

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

P.L. 2004, CHAPTER 47, *approved June 29, 2004*
Assembly, No. 3110

1 **AN ACT** concerning the net operating loss deduction under the
2 corporation business tax, amending P.L.1945, c.162.

3

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

6

7 1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read
8 as follows:

9 4. For the purposes of this act, unless the context requires a
10 different meaning:

11 (a) "Commissioner" or "director" shall mean the Director of the
12 Division of Taxation of the State Department of the Treasury.

13 (b) "Allocation factor" shall mean the proportionate part of a
14 taxpayer's net worth or entire net income used to determine a measure
15 of its tax under this act.

16 (c) "Corporation" shall mean any corporation, joint-stock company
17 or association and any business conducted by a trustee or trustees
18 wherein interest or ownership is evidenced by a certificate of interest
19 or ownership or similar written instrument, any other entity classified
20 as a corporation for federal income tax purposes, and any state or
21 federally chartered building and loan association or savings and loan
22 association.

23 (d) "Net worth" shall mean the aggregate of the values disclosed
24 by the books of the corporation for (1) issued and outstanding capital
25 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
26 profits, and (4) surplus reserves which can reasonably be expected to
27 accrue to holders or owners of equitable shares, not including
28 reasonable valuation reserves, such as reserves for depreciation or
29 obsolescence or depletion. Notwithstanding the foregoing, net worth
30 shall not include any deduction for the amount of the excess
31 depreciation described in paragraph (2)(F) of subsection (k) of this
32 section. The foregoing aggregate of values shall be reduced by 50%
33 of the amount disclosed by the books of the corporation for investment
34 in the capital stock of one or more subsidiaries, which investment is
35 defined as ownership (1) of at least 80% of the total combined voting
36 power of all classes of stock of the subsidiary entitled to vote and (2)
37 of at least 80% of the total number of shares of all other classes of
38 stock except nonvoting stock which is limited and preferred as to
39 dividends. In the case of investment in an entity organized under the
40 laws of a foreign country, the foregoing requisite degree of ownership
41 shall effect a like reduction of such investment from the net worth of

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 taxpayer, if the foreign entity is considered a corporation for any
2 purpose under the United States federal income tax laws, such as (but
3 not by way of sole examples) for the purpose of supplying deemed
4 paid foreign tax credits or for the purpose of status as a controlled
5 foreign corporation. In calculating the net worth of a taxpayer entitled
6 to reduction for investment in subsidiaries, the amount of liabilities of
7 the taxpayer shall be reduced by such proportion of the liabilities as
8 corresponds to the ratio which the excluded portion of the subsidiary
9 values bears to the total assets of the taxpayer.

10 In the case of banking corporations which have international
11 banking facilities as defined in subsection (n), the foregoing aggregate
12 of values shall also be reduced by retained earnings of the international
13 banking facility. Retained earnings means the earnings accumulated
14 over the life of such facility and shall not include the distributive share
15 of dividends paid and federal income taxes paid or payable during the
16 tax year.

17 If in the opinion of the commissioner, the corporation's books do
18 not disclose fair valuations the commissioner may make a reasonable
19 determination of the net worth which, in his opinion, would reflect the
20 fair value of the assets, exclusive of subsidiary investments as defined
21 aforesaid, carried on the books of the corporation, in accordance with
22 sound accounting principles, and such determination shall be used as
23 net worth for the purpose of this act.

24 (e) (Deleted by amendment, P.L.1998, c.114.)

25 (f) "Investment company" shall mean any corporation whose
26 business during the period covered by its report consisted, to the
27 extent of at least 90% thereof of holding, investing and reinvesting in
28 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
29 other securities for its own account, but this shall not include any
30 corporation which: (1) is a merchant or a dealer of stocks, bonds and
31 other securities, regularly engaged in buying the same and selling the
32 same to customers; or (2) had less than 90% of its average gross
33 assets in New Jersey, at cost, invested in stocks, bonds, debentures,
34 mortgages, notes, patents, patent rights or other securities or
35 consisting of cash on deposit during the period covered by its report;
36 or (3) is a banking corporation, a savings institution, or a financial
37 business corporation as defined in the Corporation Business Tax Act.

38 (g) "Regulated investment company" shall mean any corporation
39 which for a period covered by its report, is registered and regulated
40 under the Investment Company Act of 1940 (54 Stat. 789), as
41 amended.

42 (h) "Taxpayer" shall mean any corporation, and any partnership
43 required, or consenting, to report or to pay taxes, interest or penalties
44 under this act. "Taxpayer" shall not include a partnership that is listed
45 on a United States national stock exchange.

46 (i) "Fiscal year" shall mean an accounting period ending on any day

1 other than the last day of December on the basis of which the taxpayer
2 is required to report for federal income tax purposes.

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

6 (k) "Entire net income" shall mean total net income from all
7 sources, whether within or without the United States, and shall include
8 the gain derived from the employment of capital or labor, or from both
9 combined, as well as profit gained through a sale or conversion of
10 capital assets.

11 For the purpose of this act, the amount of a taxpayer's entire net
12 income shall be deemed prima facie to be equal in amount to the
13 taxable income, before net operating loss deduction and special
14 deductions, which the taxpayer is required to report, or, if the taxpayer
15 is classified as a partnership for federal tax purposes, would otherwise
16 be required to report, to the United States Treasury Department for
17 the purpose of computing its federal income tax, provided however,
18 that in the determination of such entire net income,

19 (1) Entire net income shall exclude for the periods set forth in
20 paragraph (2)(F)(i) of this subsection, any amount, except with respect
21 to qualified mass commuting vehicles as described in section
22 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
23 prior to January 1, 1984, which is included in a taxpayer's federal
24 taxable income solely as a result of an election made pursuant to the
25 provisions of paragraph (8) of that section.

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

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

31 (B) Any part of any income from dividends or interest on any kind
32 of stock, securities or indebtedness, except as provided in paragraph
33 (5) of subsection (k) of this section;

34 (C) Taxes paid or accrued to the United States, a possession or
35 territory of the United States, a state, a political subdivision thereof,
36 or the District of Columbia, or to any foreign country, state, province,
37 territory or subdivision thereof, on or measured by profits or income,
38 or business presence or business activity, or the tax imposed by this
39 act, or any tax paid or accrued with respect to subsidiary dividends
40 excluded from entire net income as provided in paragraph (5) of
41 subsection (k) of this section;

42 (D) (Deleted by amendment, P.L.1985, c.143.)

43 (E) (Deleted by amendment, P.L.1995, c.418.)

44 (F) (i) The amount by which depreciation reported to the United
45 States Treasury Department for property placed in service on and after
46 January 1, 1981, but prior to taxpayer fiscal or calendar accounting

1 years beginning on and after the effective date of P.L.1993, c.172, for
2 purposes of computing federal taxable income in accordance with
3 section 168 of the Internal Revenue Code in effect after December 31,
4 1980, exceeds the amount of depreciation determined in accordance
5 with the Internal Revenue Code provisions in effect prior to January
6 1, 1981, but only with respect to a taxpayer's accounting period ending
7 after December 31, 1981; provided, however, that where a taxpayer's
8 accounting period begins in 1981 and ends in 1982, no modification
9 shall be required with respect to this paragraph (F) for the report filed
10 for such period with respect to property placed in service during that
11 part of the accounting period which occurs in 1981. The provisions
12 of this subparagraph shall not apply to assets placed in service prior to
13 January 1, 1998 of a gas, gas and electric, and electric public utility
14 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
15 seq.) prior to 1998.

16 (ii) For the periods set forth in subparagraph (F)(i) of this
17 subsection, any amount, except with respect to qualified mass
18 commuting vehicles as described in section 168(f)(8)(D)(v) of the
19 Internal Revenue Code as in effect immediately prior to January 1,
20 1984, which the taxpayer claimed as a deduction in computing federal
21 income tax pursuant to a qualified lease agreement under paragraph
22 (8) of that section.

23 The director shall promulgate rules and regulations necessary to
24 carry out the provisions of this section, which rules shall provide,
25 among others, the manner in which the remaining life of property shall
26 be reported.

27 (G) (i) The amount of any civil, civil administrative, or criminal
28 penalty or fine, including a penalty or fine under an administrative
29 consent order, assessed and collected for a violation of a State or
30 federal environmental law, an administrative consent order, or an
31 environmental ordinance or resolution of a local governmental entity,
32 and any interest earned on the penalty or fine, and any economic
33 benefits having accrued to the violator as a result of a violation, which
34 benefits are assessed and recovered in a civil, civil administrative, or
35 criminal action, or pursuant to an administrative consent order. The
36 provisions of this paragraph shall not apply to a penalty or fine
37 assessed or collected for a violation of a State or federal
38 environmental law, or local environmental ordinance or resolution, if
39 the penalty or fine was for a violation that resulted from fire, riot,
40 sabotage, flood, storm event, natural cause, or other act of God
41 beyond the reasonable control of the violator, or caused by an act or
42 omission of a person who was outside the reasonable control of the
43 violator.

44 (ii) The amount of treble damages paid to the Department of
45 Environmental Protection pursuant to subsection a. of section 7 of
46 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the

1 department in removing, or arranging for the removal of, an
2 unauthorized discharge upon failure of the discharger to comply with
3 a directive from the department to remove, or arrange for the removal
4 of, the discharge.

5 (H) The amount of any sales and use tax paid by a utility vendor
6 pursuant to section 71 of P.L.1997, c.162.

7 (I) Interest paid, accrued or incurred for the privilege period to a
8 related member , as defined in section 5 of P.L.2002, c.40
9 (C.54:10A-4.4), except that a deduction shall be permitted to the
10 extent that the taxpayer establishes by clear and convincing evidence,
11 as determined by the director, that: (i) a principal purpose of the
12 transaction giving rise to the payment of the interest was not to avoid
13 taxes otherwise due under Title 54 of the Revised Statutes or Title
14 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to
15 arm's length contracts at an arm's length rate of interest, and (iii)(aa)
16 the related member was subject to a tax on its net income or receipts
17 in this State or another state or possession of the United States or in
18 a foreign nation, (bb) a measure of the tax includes the interest
19 received from the related member, and (cc) the rate of tax applied to
20 the interest received by the related member is equal to or greater than
21 a rate three percentage points less than the rate of tax applied to
22 taxable interest by this State.

23 A deduction shall also be permitted if the taxpayer establishes by
24 clear and convincing evidence, as determined by the director, that the
25 disallowance of a deduction is unreasonable, or the taxpayer and the
26 director agree in writing to the application or use of an alternative
27 method of apportionment under section 8 of P.L.1945, c.162
28 (C.54:10A-8); nothing in this subsection shall be construed to limit or
29 negate the director's authority to otherwise enter into agreements and
30 compromises otherwise allowed by law.

31 A deduction shall also be permitted to the extent that the taxpayer
32 establishes by a preponderance of the evidence, as determined by the
33 director, that the interest is directly or indirectly paid, accrued or
34 incurred to (i) a related member in a foreign nation which has in force
35 a comprehensive income tax treaty with the United States, provided
36 however that the taxpayer shall disclose on its return for the privilege
37 period the name of the related member, the amount of the interest, the
38 relevant foreign nation, and such other information as the director may
39 prescribe or (ii) to an independent lender and the taxpayer guarantees
40 the debt on which the interest is required.

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

45 (4) There shall be allowed as a deduction from entire net income
46 of a banking corporation, to the extent not deductible in determining

1 federal taxable income, the eligible net income of an international
2 banking facility determined as follows:

3 (A) The eligible net income of an international banking facility shall
4 be the amount remaining after subtracting from the eligible gross
5 income the applicable expenses;

6 (B) Eligible gross income shall be the gross income derived by an
7 international banking facility, which shall include, but not be limited to,
8 gross income derived from:

9 (i) Making, arranging for, placing or carrying loans to foreign
10 persons, provided, however, that in the case of a foreign person which
11 is an individual, or which is a foreign branch of a domestic corporation
12 (other than a bank), or which is a foreign corporation or foreign
13 partnership which is controlled by one or more domestic corporations
14 (other than banks), domestic partnerships or resident individuals, all
15 the proceeds of the loan are for use outside of the United States;

16 (ii) Making or placing deposits with foreign persons which are
17 banks or foreign branches of banks (including foreign subsidiaries) or
18 foreign branches of the taxpayers or with other international banking
19 facilities;

20 (iii) Entering into foreign exchange trading or hedging transactions
21 related to any of the transactions described in this paragraph; or

22 (iv) Such other activities as an international banking facility may,
23 from time to time, be authorized to engage in;

24 (C) Applicable expenses shall be any expense or other deductions
25 attributable, directly or indirectly, to the eligible gross income
26 described in subparagraph (B) of this paragraph.

27 (5) Entire net income shall exclude 100% of dividends which were
28 included in computing such taxable income for federal income tax
29 purposes, paid to the taxpayer by one or more subsidiaries owned by
30 the taxpayer to the extent of the 80% or more ownership of investment
31 described in subsection (d) of this section and shall exclude 50% of
32 dividends which were included in computing such taxable income for
33 federal income tax purposes, paid to the taxpayer by one or more
34 subsidiaries owned by the taxpayer to the extent of 50% or more
35 ownership of investment, such ownership of investment calculated in
36 the same manner as the 80% or more of ownership of investment is
37 calculated as described in subsection (d) of this section.

38 (6) (A) Net operating loss deduction. There shall be allowed as a
39 deduction for the privilege period the net operating loss carryover to
40 that period.

41 (B) Net operating loss carryover. A net operating loss for any
42 privilege period ending after June 30, 1984 shall be a net operating
43 loss carryover to each of the seven privilege periods following the
44 period of the loss. The entire amount of the net operating loss for any
45 privilege period (the "loss period") shall be carried to the earliest of
46 the privilege periods to which the loss may be carried. The portion of

1 the loss which shall be carried to each of the other privilege periods
2 shall be the excess, if any, of the amount of the loss over the sum of
3 the entire net income, computed without the exclusions permitted in
4 paragraphs (4) and (5) of this subsection or the net operating loss
5 deduction provided by subparagraph (A) of this paragraph, for each of
6 the prior privilege periods to which the loss may be carried.

7 (C) Net operating loss. For purposes of this paragraph the term
8 "net operating loss" means the excess of the deductions over the gross
9 income used in computing entire net income without the net operating
10 loss deduction provided for in subparagraph (A) of this paragraph and
11 the exclusions in paragraphs (4) and (5) of this subsection.

12 (D) Change in ownership. Where there is a change in 50% or more
13 of the ownership of a corporation because of redemption or sale of
14 stock and the corporation changes the trade or business giving rise to
15 the loss, no net operating loss sustained before the changes may be
16 carried over to be deducted from income earned after such changes.
17 In addition where the facts support the premise that the corporation
18 was acquired under any circumstances for the primary purpose of the
19 use of its net operating loss carryover, the director may disallow the
20 carryover.

21 (E) Notwithstanding the provisions of this paragraph (6) of
22 subsection (k) of this section to the contrary, for privilege periods
23 beginning during calendar year 2002 and calendar year 2003, no
24 deduction for any net operating loss carryover shall be allowed, and
25 for privilege periods beginning during calendar year 2004 and calendar
26 year 2005, there shall be allowed as a deduction for the privilege
27 period so much of the net operating loss carryover as reduces entire
28 net income otherwise calculated by 50%. If and only to the extent that
29 any net operating loss carryover deduction is disallowed by reason of
30 this subparagraph (E), the date on which the amount of the disallowed
31 net operating loss carryover deduction would otherwise expire shall be
32 extended by [two years] a period equal to the period for which
33 application of the net operating loss was disallowed by this
34 subparagraph.

35 Provided, that this subparagraph (E) shall not restrict the surrender
36 or acquisition of corporation business tax benefit certificates pursuant
37 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict
38 the application of corporation business tax benefit certificates pursuant
39 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

40 (7) The entire net income of gas, electric and gas and electric
41 public utilities that were subject to the provisions of P.L.1940, c.5
42 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting
43 the New Jersey depreciation allowance for federal tax depreciation
44 with respect to assets placed in service prior to January 1, 1998. For
45 gas, electric, and gas and electric public utilities that were subject to
46 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,

1 the New Jersey depreciation allowance shall be computed as follows:
2 All depreciable assets placed in service prior to January 1, 1998 shall
3 be considered a single asset account. The New Jersey tax basis of this
4 depreciable asset account shall be an amount equal to the carryover
5 adjusted basis for federal income tax purposes on December 31, 1997
6 of all depreciable assets in service on December 31, 1997, increased
7 by the excess, of the "net carrying value," defined to be adjusted book
8 basis of all assets and liabilities, excluding deferred income taxes,
9 recorded on the public utility's books of account on December 31,
10 1997, over the carryover adjusted basis for federal income tax
11 purposes on December 31, 1997 of all assets and liabilities owned by
12 the gas, electric, or gas and electric public utility as of December 31,
13 1997. "Books of account" for gas, gas and electric, and electric public
14 utilities means the uniform system of accounts as promulgated by the
15 Federal Energy Regulatory Commission and adopted by the Board of
16 Public Utilities. The following adjustments to entire net income shall
17 be made pursuant to this section:

18 (A) Depreciation for property placed in service prior to January 1,
19 1998 shall be adjusted as follows:

20 (i) Depreciation for federal income tax purposes shall be
21 disallowed in full.

22 (ii) A deduction shall be allowed for the New Jersey depreciation
23 allowance. The New Jersey depreciation allowance shall be computed
24 for the single asset account described above based on the New Jersey
25 tax basis as adjusted above as if all assets in the single asset account
26 were first placed in service on January 1, 1998. Depreciation shall be
27 computed using the straight line method over a thirty-year life. A full
28 year's depreciation shall be allowed in the initial tax year. No half-year
29 convention shall apply. The depreciable basis of the single account
30 shall be reduced by the adjusted federal tax basis of assets sold,
31 retired, or otherwise disposed of during any year on which gain or loss
32 is recognized for federal income tax purposes as described in
33 subparagraph (B) of this paragraph.

34 (B) Gains and losses on sales, retirements and other dispositions
35 of assets placed in service prior to January 1, 1998 shall be recognized
36 and reported on the same basis as for federal income tax purposes.

37 (C) The Director of the Division of Taxation shall promulgate
38 regulations describing the methodology for allocating the single asset
39 account in the event that a portion of the utility's operations are
40 separated, spun-off, transferred to a separate company or otherwise
41 desegregated.

42 (8) In the case of taxpayers that are gas, electric, gas and electric,
43 or telecommunication public utilities as defined pursuant to subsection
44 (q) of this section, the director shall have authority to promulgate rules
45 and issue guidance correcting distortions and adjusting timing
46 differences resulting from the adoption of P.L.1997, c.162

1 (C.54:10A-5.25 et al.).

2 (9) Notwithstanding paragraph (1) of this subsection, entire net
3 income shall not include the income derived by a corporation
4 organized in a foreign country from the international operation of a
5 ship or ships, or from the international operation of aircraft, if such
6 income is exempt from federal taxation pursuant to section 883 of the
7 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

8 (10) Entire net income shall exclude all income of an alien
9 corporation the activities of which are limited in this State to investing
10 or trading in stocks and securities for its own account, investing or
11 trading in commodities for its own account, or any combination of
12 those activities, within the meaning of section 864 of the federal
13 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on
14 December 31, 1998. Notwithstanding the previous sentence, if an
15 alien corporation undertakes one or more infrequent, extraordinary or
16 non-recurring activities, including but not limited to the sale of
17 tangible property, only the income from such infrequent, extraordinary
18 or non-recurring activity shall be subject to the tax imposed pursuant
19 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income
20 subject to tax shall be determined without regard to the allocation to
21 that specific transaction of any general business expense of the
22 taxpayer and shall be specifically assigned to this State for taxation by
23 this State without regard to section 6 of P.L.1945, c.162
24 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"
25 means a corporation organized under the laws of a jurisdiction other
26 than the United States or its political subdivisions.

27 (11) No deduction shall be allowed for research and experimental
28 expenditures, to the extent that those research and experimental
29 expenditures are qualified research expenses or basic research
30 payments for which an amount of credit is claimed pursuant to section
31 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and
32 experimental expenditures are also used to compute a federal credit
33 claimed pursuant to section 41 of the federal Internal Revenue Code
34 of 1986, 26 U.S.C. s.41.

35 (12) (A) Notwithstanding the provisions of subsection (k) of
36 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.
37 s.168, and subsection (b) of section 1400L of the federal Internal
38 Revenue Code of 1986, 26 U.S.C. s.1400L, for property acquired after
39 September 10, 2001 and before September 11, 2004, the depreciation
40 deduction otherwise allowed pursuant to section 167 of the federal
41 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined
42 pursuant to the requirements and limitations of section 168 of the
43 federal Internal Revenue Code of 1986, 26 U.S.C. s.168, and section
44 280F of the federal Internal Revenue Code of 1986, 26 U.S.C. s.280F,
45 as if that subsection (k) and that section 1400L were not in effect.

46 (B) The director shall prescribe the rules and regulations necessary

1 to carry out the provisions of this paragraph, including, among others,
2 those for determining the adjusted basis of the acquired property for
3 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,
4 c.162.

5 (l) "Real estate investment trust" shall mean any corporation, trust
6 or association qualifying and electing to be taxed as a real estate
7 investment trust under federal law.

8 (m) "Financial business corporation" shall mean any corporate
9 enterprise which is (1) in substantial competition with the business of
10 national banks and which (2) employs moneyed capital with the object
11 of making profit by its use as money, through discounting and
12 negotiating promissory notes, drafts, bills of exchange and other
13 evidences of debt; buying and selling exchange; making of or dealing
14 in secured or unsecured loans and discounts; dealing in securities and
15 shares of corporate stock by purchasing and selling such securities and
16 stock without recourse, solely upon the order and for the account of
17 customers; or investing and reinvesting in marketable obligations
18 evidencing indebtedness of any person, copartnership, association or
19 corporation in the form of bonds, notes or debentures commonly
20 known as investment securities; or dealing in or underwriting
21 obligations of the United States, any state or any political subdivision
22 thereof, or of a corporate instrumentality of any of them. This shall
23 include, without limitation of the foregoing, business commonly
24 known as industrial banks, dealers in commercial paper and
25 acceptances, sales finance, personal finance, small loan and mortgage
26 financing businesses, as well as any other enterprise employing
27 moneyed capital coming into competition with the business of national
28 banks; provided that the holding of bonds, notes, or other evidences
29 of indebtedness by individual persons not employed or engaged in the
30 banking or investment business and representing merely personal
31 investments not made in competition with the business of national
32 banks, shall not be deemed financial business. Nor shall "financial
33 business" include national banks, production credit associations
34 organized under the Farm Credit Act of 1933 or the Farm Credit Act
35 of 1971, Pub.L. 92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
36 insurance companies duly authorized to transact business in this State,
37 security brokers or dealers or investment companies or bankers not
38 employing moneyed capital coming into competition with the business
39 of national banks, real estate investment trusts, or any of the following
40 entities organized under the laws of this State: credit unions, savings
41 banks, savings and loan and building and loan associations,
42 pawnbrokers, and State banks and trust companies.

43 (n) "International banking facility" shall mean a set of asset and
44 liability accounts segregated on the books and records of a depository
45 institution, United States branch or agency of a foreign bank, or an
46 Edge or Agreement Corporation that includes only international

1 banking facility time deposits and international banking facility
2 extensions of credit as such terms are defined in section 204.8(a)(2)
3 and section 204.8(a)(3) of Regulation D of the board of governors of
4 the Federal Reserve System, 12 CFR Part 204, effective December 3,
5 1981. In the event that the United States enacts a law, or the board
6 of governors of the Federal Reserve System adopts a regulation which
7 amends the present definition of international banking facility or of
8 such facilities' time deposits or extensions of credit, the Commissioner
9 of Banking and Insurance shall forthwith adopt regulations defining
10 such terms in the same manner as such terms are set forth in the laws
11 of the United States or the regulations of the board of governors of the
12 Federal Reserve System. The regulations of the Commissioner of
13 Banking and Insurance shall thereafter provide the applicable
14 definitions.

15 (o) "S corporation" means a corporation included in the definition
16 of an "S corporation" pursuant to section 1361 of the federal Internal
17 Revenue Code of 1986, 26 U.S.C. s.1361.

18 (p) "New Jersey S corporation" means a corporation that is an S
19 corporation; which has made a valid election pursuant to section 3 of
20 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
21 corporation continuously since the effective date of the valid election
22 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

23 (q) "Public Utility" means "public utility" as defined in
24 R.S.48:2-13.

25 (r) "Qualified investment partnership" means a partnership under
26 this act that has more than 10 members or partners with no member or
27 partner owning more than a 50% interest in the entity and that derives
28 at least 90% of its gross income from dividends, interest, payments
29 with respect to securities loans, and gains from the sale or other
30 disposition of stocks or securities or foreign currencies or
31 commodities or other similar income (including but not limited to gains
32 from swaps, options, futures or forward contracts) derived with
33 respect to its business of investing or trading in those stocks,
34 securities, currencies or commodities, but "investment partnership"
35 shall not include a "dealer in securities" within the meaning of section
36 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

37 (s) "Savings institution" means a state or federally chartered
38 building and loan association, savings and loan association, or savings
39 bank.

40 (t) "Partnership" means an entity classified as a partnership for
41 federal income tax purposes.

42 (cf: P.L.2002, c.40, s.3)

43

44 2. This act shall take effect immediately.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

This bill limits the application of net operating loss (NOL) deductions under the corporation business tax for privilege periods beginning in calendar years 2004 and 2005 to so much of the NOLs as reduce the entire net income subject to tax to 50% of what it would otherwise be.

"Net operating loss" is a tax accounting concept; if a taxpayer has more business expense than business income in a tax year, the taxpayer has a net operating loss for that year. The net operating loss can be deducted in later years from taxable income to reduce tax liability. The Business Tax Reform Act, P.L.2002, c.40, provided for a suspension of the application of net operating losses for privilege periods beginning in calendar years 2002 and 2003; under current law, corporation business tax payers are allowed to begin to apply NOLs against income for privilege periods beginning in calendar year 2004.

The Governor's Proposed Budget for State Fiscal Year 2004-2005 assumed that the total suspension of NOL application would be extended for privilege periods beginning in calendar years 2004 and 2005. This bill, however, allows the use of available NOLs for 2004 and 2005 for reducing taxable income by up to 50%, returning NOLs to full deductibility for privilege periods beginning in calendar year 2006.

The bill extends the usual seven year carryforward (14 years for certain high-technology corporations) extended for the period of suspension. The suspension does not apply to the NOLs purchased through the high-technology incentive program.

Limits the corporation business tax application of net operating losses to 50% of taxable income for tax years 2004 and 2005.

ASSEMBLY, No. 3110

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 21, 2004

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Co-Sponsored by:

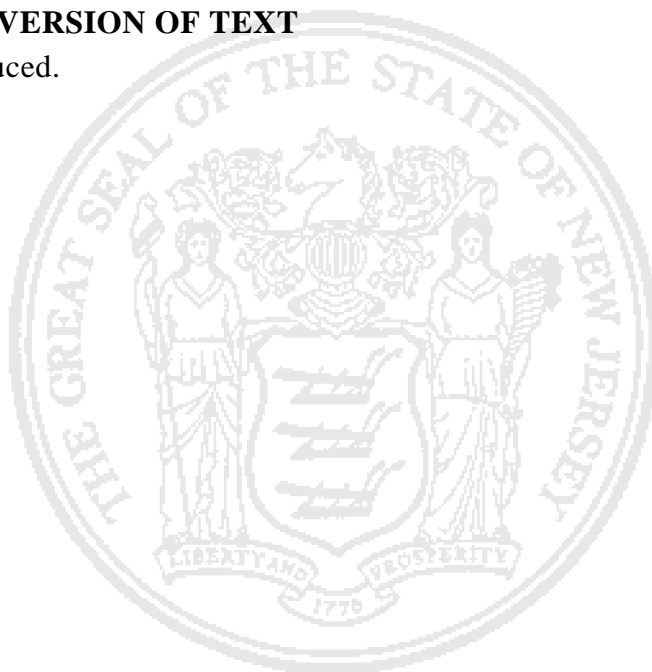
Assemblyman Caraballo, Senators Kenny and Bryant

SYNOPSIS

Limits the corporation business tax application of net operating losses to 50% of taxable income for tax years 2004 and 2005.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/25/2004)

A3110 WATSON COLEMAN, JOHNSON

2

1 AN ACT concerning the net operating loss deduction under the
2 corporation business tax, amending P.L.1945, c.162.

3

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

6

7 1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read
8 as follows:

9 4. For the purposes of this act, unless the context requires a
10 different meaning:

11 (a) "Commissioner" or "director" shall mean the Director of the
12 Division of Taxation of the State Department of the Treasury.

13 (b) "Allocation factor" shall mean the proportionate part of a
14 taxpayer's net worth or entire net income used to determine a measure
15 of its tax under this act.

16 (c) "Corporation" shall mean any corporation, joint-stock company
17 or association and any business conducted by a trustee or trustees
18 wherein interest or ownership is evidenced by a certificate of interest
19 or ownership or similar written instrument, any other entity classified
20 as a corporation for federal income tax purposes, and any state or
21 federally chartered building and loan association or savings and loan
22 association.

23 (d) "Net worth" shall mean the aggregate of the values disclosed
24 by the books of the corporation for (1) issued and outstanding capital
25 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
26 profits, and (4) surplus reserves which can reasonably be expected to
27 accrue to holders or owners of equitable shares, not including
28 reasonable valuation reserves, such as reserves for depreciation or
29 obsolescence or depletion. Notwithstanding the foregoing, net worth
30 shall not include any deduction for the amount of the excess
31 depreciation described in paragraph (2)(F) of subsection (k) of this
32 section. The foregoing aggregate of values shall be reduced by 50%
33 of the amount disclosed by the books of the corporation for investment
34 in the capital stock of one or more subsidiaries, which investment is
35 defined as ownership (1) of at least 80% of the total combined voting
36 power of all classes of stock of the subsidiary entitled to vote and (2)
37 of at least 80% of the total number of shares of all other classes of
38 stock except nonvoting stock which is limited and preferred as to
39 dividends. In the case of investment in an entity organized under the
40 laws of a foreign country, the foregoing requisite degree of ownership
41 shall effect a like reduction of such investment from the net worth of
42 the taxpayer, if the foreign entity is considered a corporation for any
43 purpose under the United States federal income tax laws, such as (but

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 not by way of sole examples) for the purpose of supplying deemed
2 paid foreign tax credits or for the purpose of status as a controlled
3 foreign corporation. In calculating the net worth of a taxpayer entitled
4 to reduction for investment in subsidiaries, the amount of liabilities of
5 the taxpayer shall be reduced by such proportion of the liabilities as
6 corresponds to the ratio which the excluded portion of the subsidiary
7 values bears to the total assets of the taxpayer.

8 In the case of banking corporations which have international
9 banking facilities as defined in subsection (n), the foregoing aggregate
10 of values shall also be reduced by retained earnings of the international
11 banking facility. Retained earnings means the earnings accumulated
12 over the life of such facility and shall not include the distributive share
13 of dividends paid and federal income taxes paid or payable during the
14 tax year.

15 If in the opinion of the commissioner, the corporation's books do
16 not disclose fair valuations the commissioner may make a reasonable
17 determination of the net worth which, in his opinion, would reflect the
18 fair value of the assets, exclusive of subsidiary investments as defined
19 aforesaid, carried on the books of the corporation, in accordance with
20 sound accounting principles, and such determination shall be used as
21 net worth for the purpose of this act.

22 (e) (Deleted by amendment, P.L.1998, c.114.)

23 (f) "Investment company" shall mean any corporation whose
24 business during the period covered by its report consisted, to the
25 extent of at least 90% thereof of holding, investing and reinvesting in
26 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
27 other securities for its own account, but this shall not include any
28 corporation which: (1) is a merchant or a dealer of stocks, bonds and
29 other securities, regularly engaged in buying the same and selling the
30 same to customers; or (2) had less than 90% of its average gross
31 assets in New Jersey, at cost, invested in stocks, bonds, debentures,
32 mortgages, notes, patents, patent rights or other securities or
33 consisting of cash on deposit during the period covered by its report;
34 or (3) is a banking corporation, a savings institution, or a financial
35 business corporation as defined in the Corporation Business Tax Act.

36 (g) "Regulated investment company" shall mean any corporation
37 which for a period covered by its report, is registered and regulated
38 under the Investment Company Act of 1940 (54 Stat. 789), as
39 amended.

40 (h) "Taxpayer" shall mean any corporation, and any partnership
41 required, or consenting, to report or to pay taxes, interest or penalties
42 under this act. "Taxpayer" shall not include a partnership that is listed
43 on a United States national stock exchange.

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

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

4 (k) "Entire net income" shall mean total net income from all
5 sources, whether within or without the United States, and shall include
6 the gain derived from the employment of capital or labor, or from both
7 combined, as well as profit gained through a sale or conversion of
8 capital assets.

9 For the purpose of this act, the amount of a taxpayer's entire net
10 income shall be deemed prima facie to be equal in amount to the
11 taxable income, before net operating loss deduction and special
12 deductions, which the taxpayer is required to report, or, if the taxpayer
13 is classified as a partnership for federal tax purposes, would otherwise
14 be required to report, to the United States Treasury Department for
15 the purpose of computing its federal income tax, provided however,
16 that in the determination of such entire net income,

17 (1) Entire net income shall exclude for the periods set forth in
18 paragraph (2)(F)(i) of this subsection, any amount, except with respect
19 to qualified mass commuting vehicles as described in section
20 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
21 prior to January 1, 1984, which is included in a taxpayer's federal
22 taxable income solely as a result of an election made pursuant to the
23 provisions of paragraph (8) of that section.

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

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

29 (B) Any part of any income from dividends or interest on any kind
30 of stock, securities or indebtedness, except as provided in paragraph
31 (5) of subsection (k) of this section;

32 (C) Taxes paid or accrued to the United States, a possession or
33 territory of the United States, a state, a political subdivision thereof,
34 or the District of Columbia, or to any foreign country, state, province,
35 territory or subdivision thereof, on or measured by profits or income,
36 or business presence or business activity, or the tax imposed by this
37 act, or any tax paid or accrued with respect to subsidiary dividends
38 excluded from entire net income as provided in paragraph (5) of
39 subsection (k) of this section;

40 (D) (Deleted by amendment, P.L.1985, c.143.)

41 (E) (Deleted by amendment, P.L.1995, c.418.)

42 (F) (i) The amount by which depreciation reported to the United
43 States Treasury Department for property placed in service on and after
44 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
45 years beginning on and after the effective date of P.L.1993, c.172, for
46 purposes of computing federal taxable income in accordance with

1 section 168 of the Internal Revenue Code in effect after December 31,
2 1980, exceeds the amount of depreciation determined in accordance
3 with the Internal Revenue Code provisions in effect prior to January
4 1, 1981, but only with respect to a taxpayer's accounting period ending
5 after December 31, 1981; provided, however, that where a taxpayer's
6 accounting period begins in 1981 and ends in 1982, no modification
7 shall be required with respect to this paragraph (F) for the report filed
8 for such period with respect to property placed in service during that
9 part of the accounting period which occurs in 1981. The provisions
10 of this subparagraph shall not apply to assets placed in service prior to
11 January 1, 1998 of a gas, gas and electric, and electric public utility
12 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
13 seq.) prior to 1998.

14 (ii) For the periods set forth in subparagraph (F)(i) of this
15 subsection, any amount, except with respect to qualified mass
16 commuting vehicles as described in section 168(f)(8)(D)(v) of the
17 Internal Revenue Code as in effect immediately prior to January 1,
18 1984, which the taxpayer claimed as a deduction in computing federal
19 income tax pursuant to a qualified lease agreement under paragraph
20 (8) of that section.

21 The director shall promulgate rules and regulations necessary to
22 carry out the provisions of this section, which rules shall provide,
23 among others, the manner in which the remaining life of property shall
24 be reported.

25 (G) (i) The amount of any civil, civil administrative, or criminal
26 penalty or fine, including a penalty or fine under an administrative
27 consent order, assessed and collected for a violation of a State or
28 federal environmental law, an administrative consent order, or an
29 environmental ordinance or resolution of a local governmental entity,
30 and any interest earned on the penalty or fine, and any economic
31 benefits having accrued to the violator as a result of a violation, which
32 benefits are assessed and recovered in a civil, civil administrative, or
33 criminal action, or pursuant to an administrative consent order. The
34 provisions of this paragraph shall not apply to a penalty or fine
35 assessed or collected for a violation of a State or federal
36 environmental law, or local environmental ordinance or resolution, if
37 the penalty or fine was for a violation that resulted from fire, riot,
38 sabotage, flood, storm event, natural cause, or other act of God
39 beyond the reasonable control of the violator, or caused by an act or
40 omission of a person who was outside the reasonable control of the
41 violator.

42 (ii) The amount of treble damages paid to the Department of
43 Environmental Protection pursuant to subsection a. of section 7 of
44 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
45 department in removing, or arranging for the removal of, an
46 unauthorized discharge upon failure of the discharger to comply with

1 a directive from the department to remove, or arrange for the removal
2 of, the discharge.

3 (H) The amount of any sales and use tax paid by a utility vendor
4 pursuant to section 71 of P.L.1997, c.162.

5 (I) Interest paid, accrued or incurred for the privilege period to a
6 related member , as defined in section 5 of P.L.2002, c.40
7 (C.54:10A-4.4), except that a deduction shall be permitted to the
8 extent that the taxpayer establishes by clear and convincing evidence,
9 as determined by the director, that: (i) a principal purpose of the
10 transaction giving rise to the payment of the interest was not to avoid
11 taxes otherwise due under Title 54 of the Revised Statutes or Title
12 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to
13 arm's length contracts at an arm's length rate of interest, and (iii)(aa)
14 the related member was subject to a tax on its net income or receipts
15 in this State or another state or possession of the United States or in
16 a foreign nation, (bb) a measure of the tax includes the interest
17 received from the related member, and (cc) the rate of tax applied to
18 the interest received by the related member is equal to or greater than
19 a rate three percentage points less than the rate of tax applied to
20 taxable interest by this State.

21 A deduction shall also be permitted if the taxpayer establishes by
22 clear and convincing evidence, as determined by the director, that the
23 disallowance of a deduction is unreasonable, or the taxpayer and the
24 director agree in writing to the application or use of an alternative
25 method of apportionment under section 8 of P.L.1945, c.162
26 (C.54:10A-8); nothing in this subsection shall be construed to limit or
27 negate the director's authority to otherwise enter into agreements and
28 compromises otherwise allowed by law.

29 A deduction shall also be permitted to the extent that the taxpayer
30 establishes by a preponderance of the evidence, as determined by the
31 director, that the interest is directly or indirectly paid, accrued or
32 incurred to (i) a related member in a foreign nation which has in force
33 a comprehensive income tax treaty with the United States, provided
34 however that the taxpayer shall disclose on its return for the privilege
35 period the name of the related member, the amount of the interest, the
36 relevant foreign nation, and such other information as the director may
37 prescribe or (ii) to an independent lender and the taxpayer guarantees
38 the debt on which the interest is required.

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

43 (4) There shall be allowed as a deduction from entire net income
44 of a banking corporation, to the extent not deductible in determining
45 federal taxable income, the eligible net income of an international
46 banking facility determined as follows:

1 (A) The eligible net income of an international banking facility shall
2 be the amount remaining after subtracting from the eligible gross
3 income the applicable expenses;

4 (B) Eligible gross income shall be the gross income derived by an
5 international banking facility, which shall include, but not be limited to,
6 gross income derived from:

7 (i) Making, arranging for, placing or carrying loans to foreign
8 persons, provided, however, that in the case of a foreign person which
9 is an individual, or which is a foreign branch of a domestic corporation
10 (other than a bank), or which is a foreign corporation or foreign
11 partnership which is controlled by one or more domestic corporations
12 (other than banks), domestic partnerships or resident individuals, all
13 the proceeds of the loan are for use outside of the United States;

14 (ii) Making or placing deposits with foreign persons which are
15 banks or foreign branches of banks (including foreign subsidiaries) or
16 foreign branches of the taxpayers or with other international banking
17 facilities;

18 (iii) Entering into foreign exchange trading or hedging transactions
19 related to any of the transactions described in this paragraph; or

20 (iv) Such other activities as an international banking facility may,
21 from time to time, be authorized to engage in;

22 (C) Applicable expenses shall be any expense or other deductions
23 attributable, directly or indirectly, to the eligible gross income
24 described in subparagraph (B) of this paragraph.

25 (5) Entire net income shall exclude 100% of dividends which were
26 included in computing such taxable income for federal income tax
27 purposes, paid to the taxpayer by one or more subsidiaries owned by
28 the taxpayer to the extent of the 80% or more ownership of investment
29 described in subsection (d) of this section and shall exclude 50% of
30 dividends which were included in computing such taxable income for
31 federal income tax purposes, paid to the taxpayer by one or more
32 subsidiaries owned by the taxpayer to the extent of 50% or more
33 ownership of investment, such ownership of investment calculated in
34 the same manner as the 80% or more of ownership of investment is
35 calculated as described in subsection (d) of this section.

36 (6) (A) Net operating loss deduction. There shall be allowed as a
37 deduction for the privilege period the net operating loss carryover to
38 that period.

39 (B) Net operating loss carryover. A net operating loss for any
40 privilege period ending after June 30, 1984 shall be a net operating
41 loss carryover to each of the seven privilege periods following the
42 period of the loss. The entire amount of the net operating loss for any
43 privilege period (the "loss period") shall be carried to the earliest of
44 the privilege periods to which the loss may be carried. The portion of
45 the loss which shall be carried to each of the other privilege periods
46 shall be the excess, if any, of the amount of the loss over the sum of

1 the entire net income, computed without the exclusions permitted in
2 paragraphs (4) and (5) of this subsection or the net operating loss
3 deduction provided by subparagraph (A) of this paragraph, for each of
4 the prior privilege periods to which the loss may be carried.

5 (C) Net operating loss. For purposes of this paragraph the term
6 "net operating loss" means the excess of the deductions over the gross
7 income used in computing entire net income without the net operating
8 loss deduction provided for in subparagraph (A) of this paragraph and
9 the exclusions in paragraphs (4) and (5) of this subsection.

10 (D) Change in ownership. Where there is a change in 50% or more
11 of the ownership of a corporation because of redemption or sale of
12 stock and the corporation changes the trade or business giving rise to
13 the loss, no net operating loss sustained before the changes may be
14 carried over to be deducted from income earned after such changes.
15 In addition where the facts support the premise that the corporation
16 was acquired under any circumstances for the primary purpose of the
17 use of its net operating loss carryover, the director may disallow the
18 carryover.

19 (E) Notwithstanding the provisions of this paragraph (6) of
20 subsection (k) of this section to the contrary, for privilege periods
21 beginning during calendar year 2002 and calendar year 2003, no
22 deduction for any net operating loss carryover shall be allowed, and
23 for privilege periods beginning during calendar year 2004 and calendar
24 year 2005, there shall be allowed as a deduction for the privilege
25 period so much of the net operating loss carryover as reduces entire
26 net income otherwise calculated by 50%. If and only to the extent that
27 any net operating loss carryover deduction is disallowed by reason of
28 this subparagraph (E), the date on which the amount of the disallowed
29 net operating loss carryover deduction would otherwise expire shall be
30 extended by [two years] a period equal to the period for which
31 application of the net operating loss was disallowed by this
32 subparagraph.

33 Provided, that this subparagraph (E) shall not restrict the surrender
34 or acquisition of corporation business tax benefit certificates pursuant
35 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict
36 the application of corporation business tax benefit certificates pursuant
37 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

38 (7) The entire net income of gas, electric and gas and electric
39 public utilities that were subject to the provisions of P.L.1940, c.5
40 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting
41 the New Jersey depreciation allowance for federal tax depreciation
42 with respect to assets placed in service prior to January 1, 1998. For
43 gas, electric, and gas and electric public utilities that were subject to
44 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,
45 the New Jersey depreciation allowance shall be computed as follows:
46 All depreciable assets placed in service prior to January 1, 1998 shall

1 be considered a single asset account. The New Jersey tax basis of this
2 depreciable asset account shall be an amount equal to the carryover
3 adjusted basis for federal income tax purposes on December 31, 1997
4 of all depreciable assets in service on December 31, 1997, increased
5 by the excess, of the "net carrying value," defined to be adjusted book
6 basis of all assets and liabilities, excluding deferred income taxes,
7 recorded on the public utility's books of account on December 31,
8 1997, over the carryover adjusted basis for federal income tax
9 purposes on December 31, 1997 of all assets and liabilities owned by
10 the gas, electric, or gas and electric public utility as of December 31,
11 1997. "Books of account" for gas, gas and electric, and electric public
12 utilities means the uniform system of accounts as promulgated by the
13 Federal Energy Regulatory Commission and adopted by the Board of
14 Public Utilities. The following adjustments to entire net income shall
15 be made pursuant to this section:

16 (A) Depreciation for property placed in service prior to January 1,
17 1998 shall be adjusted as follows:

18 (i) Depreciation for federal income tax purposes shall be
19 disallowed in full.

20 (ii) A deduction shall be allowed for the New Jersey depreciation
21 allowance. The New Jersey depreciation allowance shall be computed
22 for the single asset account described above based on the New Jersey
23 tax basis as adjusted above as if all assets in the single asset account
24 were first placed in service on January 1, 1998. Depreciation shall be
25 computed using the straight line method over a thirty-year life. A full
26 year's depreciation shall be allowed in the initial tax year. No half-year
27 convention shall apply. The depreciable basis of the single account
28 shall be reduced by the adjusted federal tax basis of assets sold,
29 retired, or otherwise disposed of during any year on which gain or loss
30 is recognized for federal income tax purposes as described in
31 subparagraph (B) of this paragraph.

32 (B) Gains and losses on sales, retirements and other dispositions
33 of assets placed in service prior to January 1, 1998 shall be recognized
34 and reported on the same basis as for federal income tax purposes.

35 (C) The Director of the Division of Taxation shall promulgate
36 regulations describing the methodology for allocating the single asset
37 account in the event that a portion of the utility's operations are
38 separated, spun-off, transferred to a separate company or otherwise
39 desegregated.

40 (8) In the case of taxpayers that are gas, electric, gas and electric,
41 or telecommunication public utilities as defined pursuant to subsection
42 (q) of this section, the director shall have authority to promulgate rules
43 and issue guidance correcting distortions and adjusting timing
44 differences resulting from the adoption of P.L.1997, c.162
45 (C.54:10A-5.25 et al.).

46 (9) Notwithstanding paragraph (1) of this subsection, entire net

1 income shall not include the income derived by a corporation
2 organized in a foreign country from the international operation of a
3 ship or ships, or from the international operation of aircraft, if such
4 income is exempt from federal taxation pursuant to section 883 of the
5 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

6 (10) Entire net income shall exclude all income of an alien
7 corporation the activities of which are limited in this State to investing
8 or trading in stocks and securities for its own account, investing or
9 trading in commodities for its own account, or any combination of
10 those activities, within the meaning of section 864 of the federal
11 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on
12 December 31, 1998. Notwithstanding the previous sentence, if an
13 alien corporation undertakes one or more infrequent, extraordinary or
14 non-recurring activities, including but not limited to the sale of
15 tangible property, only the income from such infrequent, extraordinary
16 or non-recurring activity shall be subject to the tax imposed pursuant
17 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income
18 subject to tax shall be determined without regard to the allocation to
19 that specific transaction of any general business expense of the
20 taxpayer and shall be specifically assigned to this State for taxation by
21 this State without regard to section 6 of P.L.1945, c.162
22 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"
23 means a corporation organized under the laws of a jurisdiction other
24 than the United States or its political subdivisions.

25 (11) No deduction shall be allowed for research and experimental
26 expenditures, to the extent that those research and experimental
27 expenditures are qualified research expenses or basic research
28 payments for which an amount of credit is claimed pursuant to section
29 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and
30 experimental expenditures are also used to compute a federal credit
31 claimed pursuant to section 41 of the federal Internal Revenue Code
32 of 1986, 26 U.S.C. s.41.

33 (12) (A) Notwithstanding the provisions of subsection (k) of
34 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.
35 s.168, and subsection (b) of section 1400L of the federal Internal
36 Revenue Code of 1986, 26 U.S.C. s.1400L, for property acquired after
37 September 10, 2001 and before September 11, 2004, the depreciation
38 deduction otherwise allowed pursuant to section 167 of the federal
39 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined
40 pursuant to the requirements and limitations of section 168 of the
41 federal Internal Revenue Code of 1986, 26 U.S.C. s.168, and section
42 280F of the federal Internal Revenue Code of 1986, 26 U.S.C. s.280F,
43 as if that subsection (k) and that section 1400L were not in effect.

44 (B) The director shall prescribe the rules and regulations necessary
45 to carry out the provisions of this paragraph, including, among others,
46 those for determining the adjusted basis of the acquired property for

1 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,
2 c.162.

3 (l) "Real estate investment trust" shall mean any corporation, trust
4 or association qualifying and electing to be taxed as a real estate
5 investment trust under federal law.

6 (m) "Financial business corporation" shall mean any corporate
7 enterprise which is (1) in substantial competition with the business of
8 national banks and which (2) employs moneyed capital with the object
9 of making profit by its use as money, through discounting and
10 negotiating promissory notes, drafts, bills of exchange and other
11 evidences of debt; buying and selling exchange; making of or dealing
12 in secured or unsecured loans and discounts; dealing in securities and
13 shares of corporate stock by purchasing and selling such securities and
14 stock without recourse, solely upon the order and for the account of
15 customers; or investing and reinvesting in marketable obligations
16 evidencing indebtedness of any person, copartnership, association or
17 corporation in the form of bonds, notes or debentures commonly
18 known as investment securities; or dealing in or underwriting
19 obligations of the United States, any state or any political subdivision
20 thereof, or of a corporate instrumentality of any of them. This shall
21 include, without limitation of the foregoing, business commonly
22 known as industrial banks, dealers in commercial paper and
23 acceptances, sales finance, personal finance, small loan and mortgage
24 financing businesses, as well as any other enterprise employing
25 moneyed capital coming into competition with the business of national
26 banks; provided that the holding of bonds, notes, or other evidences
27 of indebtedness by individual persons not employed or engaged in the
28 banking or investment business and representing merely personal
29 investments not made in competition with the business of national
30 banks, shall not be deemed financial business. Nor shall "financial
31 business" include national banks, production credit associations
32 organized under the Farm Credit Act of 1933 or the Farm Credit Act
33 of 1971, Pub.L. 92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
34 insurance companies duly authorized to transact business in this State,
35 security brokers or dealers or investment companies or bankers not
36 employing moneyed capital coming into competition with the business
37 of national banks, real estate investment trusts, or any of the following
38 entities organized under the laws of this State: credit unions, savings
39 banks, savings and loan and building and loan associations,
40 pawnbrokers, and State banks and trust companies.

41 (n) "International banking facility" shall mean a set of asset and
42 liability accounts segregated on the books and records of a depository
43 institution, United States branch or agency of a foreign bank, or an
44 Edge or Agreement Corporation that includes only international
45 banking facility time deposits and international banking facility
46 extensions of credit as such terms are defined in section 204.8(a)(2)

1 and section 204.8(a)(3) of Regulation D of the board of governors of
2 the Federal Reserve System, 12 CFR Part 204, effective December 3,
3 1981. In the event that the United States enacts a law, or the board
4 of governors of the Federal Reserve System adopts a regulation which
5 amends the present definition of international banking facility or of
6 such facilities' time deposits or extensions of credit, the Commissioner
7 of Banking and Insurance shall forthwith adopt regulations defining
8 such terms in the same manner as such terms are set forth in the laws
9 of the United States or the regulations of the board of governors of the
10 Federal Reserve System. The regulations of the Commissioner of
11 Banking and Insurance shall thereafter provide the applicable
12 definitions.

13 (o) "S corporation" means a corporation included in the definition
14 of an "S corporation" pursuant to section 1361 of the federal Internal
15 Revenue Code of 1986, 26 U.S.C. s.1361.

16 (p) "New Jersey S corporation" means a corporation that is an S
17 corporation; which has made a valid election pursuant to section 3 of
18 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
19 corporation continuously since the effective date of the valid election
20 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

21 (q) "Public Utility" means "public utility" as defined in
22 R.S.48:2-13.

23 (r) "Qualified investment partnership" means a partnership under
24 this act that has more than 10 members or partners with no member or
25 partner owning more than a 50% interest in the entity and that derives
26 at least 90% of its gross income from dividends, interest, payments
27 with respect to securities loans, and gains from the sale or other
28 disposition of stocks or securities or foreign currencies or
29 commodities or other similar income (including but not limited to gains
30 from swaps, options, futures or forward contracts) derived with
31 respect to its business of investing or trading in those stocks,
32 securities, currencies or commodities, but "investment partnership"
33 shall not include a "dealer in securities" within the meaning of section
34 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

35 (s) "Savings institution" means a state or federally chartered
36 building and loan association, savings and loan association, or savings
37 bank.

38 (t) "Partnership" means an entity classified as a partnership for
39 federal income tax purposes.

40 (cf: P.L.2002, c.40, s.3)

41

42 2. This act shall take effect immediately.

1 STATEMENT

2

3 This bill limits the application of net operating loss (NOL)
4 deductions under the corporation business tax for privilege periods
5 beginning in calendar years 2004 and 2005 to so much of the NOLs as
6 reduce the entire net income subject to tax to 50% of what it would
7 otherwise be.

8 "Net operating loss" is a tax accounting concept; if a taxpayer has
9 more business expense than business income in a tax year, the taxpayer
10 has a net operating loss for that year. The net operating loss can be
11 deducted in later years from taxable income to reduce tax liability.
12 The Business Tax Reform Act, P.L.2002, c.40, provided for a
13 suspension of the application of net operating losses for privilege
14 periods beginning in calendar years 2002 and 2003; under current law,
15 corporation business tax payers are allowed to begin to apply NOLs
16 against income for privilege periods beginning in calendar year 2004.

17 The Governor's Proposed Budget for State Fiscal Year 2004-2005
18 assumed that the total suspension of NOL application would be
19 extended for privilege periods beginning in calendar years 2004 and
20 2005. This bill, however, allows the use of available NOLs for 2004
21 and 2005 for reducing taxable income by up to 50%, returning NOLs
22 to full deductibility for privilege periods beginning in calendar year
23 2006.

24 The bill extends the usual seven year carryforward (14 years for
25 certain high-technology corporations) extended for the period of
26 suspension. The suspension does not apply to the NOLs purchased
27 through the high-technology incentive program.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3110

STATE OF NEW JERSEY

DATED: JUNE 22, 2004

The Assembly Budget Committee reports favorably Assembly Bill No. 3110.

Assembly Bill No. 3110 limits the application of net operating loss (NOL) deductions under the corporation business tax (CBT) for privilege periods beginning in calendar years 2004 and 2005 to so much of the NOLs as reduce the entire net income subject to tax to 50% of what it would otherwise be.

"Net operating loss" is a tax accounting concept; if a taxpayer has more business expense than business income in a tax year, the taxpayer has a net operating loss for that year. The net operating loss can be deducted in later years from taxable income to reduce tax liability. The Business Tax Reform Act, P.L.2002, c.40, provided for a suspension of the application of net operating losses for privilege periods beginning in calendar years 2002 and 2003; under current law, corporation business tax payers are allowed to begin to apply NOLs against income for privilege periods beginning in calendar year 2004.

The Governor's Proposed Budget for State Fiscal Year 2004-2005 assumed that the total suspension of NOL application would be extended for privilege periods beginning in calendar years 2004 and 2005. This bill, however, allows the use of available NOLs for 2004 and 2005 for reducing taxable income by up to 50 percent, returning NOLs to full deductibility for privilege periods beginning in calendar year 2006.

The bill extends the usual seven year carryforward (14 years for certain high-technology corporations) extended for the period of suspension. The suspension does not apply to the NOLs purchased through the high-technology incentive program.

FISCAL IMPACT

Based upon earlier Executive Branch projections that extending full suspension of NOL deduction allowance would maintain \$275 million in CBT revenue, it is estimated that allowance of such deductions at the 50 percent level will maintain about \$140 million of CBT revenue in FY2005.

SENATE, No. 1715

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JUNE 14, 2004

Sponsored by:

Senator BERNARD F. KENNY, JR.

District 33 (Hudson)

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

SYNOPSIS

Limits the corporation business tax application of net operating losses to 50% of taxable income for tax years 2004 and 2005.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2004)

S1715 KENNY, BRYANT

2

1 AN ACT concerning the net operating loss deduction under the
2 corporation business tax, amending P.L.1945, c.162.

3

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

6

7 1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read
8 as follows:

9 4. For the purposes of this act, unless the context requires a
10 different meaning:

11 (a) "Commissioner" or "director" shall mean the Director of the
12 Division of Taxation of the State Department of the Treasury.

13 (b) "Allocation factor" shall mean the proportionate part of a
14 taxpayer's net worth or entire net income used to determine a measure
15 of its tax under this act.

16 (c) "Corporation" shall mean any corporation, joint-stock company
17 or association and any business conducted by a trustee or trustees
18 wherein interest or ownership is evidenced by a certificate of interest
19 or ownership or similar written instrument, any other entity classified
20 as a corporation for federal income tax purposes, and any state or
21 federally chartered building and loan association or savings and loan
22 association.

23 (d) "Net worth" shall mean the aggregate of the values disclosed
24 by the books of the corporation for (1) issued and outstanding capital
25 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
26 profits, and (4) surplus reserves which can reasonably be expected to
27 accrue to holders or owners of equitable shares, not including
28 reasonable valuation reserves, such as reserves for depreciation or
29 obsolescence or depletion. Notwithstanding the foregoing, net worth
30 shall not include any deduction for the amount of the excess
31 depreciation described in paragraph (2)(F) of subsection (k) of this
32 section. The foregoing aggregate of values shall be reduced by 50%
33 of the amount disclosed by the books of the corporation for investment
34 in the capital stock of one or more subsidiaries, which investment is
35 defined as ownership (1) of at least 80% of the total combined voting
36 power of all classes of stock of the subsidiary entitled to vote and (2)
37 of at least 80% of the total number of shares of all other classes of
38 stock except nonvoting stock which is limited and preferred as to
39 dividends. In the case of investment in an entity organized under the
40 laws of a foreign country, the foregoing requisite degree of ownership
41 shall effect a like reduction of such investment from the net worth of
42 the taxpayer, if the foreign entity is considered a corporation for any
43 purpose under the United States federal income tax laws, such as (but

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 not by way of sole examples) for the purpose of supplying deemed
2 paid foreign tax credits or for the purpose of status as a controlled
3 foreign corporation. In calculating the net worth of a taxpayer entitled
4 to reduction for investment in subsidiaries, the amount of liabilities of
5 the taxpayer shall be reduced by such proportion of the liabilities as
6 corresponds to the ratio which the excluded portion of the subsidiary
7 values bears to the total assets of the taxpayer.

8 In the case of banking corporations which have international
9 banking facilities as defined in subsection (n), the foregoing aggregate
10 of values shall also be reduced by retained earnings of the international
11 banking facility. Retained earnings means the earnings accumulated
12 over the life of such facility and shall not include the distributive share
13 of dividends paid and federal income taxes paid or payable during the
14 tax year.

15 If in the opinion of the commissioner, the corporation's books do
16 not disclose fair valuations the commissioner may make a reasonable
17 determination of the net worth which, in his opinion, would reflect the
18 fair value of the assets, exclusive of subsidiary investments as defined
19 aforesaid, carried on the books of the corporation, in accordance with
20 sound accounting principles, and such determination shall be used as
21 net worth for the purpose of this act.

22 (e) (Deleted by amendment, P.L.1998, c.114.)

23 (f) "Investment company" shall mean any corporation whose
24 business during the period covered by its report consisted, to the
25 extent of at least 90% thereof of holding, investing and reinvesting in
26 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
27 other securities for its own account, but this shall not include any
28 corporation which: (1) is a merchant or a dealer of stocks, bonds and
29 other securities, regularly engaged in buying the same and selling the
30 same to customers; or (2) had less than 90% of its average gross
31 assets in New Jersey, at cost, invested in stocks, bonds, debentures,
32 mortgages, notes, patents, patent rights or other securities or
33 consisting of cash on deposit during the period covered by its report;
34 or (3) is a banking corporation, a savings institution, or a financial
35 business corporation as defined in the Corporation Business Tax Act.

36 (g) "Regulated investment company" shall mean any corporation
37 which for a period covered by its report, is registered and regulated
38 under the Investment Company Act of 1940 (54 Stat. 789), as
39 amended.

40 (h) "Taxpayer" shall mean any corporation, and any partnership
41 required, or consenting, to report or to pay taxes, interest or penalties
42 under this act. "Taxpayer" shall not include a partnership that is listed
43 on a United States national stock exchange.

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

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

4 (k) "Entire net income" shall mean total net income from all
5 sources, whether within or without the United States, and shall include
6 the gain derived from the employment of capital or labor, or from both
7 combined, as well as profit gained through a sale or conversion of
8 capital assets.

9 For the purpose of this act, the amount of a taxpayer's entire net
10 income shall be deemed prima facie to be equal in amount to the
11 taxable income, before net operating loss deduction and special
12 deductions, which the taxpayer is required to report, or, if the taxpayer
13 is classified as a partnership for federal tax purposes, would otherwise
14 be required to report, to the United States Treasury Department for
15 the purpose of computing its federal income tax, provided however,
16 that in the determination of such entire net income,

17 (1) Entire net income shall exclude for the periods set forth in
18 paragraph (2)(F)(i) of this subsection, any amount, except with respect
19 to qualified mass commuting vehicles as described in section
20 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
21 prior to January 1, 1984, which is included in a taxpayer's federal
22 taxable income solely as a result of an election made pursuant to the
23 provisions of paragraph (8) of that section.

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

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

29 (B) Any part of any income from dividends or interest on any kind
30 of stock, securities or indebtedness, except as provided in paragraph
31 (5) of subsection (k) of this section;

32 (C) Taxes paid or accrued to the United States, a possession or
33 territory of the United States, a state, a political subdivision thereof,
34 or the District of Columbia, or to any foreign country, state, province,
35 territory or subdivision thereof, on or measured by profits or income,
36 or business presence or business activity, or the tax imposed by this
37 act, or any tax paid or accrued with respect to subsidiary dividends
38 excluded from entire net income as provided in paragraph (5) of
39 subsection (k) of this section;

40 (D) (Deleted by amendment, P.L.1985, c.143.)

41 (E) (Deleted by amendment, P.L.1995, c.418.)

42 (F) (i) The amount by which depreciation reported to the United
43 States Treasury Department for property placed in service on and after
44 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
45 years beginning on and after the effective date of P.L.1993, c.172, for
46 purposes of computing federal taxable income in accordance with

1 section 168 of the Internal Revenue Code in effect after December 31,
2 1980, exceeds the amount of depreciation determined in accordance
3 with the Internal Revenue Code provisions in effect prior to January
4 1, 1981, but only with respect to a taxpayer's accounting period ending
5 after December 31, 1981; provided, however, that where a taxpayer's
6 accounting period begins in 1981 and ends in 1982, no modification
7 shall be required with respect to this paragraph (F) for the report filed
8 for such period with respect to property placed in service during that
9 part of the accounting period which occurs in 1981. The provisions
10 of this subparagraph shall not apply to assets placed in service prior to
11 January 1, 1998 of a gas, gas and electric, and electric public utility
12 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
13 seq.) prior to 1998.

14 (ii) For the periods set forth in subparagraph (F)(i) of this
15 subsection, any amount, except with respect to qualified mass
16 commuting vehicles as described in section 168(f)(8)(D)(v) of the
17 Internal Revenue Code as in effect immediately prior to January 1,
18 1984, which the taxpayer claimed as a deduction in computing federal
19 income tax pursuant to a qualified lease agreement under paragraph
20 (8) of that section.

21 The director shall promulgate rules and regulations necessary to
22 carry out the provisions of this section, which rules shall provide,
23 among others, the manner in which the remaining life of property shall
24 be reported.

25 (G) (i) The amount of any civil, civil administrative, or criminal
26 penalty or fine, including a penalty or fine under an administrative
27 consent order, assessed and collected for a violation of a State or
28 federal environmental law, an administrative consent order, or an
29 environmental ordinance or resolution of a local governmental entity,
30 and any interest earned on the penalty or fine, and any economic
31 benefits having accrued to the violator as a result of a violation, which
32 benefits are assessed and recovered in a civil, civil administrative, or
33 criminal action, or pursuant to an administrative consent order. The
34 provisions of this paragraph shall not apply to a penalty or fine
35 assessed or collected for a violation of a State or federal
36 environmental law, or local environmental ordinance or resolution, if
37 the penalty or fine was for a violation that resulted from fire, riot,
38 sabotage, flood, storm event, natural cause, or other act of God
39 beyond the reasonable control of the violator, or caused by an act or
40 omission of a person who was outside the reasonable control of the
41 violator.

42 (ii) The amount of treble damages paid to the Department of
43 Environmental Protection pursuant to subsection a. of section 7 of
44 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
45 department in removing, or arranging for the removal of, an
46 unauthorized discharge upon failure of the discharger to comply with

1 a directive from the department to remove, or arrange for the removal
2 of, the discharge.

3 (H) The amount of any sales and use tax paid by a utility vendor
4 pursuant to section 71 of P.L.1997, c.162.

5 (I) Interest paid, accrued or incurred for the privilege period to a
6 related member , as defined in section 5 of P.L.2002, c.40
7 (C.54:10A-4.4), except that a deduction shall be permitted to the
8 extent that the taxpayer establishes by clear and convincing evidence,
9 as determined by the director, that: (i) a principal purpose of the
10 transaction giving rise to the payment of the interest was not to avoid
11 taxes otherwise due under Title 54 of the Revised Statutes or Title
12 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to
13 arm's length contracts at an arm's length rate of interest, and (iii)(aa)
14 the related member was subject to a tax on its net income or receipts
15 in this State or another state or possession of the United States or in
16 a foreign nation, (bb) a measure of the tax includes the interest
17 received from the related member, and (cc) the rate of tax applied to
18 the interest received by the related member is equal to or greater than
19 a rate three percentage points less than the rate of tax applied to
20 taxable interest by this State.

21 A deduction shall also be permitted if the taxpayer establishes by
22 clear and convincing evidence, as determined by the director, that the
23 disallowance of a deduction is unreasonable, or the taxpayer and the
24 director agree in writing to the application or use of an alternative
25 method of apportionment under section 8 of P.L.1945, c.162
26 (C.54:10A-8); nothing in this subsection shall be construed to limit or
27 negate the director's authority to otherwise enter into agreements and
28 compromises otherwise allowed by law.

29 A deduction shall also be permitted to the extent that the taxpayer
30 establishes by a preponderance of the evidence, as determined by the
31 director, that the interest is directly or indirectly paid, accrued or
32 incurred to (i) a related member in a foreign nation which has in force
33 a comprehensive income tax treaty with the United States, provided
34 however that the taxpayer shall disclose on its return for the privilege
35 period the name of the related member, the amount of the interest, the
36 relevant foreign nation, and such other information as the director may
37 prescribe or (ii) to an independent lender and the taxpayer guarantees
38 the debt on which the interest is required.

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

43 (4) There shall be allowed as a deduction from entire net income
44 of a banking corporation, to the extent not deductible in determining
45 federal taxable income, the eligible net income of an international
46 banking facility determined as follows:

1 (A) The eligible net income of an international banking facility shall
2 be the amount remaining after subtracting from the eligible gross
3 income the applicable expenses;

4 (B) Eligible gross income shall be the gross income derived by an
5 international banking facility, which shall include, but not be limited to,
6 gross income derived from:

7 (i) Making, arranging for, placing or carrying loans to foreign
8 persons, provided, however, that in the case of a foreign person which
9 is an individual, or which is a foreign branch of a domestic corporation
10 (other than a bank), or which is a foreign corporation or foreign
11 partnership which is controlled by one or more domestic corporations
12 (other than banks), domestic partnerships or resident individuals, all
13 the proceeds of the loan are for use outside of the United States;

14 (ii) Making or placing deposits with foreign persons which are
15 banks or foreign branches of banks (including foreign subsidiaries) or
16 foreign branches of the taxpayers or with other international banking
17 facilities;

18 (iii) Entering into foreign exchange trading or hedging transactions
19 related to any of the transactions described in this paragraph; or

20 (iv) Such other activities as an international banking facility may,
21 from time to time, be authorized to engage in;

22 (C) Applicable expenses shall be any expense or other deductions
23 attributable, directly or indirectly, to the eligible gross income
24 described in subparagraph (B) of this paragraph.

25 (5) Entire net income shall exclude 100% of dividends which were
26 included in computing such taxable income for federal income tax
27 purposes, paid to the taxpayer by one or more subsidiaries owned by
28 the taxpayer to the extent of the 80% or more ownership of investment
29 described in subsection (d) of this section and shall exclude 50% of
30 dividends which were included in computing such taxable income for
31 federal income tax purposes, paid to the taxpayer by one or more
32 subsidiaries owned by the taxpayer to the extent of 50% or more
33 ownership of investment, such ownership of investment calculated in
34 the same manner as the 80% or more of ownership of investment is
35 calculated as described in subsection (d) of this section.

36 (6) (A) Net operating loss deduction. There shall be allowed as
37 a deduction for the privilege period the net operating loss carryover to
38 that period.

39 (B) Net operating loss carryover. A net operating loss for any
40 privilege period ending after June 30, 1984 shall be a net operating
41 loss carryover to each of the seven privilege periods following the
42 period of the loss. The entire amount of the net operating loss for any
43 privilege period (the "loss period") shall be carried to the earliest of
44 the privilege periods to which the loss may be carried. The portion of
45 the loss which shall be carried to each of the other privilege periods
46 shall be the excess, if any, of the amount of the loss over the sum of

1 the entire net income, computed without the exclusions permitted in
2 paragraphs (4) and (5) of this subsection or the net operating loss
3 deduction provided by subparagraph (A) of this paragraph, for each of
4 the prior privilege periods to which the loss may be carried.

5 (C) Net operating loss. For purposes of this paragraph the term
6 "net operating loss" means the excess of the deductions over the gross
7 income used in computing entire net income without the net operating
8 loss deduction provided for in subparagraph (A) of this paragraph and
9 the exclusions in paragraphs (4) and (5) of this subsection.

10 (D) Change in ownership. Where there is a change in 50% or more
11 of the ownership of a corporation because of redemption or sale of
12 stock and the corporation changes the trade or business giving rise to
13 the loss, no net operating loss sustained before the changes may be
14 carried over to be deducted from income earned after such changes.
15 In addition where the facts support the premise that the corporation
16 was acquired under any circumstances for the primary purpose of the
17 use of its net operating loss carryover, the director may disallow the
18 carryover.

19 (E) Notwithstanding the provisions of this paragraph (6) of
20 subsection (k) of this section to the contrary, for privilege periods
21 beginning during calendar year 2002 and calendar year 2003, no
22 deduction for any net operating loss carryover shall be allowed, and
23 for privilege periods beginning during calendar year 2004 and calendar
24 year 2005, there shall be allowed as a deduction for the privilege
25 period so much of the net operating loss carryover as reduces entire
26 net income otherwise calculated by 50%. If and only to the extent that
27 any net operating loss carryover deduction is disallowed by reason of
28 this subparagraph (E), the date on which the amount of the disallowed
29 net operating loss carryover deduction would otherwise expire shall be
30 extended by [two years] a period equal to the period for which
31 application of the net operating loss was disallowed by this
32 subparagraph.

33 Provided, that this subparagraph (E) shall not restrict the surrender
34 or acquisition of corporation business tax benefit certificates pursuant
35 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict
36 the application of corporation business tax benefit certificates pursuant
37 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

38 (7) The entire net income of gas, electric and gas and electric
39 public utilities that were subject to the provisions of P.L.1940, c.5
40 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting
41 the New Jersey depreciation allowance for federal tax depreciation
42 with respect to assets placed in service prior to January 1, 1998. For
43 gas, electric, and gas and electric public utilities that were subject to
44 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,
45 the New Jersey depreciation allowance shall be computed as follows:
46 All depreciable assets placed in service prior to January 1, 1998 shall

1 be considered a single asset account. The New Jersey tax basis of this
2 depreciable asset account shall be an amount equal to the carryover
3 adjusted basis for federal income tax purposes on December 31, 1997
4 of all depreciable assets in service on December 31, 1997, increased
5 by the excess, of the "net carrying value," defined to be adjusted book
6 basis of all assets and liabilities, excluding deferred income taxes,
7 recorded on the public utility's books of account on December 31,
8 1997, over the carryover adjusted basis for federal income tax
9 purposes on December 31, 1997 of all assets and liabilities owned by
10 the gas, electric, or gas and electric public utility as of December 31,
11 1997. "Books of account" for gas, gas and electric, and electric public
12 utilities means the uniform system of accounts as promulgated by the
13 Federal Energy Regulatory Commission and adopted by the Board of
14 Public Utilities. The following adjustments to entire net income shall
15 be made pursuant to this section:

16 (A) Depreciation for property placed in service prior to January 1,
17 1998 shall be adjusted as follows:

18 (i) Depreciation for federal income tax purposes shall be
19 disallowed in full.

20 (ii) A deduction shall be allowed for the New Jersey depreciation
21 allowance. The New Jersey depreciation allowance shall be computed
22 for the single asset account described above based on the New Jersey
23 tax basis as adjusted above as if all assets in the single asset account
24 were first placed in service on January 1, 1998. Depreciation shall be
25 computed using the straight line method over a thirty-year life. A full
26 year's depreciation shall be allowed in the initial tax year. No half-year
27 convention shall apply. The depreciable basis of the single account
28 shall be reduced by the adjusted federal tax basis of assets sold,
29 retired, or otherwise disposed of during any year on which gain or loss
30 is recognized for federal income tax purposes as described in
31 subparagraph (B) of this paragraph.

32 (B) Gains and losses on sales, retirements and other dispositions
33 of assets placed in service prior to January 1, 1998 shall be recognized
34 and reported on the same basis as for federal income tax purposes.

35 (C) The Director of the Division of Taxation shall promulgate
36 regulations describing the methodology for allocating the single asset
37 account in the event that a portion of the utility's operations are
38 separated, spun-off, transferred to a separate company or otherwise
39 desegregated.

40 (8) In the case of taxpayers that are gas, electric, gas and electric,
41 or telecommunication public utilities as defined pursuant to subsection
42 (q) of this section, the director shall have authority to promulgate rules
43 and issue guidance correcting distortions and adjusting timing
44 differences resulting from the adoption of P.L.1997, c.162
45 (C.54:10A-5.25 et al.).

46 (9) Notwithstanding paragraph (1) of this subsection, entire net

1 income shall not include the income derived by a corporation
2 organized in a foreign country from the international operation of a
3 ship or ships, or from the international operation of aircraft, if such
4 income is exempt from federal taxation pursuant to section 883 of the
5 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

6 (10) Entire net income shall exclude all income of an alien
7 corporation the activities of which are limited in this State to investing
8 or trading in stocks and securities for its own account, investing or
9 trading in commodities for its own account, or any combination of
10 those activities, within the meaning of section 864 of the federal
11 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on
12 December 31, 1998. Notwithstanding the previous sentence, if an
13 alien corporation undertakes one or more infrequent, extraordinary or
14 non-recurring activities, including but not limited to the sale of
15 tangible property, only the income from such infrequent, extraordinary
16 or non-recurring activity shall be subject to the tax imposed pursuant
17 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income
18 subject to tax shall be determined without regard to the allocation to
19 that specific transaction of any general business expense of the
20 taxpayer and shall be specifically assigned to this State for taxation by
21 this State without regard to section 6 of P.L.1945, c.162
22 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"
23 means a corporation organized under the laws of a jurisdiction other
24 than the United States or its political subdivisions.

25 (11) No deduction shall be allowed for research and experimental
26 expenditures, to the extent that those research and experimental
27 expenditures are qualified research expenses or basic research
28 payments for which an amount of credit is claimed pursuant to section
29 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and
30 experimental expenditures are also used to compute a federal credit
31 claimed pursuant to section 41 of the federal Internal Revenue Code
32 of 1986, 26 U.S.C. s.41.

33 (12) (A) Notwithstanding the provisions of subsection (k) of
34 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.
35 s.168, and subsection (b) of section 1400L of the federal Internal
36 Revenue Code of 1986, 26 U.S.C. s.1400L, for property acquired after
37 September 10, 2001 and before September 11, 2004, the depreciation
38 deduction otherwise allowed pursuant to section 167 of the federal
39 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined
40 pursuant to the requirements and limitations of section 168 of the
41 federal Internal Revenue Code of 1986, 26 U.S.C. s.168, and section
42 280F of the federal Internal Revenue Code of 1986, 26 U.S.C. s.280F,
43 as if that subsection (k) and that section 1400L were not in effect.

44 (B) The director shall prescribe the rules and regulations necessary
45 to carry out the provisions of this paragraph, including, among others,
46 those for determining the adjusted basis of the acquired property for

1 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,
2 c.162.

3 (l) "Real estate investment trust" shall mean any corporation, trust
4 or association qualifying and electing to be taxed as a real estate
5 investment trust under federal law.

6 (m) "Financial business corporation" shall mean any corporate
7 enterprise which is (1) in substantial competition with the business of
8 national banks and which (2) employs moneyed capital with the object
9 of making profit by its use as money, through discounting and
10 negotiating promissory notes, drafts, bills of exchange and other
11 evidences of debt; buying and selling exchange; making of or dealing
12 in secured or unsecured loans and discounts; dealing in securities and
13 shares of corporate stock by purchasing and selling such securities and
14 stock without recourse, solely upon the order and for the account of
15 customers; or investing and reinvesting in marketable obligations
16 evidencing indebtedness of any person, copartnership, association or
17 corporation in the form of bonds, notes or debentures commonly
18 known as investment securities; or dealing in or underwriting
19 obligations of the United States, any state or any political subdivision
20 thereof, or of a corporate instrumentality of any of them. This shall
21 include, without limitation of the foregoing, business commonly
22 known as industrial banks, dealers in commercial paper and
23 acceptances, sales finance, personal finance, small loan and mortgage
24 financing businesses, as well as any other enterprise employing
25 moneyed capital coming into competition with the business of national
26 banks; provided that the holding of bonds, notes, or other evidences
27 of indebtedness by individual persons not employed or engaged in the
28 banking or investment business and representing merely personal
29 investments not made in competition with the business of national
30 banks, shall not be deemed financial business. Nor shall "financial
31 business" include national banks, production credit associations
32 organized under the Farm Credit Act of 1933 or the Farm Credit Act
33 of 1971, Pub.L. 92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
34 insurance companies duly authorized to transact business in this State,
35 security brokers or dealers or investment companies or bankers not
36 employing moneyed capital coming into competition with the business
37 of national banks, real estate investment trusts, or any of the following
38 entities organized under the laws of this State: credit unions, savings
39 banks, savings and loan and building and loan associations,
40 pawnbrokers, and State banks and trust companies.

41 (n) "International banking facility" shall mean a set of asset and
42 liability accounts segregated on the books and records of a depository
43 institution, United States branch or agency of a foreign bank, or an
44 Edge or Agreement Corporation that includes only international
45 banking facility time deposits and international banking facility
46 extensions of credit as such terms are defined in section 204.8(a)(2)

1 and section 204.8(a)(3) of Regulation D of the board of governors of
2 the Federal Reserve System, 12 CFR Part 204, effective December 3,
3 1981. In the event that the United States enacts a law, or the board
4 of governors of the Federal Reserve System adopts a regulation which
5 amends the present definition of international banking facility or of
6 such facilities' time deposits or extensions of credit, the Commissioner
7 of Banking and Insurance shall forthwith adopt regulations defining
8 such terms in the same manner as such terms are set forth in the laws
9 of the United States or the regulations of the board of governors of the
10 Federal Reserve System. The regulations of the Commissioner of
11 Banking and Insurance shall thereafter provide the applicable
12 definitions.

13 (o) "S corporation" means a corporation included in the definition
14 of an "S corporation" pursuant to section 1361 of the federal Internal
15 Revenue Code of 1986, 26 U.S.C. s.1361.

16 (p) "New Jersey S corporation" means a corporation that is an S
17 corporation; which has made a valid election pursuant to section 3 of
18 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
19 corporation continuously since the effective date of the valid election
20 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

21 (q) "Public Utility" means "public utility" as defined in
22 R.S.48:2-13.

23 (r) "Qualified investment partnership" means a partnership under
24 this act that has more than 10 members or partners with no member or
25 partner owning more than a 50% interest in the entity and that derives
26 at least 90% of its gross income from dividends, interest, payments
27 with respect to securities loans, and gains from the sale or other
28 disposition of stocks or securities or foreign currencies or
29 commodities or other similar income (including but not limited to gains
30 from swaps, options, futures or forward contracts) derived with
31 respect to its business of investing or trading in those stocks,
32 securities, currencies or commodities, but "investment partnership"
33 shall not include a "dealer in securities" within the meaning of section
34 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

35 (s) "Savings institution" means a state or federally chartered
36 building and loan association, savings and loan association, or savings
37 bank.

38 (t) "Partnership" means an entity classified as a partnership for
39 federal income tax purposes.

40 (cf: P.L.2002, c.40, s.3)

41

42 2. This act shall take effect immediately.

1 STATEMENT

2

3 This bill limits the application of net operating loss (NOL)
4 deductions under the corporation business tax for privilege periods
5 beginning in calendar years 2004 and 2005 to so much of the NOLs as
6 reduce the entire net income subject to tax to 50% of what it would
7 otherwise be.

8 "Net operating loss" is a tax accounting concept; if a taxpayer has
9 more business expense than business income in a tax year, the taxpayer
10 has a net operating loss for that year. The net operating loss can be
11 deducted in later years from taxable income to reduce tax liability.
12 The Business Tax Reform Act, P.L.2002, c.40, provided for a
13 suspension of the application of net operating losses for privilege
14 periods beginning in calendar years 2002 and 2003; under current law,
15 corporation business tax payers are allowed to begin to apply NOLs
16 against income for privilege periods beginning in calendar year 2004.

17 The Governor's Proposed Budget for State Fiscal Year 2004-2005
18 assumed that the total suspension of NOL application would be
19 extended for privilege periods beginning in calendar years 2004 and
20 2005. This bill, however, allows the use of available NOLs for 2004
21 and 2005 for reducing taxable income by up to 50%, returning NOLs
22 to full deductibility for privilege periods beginning in calendar year
23 2006.

24 The bill extends the usual seven year carryforward (14 years for
25 certain high-technology corporations) extended for the period of
26 suspension. The suspension does not apply to the NOLs purchased
27 through the high-technology incentive program.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1715

STATE OF NEW JERSEY

DATED: JUNE 18, 2004

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1715.

This bill limits the application of net operating loss (NOL) deductions under the corporation business tax (CBT) for privilege periods beginning in calendar years 2004 and 2005 to so much of the NOLs as reduce the entire net income subject to tax to 50% of what it would otherwise be.

"Net operating loss" is a tax accounting concept; if a taxpayer has more business expense than business income in a tax year, the taxpayer has a net operating loss for that year. The net operating loss can be deducted in later years from taxable income to reduce tax liability. The Business Tax Reform Act, P.L.2002, c.40, provided for a suspension of the application of net operating losses for privilege periods beginning in calendar years 2002 and 2003; under current law, corporation business tax payers are allowed to begin to apply NOLs against income for privilege periods beginning in calendar year 2004.

The Governor's Proposed Budget for State Fiscal Year 2004-2005 assumed that the total suspension of NOL application would be extended for privilege periods beginning in calendar years 2004 and 2005. This bill, however, allows the use of available NOLs for 2004 and 2005 for reducing taxable income by up to 50 percent, returning NOLs to full deductibility for privilege periods beginning in calendar year 2006.

The bill extends the usual seven year carryforward (14 years for certain high-technology corporations) extended for the period of suspension. The suspension does not apply to the NOLs purchased through the high-technology incentive program.

FISCAL IMPACT

Based upon earlier Executive Branch projections that extending full suspension of NOL deduction allowance would maintain \$275 million in CBT revenue, it is estimated that allowance of such deductions at the 50 percent level will maintain about \$140 million of CBT revenue in FY2005.