

# 34:1B-115.1

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2004 **CHAPTER:** 65

**NJSA:** 34:1B-115.1 (Decouples corporation business tax from federal depreciation)

**BILL NO:** A3111 ( Substituted for S1657)

**SPONSOR(S):** Sires and Cohen

**DATE INTRODUCED:** June 21, 2004

**COMMITTEE:** **ASSEMBLY:** Budget

**SENATE:** ---

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:** **ASSEMBLY:** June 24, 2004

**SENATE:** June 24, 2004

**DATE OF APPROVAL:** June 30, 2004

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (Assembly Committee Substitute enacted)

**A3111**

[SPONSOR'S STATEMENT:](#) (Begins on page 13 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**S1657**

[SPONSOR'S STATEMENT:](#) (Begins on page 13 of original bill) [Yes](#)

Bill and Sponsors Statement identical to A3111

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**SENATE:** [Yes](#)

Identical to Assembly Statement to A3111

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

§§5-7 -  
C.34:1B-115.1  
to 34:1B-115.3  
§11 - C.34:1B-118.1  
§§14,17 -  
C.34:1B-120.1  
and 34:1B-120.2  
§§19-22 -  
C.34:1B-185  
to 34:1B-188  
§23 - C.52:27H-87.1  
§26 - C.54A:5-1.2  
§27 - Note

P.L. 2004, CHAPTER 65, *approved June 30, 2004*  
Assembly Committee Substitute for  
Assembly, No. 3111

1 **AN ACT** concerning the timing of tax deductions for certain business  
2 expenses and providing incentives for business relocation and  
3 retention, amending and supplementing P.L.1996, c.25, amending  
4 P.L.1997, c.334, supplementing chapter 1B of Title 34 of the  
5 Revised Statutes and P.L.1983, c.303 (C.52:27H-60 et seq.),  
6 amending P.L.1945, c.162 and P.L.1993, c.171, and supplementing  
7 Title 54A of the Revised Statutes.

8  
9 **BE IT ENACTED** by the Senate and General Assembly of the State  
10 of New Jersey:

11  
12 1. Section 1 of P.L.1996, c.25 (C.34:1B-112) is amended to read  
13 as follows:

14 1. This act shall be known and may be cited as the "Business  
15 Retention and Relocation Assistance Act."  
16 (cf: P.L.1996, c.25, s.1)

17  
18 2. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to read  
19 as follows

20 2. As used in this act:

21 "Advanced computing" means a technology used in the designing  
22 and developing of computing hardware and software, including  
23 innovations in designing the full spectrum of hardware from hand-held  
24 calculators to super computers, and peripheral equipment;

25 "Advanced computing company" means a person with headquarters  
26 or base of operations located in New Jersey and engaged in the  
27 research, development, production, or provision of advanced  
28 computing for the purpose of developing or providing products or  
29 processes for specific commercial or public purposes;

30 "Advanced materials" means materials with engineered properties

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

Matter underlined thus is new matter.

1 created through the development of specialized processing and  
2 synthesis technology, including ceramics, high value-added metals,  
3 electronic materials, composites, polymers, and biomaterials;

4 "Advanced materials company" means a person with headquarters  
5 or base of operations located in New Jersey and engaged in the  
6 research, development, production, or provision of advanced materials  
7 for the purpose of developing or providing products or processes for  
8 specific commercial or public purposes;

9 "Biotechnology" means the continually expanding body of  
10 fundamental knowledge about the functioning of biological systems  
11 from the macro level to the molecular and sub-atomic levels, as well  
12 as novel products, services, technologies and sub-technologies  
13 developed as a result of insights gained from research advances which  
14 add to that body of fundamental knowledge;

15 "Biotechnology company" means a person with headquarters or  
16 base of operations located in New Jersey and engaged in the research,  
17 development, production, or provision or biotechnology for the  
18 purpose of developing or providing products or processes for specific  
19 commercial or public purposes, including, but not limited to, medical,  
20 pharmaceutical, nutritional, and other health-related purposes,  
21 agricultural purposes, and environmental purposes, or a person with  
22 headquarters or base of operations located in New Jersey and engaged  
23 in providing services or products necessary for such research,  
24 development, production, or provision;

25 "Business retention or relocation grant of tax credits" or "grant of  
26 tax credits" means a grant which consists of the value of corporation  
27 business tax credits against the liability imposed pursuant to section 5  
28 of P.L.1945, c.162 (C.54:10A-5) or credits against the taxes imposed  
29 on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section  
30 1 of P.L.1950, c.231 (C.17:32-15), and N.J.S.17B:23-5, provided to  
31 fund a portion of retention and relocation costs pursuant to [this act]  
32 P.L.1996, c.25 (C.34:1B-112 et seq.);

33 "Commissioner" means the [Commissioner of the Department of  
34 Commerce and Economic Development] Chief Executive Officer and  
35 Secretary of the New Jersey Commerce and Economic Growth  
36 Commission;

37 "Department" means the [Department of Commerce and Economic  
38 Development] New Jersey Commerce and Economic Growth  
39 Commission;

40 "Business" means an employer located in this State that has  
41 operated continuously in the State, in whole or in part, in its current  
42 form or as a predecessor entity for at least 10 years prior to filing an  
43 application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and  
44 which is subject to the provisions of R.S.43:21-1 et seq. and may  
45 include a sole proprietorship, a partnership, or a corporation that has  
46 made an election under Subchapter S of Chapter One of Subtitle A of

1 the Internal Revenue Code of 1986, or any other business entity  
2 through which income flows as a distributive share to its owners,  
3 limited liability company, nonprofit corporation, or any other form of  
4 business organization located either within or outside the State[,  
5 including a cooperative association. A grant received under this act  
6 by a partnership, Subchapter S-Corporation, or other such business  
7 entity shall be apportioned among the persons to whom the income or  
8 profit of the partnership, Subchapter S-Corporation, or other entity is  
9 distributed, in the same proportions as those in which the income or  
10 profit is distributed.

11 "Cooperative association" shall include financial, stock or  
12 commodities exchanges];

13 "Commitment duration" means five years from the date specified  
14 in the project agreement entered into pursuant to section 5 of  
15 P.L.1996, c.25 (C.34:1B-116);

16 "Designated industry" means a business engaged in the field of  
17 biotechnology, pharmaceuticals, manufacturing, financial services or  
18 transportation and logistics, advanced computing, advanced materials,  
19 electronic device technology, environmental technology or medical  
20 device technology;

21 "Designated urban center" means an urban center designated in the  
22 State Development and Redevelopment Plan adopted by the State  
23 Planning Commission;

24 "Electronic device technology" means a technology involving  
25 microelectronics, semiconductors, electronic equipment, and  
26 instrumentation, radio frequency, microwave, and millimeter  
27 electronics, and optical and optic-related electrical devices, or data and  
28 digital communications and imaging devices;

29 "Electronic device technology company" means a person with  
30 headquarters or base of operations located in New Jersey and engaged  
31 in the research, development, production, or provision of electronic  
32 device technology for the purpose of developing or providing products  
33 or processes for specific commercial or public purposes;

34 "Eligible position" means a full-time position retained by a business  
35 in this State for which a business provides employee health benefits  
36 under a group health plan as defined under section 14 of P.L.1997,  
37 c.146 (C.17B:27-54), a health benefits plan as defined under section  
38 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health  
39 insurance covering more than one person issued pursuant to Article 2  
40 of Title 17B of the New Jersey Statutes;

41 "Full-time employee" means a person who is employed for  
42 consideration for at least thirty-five hours a week, or who renders any  
43 other standard of service generally accepted by custom or practice as  
44 full-time employment, [provided that a person shall be determined by  
45 the department to be employed in a permanent position in accordance  
46 with criteria developed by the department. In determining if

1 employees are full-time, the commissioner shall give greater  
2 consideration to employees who earn an average of at least 1.5 times  
3 the minimum hourly wage] whose wages are subject to withholding as  
4 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
5 et seq., and who is determined by the commissioner to be employed in  
6 a permanent position according to criteria as the commissioner may  
7 prescribe. "Full-time employee" shall not include any person who  
8 works as an independent contractor or on a consulting basis for the  
9 business. "Full-time employee" shall not include a child, grandchild,  
10 parent, or spouse of an individual who has direct or indirect ownership  
11 of at least 5% of the profits, capital, or value of the business;

12 "Headquarters" of a business means the single location that serves  
13 as the national administrative center of the business, at which the  
14 primary office of the chief executive officer or chief operating officer  
15 of the business, as well as the offices of the management officials  
16 responsible for key businesswide functions such as finance, legal,  
17 marketing, and human resources, are located;

18 "High-technology business" means an advanced computing  
19 company, advanced materials company, electronic device technology  
20 company, environmental technology company or medical device  
21 technology company;

22 "Medical device technology" means a technology involving any  
23 medical equipment or product (other than a pharmaceutical product)  
24 that has therapeutic value, diagnostic value, or both, and is regulated  
25 by the federal Food and Drug Administration;

26 "Medical device technology company" means a person with  
27 headquarters or base of operations located in New Jersey and engaged  
28 in the research, development, production, or provision of medical  
29 device technology for the purpose of developing or providing products  
30 or processes for specific commercial or public purposes;

31 "New business location" means the premises that the business has  
32 either purchased or built or for which the business has entered into a  
33 purchase agreement or a written lease for a period of no less than eight  
34 years from the date of relocation;

35 ["New full-time job" means a job held by a full-time employee that  
36 did not exist in this State prior to the business relocating to the new  
37 business location;

38 "New income tax revenue" means the total amount withheld by the  
39 business during the taxable year from the wages of employees in new  
40 full-time jobs pursuant to the "New Jersey Gross Income Tax Act,"  
41 N.J.S.54A:1-1 et seq., as certified by the Director of the Division of  
42 Taxation;]

43 "Manufacturing facility" means a business location at which more  
44 than 50% of the business personal property that is housed in the  
45 facility is eligible for the sales tax exemption pursuant to subsection a.  
46 of section 25 of P.L.1980, c.105 (C.54:32B-8.13) for machinery,

1 apparatus or equipment used in the production of tangible personal  
2 property:

3 "Program" means the Business Retention and Relocation  
4 Assistance Grant Program created pursuant to P.L.1996, c.25  
5 (C.34:1B-112 et seq.);

6 ["Relocation costs" means the costs incurred by the business in  
7 moving and installing furniture, files, office equipment or other  
8 machinery or equipment in the new business location; the cost of  
9 installation of telephones and other communication equipment; and the  
10 cost incurred in the purchase of office furniture and fixtures]

11 "Project agreement" means an agreement between a business and  
12 the department that sets the forecasted schedule for completion and  
13 occupancy of the project, the date the commitment duration shall  
14 commence, the amount of the applicable grant of tax credits, and other  
15 such provisions which further the purposes of P.L.1996, c.25  
16 (C.34:1B-112 et seq.);

17 "Research and development facility" means a business location at  
18 which more than 50% of the business personal property that is  
19 purchased for the facility is eligible for the sales tax exemption  
20 pursuant to section 26 of P.L.1980, c.105 (C.54:32B-8.14) for  
21 property used in research and development;

22 "Retained full-time job" means an eligible position that currently  
23 exists in New Jersey and is filled by a full-time employee but which,  
24 because of a relocation by the business, is at risk of being lost to  
25 another state or country. For the purposes of determining a number  
26 of retained full-time jobs, the eligible positions of the members of a  
27 "controlled group of corporations" as defined pursuant to section 1563  
28 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, shall  
29 be considered the eligible positions of a single employer; and

30 "Total allowable relocation costs" means [the lesser of total  
31 relocation costs or \$400] \$1,500 times the number of [new] retained  
32 full-time jobs [created]. "Total allowable relocation costs" does not  
33 include the amount of any bonus award authorized pursuant to section  
34 5 of P.L. , c. (C. )(now pending before the Legislature as this  
35 bill).

36 (cf: P.L.1996, c.25, s.2)

37

38 3. Section 3 of P.L.1996, c.25 (C.34:1B-114) is amended to read  
39 as follows:

40 3. The Business Retention and Relocation Assistance Grant  
41 Program is hereby established as program under the jurisdiction of the  
42 [in the Department of Commerce and Economic Development] New  
43 Jersey Commerce and Economic Growth Commission and shall be  
44 administered by the [Commissioner of the Department of Commerce  
45 and Economic Development] Chief Executive Officer and Secretary  
46 of the New Jersey Commerce and Economic Growth Commission.

1 The purpose of the program is to encourage economic development  
2 and job creation and to preserve jobs that currently exist in New  
3 Jersey but which are in danger of being relocated to premises outside  
4 of the State. To implement that purpose, and to the extent that  
5 funding for the program is available, the program may provide grants  
6 [in an amount up to and including 50% of the total allowable  
7 relocation costs,] of tax credits but in no case shall the amount of an  
8 individual grant of tax credits exceed 80% of the projected [new  
9 income] State tax revenues from the [new] retained full-time jobs  
10 [created] covered by [a grant] the project agreement of an applicant  
11 for a grant of tax credits.

12 (cf: P.L.1996, c.25, s.3)

13

14 4. Section 4 of P.L.1996, c.25 (C.34:1B-115) is amended to read  
15 as follows:

16 4. a. To qualify for a grant of tax credits, a business shall enter  
17 into an agreement to undertake a project to:

18 [a.] (1) relocate a minimum of [25 new] 250 retained full-time  
19 jobs [to] from one or more locations within this State to a new  
20 business location or locations in this State; [or

21 b. move to expanded facilities within the State and create a  
22 minimum of 25 new full-time jobs in the State] and

23 (2) maintain the retained full-time jobs pursuant to the project  
24 agreement for the commitment duration.

25 b. A project that consists solely of point-of-final-purchase retail  
26 facilities shall not be eligible for a grant of tax credits. If a project  
27 consists of both point-of-final-purchase retail facilities and non-retail  
28 facilities, only the portion of the project consisting of non-retail  
29 facilities shall be eligible for a grant of tax credits. If a warehouse  
30 facility is part of a point-of-final-purchase retail facility and supplies  
31 only that facility, the warehouse facility shall not be eligible for a grant  
32 of tax credits. For the purposes of this section, catalog distribution  
33 centers shall not be considered point-of-final-purchase retail facilities.

34 (cf: P.L.1996, c.25, s.4)

35

36 5. (New section) In addition to any grant of tax credits  
37 determined pursuant to section 7 of P.L. , c. (C. ) (now pending  
38 before the Legislature as this bill), a bonus award equivalent to 50%  
39 of the amount of the original grant of tax credits shall be made to any  
40 business that relocates more than 2,000 full-time employees covered  
41 by the project agreement from one or more locations outside of a  
42 designated urban center into a designated urban center, provided that  
43 all other applicable requirements of P.L.1996, c.25 (C.34:1B-112 et  
44 seq.) are satisfied; and provided further that no grant of tax credits  
45 shall be awarded pursuant to this section for any job that is moved



1 from its current location in an urban enterprise zone designated  
2 pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983,  
3 c.303 (C.52:27H-60 et seq.) to a location that is not within an urban  
4 enterprise zone; however, that if the move from the urban enterprise  
5 zone is to a facility already owned or leased by the same business and  
6 that business already employs at least the same number of persons as  
7 those being relocated from the urban enterprise zone a grant of tax  
8 credits may still be awarded pursuant to this section.

9  
10 6. (New section) To qualify for a grant of tax credits pursuant to  
11 P.L.1996, c.25 (C.34:1B-112 et seq.), a business shall demonstrate  
12 that the receipt of assistance pursuant to P.L.1996, c.25, will be a  
13 material factor in the business' decision not to relocate outside of New  
14 Jersey; provided however, that a business that relocates 1,500 or more  
15 retained full-time jobs covered by a project agreement from outside of  
16 a designated urban center to one or more new locations within a  
17 designated urban center shall not be required to make such a  
18 demonstration if the business applies for a grant of tax credits within  
19 six months of signing its lease or purchase agreement.

20  
21 7. (New section) a. The total value of the grants of tax credits  
22 issued pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) shall not  
23 exceed an aggregate annual limit of \$20,000,000 for a fiscal year. A  
24 tax credit issued pursuant to P.L.1996, c.25 may be applied against  
25 liability arising in the tax period in which the tax credit is issued and  
26 the tax period next following, and shall expire thereafter.

27 b. Grants of tax credits shall be awarded and issued to qualifying  
28 businesses as follows, subject to the limitations of subsection c. of this  
29 section:

30 (1) for a project that covers a business relocating a minimum of  
31 500 full-time employees, a grant of tax credits made pursuant to  
32 P.L.1996, c.25 (C.34:1B-112 et seq.) shall equal total allowable  
33 relocation costs plus any applicable bonus award determined pursuant  
34 to section 5 of P.L. , c. (C. ) (now pending before the Legislature  
35 as this bill) and shall be issued immediately upon the entry of the  
36 project agreement between the commissioner and the business with an  
37 approved project, up to the aggregate annual limit; and

38 (2) for a project that covers a business relocating between 250 and  
39 499 full-time employees, a grant of tax credits shall not be issued until  
40 the end of the fiscal year in which the application is approved.

41 c. If the sum of the amount of tax credits issued pursuant to  
42 paragraph (1) of subsection b. of this section in a fiscal year, plus the  
43 amount of tax credits approved pursuant to paragraph (2) of  
44 subsection b. of this section exceeds the \$20,000,000 aggregate annual  
45 limit, the commissioner shall reduce, on a pro rata basis, the award to  
46 each business receiving a grant of tax credits pursuant to paragraph (2)

1 of subsection b. as necessary to comply with the aggregate annual  
2 limit.

3  
4 8. Section 5 of P.L.1996, c.25 (C.34:1B-116) is amended to read  
5 as follows:

6 5. Each business seeking a grant of tax credits for a project shall  
7 submit an application for approval of the project to the commissioner  
8 in a form and manner prescribed in regulations adopted by the  
9 commissioner. The application must be submitted to the **[department]**  
10 commissioner for approval at least 45 days prior to moving to the new  
11 business location; provided however, a business relocating 1,500 or  
12 more retained full-time jobs to one or more new locations within a  
13 designated urban center shall, if relocating to a leased location, submit  
14 an application within six months of executing its lease. The  
15 application for approval of a project shall include:

16 a. A schedule of short-term and long-term employment projections  
17 of the business in the State based upon the relocation;

18 b. **[An estimate of the projected relocation costs]** ~~(Deleted by~~  
19 ~~amendment, P.L. , c. )(now pending before the Legislature as this~~  
20 ~~bill);~~

21 c. Terms of any lease agreements or details of the purchase or  
22 building of the new business location;

23 d. An estimate of the projected **[new income]** retained State tax  
24 revenues resulting from the relocation;

25 e. A description of the type of contribution the business can make  
26 to the long-term growth of the State's economy and a description of  
27 the potential impact on the State's economy if the jobs are not  
28 retained; [and]

29 f. Evidence that the business or a predecessor entity has been  
30 operating, in whole or in part, in this State for at least 10 years prior  
31 to the filing of the application;

32 g. Evidence of alternative relocation plans, such as an analysis of  
33 the cost effectiveness of remaining in this State versus relocation  
34 under the alternative plans;

35 h. A written commitment by the business to maintain 95% of the  
36 retained full-time jobs for at least the first two years of the  
37 commitment duration, and to maintain a minimum of 90% of the  
38 retained full-time jobs for the commitment duration; and

39 i. Any other necessary and relevant information as determined by  
40 the commissioner.

41 The commissioner may provide whatever assistance **[deemed]** the  
42 commissioner deems appropriate in the preparation of an application  
43 for approval of a project and may issue grants of tax credits pursuant  
44 to the project agreement entered between the commissioner and the  
45 business with an approved project at the commissioner's discretion  
46 subject to the provisions of **[this act]** P.L.1996, c.25 (C.34:1B-112 et

1 seq.)

2 The project agreement shall include terms establishing the starting  
3 date, or event that will determine the starting date, of the commitment  
4 duration and any other terms or conditions as determined by the  
5 commissioner.

6 [A cooperative association may apply, in one consolidated  
7 application on a form and in a manner determined by the  
8 commissioner, for a grant on its own behalf as a business and for  
9 grants on behalf of the members of the association who may qualify  
10 under this act. If a cooperative association is applying for grants on  
11 behalf of its members, the members for whom the application is  
12 submitted shall assign to the association any claim of right the  
13 members may have under this act to apply for grants individually, and  
14 shall agree to cooperate with the association in providing to the  
15 commissioner all the information required for the initial application  
16 and any other information the commissioner may require for the  
17 purposes of this act. If a cooperative association applies for a grant  
18 on behalf of its members, the members included in the application may  
19 be permitted to meet the qualifications for a grant collectively, the  
20 amount of a grant for the members shall be calculated as if the  
21 members included in the application are one business entity, and any  
22 restrictions on the qualification for a grant shall apply to each member  
23 for whom an application for a grant is submitted. The grants awarded  
24 shall be paid in a lump sum to the cooperative association. A grant  
25 received under this act by a cooperative association may be  
26 apportioned to the members of the association in a manner determined  
27 by the association.]

28 (cf: P.L.1996, c.25, s.5)

29

30 9. Section 6 of P.L.1996, c.25 (C.34:1B-117) is amended to read  
31 as follows:

32 6. No [amount shall be disbursed to a recipient] tax credits shall  
33 be issued as a grant of tax credits under [this act] P.L.1996, c.25  
34 (C.34:1B-112 et seq.) in any year until the State Treasurer has  
35 certified that the amount of [new income] retained State tax revenue  
36 received in [that year] the most recently completed State tax periods  
37 by the Director of the Division of Taxation from the business equals  
38 or exceeds the amount of the grant of tax credits.

39 (cf: P.L.1996, c.25, s.6)

40

41 10. Section 7 of P.L.1996, c.25 (C.34:1B-118) is amended to read  
42 as follows:

43 7. a. A business that is receiving a business employment incentive  
44 grant pursuant to the provisions of P.L.1996, c.26 (C.34:1B-124 et  
45 al.) shall not be eligible to receive a grant of tax credits under [this act  
46 except upon the approval of the State Treasurer] P.L.1996, c.25

1 (C.34:1B-112 et seq.) with respect to a job which is included in the  
2 calculation of a grant pursuant to P.L.1996, c.26.

3 b. A business that is receiving any other grant by operation of  
4 State law shall be eligible to receive a grant of tax credits under  
5 P.L.1996, c.25 (C.34:1B-112 et seq.); provided, however, that a  
6 business that is receiving another State grant shall not be eligible to  
7 receive assistance with respect to any job that is currently the subject  
8 of any other State grant, except for grants from the Office of  
9 Customized Training pursuant to the "1992 New Jersey Employment  
10 and Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et  
11 seq.), and provided further that a business shall not receive an amount  
12 as a grant of tax credits pursuant to [this act] P.L.1996, c.25  
13 (C.34:1B-112 et seq.) which, when combined with such other grants,  
14 exceeds 80% of the [new income] retained State tax revenue  
15 [generated by employees in new full-time jobs], except upon the  
16 approval of the State Treasurer. Amounts received as grants from the  
17 Office of Customized Training pursuant to the "1992 New Jersey  
18 Employment and Workforce Development Act," P.L.1992, c.43  
19 (C.34:15D-1 et seq.), shall be excluded from the calculation of the  
20 total amount permitted under this subsection.

21 (cf: P.L.1996, c.25, s.7)

22

23 11. (New section) In determining the amount of any grant of tax  
24 credits made pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), the  
25 commissioner shall consider, as part of the commissioner's overall  
26 calculation process, the following factors:

27 a. The number of full-time jobs retained;

28 b. The quality of the full-time jobs retained, including but not  
29 limited to the salaries and benefits provided to retained full-time  
30 employees;

31 c. Any capital investments made by the business at the new  
32 business location;

33 d. The nature of the business' operations, including but not limited  
34 to whether the business is a designated industry;

35 e. The potential impact on the State if the business were to  
36 relocate to another state;

37 f. The site of the new business location and its consistency with  
38 the smart growth goals, strategies and policies of the State  
39 Development and Redevelopment Plan established pursuant to section  
40 5 of P.L.1985, c.398 (C.52:18A-200);

41 g. Whether positions average at least 1.5 times the minimum  
42 hourly wage during the commitment duration; and

43 h. The duration and extent of past operations by the business in  
44 New Jersey and any other information indicating the business' level of  
45 commitment to the State and the likelihood that the business will  
46 continue to operate in this State in the future.

1       12. Section 8 of P.L.1996, c.25 (C.34:1B-119) is amended to read  
2 as follows:

3       8. The commissioner shall, after consultation with the Director of  
4 the Division of Taxation, pursuant to the "Administrative Procedure  
5 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
6 regulations necessary to govern the proper conduct and operation of  
7 the program consistent with the provisions of [this act] P.L.1996,  
8 c.25 (C.34:1B-112 et seq.) including, but not limited to, a procedure  
9 for recapturing relocation grants of tax credits awarded pursuant to  
10 [this act] P.L.1996, c.25 (C.34:1B-112 et seq.) in those cases in  
11 which the commissioner determines that the business receiving the  
12 grant of tax credits fails to meet or comply with any condition or  
13 requirement attached by the commissioner to the receipt of the grant  
14 of tax credits or included in rules and regulations adopted by the  
15 commissioner governing the implementation of the program. [The  
16 rules also shall include the procedures to clarify the application of the  
17 various provisions of this act to cooperative associations that submit  
18 applications on behalf of their members.] The Director of the Division  
19 of Taxation is authorized to promulgate such rules and regulations as  
20 may be necessary to effect the tax-related provisions of the program.  
21 (cf: P.L.1996, c.25, s.8)

22

23       13. Section 9 of P.L.1996, c.25 (C.34:1B-120) is amended to read  
24 as follows:

25       9. As determined by the commissioner, a business which is  
26 awarded a grant of tax credits under [this act] P.L.1996, c.25  
27 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st  
28 of each year, commencing the year following the calendar year in  
29 which the business was approved for the grant of tax credits and for  
30 the remainder of the commitment duration, a copy of the State tax  
31 return for the business showing business income or activity,  
32 appropriate to its form of ownership together with an annual report  
33 listing the full-time employees in eligible positions employed at the  
34 location or locations approved for the grant of tax credits, to the  
35 commissioner. Failure to submit a copy of [this document may result  
36 in the suspension or termination of a grant] its annual report or  
37 submission of the annual report without the information required  
38 above, may result in the forfeiture of any grant of tax credits to be  
39 received by the business and the recapture of any tax credits issued to  
40 the business unless the commissioner determines that there are  
41 extenuating circumstances excusing the business from the timely filing  
42 required.

43 (cf: P.L.1996, c.25, s.9).

44

45       14. (New section) The commissioner shall adopt rules for the  
46 recapture of all, or a portion of, the grant of tax credits, based on

1 criteria established by the commissioner pursuant to regulation or  
2 under the terms of the project agreement if the business fails to  
3 maintain the retained full-time jobs at the location or locations  
4 approved for the grant of tax credits for the commitment duration or  
5 fails to meet or comply with any condition or requirement under the  
6 terms of the project agreement or included in rules and regulations  
7 adopted by the commissioner governing the implementation of the  
8 program. The rules shall allow for the commissioner to notify the  
9 Director of the Division of Taxation in the Department of the  
10 Treasury, who shall issue a recapture assessment which shall be based  
11 upon the proportionate value of the grant of tax credits that  
12 corresponds to the amount and period of noncompliance. The  
13 recapture of funds shall be subject to the State Uniform Tax Procedure  
14 Law, R.S.54:48-1 et seq. Recaptured funds shall be deposited in the  
15 General Fund of the State.

16

17 15. Section 10 of P.L.1996, c.25 (C.34:1B-121) is amended to  
18 read as follows:

19 10. The commissioner shall prepare and transmit to the Governor  
20 and the Legislature on or before November 1st of each year, a report  
21 concerning the impact of the program on job creation retention in  
22 the State.

23 (cf: P.L.1996, c.25, s.10)

24

25 16. Section 12 of P.L.1996, c.25 (C.34:1B-123) is amended to  
26 read as follows:

27 12. There is appropriated to the [Department of Commerce and  
28 Economic Development]New Jersey Commerce and Economic  
29 Growth Commission from the General Fund such sums as may be  
30 necessary, as certified by the commissioner and the Director of the  
31 Division of Budget and Accounting, to fund business retention and  
32 relocation grants of tax credits made under [this act] P.L.1996, c.25  
33 (C.34:1B-112 et seq.), the amount of which shall not exceed the [new  
34 income] retained State tax revenues as defined in section 2 of [this  
35 act] P.L.1996, c.25 (C.34:1B-113).

36 (cf: P.L.1996, c.25, s.12)

37

38 17. (New section) a. The commissioner shall establish a  
39 corporation business tax credit and insurance premiums tax credit  
40 certificate transfer program to allow businesses in this State with  
41 unused amounts of tax credits issued under P.L.1996, c.25 (C.34:1B-  
42 112 et seq.), and otherwise allowable, that cannot be applied by the  
43 business to which originally issued before the expiration of the credit,  
44 to surrender those tax credits for use by other corporation business  
45 and insurance premiums taxpayers in this State, provided that the  
46 taxpayer receiving the surrendered tax credits is not affiliated with the

1 business that is surrendering its tax credits. For the purposes of this  
2 section, the test of affiliation is whether the same entity directly or  
3 indirectly owns or controls 5% or more of the voting rights or 5% or  
4 more of the value of all classes of stock of both the taxpayer receiving  
5 the tax credits and the business that is surrendering the tax credits. The  
6 tax credits may be used on the corporation business tax and insurance  
7 premiums tax returns to be filed by those taxpayers in exchange for  
8 private financial assistance to be provided by the corporation business  
9 taxpayer or insurance premiums taxpayer that is the recipient of the  
10 corporation business tax credit certificate or insurance premiums tax  
11 credit certificate to assist in the funding of costs incurred by the  
12 relocating business.

13 b. The commissioner, in cooperation with the Director of the  
14 Division of Taxation in the Department of the Treasury, shall review  
15 and approve applications by taxpayers under the Corporation Business  
16 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and by  
17 taxpayers under the taxes imposed on insurers pursuant to P.L.1945,  
18 c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15)  
19 and N.J.S.17B:23-5 to acquire surrendered tax benefits, which shall be  
20 issued in the form of corporation business tax credit and insurance  
21 premiums tax credit transfer certificates, in exchange for private  
22 financial assistance to be made by the taxpayer in an amount equal to  
23 at least 75% of the amount of the surrendered tax credit of a business  
24 relocating in the State. The private financial assistance shall assist in  
25 funding expenses incurred in connection with the operation of the  
26 business in the State, including but not limited to the expenses of fixed  
27 assets, such as the construction and acquisition and development of  
28 real estate, materials, start-up, tenant fit-out, working capital, salaries,  
29 research and development expenditures and any other expenses  
30 determined by the commissioner to be necessary to carry out the  
31 purposes of P.L.1996, c.25 (C.34:1B-112 et seq.).

32 c. The commissioner shall coordinate the applications for  
33 surrender and acquisition of unused but otherwise allowable tax credits  
34 pursuant to this section in a manner that can best stimulate and  
35 encourage the extension of private financial assistance to businesses  
36 in this State.

37 d. The commissioner shall, in consultation with the Director of the  
38 Division of Taxation, develop criteria for the approval or disapproval  
39 of applications.

40

41 18. Section 1 of P.L.1997, c.334 (C.34:1B-7.42a) is amended to  
42 read as follows:

43 1. a. The New Jersey Economic Development Authority shall  
44 establish within the New Jersey Emerging Technology and  
45 Biotechnology Financial Assistance Program established pursuant to  
46 P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business tax

1 benefit certificate transfer program to allow new or expanding  
2 emerging technology and biotechnology companies in this State with  
3 unused amounts of research and development tax credits otherwise  
4 allowable which cannot be applied for the credit's tax year due to the  
5 limitations of subsection b. of section 1 of P.L.1993, c.175  
6 (C.54:10A-5.24) and unused net operating loss carryover pursuant to  
7 subparagraph (B) of paragraph (6) of subsection (k) of section 4 of  
8 P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use  
9 by other corporation business taxpayers in this State, provided that the  
10 taxpayer receiving the surrendered tax benefits is not affiliated with a  
11 corporation that is surrendering its tax benefits under the program  
12 established under P.L.1997, c.334. For the purposes of this section,  
13 the test of affiliation is whether the same entity directly or indirectly  
14 owns or controls 5% or more of the voting rights or 5% or more of  
15 the value of all classes of stock of both the taxpayer receiving the  
16 benefits and a corporation that is surrendering the benefits. The tax  
17 benefits may be used on the corporation business tax returns to be filed  
18 by those taxpayers in exchange for private financial assistance to be  
19 provided by the corporation business taxpayer that is the recipient of  
20 the corporation business tax benefit certificate to assist in the funding  
21 of costs incurred by the new or expanding emerging technology and  
22 biotechnology company.

23 b. The authority, in cooperation with the Division of Taxation in  
24 the Department of the Treasury, shall review and approve applications  
25 by new or expanding emerging technology and biotechnology  
26 companies in this State with unused but otherwise allowable carryover  
27 of research and development tax credits pursuant to section 1 of  
28 P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable  
29 net operating loss carryover pursuant to paragraph (6) of subsection  
30 (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those  
31 tax benefits in exchange for private financial assistance to be made by  
32 the corporation business taxpayer that is the recipient of the  
33 corporation business tax benefit certificate in an amount equal to at  
34 least 75% of the amount of the surrendered tax benefit. Provided that  
35 the amount of the surrendered tax benefit for a surrendered research  
36 and development tax credit carryover is the amount of the credit, and  
37 provided that the amount of the surrendered tax benefit for a  
38 surrendered net operating loss carryover is the amount of the loss  
39 multiplied by the new or expanding emerging technology or  
40 biotechnology company's anticipated allocation factor, as determined  
41 pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6) for the tax year  
42 in which the benefit is transferred and subsequently multiplied by the  
43 corporation business tax rate provided pursuant to subsection (c) of  
44 section 5 of P.L.1945, c.162 (C.54:10A-5). The authority shall be  
45 authorized to approve the transfer of no more than \$50,000,000 of  
46 tax benefits over State fiscal year 2000 [and], \$40,000,000 of tax



1 benefits over each State fiscal year 2001 through 2004, and  
2 \$60,000,000 over State fiscal year 2005 and each State fiscal year  
3 thereafter. If the total amount of transferable tax benefits requested  
4 to be surrendered by approved applicants exceeds \$50,000,000 for  
5 State fiscal year 2000 [or], \$40,000,000 for each State fiscal year  
6 2001 through 2004, or \$60,000,00 for State fiscal year 2005 and for  
7 each State fiscal year thereafter, the authority, in cooperation with the  
8 Division of Taxation in the Department of the Treasury, shall not be  
9 authorized to approve the transfer of more than \$50,000,000 for State  
10 fiscal year 2000 [or], more than \$40,000,000 for each State fiscal  
11 2001 through 2004, or \$60,000,00 for State fiscal year 2005 and for  
12 each State fiscal year thereafter and shall allocate the transfer of tax  
13 benefits by approved companies using the following method:

14 (1) an eligible applicant with \$250,000 or less of transferable tax  
15 benefits shall be authorized to surrender the entire amount of its  
16 transferable tax benefits;

17 (2) an eligible applicant with more than \$250,000 of transferable  
18 tax benefits shall be authorized to surrender a minimum of \$250,000  
19 of its transferable tax benefits;

20 (3) an eligible applicant with more than \$250,000 of transferable  
21 tax benefits that was approved to surrender tax benefits in the prior  
22 fiscal year shall be authorized to surrender a minimum of 50% of the  
23 transferable tax benefits surrendered in the prior fiscal year or  
24 \$250,000 whichever is greater, provided that the amount of  
25 transferable tax benefits authorized shall not exceed the applicant's  
26 transferable tax benefits for the current fiscal year;

27 (4) an eligible applicant with more than \$250,000 shall also be  
28 authorized to surrender additional transferable tax benefits determined  
29 by multiplying the applicant's transferable tax benefits less the  
30 minimum transferable tax benefits that company is authorized to  
31 surrender under paragraph (2) or (3) of this subsection by a fraction,  
32 the numerator of which is the total amount of transferable tax benefits  
33 that the authority is authorized to approve less the total amount of  
34 transferable tax benefit approved under paragraphs (1), (2) [and], (3)  
35 and (5) of this subsection and the denominator of which is the total  
36 amount of transferable tax benefits requested to be surrendered by all  
37 eligible applicants less the total amount of transferable tax benefits  
38 approved under paragraphs (1), (2) [and] , (3) and (5) of this  
39 subsection;

40 (5) The authority shall establish the boundaries for three  
41 innovation zones to be geographically distributed in the northern,  
42 central, and southern portions of this State. Of the \$60,000,000 of  
43 transferable tax benefits authorized for each State fiscal year,  
44 \$5,000,000 shall be allocated for the surrender of transferable tax  
45 benefits exclusively by eligible companies that operate within the  
46 boundaries of the innovation zones during State fiscal year 2005, and

1 \$10,000,000 shall be so allocated for State fiscal year 2006 and for  
2 each State fiscal year thereafter.

3 If the total amount of transferable tax benefits that would be  
4 authorized using the above method exceeds \$50,000,000 for State  
5 fiscal year 2000 [or], \$40,000,000 for each State fiscal year 2001  
6 through 2004, or \$60,000,00 for State fiscal year 2005 and for each  
7 State fiscal thereafter, then the authority, in cooperation with the  
8 Division of Taxation in the Department of the Treasury, shall limit the  
9 total amount of tax benefits authorized to be transferred to  
10 \$50,000,000 for State fiscal year 2000 [or], \$40,000,000 for each  
11 State fiscal year 2001 through 2004, or \$60,000,00 for State fiscal  
12 year 2005 and for each State fiscal thereafter by applying the above  
13 method on an apportioned basis.

14 For purposes of this section transferable tax benefits include an  
15 eligible applicant's unused but otherwise allowable carryover of net  
16 operating losses multiplied by the applicant's anticipated allocation  
17 factor as determined pursuant to section 6 of P.L. 1945, c.162  
18 (C.54:10A-6) for the tax year in which the benefit is transferred and  
19 subsequently multiplied by the corporation business tax rate as  
20 provided in subsection (c) of section 5 of P.L.1945, c.162  
21 (C.54:10A-5) plus the total amount of the applicant's unused but  
22 otherwise allowable carryover of research and development tax  
23 credits. An eligible applicant's transferable tax benefits shall be limited  
24 to net operating losses and research and development tax credits that  
25 the applicant requests to surrender in its application to the authority  
26 and shall not, in total, exceed the maximum amount of tax benefits that  
27 the applicant is eligible to surrender.

28 The maximum lifetime value of surrendered tax benefits that a  
29 corporation shall be permitted to surrender pursuant to the program  
30 is \$10,000,000. Applications must be received within 30 days from  
31 enactment of P.L.1999, c.140 (C.34:1B-7.42b et al.) for State fiscal  
32 year 2000 and on or before June 30 for each subsequent State fiscal  
33 year.

34 The private financial assistance shall be used to fund expenses  
35 incurred in connection with the operation of the new or expanding  
36 emerging technology or biotechnology company in the State, including  
37 but not limited to the expenses of fixed assets, such as the construction  
38 and acquisition and development of real estate, materials, start-up,  
39 tenant fit-out, working capital, salaries, research and development  
40 expenditures and any other expenses determined by the authority to be  
41 necessary to carry out the purposes of the New Jersey Emerging  
42 Technology and Biotechnology Financial Assistance Program.

43 c. The authority, in cooperation with the Division of Taxation in  
44 the Department of the Treasury, shall review and approve applications  
45 by taxpayers under the Corporation Business Tax Act (1945),  
46 P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax

1 benefits approved pursuant to subsection b. of this section which shall  
2 be issued in the form of corporation business tax benefit transfer  
3 certificates, in exchange for private financial assistance to be made by  
4 the taxpayer in an amount equal to at least 75% of the amount of the  
5 surrendered tax benefit of an emerging technology or biotechnology  
6 company in the State. A corporation business tax benefit transfer  
7 certificate shall not be issued unless the applicant certifies that as of  
8 the date of the exchange of the corporation business tax benefit  
9 certificate it is operating as a new or expanding emerging technology  
10 or biotechnology company and has no current intention to cease  
11 operating as a new or expanding emerging technology or  
12 biotechnology company.

13 The private financial assistance shall assist in funding expenses  
14 incurred in connection with the operation of the new or expanding  
15 emerging technology or biotechnology company in the State, including  
16 but not limited to the expenses of fixed assets, such as the construction  
17 and acquisition and development of real estate, materials, start-up,  
18 tenant fit-out, working capital, salaries, research and development  
19 expenditures and any other expenses determined by the authority to be  
20 necessary to carry out the purposes of the New Jersey Emerging  
21 Technology and Biotechnology Financial Assistance Program.

22 d. The authority shall coordinate the applications for surrender  
23 and acquisition of unused but otherwise allowable tax benefits  
24 pursuant to this section in a manner that can best stimulate and  
25 encourage the extension of private financial assistance to new and  
26 expanding emerging technology and biotechnology companies in this  
27 State. The applications shall be submitted and the authority shall  
28 approve or disapprove the applications.

29 The authority shall, in consultation with the New Jersey Commerce  
30 and Economic Growth Commission, the New Jersey Commission on  
31 Science and Technology and any institution of higher education in  
32 New Jersey, develop criteria for the approval or disapproval of  
33 applications. Such criteria shall include, but need not be limited to, an  
34 evaluation of the new or expanding emerging technology or  
35 biotechnology company's actual or potential scientific and  
36 technological viability, a determination that the new or expanding  
37 emerging technology or biotechnology company's principal products  
38 or services are sufficiently innovative to provide a competitive  
39 advantage, a determination that the proposed financial assistance will  
40 result in significant growth in permanent, full-time employment in the  
41 State, a determination made by the authority that the new or  
42 expanding emerging technology or biotechnology company does not  
43 have sufficient resources to operate in the short term or cannot secure  
44 financial assistance from venture capital, stock issuance, product sales  
45 revenue, a parent corporation or other affiliates, bank or any other  
46 method of obtaining capital, and a determination that the financial

1 assistance provided pursuant to this act demonstrates the prospect of  
2 a significant positive change in the applicant's net income. The  
3 authority shall establish the weight of importance to be given each  
4 criterion utilized in its application approval process. No application  
5 shall be approved in which the new or expanding technology or  
6 biotechnology company (1) has demonstrated positive net income in  
7 any of the two previous full years of ongoing operations as determined  
8 on its financial statements; or (2) has demonstrated a ratio in excess of  
9 110% or greater of operating revenues divided by operating expenses  
10 in any of the two previous full years of operations as determined on its  
11 financial statements; or (3) is directly or indirectly at least 50% owned  
12 or controlled by another corporation that has demonstrated positive  
13 net income in any of the two previous full years of ongoing operations  
14 as determined on its financial statements or is part of a consolidated  
15 group of affiliated corporations, as filed for federal income tax  
16 purposes, that in the aggregate has demonstrated positive net income  
17 in any of the two previous full years of ongoing operations as  
18 determined on its combined financial statements.

19 Once an application has been approved, the applicant shall be  
20 permitted to surrender, subject to the limitations set forth in subsection  
21 b. of this section and the net operating loss carryover and research and  
22 development tax credit carryover time periods pursuant to  
23 subparagraph (B) of paragraph (6) of subsection (k) of section 4 of  
24 P.L.1945, c.162 (C.54:10A-4) and subsection b. of section 1 of  
25 P.L.1993, c.175 (C.54:10A-5.24), the surrendered tax benefits that are  
26 requested in the application regardless of whether the applicant  
27 continues to meet the eligibility criteria set forth in the act in  
28 subsequent years.

29 The authority shall require a corporation business taxpayer that  
30 acquires a corporation business tax benefit certificate to enter into a  
31 written agreement with the new or expanding emerging technology or  
32 biotechnology company concerning the terms and conditions of the  
33 private financial assistance made in exchange for the certificate. The  
34 written agreement may contain terms concerning the maintenance by  
35 the new or expanding emerging technology or biotechnology company  
36 of a headquarters or a base of operation in this State.

37 (cf: P.L.1999, c.140, s.2)

38

39 19. (New section) As used in sections 19 through 22 of P.L. ,  
40 c. (C. ) (now pending before the Legislature as this bill) the  
41 following terms shall have the following meanings:

42 "Eligible property" means machinery, equipment, furniture and  
43 furnishings, fixtures, and building materials, but "eligible property"  
44 shall not include "motor vehicles" as defined pursuant to section 2 of  
45 P.L.1976, c.30 (C.54:32B-2), parts with a useful life of one year or  
46 less, or tools or supplies used in connection with the eligible property;

1 "Headquarters" means the single location that serves as the  
2 national administrative center of a business, at which the primary  
3 office of the chief executive officer or chief operating officer of the  
4 business, as well as the offices of the management officials responsible  
5 for key businesswide functions such as finance, legal, marketing, and  
6 human resources, are located;

7 "Life sciences business" means a business engaged principally in  
8 the production of medical equipment, ophthalmic goods, medical or  
9 dental instruments, diagnostic substances, biopharmaceutical products;  
10 or physical and biological research; or biotechnology;

11 "Manufacturing facility" means a business location at which more  
12 than 50% of the business personal property that is housed in the  
13 facility is eligible for the sales tax exemption pursuant to subsection a.  
14 of section 25 of P.L.1980, c.105 (C. 54:32B-8.13) for machinery,  
15 apparatus or equipment used in the production of tangible personal  
16 property;

17 "Research and development facility" means a business location at  
18 which more than 50% of the business personal property that is  
19 purchased for the facility is eligible for the sales tax exemption  
20 pursuant to section 26 of P.L.1980, c.105 (C.54:32B-8.14) for  
21 property used in research and development; and

22 "Secretary" means the Chief Executive Officer and Secretary of the  
23 New Jersey Commerce and Economic Growth Commission.

24  
25 20. (New section) The secretary shall establish and administer a  
26 program to approve the issuance of sales and use tax exemption  
27 certificates to qualifying businesses as specified in sections 19 through  
28 22 of P.L. , c. (C. )(now pending before the Legislature as this  
29 bill). The receipts from the certificate holder's purchase of eligible  
30 property located or placed at the business location covered by the  
31 project approval within the period established pursuant to the terms  
32 and conditions of the project approval for the approved business  
33 location shall be exempt from the tax imposed under the "Sales and  
34 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

35  
36 21. (New section) a. A business seeking to participate in the  
37 sales and use tax exemption certificate program established pursuant  
38 to sections 19 through 22 of P.L. , c. (C. )(now pending before  
39 the Legislature as this bill) shall submit a project application to the  
40 secretary in such form as required by the secretary.

41 b. The location for the project shall be situated in designated  
42 Planning Area 1 or 2, as defined in the State Development and  
43 Redevelopment Plan adopted by the State Planning Commission;  
44 provided however, that a business project involving the renovation or  
45 expansion of an existing facility that is not located in designated  
46 Planning Area 1 or 2 may be eligible to participate in the program, at

1 the determination of the secretary, if all other applicable criteria are  
2 satisfied.

3 A business located in an urban enterprise zone designated pursuant  
4 to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
5 (C.52:27H-60 et seq.) as of the effective date of this section shall not  
6 be eligible to participate in this program if the relocation project is  
7 from a facility within the urban enterprise zone to a facility outside an  
8 urban enterprise zone; provided however, that if the relocation is to  
9 a facility already owned or leased by the same business and that  
10 business already employs at least the same number of persons as those  
11 being relocated from the urban enterprise zone, it may be eligible to  
12 apply.

13 c. To be eligible to apply for the sales and use tax exemption  
14 certificate program, a business shall have operated continuously in this  
15 State, in whole or in part, in its current form or as a predecessor  
16 entity, for at least 10 years prior to filing an application and shall  
17 satisfy at least one of the following criteria:

18 (1) the business has 1,000 or more full-time employees in the State  
19 and the project involves relocating 500 or more full-time employees  
20 into a new business location or locations;

21 (2) the business is a life sciences business or a manufacturing  
22 facility and the project is: constructing one or more new research and  
23 development facilities, constructing one or more new manufacturing  
24 facilities in this State, or relocating to a new headquarters in this State  
25 that will employ 250 or more full-time employees;

26 (3) the business is a life sciences business or a manufacturing  
27 business and the project is constructing a new, or substantially  
28 rehabilitating a vacant, property that will separately or collectively:

29 (a) be predominately a new research and development facility;

30 (b) be predominately a new manufacturing facility;

31 (c) house the headquarters of the business; or

32 (d) separately or collectively be a combination of subparagraphs  
33 (a), (b) and (c);

34 provided, that the new or substantially rehabilitated facility will house  
35 a minimum of 250 full-time employees. For the purposes of this  
36 subparagraph, "predominantly" means a majority of the employees  
37 housed in the new facility are engaged in that activity, or a majority of  
38 the square footage of the new facility is used in that activity; or a  
39 majority of the total value of the investment made will be employed in  
40 that activity; or other measures of activity as may determined by the  
41 secretary that demonstrate that a critical concentration of research and  
42 development, manufacturing, or both, will occur at the new facility; or

43 (4) the business is, at the time of enactment of this section,  
44 currently receiving a structured finance special guarantee pursuant to  
45 N.J.A.C.19:31-2.1(c)3.ii(5) for the project.

46 d. For the purposes of determining a number of full-time

1 employees pursuant to subsection c. of this section, the full-time  
2 employees of the members of a "controlled group of corporations" as  
3 defined pursuant to section 1563 of the federal Internal Revenue Code  
4 of 1986, 26 U.S.C. s.1563, shall be considered the employees of a  
5 single employer.

6 e. A project may be completed in up to two phases provided that  
7 it will be the national headquarters of a life sciences or manufacturing  
8 company, and will include a significant research and development, a  
9 significant manufacturing facility, or combination thereof if : (1) the  
10 first completed phase will house at least 200 full-time employees and  
11 the second phase will house at least 100 additional employees; and (2)  
12 the project is pre-approved for phases and that all phases are  
13 completed within 30 months of project approval.

14 f. Upon approval of a project, the secretary shall notify the  
15 Director of the Division of Taxation in the Department of the Treasury  
16 of the terms and conditions of the project approval and the director  
17 shall issue a certificate of exemption pursuant to the terms and  
18 conditions of the project approval. In general, the sales and use tax  
19 exemption certificate provided by sections 19 through 22 of P.L. ,  
20 c. (C. )(now pending before the Legislature as this bill) should  
21 not apply to a purchases initiated by the business after the date that  
22 the temporary certificate of occupancy is issued, or in cases where no  
23 temporary certificate of occupancy is issued should not apply to a  
24 purchases initiated by the business more than one year from the project  
25 commencement date; however, the duration of the certificate of  
26 exemption shall be pursuant to the terms and conditions of the project  
27 approval.

28

29 22. (New section) The secretary shall, after consultation with the  
30 Director of the Division of Taxation in the Department of the  
31 Treasury, adopt rules and regulations pursuant to the "Administrative  
32 Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) necessary to  
33 govern the proper conduct and operation of the program consistent  
34 with the provisions of sections 19 through 22 of P.L. , c. (C. )  
35 (now pending before the Legislature as this bill).

36

37 23. (New section) a. Retail sales of energy and utility service to:

38 (1) a qualified business that employs at least 500 people within an  
39 enterprise zone, at least 50%percent of whom are directly employed  
40 in a manufacturing process, for the exclusive use or consumption of  
41 such business within an enterprise zone, and

42 (2) a group of two or more persons: (a) each of which is a  
43 qualified business that are all located within a single redevelopment  
44 area adopted pursuant to the "Local Redevelopment and Housing  
45 Law," P.L.1992, c.79 (C.40A:12A-1 et seq.); (b) that collectively  
46 employ at least 500 people within an enterprise zone, at least 50% of

1 whom are directly employed in a manufacturing process; (c) are each  
2 engaged in a vertically integrated business, evidenced by the  
3 manufacture and distribution of a product or family of products that,  
4 when taken together, are primarily used, packaged and sold as a single  
5 product; and (d) collectively use the energy and utility service for the  
6 exclusive use or consumption of each the persons that comprise group  
7 within an enterprise zone;  
8 are exempt from the taxes imposed under the "Sales and Use Tax  
9 Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

10 A qualified business will continue to be subject to applicable Board  
11 of Public Utilities tariff regulations except that its bills from utility  
12 companies and third party suppliers for energy and utility service shall  
13 not include charges for sales and use tax.

14 b. A business that meets the requirement of subsection a. of this  
15 section shall not be allowed the exemption granted pursuant to this  
16 section until it has complied with such requirements for obtaining the  
17 exemption as may be provided pursuant to P.L.1983, c.303  
18 (C.52:27H-60 et seq.) and P.L.1966, c.30 (C.54:32B-1 et seq.). The  
19 Chief Executive Officer and Secretary of the Commerce and Economic  
20 Growth Commission shall provide prompt notice to the President of  
21 the Board of Public Utilities and to the Director of the Division of  
22 Taxation in the Department of the Treasury, of a qualified business  
23 that has qualified for the exemption under this subsection, shall  
24 provide the president and the director an annual list of all businesses  
25 that qualify.

26  
27 24. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read  
28 as follows:

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

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

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

36 (c) "Corporation" shall mean any corporation, joint-stock  
37 company or association and any business conducted by a trustee or  
38 trustees wherein interest or ownership is evidenced by a certificate of  
39 interest or ownership or similar written instrument, any other entity  
40 classified as a corporation for federal income tax purposes, and any  
41 state or federally chartered building and loan association or savings  
42 and loan association.

43 (d) "Net worth" shall mean the aggregate of the values disclosed  
44 by the books of the corporation for (1) issued and outstanding capital  
45 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided  
46 profits, and (4) surplus reserves which can reasonably be expected to



1 accrue to holders or owners of equitable shares, not including  
2 reasonable valuation reserves, such as reserves for depreciation or  
3 obsolescence or depletion. Notwithstanding the foregoing, net worth  
4 shall not include any deduction for the amount of the excess  
5 depreciation described in paragraph (2)(F) of subsection (k) of this  
6 section. The foregoing aggregate of values shall be reduced by 50%  
7 of the amount disclosed by the books of the corporation for investment  
8 in the capital stock of one or more subsidiaries, which investment is  
9 defined as ownership (1) of at least 80% of the total combined voting  
10 power of all classes of stock of the subsidiary entitled to vote and (2)  
11 of at least 80% of the total number of shares of all other classes of  
12 stock except nonvoting stock which is limited and preferred as to  
13 dividends. In the case of investment in an entity organized under the  
14 laws of a foreign country, the foregoing requisite degree of ownership  
15 shall effect a like reduction of such investment from the net worth of  
16 the taxpayer, if the foreign entity is considered a corporation for any  
17 purpose under the United States federal income tax laws, such as (but  
18 not by way of sole examples) for the purpose of supplying deemed  
19 paid foreign tax credits or for the purpose of status as a controlled  
20 foreign corporation. In calculating the net worth of a taxpayer entitled  
21 to reduction for investment in subsidiaries, the amount of liabilities of  
22 the taxpayer shall be reduced by such proportion of the liabilities as  
23 corresponds to the ratio which the excluded portion of the subsidiary  
24 values bears to the total assets of the taxpayer.

25 In the case of banking corporations which have international  
26 banking facilities as defined in subsection (n), the foregoing aggregate  
27 of values shall also be reduced by retained earnings of the international  
28 banking facility. Retained earnings means the earnings accumulated  
29 over the life of such facility and shall not include the distributive share  
30 of dividends paid and federal income taxes paid or payable during the  
31 tax year.

32 If in the opinion of the commissioner, the corporation's books do  
33 not disclose fair valuations the commissioner may make a reasonable  
34 determination of the net worth which, in his opinion, would reflect the  
35 fair value of the assets, exclusive of subsidiary investments as defined  
36 aforesaid, carried on the books of the corporation, in accordance with  
37 sound accounting principles, and such determination shall be used as  
38 net worth for the purpose of this act.

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

40 (f) "Investment company" shall mean any corporation whose  
41 business during the period covered by its report consisted, to the  
42 extent of at least 90% thereof of holding, investing and reinvesting in  
43 stocks, bonds, notes, mortgages, debentures, patents, patent rights and  
44 other securities for its own account, but this shall not include any  
45 corporation which: (1) is a merchant or a dealer of stocks, bonds and  
46 other securities, regularly engaged in buying the same and selling the

1 same to customers; or (2) had less than 90% of its average gross  
2 assets in New Jersey, at cost, invested in stocks, bonds, debentures,  
3 mortgages, notes, patents, patent rights or other securities or  
4 consisting of cash on deposit during the period covered by its report;  
5 or (3) is a banking corporation, a savings institution, or a financial  
6 business corporation as defined in the Corporation Business Tax Act.

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

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

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

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

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

26 For the purpose of this act, the amount of a taxpayer's entire net  
27 income shall be deemed prima facie to be equal in amount to the  
28 taxable income, before net operating loss deduction and special  
29 deductions, which the taxpayer is required to report, or, if the taxpayer  
30 is classified as a partnership for federal tax purposes, would otherwise  
31 be required to report, to the United States Treasury Department for  
32 the purpose of computing its federal income tax, provided however,  
33 that in the determination of such entire net income,

34 (1) Entire net income shall exclude for the periods set forth in  
35 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
36 to qualified mass commuting vehicles as described in section  
37 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
38 prior to January 1, 1984, which is included in a taxpayer's federal  
39 taxable income solely as a result of an election made pursuant to the  
40 provisions of paragraph (8) of that section.

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

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

46 (B) Any part of any income from dividends or interest on any kind

1 of stock, securities or indebtedness, except as provided in paragraph  
2 (5) of subsection (k) of this section;

3 (C) Taxes paid or accrued to the United States, a possession or  
4 territory of the United States, a state, a political subdivision thereof,  
5 or the District of Columbia, or to any foreign country, state, province,  
6 territory or subdivision thereof, on or measured by profits or income,  
7 or business presence or business activity, or the tax imposed by this  
8 act, or any tax paid or accrued with respect to subsidiary dividends  
9 excluded from entire net income as provided in paragraph (5) of  
10 subsection (k) of this section;

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

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

13 (F) (i) The amount by which depreciation reported to the United  
14 States Treasury Department for property placed in service on and after  
15 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
16 years beginning on and after the effective date of P.L.1993, c.172, for  
17 purposes of computing federal taxable income in accordance with  
18 section 168 of the Internal Revenue Code in effect after December 31,  
19 1980, exceeds the amount of depreciation determined in accordance  
20 with the Internal Revenue Code provisions in effect prior to January  
21 1, 1981, but only with respect to a taxpayer's accounting period ending  
22 after December 31, 1981; provided, however, that where a taxpayer's  
23 accounting period begins in 1981 and ends in 1982, no modification  
24 shall be required with respect to this paragraph (F) for the report filed  
25 for such period with respect to property placed in service during that  
26 part of the accounting period which occurs in 1981. The provisions  
27 of this subparagraph shall not apply to assets placed in service prior to  
28 January 1, 1998 of a gas, gas and electric, and electric public utility  
29 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
30 seq.) prior to 1998.

31 (ii) For the periods set forth in subparagraph (F)(i) of this  
32 subsection, any amount, except with respect to qualified mass  
33 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
34 Internal Revenue Code as in effect immediately prior to January 1,  
35 1984, which the taxpayer claimed as a deduction in computing federal  
36 income tax pursuant to a qualified lease agreement under paragraph  
37 (8) of that section.

38 The director shall promulgate rules and regulations necessary to  
39 carry out the provisions of this section, which rules shall provide,  
40 among others, the manner in which the remaining life of property shall  
41 be reported.

42 (G) (i) The amount of any civil, civil administrative, or criminal  
43 penalty or fine, including a penalty or fine under an administrative  
44 consent order, assessed and collected for a violation of a State or  
45 federal environmental law, an administrative consent order, or an  
46 environmental ordinance or resolution of a local governmental entity,

1 and any interest earned on the penalty or fine, and any economic  
2 benefits having accrued to the violator as a result of a violation, which  
3 benefits are assessed and recovered in a civil, civil administrative, or  
4 criminal action, or pursuant to an administrative consent order. The  
5 provisions of this paragraph shall not apply to a penalty or fine  
6 assessed or collected for a violation of a State or federal  
7 environmental law, or local environmental ordinance or resolution, if  
8 the penalty or fine was for a violation that resulted from fire, riot,  
9 sabotage, flood, storm event, natural cause, or other act of God  
10 beyond the reasonable control of the violator, or caused by an act or  
11 omission of a person who was outside the reasonable control of the  
12 violator.

13 (ii) The amount of treble damages paid to the Department of  
14 Environmental Protection pursuant to subsection a. of section 7 of  
15 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
16 department in removing, or arranging for the removal of, an  
17 unauthorized discharge upon failure of the discharger to comply with  
18 a directive from the department to remove, or arrange for the removal  
19 of, the discharge.

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

22 (I) Interest paid, accrued or incurred for the privilege period to a  
23 related member, as defined in section 5 of P.L.2002, c.40  
24 (C.54:10A-4.4), except that a deduction shall be permitted to the  
25 extent that the taxpayer establishes by clear and convincing evidence,  
26 as determined by the director, that: (i) a principal purpose of the  
27 transaction giving rise to the payment of the interest was not to avoid  
28 taxes otherwise due under Title 54 of the Revised Statutes or Title  
29 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to  
30 arm's length contracts at an arm's length rate of interest, and (iii)(aa)  
31 the related member was subject to a tax on its net income or receipts  
32 in this State or another state or possession of the United States or in  
33 a foreign nation, (bb) a measure of the tax includes the interest  
34 received from the related member, and (cc) the rate of tax applied to  
35 the interest received by the related member is equal to or greater than  
36 a rate three percentage points less than the rate of tax applied to  
37 taxable interest by this State.

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

46 A deduction shall also be permitted to the extent that the taxpayer

1 establishes by a preponderance of the evidence, as determined by the  
2 director, that the interest is directly or indirectly paid, accrued or  
3 incurred to (i) a related member in a foreign nation which has in force  
4 a comprehensive income tax treaty with the United States, provided  
5 however that the taxpayer shall disclose on its return for the privilege  
6 period the name of the related member, the amount of the interest, the  
7 relevant foreign nation, and such other information as the director may  
8 prescribe or (ii) to an independent lender and the taxpayer guarantees  
9 the debt on which the interest is required.

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

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

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

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

24 (i) Making, arranging for, placing or carrying loans to foreign  
25 persons, provided, however, that in the case of a foreign person which  
26 is an individual, or which is a foreign branch of a domestic corporation  
27 (other than a bank), or which is a foreign corporation or foreign  
28 partnership which is controlled by one or more domestic corporations  
29 (other than banks), domestic partnerships or resident individuals, all  
30 the proceeds of the loan are for use outside of the United States;

31 (ii) Making or placing deposits with foreign persons which are  
32 banks or foreign branches of banks (including foreign subsidiaries) or  
33 foreign branches of the taxpayers or with other international banking  
34 facilities;

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

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

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

43 (5) Entire net income shall exclude 100% of dividends which were  
44 included in computing such taxable income for federal income tax  
45 purposes, paid to the taxpayer by one or more subsidiaries owned by  
46 the taxpayer to the extent of the 80% or more ownership of investment

1 described in subsection (d) of this section and shall exclude 50% of  
2 dividends which were included in computing such taxable income for  
3 federal income tax purposes, paid to the taxpayer by one or more  
4 subsidiaries owned by the taxpayer to the extent of 50% or more  
5 ownership of investment, such ownership of investment calculated in  
6 the same manner as the 80% or more of ownership of investment is  
7 calculated as described in subsection (d) of this section.

8 (6) (A) Net operating loss deduction. There shall be allowed as  
9 a deduction for the privilege period the net operating loss carryover to  
10 that period.

11 (B) Net operating loss carryover. A net operating loss for any  
12 privilege period ending after June 30, 1984 shall be a net operating  
13 loss carryover to each of the seven privilege periods following the  
14 period of the loss. The entire amount of the net operating loss for any  
15 privilege period (the "loss period") shall be carried to the earliest of  
16 the privilege periods to which the loss may be carried. The portion of  
17 the loss which shall be carried to each of the other privilege periods  
18 shall be the excess, if any, of the amount of the loss over the sum of  
19 the entire net income, computed without the exclusions permitted in  
20 paragraphs (4) and (5) of this subsection or the net operating loss  
21 deduction provided by subparagraph (A) of this paragraph, for each of  
22 the prior privilege periods to which the loss may be carried.

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

28 (D) Change in ownership. Where there is a change in 50% or more  
29 of the ownership of a corporation because of redemption or sale of  
30 stock and the corporation changes the trade or business giving rise to  
31 the loss, no net operating loss sustained before the changes may be  
32 carried over to be deducted from income earned after such changes.  
33 In addition where the facts support the premise that the corporation  
34 was acquired under any circumstances for the primary purpose of the  
35 use of its net operating loss carryover, the director may disallow the  
36 carryover.

37 (E) Notwithstanding the provisions of this paragraph (6) of  
38 subsection (k) of this section to the contrary, for privilege periods  
39 beginning during calendar year 2002 and calendar year 2003, no  
40 deduction for any net operating loss carryover shall be allowed. If and  
41 only to the extent that any net operating loss carryover deduction is  
42 disallowed by reason of this subparagraph (E), the date on which the  
43 amount of the disallowed net operating loss carryover deduction  
44 would otherwise expire shall be extended by two years.

45 Provided, that this subparagraph (E) shall not restrict the surrender  
46 or acquisition of corporation business tax benefit certificates pursuant

1 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict  
2 the application of corporation business tax benefit certificates pursuant  
3 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

4 (7) The entire net income of gas, electric and gas and electric  
5 public utilities that were subject to the provisions of P.L.1940, c.5  
6 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
7 the New Jersey depreciation allowance for federal tax depreciation  
8 with respect to assets placed in service prior to January 1, 1998. For  
9 gas, electric, and gas and electric public utilities that were subject to  
10 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,  
11 the New Jersey depreciation allowance shall be computed as follows:  
12 All depreciable assets placed in service prior to January 1, 1998 shall  
13 be considered a single asset account. The New Jersey tax basis of this  
14 depreciable asset account shall be an amount equal to the carryover  
15 adjusted basis for federal income tax purposes on December 31, 1997  
16 of all depreciable assets in service on December 31, 1997, increased  
17 by the excess, of the "net carrying value," defined to be adjusted book  
18 basis of all assets and liabilities, excluding deferred income taxes,  
19 recorded on the public utility's books of account on December 31,  
20 1997, over the carryover adjusted basis for federal income tax  
21 purposes on December 31, 1997 of all assets and liabilities owned by  
22 the gas, electric, or gas and electric public utility as of December 31,  
23 1997. "Books of account" for gas, gas and electric, and electric public  
24 utilities means the uniform system of accounts as promulgated by the  
25 Federal Energy Regulatory Commission and adopted by the Board of  
26 Public Utilities. The following adjustments to entire net income shall  
27 be made pursuant to this section:

28 (A) Depreciation for property placed in service prior to January  
29 1, 1998 shall be adjusted as follows:

30 (i) Depreciation for federal income tax purposes shall be  
31 disallowed in full.

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

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

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

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

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

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

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

45 (12) (A) Notwithstanding the provisions of subsection (k) of  
46 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.



1 s.168, [and] subsection (b) of section 1400L of the federal Internal  
2 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal law,  
3 for property acquired after September 10, 2001 [and before  
4 September 11, 2004], the depreciation deduction otherwise allowed  
5 pursuant to section 167 of the federal Internal Revenue Code of 1986,  
6 26 U.S.C. s.167, shall be determined pursuant to [the requirements  
7 and limitations of section 168 of the federal Internal Revenue Code of  
8 1986, 26 U.S.C. s.168, and section 280F of the federal Internal  
9 Revenue Code of 1986, 26 U.S.C. s.280F, as if that subsection (k) and  
10 that section 1400L were not in effect] the provisions of the federal  
11 Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on  
12 December 31, 2001.

13 (B) The director shall prescribe the rules and regulations necessary  
14 to carry out the provisions of this paragraph, including, among others,  
15 those for determining the adjusted basis of the acquired property for  
16 the purposes of the Corporation Business Tax Act (1945), P.L.1945,  
17 c.162.

18 (13) (A) Notwithstanding the provisions of section 179 of the  
19 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for property  
20 placed in service on or after January 1, 2004, the costs that a taxpayer  
21 may otherwise elect to treat as an expense which is not chargeable to  
22 a capital account shall be determined pursuant to the provisions of the  
23 federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect  
24 on December 31, 2002.

25 (B) The director shall prescribe the rules and regulations necessary  
26 to carry out the provisions of this paragraph, including, among others,  
27 those for determining the adjusted basis of the acquired property for  
28 the purposes of the Corporation Business Tax Act (1945), P.L.1945,  
29 c.162.

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

33 (m) "Financial business corporation" shall mean any corporate  
34 enterprise which is (1) in substantial competition with the business of  
35 national banks and which (2) employs moneyed capital with the object  
36 of making profit by its use as money, through discounting and  
37 negotiating promissory notes, drafts, bills of exchange and other  
38 evidences of debt; buying and selling exchange; making of or dealing  
39 in secured or unsecured loans and discounts; dealing in securities and  
40 shares of corporate stock by purchasing and selling such securities and  
41 stock without recourse, solely upon the order and for the account of  
42 customers; or investing and reinvesting in marketable obligations  
43 evidencing indebtedness of any person, copartnership, association or  
44 corporation in the form of bonds, notes or debentures commonly  
45 known as investment securities; or dealing in or underwriting  
46 obligations of the United States, any state or any political subdivision

1 thereof, or of a corporate instrumentality of any of them. This shall  
2 include, without limitation of the foregoing, business commonly  
3 known as industrial banks, dealers in commercial paper and  
4 acceptances, sales finance, personal finance, small loan and mortgage  
5 financing businesses, as well as any other enterprise employing  
6 moneyed capital coming into competition with the business of national  
7 banks; provided that the holding of bonds, notes, or other evidences  
8 of indebtedness by individual persons not employed or engaged in the  
9 banking or investment business and representing merely personal  
10 investments not made in competition with the business of national  
11 banks, shall not be deemed financial business. Nor shall "financial  
12 business" include national banks, production credit associations  
13 organized under the Farm Credit Act of 1933 or the Farm Credit Act  
14 of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
15 insurance companies duly authorized to transact business in this State,  
16 security brokers or dealers or investment companies or bankers not  
17 employing moneyed capital coming into competition with the business  
18 of national banks, real estate investment trusts, or any of the following  
19 entities organized under the laws of this State: credit unions, savings  
20 banks, savings and loan and building and loan associations,  
21 pawnbrokers, and State banks and trust companies.

22 (n) "International banking facility" shall mean a set of asset and  
23 liability accounts segregated on the books and records of a depository  
24 institution, United States branch or agency of a foreign bank, or an  
25 Edge or Agreement Corporation that includes only international  
26 banking facility time deposits and international banking facility  
27 extensions of credit as such terms are defined in section 204.8(a)(2)  
28 and section 204.8(a)(3) of Regulation D of the board of governors of  
29 the Federal Reserve System, 12 CFR Part 204, effective December 3,  
30 1981. In the event that the United States enacts a law, or the board  
31 of governors of the Federal Reserve System adopts a regulation which  
32 amends the present definition of international banking facility or of  
33 such facilities' time deposits or extensions of credit, the Commissioner  
34 of Banking and Insurance shall forthwith adopt regulations defining  
35 such terms in the same manner as such terms are set forth in the laws  
36 of the United States or the regulations of the board of governors of the  
37 Federal Reserve System. The regulations of the Commissioner of  
38 Banking and Insurance shall thereafter provide the applicable  
39 definitions.

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

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

1 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

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

4 (r) "Qualified investment partnership" means a partnership under  
5 this act that has more than 10 members or partners with no member or  
6 partner owning more than a 50% interest in the entity and that derives  
7 at least 90% of its gross income from dividends, interest, payments  
8 with respect to securities loans, and gains from the sale or other  
9 disposition of stocks or securities or foreign currencies or  
10 commodities or other similar income (including but not limited to gains  
11 from swaps, options, futures or forward contracts) derived with  
12 respect to its business of investing or trading in those stocks,  
13 securities, currencies or commodities, but "investment partnership"  
14 shall not include a "dealer in securities" within the meaning of section  
15 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

16 (s) "Savings institution" means a state or federally chartered  
17 building and loan association, savings and loan association, or savings  
18 bank.

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

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

22

23 25. Section 3 of P.L.1993, c.171 (C.54:10A-5.18) is amended to  
24 read as follows:

25 3. a. A taxpayer shall be allowed a credit against the tax imposed  
26 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount  
27 equal to 2% of the investment credit base of qualified equipment  
28 placed in service in the tax year, up to a maximum allowed credit for  
29 the tax year of \$1,000,000; provided however, that if a taxpayer has  
30 50 or fewer employees (an average number of full-time employees and  
31 full-time employee equivalents of 50 or less) and entire net income to  
32 be used as a measure of the tax determined pursuant to section 6 of  
33 P.L.1945, c.162 (C.54:10A-6) of less than \$5,000,000 for the tax year,  
34 the taxpayer shall be allowed a credit against the tax imposed pursuant  
35 to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to  
36 4% of the investment credit base of qualified equipment placed in  
37 service in the tax year, up to a maximum allowed credit for the tax  
38 year of \$1,000,000.

39 b. The tax imposed for the tax year pursuant to section 5 of  
40 P.L.1945, c.162, shall first be reduced by the amount of any credit  
41 allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78),  
42 then by any credit allowed pursuant to section 12 of P.L.1985, c.227  
43 (C.55:19-13), then by any credit allowed pursuant to section 42 of  
44 P.L.1987, c.102 (C.54:10A-5.3), prior to applying any credits  
45 allowable pursuant to this section. Credits allowable pursuant to this  
46 section shall be applied in the order of the credits' tax years. The

1 amount of the credits applied under this section and section 4 of  
2 P.L.1993, c.171 (C.54:10A-5.19), against the tax imposed pursuant to  
3 section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of  
4 the tax liability otherwise due and shall not reduce the tax liability to  
5 an amount less than the statutory minimum provided in subsection (e)  
6 of section 5 of P.L.1945, c.162.

7 c. The amount of tax year credit otherwise allowable under  
8 subsection a. of this section which cannot be applied for the tax year  
9 due to the limitations of subsection b. of this section may be carried  
10 over, if necessary, to the seven tax years following a credit's tax year.  
11 Provided however, that a taxpayer may not carry over any amount of  
12 credit or credits allowed under subsection a. of this section to a tax  
13 year during which a corporate acquisition with respect to which the  
14 taxpayer was a target corporation occurred or during which the  
15 taxpayer was a party to a merger or a consolidation, or to any  
16 subsequent tax year, if the credit was allowed for a tax year prior to  
17 the year of acquisition, merger or consolidation; provided further,  
18 however, that if in the case of a corporate merger or corporate  
19 consolidation the taxpayer can demonstrate, through the submission  
20 of a copy of the plan of merger or consolidation and such other  
21 evidence as may be required by the director, the identity of the  
22 constituent corporation which was the acquiring person, a credit  
23 allowed to the acquiring person may be carried over by the taxpayer.  
24 "Acquiring person" means the constituent corporation the stockholders  
25 of which own the largest proportion of the total voting power in the  
26 surviving or consolidated corporation after the merger or  
27 consolidation.

28 d. (1) With respect to equipment that is three-year property, as  
29 described in subsection (e) of section 168 of the federal Internal  
30 Revenue Code of 1986, 26 U.S.C. s.168, which is disposed of or  
31 ceases to be qualified equipment prior to the end of the 36 month  
32 period following being placed in service in this State, the amount of  
33 credit allowed shall be that portion of the credit provided for in  
34 subsection a. of this section which represents the ratio which the  
35 months of qualified use bear to 36, and the difference between the  
36 credit taken and the credit allowed for actual use shall be forfeited.  
37 Additionally, except when the property is damaged or destroyed by  
38 fire, flood, storm or other casualty, or is stolen, the taxpayer shall  
39 redetermine the amount of credit allowed for the tax year of the credit  
40 by reducing the investment credit base by the cost of the amount of the  
41 disposed or disqualified equipment. If the redetermination of the  
42 credit results in an increase in final liability for any tax year in which  
43 the credit was applied, then, notwithstanding the four year limitation  
44 of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid  
45 liability, if any, shall be considered a deficiency for the purposes of the  
46 State Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount

1 of credit allowed for actual use shall be determined by multiplying the  
2 original credit by the ratio which the months of qualified use bear to  
3 36.

4 (2) With respect to property other than that described in  
5 subparagraph (1) of this subsection which is disposed of or ceases to  
6 be qualified equipment prior to the end of the 60 month period  
7 following being placed in service in this State, the amount of credit  
8 allowed shall be that portion of the credit provided for in subsection  
9 a. of this section which represents the ratio which the months of  
10 qualified use bear to 60, and the difference between the credit taken  
11 and the credit allowed for actual use shall be forfeited. Additionally,  
12 except when the property is damaged or destroyed by fire, flood,  
13 storm or other casualty, or is stolen, the taxpayer shall redetermine the  
14 amount of credit allowed for the tax year of the credit by reducing the  
15 investment credit base by the cost of the amount of the disposed or  
16 disqualified equipment. If the redetermination of the credit results in  
17 an increase in final liability for any tax year in which the credit was  
18 applied, then, notwithstanding the four year limitation of subsection b.  
19 of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any,  
20 shall be considered a deficiency for the purposes of the State Tax  
21 Uniform Procedure Law, R.S.54:48-1 et seq. The amount of credit  
22 allowed for actual use shall be determined by multiplying the original  
23 credit by the ratio which the months of qualified use bear to 60.  
24 (cf: P.L.1993, c.171, s.3)

25

26 26. (New section) a. For taxable years beginning on or after  
27 January 1, 2004, notwithstanding the provisions of N.J.S.54A:5-1, if  
28 any, or any other law to the contrary, for the purposes of determining  
29 the amount of a category of income pursuant to N.J.S.54A:5-1 that is  
30 net of expenses:

31 (1) notwithstanding the provisions of subsection (k) of section 168  
32 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168,  
33 subsection (b) of section 1400L of the federal Internal Revenue Code  
34 of 1986, 26 U.S.C. s.1400L, or any other federal law, for property  
35 placed in service on or after January 1, 2004, the depreciation  
36 deduction otherwise allowed pursuant to section 167 of the federal  
37 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined  
38 pursuant to the provisions of the federal Internal Revenue Code of  
39 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001; and

40 (2) notwithstanding the provisions of section 179 of the federal  
41 Internal Revenue Code of 1986, 26 U.S.C. s.179, for property placed  
42 in service on or after January 1, 2004, the costs that a taxpayer may  
43 otherwise elect to treat as an expense which is not chargeable to a  
44 capital account shall be determined pursuant to the provisions of the  
45 federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect  
46 on December 31, 2002.

1       b. The director shall prescribe the rules and regulations necessary  
2 to carry out the provisions of this section, including, among others,  
3 those for determining the adjusted basis of the acquired property for  
4 the purposes of the "New Jersey Gross Income Tax Act,"  
5 N.J.S.54A:1-1 et seq.

6

7       27. This act shall take effect immediately; sections 1 through 17  
8 shall apply to State fiscal years beginning July 1, 2004 and thereafter;  
9 and section 25 shall apply to qualified equipment placed in service  
10 during privilege periods beginning on or after July 1, 2004.

11

12

13

14

15       Decouples corporation business tax and gross income tax from  
16 changes in federal depreciation and certain expensing; provides  
17 incentives for business relocation and retention.

# ASSEMBLY, No. 3111

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 21, 2004

**Sponsored by:**

**Assemblyman ALBIO SIRES**

**District 33 (Hudson)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**SYNOPSIS**

Decouples corporation business tax and gross income tax from changes in federal depreciation and certain expensing.

**CURRENT VERSION OF TEXT**

As introduced.



A3111 SIRES, COHEN

2

1 AN ACT concerning the timing of tax deductions for certain business  
2 expenses, amending P.L.1945, c.162 and supplementing Title 54A  
3 of the New Jersey Statutes.

4

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

7

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (i) "Fiscal year" shall mean an accounting period ending on any day  
46 other than the last day of December on the basis of which the taxpayer

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1 is required to report for federal income tax purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 banking facility determined as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (E) Notwithstanding the provisions of this paragraph (6) of  
21 subsection (k) of this section to the contrary, for privilege periods  
22 beginning during calendar year 2002 and calendar year 2003, no  
23 deduction for any net operating loss carryover shall be allowed. If and  
24 only to the extent that any net operating loss carryover deduction is  
25 disallowed by reason of this subparagraph (E), the date on which the  
26 amount of the disallowed net operating loss carryover deduction  
27 would otherwise expire shall be extended by two years.

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

33 (7) The entire net income of gas, electric and gas and electric public  
34 utilities that were subject to the provisions of P.L.1940, c.5  
35 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
36 the New Jersey depreciation allowance for federal tax depreciation  
37 with respect to assets placed in service prior to January 1, 1998. For  
38 gas, electric, and gas and electric public utilities that were subject to  
39 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,  
40 the New Jersey depreciation allowance shall be computed as follows:  
41 All depreciable assets placed in service prior to January 1, 1998 shall  
42 be considered a single asset account. The New Jersey tax basis of this  
43 depreciable asset account shall be an amount equal to the carryover  
44 adjusted basis for federal income tax purposes on December 31, 1997  
45 of all depreciable assets in service on December 31, 1997, increased  
46 by the excess, of the "net carrying value," defined to be adjusted book

1 basis of all assets and liabilities, excluding deferred income taxes,  
2 recorded on the public utility's books of account on December 31,  
3 1997, over the carryover adjusted basis for federal income tax  
4 purposes on December 31, 1997 of all assets and liabilities owned by  
5 the gas, electric, or gas and electric public utility as of December 31,  
6 1997. "Books of account" for gas, gas and electric, and electric public  
7 utilities means the uniform system of accounts as promulgated by the  
8 Federal Energy Regulatory Commission and adopted by the Board of  
9 Public Utilities. The following adjustments to entire net income shall  
10 be made pursuant to this section:

11 (A) Depreciation for property placed in service prior to January 1,  
12 1998 shall be adjusted as follows:

13 (i) Depreciation for federal income tax purposes shall be disallowed  
14 in full.

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

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

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

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

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

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

20 (11) No deduction shall be allowed for research and experimental  
21 expenditures, to the extent that those research and experimental  
22 expenditures are qualified research expenses or basic research  
23 payments for which an amount of credit is claimed pursuant to section  
24 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and  
25 experimental expenditures are also used to compute a federal credit  
26 claimed pursuant to section 41 of the federal Internal Revenue Code  
27 of 1986, 26 U.S.C. s.41.

28 (12) (A) Notwithstanding the provisions of subsection (k) of  
29 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
30 s.168, [and] subsection (b) of section 1400L of the federal Internal  
31 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal law,  
32 for property acquired after September 10, 2001 [and before  
33 September 11, 2004], the depreciation deduction otherwise allowed  
34 pursuant to section 167 of the federal Internal Revenue Code of 1986,  
35 26 U.S.C. s.167, shall be determined pursuant to [the requirements  
36 and limitations of section 168 of the federal Internal Revenue Code of  
37 1986, 26 U.S.C. s.168, and section 280F of the federal Internal  
38 Revenue Code of 1986, 26 U.S.C. s.280F, as if that subsection (k) and  
39 that section 1400L were not in effect] the provisions of the federal  
40 Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on  
41 December 31, 2001.

42 (B) The director shall prescribe the rules and regulations necessary  
43 to carry out the provisions of this paragraph, including, among others,  
44 those for determining the adjusted basis of the acquired property for  
45 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,  
46 c.162.



1       (13) (A) Notwithstanding the provisions of section 179 of the  
2 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for property  
3 placed in service on or after January 1, 2004, the costs that a taxpayer  
4 may otherwise elect to treat as an expense which is not chargeable to  
5 a capital account shall be determined pursuant to the provisions of the  
6 federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect  
7 on December 31, 2002.

8       (B) The director shall prescribe the rules and regulations necessary  
9 to carry out the provisions of this paragraph, including, among others,  
10 those for determining the adjusted basis of the acquired property for  
11 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,  
12 c.162.

13       (1) "Real estate investment trust" shall mean any corporation, trust  
14 or association qualifying and electing to be taxed as a real estate  
15 investment trust under federal law.

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

1 of national banks, real estate investment trusts, or any of the following  
2 entities organized under the laws of this State: credit unions, savings  
3 banks, savings and loan and building and loan associations,  
4 pawnbrokers, and State banks and trust companies.

5 (n) "International banking facility" shall mean a set of asset and  
6 liability accounts segregated on the books and records of a depository  
7 institution, United States branch or agency of a foreign bank, or an  
8 Edge or Agreement Corporation that includes only international  
9 banking facility time deposits and international banking facility  
10 extensions of credit as such terms are defined in section 204.8(a)(2)  
11 and section 204.8(a)(3) of Regulation D of the board of governors of  
12 the Federal Reserve System, 12 CFR Part 204, effective December 3,  
13 1981. In the event that the United States enacts a law, or the board  
14 of governors of the Federal Reserve System adopts a regulation which  
15 amends the present definition of international banking facility or of  
16 such facilities' time deposits or extensions of credit, the Commissioner  
17 of Banking and Insurance shall forthwith adopt regulations defining  
18 such terms in the same manner as such terms are set forth in the laws  
19 of the United States or the regulations of the board of governors of the  
20 Federal Reserve System. The regulations of the Commissioner of  
21 Banking and Insurance shall thereafter provide the applicable  
22 definitions.

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

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

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

32 (r) "Qualified investment partnership" means a partnership under  
33 this act that has more than 10 members or partners with no member or  
34 partner owning more than a 50% interest in the entity and that derives  
35 at least 90% of its gross income from dividends, interest, payments  
36 with respect to securities loans, and gains from the sale or other  
37 disposition of stocks or securities or foreign currencies or  
38 commodities or other similar income (including but not limited to gains  
39 from swaps, options, futures or forward contracts) derived with  
40 respect to its business of investing or trading in those stocks,  
41 securities, currencies or commodities, but "investment partnership"  
42 shall not include a "dealer in securities" within the meaning of section  
43 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

44 (s) "Savings institution" means a state or federally chartered  
45 building and loan association, savings and loan association, or savings  
46 bank.

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

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

4

5 2. (New section) a. For taxable years beginning on or after  
6 January 1, 2004, notwithstanding the provisions of N.J.S.54A:5-1, if  
7 any, or any other law to the contrary, for the purposes of determining  
8 the amount of a category of income pursuant to N.J.S.54A:5-1 that is  
9 net of expenses:

10 (1) notwithstanding the provisions of subsection (k) of section 168  
11 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168,  
12 subsection (b) of section 1400L of the federal Internal Revenue Code  
13 of 1986, 26 U.S.C. s.1400L, or any other federal law, for property  
14 placed in service on or after January 1, 2004, the depreciation  
15 deduction otherwise allowed pursuant to section 167 of the federal  
16 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined  
17 pursuant to the provisions of the federal Internal Revenue Code of  
18 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001; and

19 (2) notwithstanding the provisions of section 179 of the federal  
20 Internal Revenue Code of 1986, 26 U.S.C. s.179, for property placed  
21 in service on or after January 1, 2004, the costs that a taxpayer may  
22 otherwise elect to treat as an expense which is not chargeable to a  
23 capital account shall be determined pursuant to the provisions of the  
24 federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect  
25 on December 31, 2002.

26 b. The director shall prescribe the rules and regulations necessary  
27 to carry out the provisions of this section, including, among others,  
28 those for determining the adjusted basis of the acquired property for  
29 the purposes of the "New Jersey Gross Income Tax Act,"  
30 N.J.S.54A:1-1 et seq.

31

32 3. This act shall take effect immediately.

33

34

#### 35 STATEMENT

36

37 This bill concerns the timing of the tax deductions for the expenses  
38 of running a business. Taxpayers are allowed to deduct a reasonable  
39 allowance for the wear and tear of property used in a trade or  
40 business, and this deduction for the "depreciation" of property is  
41 usually allowed in correspondence to the property's actual economic  
42 exhaustion of value.

43

44 On occasion the federal Internal Revenue Code rules for  
45 depreciation have been altered to allow a faster write-off of business  
46 expenses, and New Jersey has uncoupled the New Jersey depreciation  
rules from the federal rules. Since New Jersey uncoupled in 2002

1 from the 30% "bonus" depreciation that was allowed for certain  
2 property for federal tax purposes, the federal rules have been altered  
3 again by the federal Jobs and Growth Tax Relief Reconciliation Act of  
4 2003 (JGTRRA), Pub.L.108-27. That federal law made two  
5 significant changes to the federal tax code that "flow through" to New  
6 Jersey tax laws. This bill returns the New Jersey depreciation rules to  
7 New Jersey law as it stood before the enactment of the federal law,  
8 and gives the Director of the Division of Taxation authority to  
9 formulate rules and regulations to carry out the decoupling from  
10 federal law, including the necessary basis adjustments.

11 The federal JGTRRA increased the federal "bonus depreciation"  
12 by extending the original 3-year window by 3 months to the end of  
13 calendar 2004 and by increasing the bonus from 30% of the investment  
14 to 50% of the investment for property acquired after May 5, 2003. To  
15 provide relative stability in a climate of frequent change, this bill  
16 uncouples from those provisions and from further changes in federal  
17 depreciation rules for the purposes of both the corporation business  
18 tax and the gross income tax.

19 The federal JGTRRA also temporarily increased small investment  
20 expensing. In lieu of depreciation, business taxpayers that put  
21 \$200,000 or less of qualified property in service in a year (small  
22 businesses) could elect to immediately deduct, rather than depreciate  
23 over time, up to \$25,000 of the qualified property. The federal  
24 JGTRRA boosted this up to \$100,000 and raised the small business  
25 investment limitation from \$200,000 to \$400,000. This bill returns the  
26 New Jersey expensing rules to New Jersey law as it stood before the  
27 enactment of the federal law.

28 This bill applies to tax years beginning in calendar year 2004 and  
29 thereafter.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3111

# STATE OF NEW JERSEY

DATED: JUNE 22, 2004

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3111.

This Assembly Committee Substitute for Assembly Bill No. 3111 decouples the corporation business tax and gross income tax from changes in federal depreciation and certain expensing and provides incentives for business relocation and retention.

#### **Decoupling**

Taxpayers are allowed to deduct a reasonable allowance for the wear and tear on property used in a trade or business, and this deduction for the "depreciation" of property is usually allowed in correspondence to the property's actual economic exhaustion of value.

On occasion the federal Internal Revenue Code rules for depreciation have been altered to allow a faster write-off of business expenses, and New Jersey has uncoupled the New Jersey depreciation rules from the federal rules. Since New Jersey uncoupled in 2002 from the 30% "bonus" depreciation that was allowed for certain property for federal tax purposes, the federal rules have been altered again by the federal Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA), Pub.L.108-27. That federal law made two significant changes to the federal tax code that "flow through" to New Jersey tax laws. This substitute returns the New Jersey depreciation rules to New Jersey law as it stood before the enactment of the federal law, and gives the Director of the Division of Taxation authority to formulate rules and regulations to carry out the decoupling from federal law, including the necessary basis adjustments.

The federal JGTRRA increased the federal "bonus depreciation" by extending the original 3-year window by 3 months to the end of calendar 2004 and by increasing the bonus from 30% of the investment to 50% of the investment for property acquired after May 5, 2003. To provide relative stability in a climate of frequent change, this substitute uncouples from those provisions and from further changes in federal depreciation rules for the purposes of both the corporation business tax and the gross income tax.

The federal JGTRRA also temporarily increased small investment

expensing. In lieu of depreciation, business taxpayers that put \$200,000 or less of qualified property in service in a year (small businesses) could elect to immediately deduct, rather than depreciate over time, up to \$25,000 of the qualified property. The federal JGTRRA boosted this up to \$100,000 and raised the small business investment limitation from \$200,000 to \$400,000. This bill returns the New Jersey expensing rules to New Jersey law as it stood before the enactment of the federal law.

### **Business Retention and Relocation Assistance Act**

This substitute revises a program currently aimed at encouraging businesses to move to New Jersey into the "Business Retention and Relocation Assistance Act," a program to retain in New Jersey the full-time jobs of businesses already active in this State.

The substitute establishes a program of grants of corporation business tax credits and insurance premiums tax credits to business to assist them in developing projects to relocate manufacturing and research and development full-time jobs to new facilities in this State.

The substitute requires a business to relocate a minimum of 250 jobs. For a minimum of 500 jobs relocated, the substitute allows the maximum regular benefit of \$1,500 credit issued per full-time job retained. Relocating more than 2,000 jobs into a designated urban center qualifies the business for a "bonus grant" of 50% in addition to its base grant. Credits will be granted to businesses based on

- The number of full-time jobs retained
- The quality of the full-time jobs retained, including but not limited to the salaries and benefits provided to retained full-time employees
- Any capital investments made by the business at the new business location;
- The nature of the business' operations, including but not limited to whether the business is a designated industry;
- The potential impact on the State if the business were to relocate to another state;
- The site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan;
- Whether positions average at least 1.5 times the minimum hourly wage during the commitment duration; and
- The duration and extent of past operations by the business in New Jersey and any other information indicating the business' level of commitment to the State and the likelihood that the business will continue to operate in this State in the future.

The substitute caps the tax credits that can be issued at \$20,000,000 per State Fiscal Year. The credits can be applied in the year issued or the year following issue.

To facilitate financing, the substitute establishes a credit transfer program for the credits issued under the relocation program, not

unlike the High-Tech benefit transfer program, so that credit recipients can sell their program benefits to other taxpayers.

The program includes a benefit recapture provision (sometimes referred to as a "clawback") for businesses that have been granted incentives but do not maintain for five years the full-time job levels required by the program and to which the participants have agreed in writing.

#### **Increasing the Tax Benefit Certificate Transfer Program cap.**

The substitute increases the annual cap on the tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies from \$40 million to \$60 million per State Fiscal Year.

The tax benefit certificate transfer program is a State financial assistance program for small businesses supported by corporation business tax expenditures and operated through a system of tax benefit sales administered by the Economic Development Authority. The program allows corporations to purchase the research and development credits and net operating loss deductions of new or expanding emerging technology and biotechnology companies in this State that are not able to use these tax benefits because they are not yet profitable.

This substitute increases the annual program cap on transfers from \$40 million to \$60 million and allocates a part of that increase to a new subprogram

The substitute directs the Economic Development Authority to establish three innovation zones, to be geographically distributed in the northern, central, and southern portions of this State. The substitute allocates \$5 million for the surrender of transferable tax benefits exclusively by eligible companies that operate within the innovation zones over State Fiscal Year 2005 and \$10 million for each State Fiscal Year thereafter.

#### **Sales Tax Exemption Certificate Program**

The substitute establishes a sales tax exemption certificate program for projects of new business headquarters, manufacturing facilities and research and development facilities in New Jersey State Development and Redevelopment Plan designated Planning Area 1 or 2 locations.

Under the substitute, a business:

- with 1,000 or more full-time employees in the State and a project involving relocating 500 or more full-time employees into a new business location or locations;
- that is a life sciences business or a manufacturing facility and a project constructing one or more new research and development facilities, constructing one or more new manufacturing facilities in this State, or relocating to a new headquarters in this State that will employ 250 or more full-time employees;
- that is a life sciences business or a manufacturing business and the

project is constructing a new, or substantially rehabilitating a vacant, property that will separately or collectively be predominately a new research and development facility, predominately a new manufacturing facility, house the headquarters of the business, or a combination thereof; Or

- that is a currently receiving an Economic Development Authority a structured finance special guarantee

can qualify for a sales tax exemption certificate for the project.

The exemption certificate, *which applies only to property purchased for installation in that approved project*, will allow the business to purchase machinery, equipment, furniture and furnishings, fixtures and building materials other than tools and supplies for placement at the project location without the imposition of sales and use tax until the new facility is functional.

#### **Urban Enterprise Zone Energy and Utility Service Exemption from sales and use tax**

The substitute provides for a sales and use tax exemption for final sales of electricity and natural gas and their transport to a qualified business in an urban enterprise zone for consumption in the zone, or a vertically integrated combination of qualified businesses manufacturing a single product, that employs at least 500 people at least 50 percent of whom are directly employed in a manufacturing process.

#### **Small business provisions for the Manufacturing Equipment and Employment Investment Tax Credit under the corporation business tax**

The Manufacturing Equipment and Employment Investment Tax credit currently allows a credit against the corporation business tax equal to two percent of a corporation's investment in machinery, apparatus or equipment having a federal depreciation useful life of 4 years or more, placed in service in this State, and used or consumed directly and primarily in the production of tangible personal property.

The substitute increases this component of the credit to four percent if the business has 50 or fewer employees and entire net income of less than \$ million for the tax year.

#### **FISCAL IMPACT:**

At this time, the Executive branch has not provided any information concerning the fiscal impact of the provisions of this substitute.



**SENATE, No. 1657**

**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

INTRODUCED JUNE 7, 2004

**Sponsored by:**

**Senator WAYNE R. BRYANT**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Decouples corporation business tax and gross income tax from changes in federal depreciation and certain expensing.

**CURRENT VERSION OF TEXT**

As introduced.



S1657 BRYANT

2

1 AN ACT concerning the timing of tax deductions for certain business  
2 expenses, amending P.L.1945, c.162 and supplementing Title 54A  
3 of the New Jersey Statutes.

4

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

7

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (i) "Fiscal year" shall mean an accounting period ending on any day  
46 other than the last day of December on the basis of which the taxpayer

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1 is required to report for federal income tax purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 banking facility determined as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (E) Notwithstanding the provisions of this paragraph (6) of  
21 subsection (k) of this section to the contrary, for privilege periods  
22 beginning during calendar year 2002 and calendar year 2003, no  
23 deduction for any net operating loss carryover shall be allowed. If and  
24 only to the extent that any net operating loss carryover deduction is  
25 disallowed by reason of this subparagraph (E), the date on which the  
26 amount of the disallowed net operating loss carryover deduction  
27 would otherwise expire shall be extended by two years.

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

33 (7) The entire net income of gas, electric and gas and electric  
34 public utilities that were subject to the provisions of P.L.1940, c.5  
35 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
36 the New Jersey depreciation allowance for federal tax depreciation  
37 with respect to assets placed in service prior to January 1, 1998. For  
38 gas, electric, and gas and electric public utilities that were subject to  
39 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,  
40 the New Jersey depreciation allowance shall be computed as follows:  
41 All depreciable assets placed in service prior to January 1, 1998 shall  
42 be considered a single asset account. The New Jersey tax basis of this  
43 depreciable asset account shall be an amount equal to the carryover  
44 adjusted basis for federal income tax purposes on December 31, 1997  
45 of all depreciable assets in service on December 31, 1997, increased  
46 by the excess, of the "net carrying value," defined to be adjusted book



1 basis of all assets and liabilities, excluding deferred income taxes,  
2 recorded on the public utility's books of account on December 31,  
3 1997, over the carryover adjusted basis for federal income tax  
4 purposes on December 31, 1997 of all assets and liabilities owned by  
5 the gas, electric, or gas and electric public utility as of December 31,  
6 1997. "Books of account" for gas, gas and electric, and electric public  
7 utilities means the uniform system of accounts as promulgated by the  
8 Federal Energy Regulatory Commission and adopted by the Board of  
9 Public Utilities. The following adjustments to entire net income shall  
10 be made pursuant to this section:

11 (A) Depreciation for property placed in service prior to January 1,  
12 1998 shall be adjusted as follows:

13 (i) Depreciation for federal income tax purposes shall be  
14 disallowed in full.

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

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

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

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

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

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

20 (11) No deduction shall be allowed for research and experimental  
21 expenditures, to the extent that those research and experimental  
22 expenditures are qualified research expenses or basic research  
23 payments for which an amount of credit is claimed pursuant to section  
24 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and  
25 experimental expenditures are also used to compute a federal credit  
26 claimed pursuant to section 41 of the federal Internal Revenue Code  
27 of 1986, 26 U.S.C. s.41.

28 (12) (A) Notwithstanding the provisions of subsection (k) of  
29 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
30 s.168, [and] subsection (b) of section 1400L of the federal Internal  
31 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal law,  
32 for property acquired after September 10, 2001 [and before  
33 September 11, 2004], the depreciation deduction otherwise allowed  
34 pursuant to section 167 of the federal Internal Revenue Code of 1986,  
35 26 U.S.C. s.167, shall be determined pursuant to [the requirements  
36 and limitations of section 168 of the federal Internal Revenue Code of  
37 1986, 26 U.S.C. s.168, and section 280F of the federal Internal  
38 Revenue Code of 1986, 26 U.S.C. s.280F, as if that subsection (k) and  
39 that section 1400L were not in effect] the provisions of the federal  
40 Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on  
41 December 31, 2001.

42 (B) The director shall prescribe the rules and regulations necessary  
43 to carry out the provisions of this paragraph, including, among others,  
44 those for determining the adjusted basis of the acquired property for  
45 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,  
46 c.162.

1       (13) (A) Notwithstanding the provisions of section 179 of the  
2 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for property  
3 placed in service on or after January 1, 2004, the costs that a taxpayer  
4 may otherwise elect to treat as an expense which is not chargeable to  
5 a capital account shall be determined pursuant to the provisions of the  
6 federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect  
7 on December 31, 2002.

8       (B) The director shall prescribe the rules and regulations necessary  
9 to carry out the provisions of this paragraph, including, among others,  
10 those for determining the adjusted basis of the acquired property for  
11 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,  
12 c.162.

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

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

1 of national banks, real estate investment trusts, or any of the following  
2 entities organized under the laws of this State: credit unions, savings  
3 banks, savings and loan and building and loan associations,  
4 pawnbrokers, and State banks and trust companies.

5 (n) "International banking facility" shall mean a set of asset and  
6 liability accounts segregated on the books and records of a depository  
7 institution, United States branch or agency of a foreign bank, or an  
8 Edge or Agreement Corporation that includes only international  
9 banking facility time deposits and international banking facility  
10 extensions of credit as such terms are defined in section 204.8(a)(2)  
11 and section 204.8(a)(3) of Regulation D of the board of governors of  
12 the Federal Reserve System, 12 CFR Part 204, effective December 3,  
13 1981. In the event that the United States enacts a law, or the board  
14 of governors of the Federal Reserve System adopts a regulation which  
15 amends the present definition of international banking facility or of  
16 such facilities' time deposits or extensions of credit, the Commissioner  
17 of Banking and Insurance shall forthwith adopt regulations defining  
18 such terms in the same manner as such terms are set forth in the laws  
19 of the United States or the regulations of the board of governors of the  
20 Federal Reserve System. The regulations of the Commissioner of  
21 Banking and Insurance shall thereafter provide the applicable  
22 definitions.

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

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

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

33 (r) "Qualified investment partnership" means a partnership under  
34 this act that has more than 10 members or partners with no member or  
35 partner owning more than a 50% interest in the entity and that derives  
36 at least 90% of its gross income from dividends, interest, payments  
37 with respect to securities loans, and gains from the sale or other  
38 disposition of stocks or securities or foreign currencies or  
39 commodities or other similar income (including but not limited to gains  
40 from swaps, options, futures or forward contracts) derived with  
41 respect to its business of investing or trading in those stocks,  
42 securities, currencies or commodities, but "investment partnership"  
43 shall not include a "dealer in securities" within the meaning of section  
44 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

45 (s) "Savings institution" means a state or federally chartered  
46 building and loan association, savings and loan association, or savings

1 bank.

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

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

5

6 2. (New section) a. For taxable years beginning on or after  
7 January 1, 2004, notwithstanding the provisions of N.J.S.54A:5-1, if  
8 any, or any other law to the contrary, for the purposes of determining  
9 the amount of a category of income pursuant to N.J.S.54A:5-1 that is  
10 net of expenses:

11 (1) notwithstanding the provisions of subsection (k) of section 168  
12 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168,  
13 subsection (b) of section 1400L of the federal Internal Revenue Code  
14 of 1986, 26 U.S.C. s.1400L, or any other federal law, for property  
15 placed in service on or after January 1, 2004, the depreciation  
16 deduction otherwise allowed pursuant to section 167 of the federal  
17 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined  
18 pursuant to the provisions of the federal Internal Revenue Code of  
19 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001; and

20 (2) notwithstanding the provisions of section 179 of the federal  
21 Internal Revenue Code of 1986, 26 U.S.C. s.179, for property placed  
22 in service on or after January 1, 2004, the costs that a taxpayer may  
23 otherwise elect to treat as an expense which is not chargeable to a  
24 capital account shall be determined pursuant to the provisions of the  
25 federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect  
26 on December 31, 2002.

27 b. The director shall prescribe the rules and regulations necessary  
28 to carry out the provisions of this section, including, among others,  
29 those for determining the adjusted basis of the acquired property for  
30 the purposes of the "New Jersey Gross Income Tax Act,"  
31 N.J.S.54A:1-1 et seq.

32

33 3. This act shall take effect immediately.

34

35

36

#### STATEMENT

37

38 This bill concerns the timing of the tax deductions for the expenses  
39 of running a business. Taxpayers are allowed to deduct a reasonable  
40 allowance for the wear and tear of property used in a trade or  
41 business, and this deduction for the "depreciation" of property is  
42 usually allowed in correspondence to the property's actual economic  
43 exhaustion of value.

44 On occasion the federal Internal Revenue Code rules for  
45 depreciation have been altered to allow a faster write-off of business  
46 expenses, and New Jersey has uncoupled the New Jersey depreciation

1 rules from the federal rules. Since New Jersey uncoupled in 2002  
2 from the 30% "bonus" depreciation that was allowed for certain  
3 property for federal tax purposes, the federal rules have been altered  
4 again by the federal Jobs and Growth Tax Relief Reconciliation Act of  
5 2003 (JGTRRA), Pub.L.108-27. That federal law made two  
6 significant changes to the federal tax code that "flow through" to New  
7 Jersey tax laws. This bill returns the New Jersey depreciation rules to  
8 New Jersey law as it stood before the enactment of the federal law,  
9 and gives the Director of the Division of Taxation authority to  
10 formulate rules and regulations to carry out the decoupling from  
11 federal law, including the necessary basis adjustments.

12 The federal JGTRRA increased the federal "bonus depreciation"  
13 by extending the original 3-year window by 3 months to the end of  
14 calendar 2004 and by increasing the bonus from 30% of the investment  
15 to 50% of the investment for property acquired after May 5, 2003. To  
16 provide relative stability in a climate of frequent change, this bill  
17 uncouples from those provisions and from further changes in federal  
18 depreciation rules for the purposes of both the corporation business  
19 tax and the gross income tax.

20 The federal JGTRRA also temporarily increased small investment  
21 expensing. In lieu of depreciation, business taxpayers that put  
22 \$200,000 or less of qualified property in service in a year (small  
23 businesses) could elect to immediately deduct, rather than depreciate  
24 over time, up to \$25,000 of the qualified property. The federal  
25 JGTRRA boosted this up to \$100,000 and raised the small business  
26 investment limitation from \$200,000 to \$400,000. This bill returns the  
27 New Jersey expensing rules to New Jersey law as it stood before the  
28 enactment of the federal law.

29 This bill applies to tax years beginning in calendar year 2004 and  
30 thereafter.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1657**

# **STATE OF NEW JERSEY**

DATED: JUNE 21, 2004

The Senate Budget and Appropriations Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1657.

This Senate Committee Substitute for Senate Bill No. 1657 decouples corporation business tax and gross income tax from changes in federal depreciation and certain expensing and provides incentives for business relocation and retention.

#### **Decoupling**

Taxpayers are allowed to deduct a reasonable allowance for the wear and tear of property used in a trade or business, and this deduction for the "depreciation" of property is usually allowed in correspondence to the property's actual economic exhaustion of value.

On occasion the federal Internal Revenue Code rules for depreciation have been altered to allow a faster write-off of business expenses, and New Jersey has uncoupled the New Jersey depreciation rules from the federal rules. Since New Jersey uncoupled in 2002 from the 30% "bonus" depreciation that was allowed for certain property for federal tax purposes, the federal rules have been altered again by the federal Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA), Pub.L.108-27. That federal law made two significant changes to the federal tax code that "flow through" to New Jersey tax laws. This substitute returns the New Jersey depreciation rules to New Jersey law as it stood before the enactment of the federal law, and gives the Director of the Division of Taxation authority to formulate rules and regulations to carry out the decoupling from federal law, including the necessary basis adjustments.

The federal JGTRRA increased the federal "bonus depreciation" by extending the original 3-year window by 3 months to the end of calendar 2004 and by increasing the bonus from 30% of the investment to 50% of the investment for property acquired after May 5, 2003. To provide relative stability in a climate of frequent change, this substitute uncouples from those provisions and from further changes in federal depreciation rules for the purposes of both the corporation business tax and the gross income tax.

The federal JGTRRA also temporarily increased small investment

expensing. In lieu of depreciation, business taxpayers that put \$200,000 or less of qualified property in service in a year (small businesses) could elect to immediately deduct, rather than depreciate over time, up to \$25,000 of the qualified property. The federal JGTRRA boosted this up to \$100,000 and raised the small business investment limitation from \$200,000 to \$400,000. This bill returns the New Jersey expensing rules to New Jersey law as it stood before the enactment of the federal law.

### **Business Retention and Relocation Assistance Act**

This substitute revises a program currently aimed at encouraging businesses to move to New Jersey into the "Business Retention and Relocation Assistance Act," a program to retain in New Jersey the full-time jobs of businesses already active in this State.

The substitute establishes a program of grants of corporation business tax credits and insurance premiums tax credits to business to assist them in developing projects to relocate manufacturing and research and development full-time jobs to new facilities in this State.

The substitute requires a business to relocate a minimum of 250 jobs. For a minimum of 500 jobs relocated the substitute allows the maximum regular benefit of \$1,500 credit issued per full-time job retained. Relocating more than 2,000 jobs into a designated urban center qualifies the business for a "bonus grant" of 50% in addition to its base grant. Credits will be granted to businesses based on

- The number of full-time jobs retained
- The quality of the full-time jobs retained, including but not limited to the salaries and benefits provided to retained full-time employees
- Any capital investments made by the business at the new business location;
- The nature of the business' operations, including but not limited to whether the business is a designated industry;
- The potential impact on the State if the business were to relocate to another state;
- The site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan;
- Whether positions average at least 1.5 times the minimum hourly wage during the commitment duration; and
- The duration and extent of past operations by the business in New Jersey and any other information indicating the business' level of commitment to the State and the likelihood that the business will continue to operate in this State in the future.

The substitute caps the tax credits that can be issued at \$20,000,000 per State Fiscal Year. The credits can be applied in the year issued or the year following issue.

To facilitate financing, the substitute establishes a credit transfer



program for the credits issued under the relocation program, not unlike the High-Tech benefit transfer program, so that credit recipients can sell their program benefits to other taxpayers.

The program includes a benefit recapture provision (sometimes referred to as a "clawback") for businesses that have been granted incentives but do not maintain for five years the full-time job levels required by the program and to which the participants have agreed in writing.

#### **Increasing the Tax Benefit Certificate Transfer Program cap.**

The substitute increases the annual cap on the tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies from \$40 million to \$60 million per State Fiscal Year.

The tax benefit certificate transfer program is a State financial assistance program for small businesses supported by corporation business tax expenditures and operated through a system of tax benefit sales administered by the Economic Development Authority. The program allows corporations to purchase the research and development credits and net operating loss deductions of new or expanding emerging technology and biotechnology companies in this State that are not able to use these tax benefits because they are not yet profitable.

This bill increases the annual program cap on transfers from \$40 million to \$60 million and allocates a part of that increase to a new subprogram

The substitute directs the Economic Development Authority to establish three innovation zones, to be geographically distributed in the northern, central, and southern portions of this State. The substitute allocates \$5 million for the surrender of transferable tax benefits exclusively by eligible companies that operate within the innovation zones over State Fiscal Year 2005 and \$10 million for each State Fiscal Year thereafter.

#### **Sales Tax Exemption Certificate Program**

The substitute establishes a sales tax exemption certificate program for projects of new business headquarters, manufacturing facilities and research and development facilities in New Jersey State Development and Redevelopment Plan designated Planning Area 1 or 2 locations.

Under the substitute, a business:

- with 1,000 or more full-time employees in the State and a project involving relocating 500 or more full-time employees into a new business location or locations;
- that is a life sciences business or a manufacturing facility and a project constructing one or more new research and development facilities, constructing one or more new manufacturing facilities in this State, or relocating to a new headquarters in this State that will employ 250 or more full-time employees; or

- that is a life sciences business or a manufacturing business and the project is constructing a new, or substantially rehabilitating a vacant, property that will separately or collectively be predominately a new research and development facility, predominately a new manufacturing facility, house the headquarters of the business, or a combination thereof can qualify for a sales tax exemption certificate for the project.

The exemption certificate, *which applies only to property purchased for installation in that approved project*, will allow the business to purchase machinery, equipment, furniture and furnishings, fixtures and building materials other than tools and supplies for placement at the project location without the imposition of sales and use tax until the new facility is functional.

#### **Urban Enterprise Zone Energy and Utility Service Exemption from sales and use tax**

The substitute provides for a sales and use tax exemption for final sales of electricity and natural gas and their transport to a qualified business in an urban enterprise zone for consumption in the zone, or a vertically integrated combination of qualified businesses manufacturing a single product, that employs at least 500 people at least 50 percent of whom are directly employed in a manufacturing process.

#### **Small business provisions for the Manufacturing Equipment and Employment Investment Tax Credit under the corporation business tax**

The Manufacturing Equipment and Employment Investment Tax credit currently allows a credit against the corporation business tax equal to two percent of a corporation's investment in machinery, apparatus or equipment having a federal depreciation useful life of 4 years or more, placed in service in this State, and used or consumed directly and primarily in the production of tangible personal property.

The substitute increases this component of the credit to four percent if the business has 50 or fewer employees entire net income of less than \$ million for the tax year.

#### **FISCAL IMPACT**

No data are available on which to base an estimate of either the revenue that the State may realize from the decoupling provisions or the cost of the incentives to be offered under this bill.