register itself or its membership interests with the federal Securities and Exchange Commission (SEC).

FISCAL ANALYSIS

EXECUTIVE BRANCH

National data for 2001 indicated that investment clubs had 400,000 individual members. The Executive has assumed that 4 percent of the members are in New Jersey based clubs, resulting in approximately 16,000 members at most that are subject to the \$150 filing fee and \$2.4 million in filing fee that should be forthcoming from these members. Also assuming that all investment clubs with income from New Jersey sources were exempt, the loss would be \$2.4 million.

New Jersey regulations exempt investment clubs with total asset values less than \$60,000 from filing fee payments. The regulations result in a loss of approximately \$1.4 million of the \$2.4 million total. This bill would extend the exemption to investment clubs based on asset values of \$35,000 multiplied by the number of its owners. This would result in a further loss of revenue of \$1 million annually to the Property tax Relief Fund or the General Fund.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) has utilized more recent data to conclude that the revenue impact of this bill would be somewhat less than executive estimate.

The National Association of Investors Corporation, a national association of investment clubs, reports that survey data from 2003 indicate that there are 298,000 investment clubs members nationwide (a 25 percent from two years earlier). An average club has a membership of 11.6 and holdings of \$87,000. OLS applied the same 4 percent allocation to New Jersey as was applied by the Executive, and estimates that New Jersey has 11,920 investment club members. Accordingly the maximum possible liability for investment clubs under the provisions of P.L.2002, c.40 would be \$1.8 million (11,920 x \$150).

However, on November 26, 2002, the State Treasurer announced that the filing fee would be waived for all investment clubs with assets below \$60,000. According to the Executive's fiscal analysis this regulatory change reduced the liability by \$1.4 million. Accordingly the additional

revenue reduction that could result from this bill would be the remaining \$400,000 (\$1,800,00 - \$1,400,000)

The executive provided no explanation for the \$1.4 million estimate and OLS doubts that such a large proportion (more than 75 percent) of the members would have been in clubs who assets were less than \$60,000, when the national average for club assets is more than \$86,000. Alternatively, if half the members were excluded by the \$60,000 limit, the maximum impact of this bill would be \$900,000. This cost would be reduced further because some clubs - although probably not a large percentage - have assets above the bill's \$35,000 per member or \$250,000 level and would still be subject to the fee. An additional factor which would reduce the bill's fiscal impact is the opportunity for clubs to restructure or reorganize in order to avoid the fee. Accordingly, OLS estimates that maximum cost from the bill at about \$800,000.

There will be no fiscal impact from the exemption for the "withholding" payment, because nonresident members of New Jersey investment clubs would derive no income from the investment clubs that would be subject to New Jersey taxation.

OLS does not understand why the Executive estimate reflects a belief that the revenue loss from the bill might be experienced by the General Fund.

Section: *Revenue, Finance and Appropriations*

Analyst: *David J. Rosen*

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

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