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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Corzine wraps up weeklong effort of business-tax reform," Courier News, 12-20-08, p. A-13

"Enacted bill will change corporate tax rules," Asbury Park Press, 12-20-08, p. B4

"Corzine signs measure to cut business tax," Courier-Post, 12-20-08, p. 5B

"N.J.'s corporate tax rules changed," Home News Tribune, 12-20-08, p. A5

LAW/RWH 3/6/09

P.L. 2008, CHAPTER 120, *approved December 19, 2008*
Assembly, No. 2722 (*Second Reprint*)

1 AN ACT eliminating the throwout of receipts in allocation of entire
2 net income under the corporation business tax ¹and eliminating
3 the "regular place of business" requirement to allocate less than
4 100% of income to New Jersey¹, amending P.L.1945, c.162.

5

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

8

9 1. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to
10 read as follows:

11 5. The franchise tax to be annually assessed to and paid by
12 each taxpayer shall be the greater of the amount computed pursuant
13 to this section or the alternative minimum assessment computed
14 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
15 however, that in the case of a taxpayer that is a New Jersey S
16 corporation, an investment company, a professional corporation
17 organized pursuant to P.L.1969, c. 232 (C.14A:17-1 et seq.) or a
18 similar corporation for profit organized for the purpose of rendering
19 professional services under the laws of another state, or a person
20 operating on a cooperative basis under Part I of Subchapter T of the
21 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,
22 there shall be no alternative minimum assessment computed
23 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

24 The amount computed pursuant to this section shall be the sum
25 of the amount computed under subsection (a) hereof, or in the
26 alternative to the amount computed under subsection (a) hereof, the
27 amount computed under subsection (f) hereof, and the amount
28 computed under subsection (c) hereof:

29 (a) That portion of its entire net worth as may be allocable to
30 this State as provided in section 6, multiplied by the following
31 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated
32 net worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
33 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
34 mill per dollar on all amounts of allocated net worth in excess of
35 \$300,000,000.00; provided, however, that with respect to reports
36 covering accounting or privilege periods set forth below, the rate
37 shall be that percentage of the rate set forth in this subsection for
38 the appropriate year:

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted October 23, 2008.

²Senate SBA committee amendments adopted November 13, 2008.

1	Accounting or Privilege	
2	Periods Beginning on or	The Percentage of the Rate
3	after:	to be Imposed Shall be:
4	April 1, 1983	75%
5	July 1, 1984	50%
6	July 1, 1985	25%
7	July 1, 1986	0
8	(b) (Deleted by amendment, P.L.1968, c.250, s.2.)	
9	(c) (1) For a taxpayer that is not a New Jersey S corporation, 3	
10	1/4% of its entire net income or such portion thereof as may be	
11	allocable to this State as provided in section 6 of P.L.1945, c.162	
12	(C.54:10A-6) plus such portion thereof as is specifically assigned to	
13	this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-	
14	6.1); provided, however, that with respect to reports covering	
15	accounting or privilege periods or parts thereof ending after	
16	December 31, 1967, the rate shall be 4 1/4%; and that with respect	
17	to reports covering accounting or privilege periods or parts thereof	
18	ending after December 31, 1971, the rate shall be 5 1/2%; and that	
19	with respect to reports covering accounting or privilege periods or	
20	parts thereof ending after December 31, 1974, the rate shall be 7	
21	1/2%; and that with respect to reports covering privilege periods or	
22	parts thereof ending after December 31, 1979, the rate shall be 9%;	
23	provided however, that for a taxpayer that has entire net income of	
24	\$100,000 or less for a privilege period and is not a partnership the	
25	rate for that privilege period shall be 7 1/2% and provided further	
26	that for a taxpayer that has entire net income of \$50,000 or less for	
27	a privilege period and is not a partnership the rate for that privilege	
28	period shall be 6 1/2%.	
29	(2) For a taxpayer that is a New Jersey S corporation:	
30	(i) for privilege periods ending on or before June 30, 1998 the	
31	rate determined by subtracting the maximum tax bracket rate	
32	provided under N.J.S.54A:2-1 for the privilege period from the tax	
33	rate that would otherwise be applicable to the taxpayer's entire net	
34	income for the privilege period if the taxpayer were not an S	
35	corporation provided under paragraph (1) of this subsection for the	
36	privilege period; and	
37	(ii) For a taxpayer that has entire net income in excess of	
38	\$100,000 for the privilege period, for privilege periods ending on or	
39	after July 1, 1998, but on or before June 30, 2001, the rate shall be	
40	2%,	
41	for privilege periods ending on or after July 1, 2001, but on or	
42	before June 30, 2006, the rate shall be 1.33%,	
43	for privilege periods ending on or after July 1, 2006, but on or	
44	before June 30, 2007, the rate shall be 0.67%, and	
45	for privilege periods ending on or after July 1, 2007 there shall	
46	be no rate of tax imposed under this paragraph, and	
47	(iii) For a taxpayer that has entire net income of \$100,000 or less	
48	for privilege periods ending on or after July 1, 1998, but on or	

1 before June 30, 2001 the rate for that privilege period shall be 0.5%,
 2 and for privilege periods ending on or after July 1, 2001 there shall
 3 be no rate of tax imposed under this paragraph.

4 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or
 5 (iii) of this paragraph shall be multiplied by its entire net income
 6 that is not subject to federal income taxation or such portion thereof
 7 as may be allocable to this State pursuant to sections 6 through 10
 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such
 9 portion thereof as is specifically assigned to this State as provided
 10 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

11 (3) For a taxpayer that is a New Jersey S corporation, in addition
 12 to the amount, if any, determined under paragraph (2) of this
 13 subsection, the tax rate that would otherwise be applicable to the
 14 taxpayer's entire net income for the privilege period if the taxpayer
 15 were not an S corporation provided under paragraph (1) of this
 16 subsection for the privilege period multiplied by its entire net
 17 income that is subject to federal income taxation or such portion
 18 thereof as may be allocable to this State pursuant to sections 6
 19 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

20 (d) Provided, however, that the franchise tax to be annually
 21 assessed to and paid by any investment company or real estate
 22 investment trust, which has elected to report as such and has filed
 23 its return in the form and within the time provided in this act and
 24 the rules and regulations promulgated in connection therewith,
 25 shall, in the case of an investment company, be measured by 40% of
 26 its entire net income and 40% of its entire net worth, and in the case
 27 of a real estate investment trust, by 4% of its entire net income and
 28 15% of its entire net worth, at the rates hereinbefore set forth for the
 29 computation of tax on net income and net worth, respectively, but in
 30 no case less than \$250, and further provided, however, that the
 31 franchise tax to be annually assessed to and paid by a regulated
 32 investment company which for a period covered by its report
 33 satisfies the requirements of Chapter 1, Subchapter M, Part I,
 34 Section 852(a) of the federal Internal Revenue Code shall be \$250.

35 (e) The tax assessed to any taxpayer pursuant to this section
 36 shall not be less than \$25 in the case of a domestic corporation, \$50
 37 in the case of a foreign corporation, or \$250 in the case of an
 38 investment company or regulated investment company. Provided
 39 however, that for privilege periods beginning in calendar year 1994
 40 and thereafter the minimum taxes for taxpayers other than an
 41 investment company or a regulated investment company shall be as
 42 provided in the following schedule:

43	Period Beginning	Domestic	Foreign
44	In Calendar Year	Corporation	Corporation
45		Minimum Tax	Minimum Tax
46	1994	\$ 50	\$100
47	1995	\$100	\$200
48	1996	\$150	\$200

1	1997	\$200	\$200
2	1998	\$200	\$200
3	1999	\$200	\$200
4	2000	\$200	\$200
5	2001	\$210	\$210

6 and for calendar year 2002 through 2005 the minimum tax for all
 7 taxpayers shall be \$500, and for calendar year 2006 and thereafter
 8 the minimum tax shall be based on the New Jersey gross receipts, as
 9 defined for the purposes of this section pursuant to section 7 of
 10 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the
 11 following schedule:

12	New Jersey Gross Receipts:	Minimum Tax:
13	Less than \$100,000	\$500
14	\$100,000 or more but	
15	less than \$250,000	\$750
16	\$250,000 or more but	
17	less than \$500,000	\$1,000
18	\$500,000 or more but	
19	less than \$1,000,000	\$1,500
20	\$1,000,000 or more	\$2,000

21 provided however, that for a taxpayer that is a member of an
 22 affiliated group or a controlled group pursuant to section 1504 or
 23 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
 24 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
 25 more for the privilege period, the minimum tax shall be \$2,000 for
 26 the privilege period.

27 (f) In lieu of the portion of the tax based on net worth and to be
 28 computed under subsection (a) of this section, any taxpayer, the
 29 value of whose total assets everywhere, less reasonable reserves for
 30 depreciation, as of the close of the period covered by its report,
 31 amounts to less than \$150,000, may elect to pay the tax shown in a
 32 table which shall be promulgated by the director.

33 (g) Provided however, that for privilege periods beginning on or
 34 after January 1, 2001 but before January 1, 2002 the franchise tax
 35 annually assessed to and paid by a taxpayer:

36 (1) that is a limited liability company or foreign limited liability
 37 company classified as a partnership for federal income tax purposes
 38 shall be the amount determined pursuant to the provisions of section
 39 3 of P.L.2001, c.136 (C.54:10A-15.6); or

40 (2) that is a limited partnership or foreign limited partnership
 41 classified as a partnership for federal income tax purposes shall be
 42 the amount determined pursuant to the provisions of section 4 of
 43 P.L.2001, c.136 (C.54:10A-15.7).

44 (h) Provided however, that for privilege periods beginning on or
 45 after January 1, 2002 the franchise tax annually assessed to and paid
 46 by a taxpayer that is a partnership shall be the amount determined
 47 pursuant to the provisions of section 12 of P.L.2002, c.40
 48 (C.54:10A-15.11).

1 (i) [Notwithstanding the provisions of subsection c. of this
2 section to the contrary, and notwithstanding the provisions of
3 subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6) to the
4 contrary, the amount by which the exclusion of receipts from the
5 denominator of the sales fraction pursuant to subsection (B) of
6 section 6 of P.L.1945, c.162 (C.54:10A-6) increases the liability of
7 all of the members of an affiliated group or a controlled group
8 pursuant to section 1504 or 1563 of the federal Internal Revenue
9 Code of 1986, 26 U.S.C. s.1504 or 1563, over that liability
10 calculated without application of the exclusion for a privilege
11 period shall not exceed \$5,000,000. If the exclusion of receipts
12 from the denominator of the sales fraction pursuant to subsection
13 (B) would otherwise increase the liability of all of the members of
14 an affiliated group or a controlled group by more than \$5,000,000
15 for a privilege period, then the amount of liability in excess of
16 \$5,000,000 due to the exclusion of receipts from the denominator
17 shall be abated, and the abated liability shall be allocated among the
18 members of the affiliated group or the controlled group in
19 proportion to each member's increase in liability due to the
20 exclusion of such receipts; provided however, that the director may
21 allow a single corporation within the affiliated group or controlled
22 group to act as the key corporation for the abatement, in such
23 manner as the director may prescribe.] (Deleted by amendment,
24 P.L. , c.) (pending before the Legislature as this bill)
25 (cf: P.L.2006, c.38, s.2)

26
27 2. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read
28 as follows:

29 6. ²[In the case of a taxpayer which maintains a regular place of
30 business outside this State other than a statutory office, the] The²
31 portion of its entire net worth to be used as a measure of the tax
32 imposed by subsection (a) of section 5 of P.L.1945, c.162
33 (C.54:10A-5), and the portion of its entire net income to be used as
34 a measure of the tax imposed by subsection (c) of section 5 of
35 P.L.1945, c.162 (C.54:10A-5), shall be determined by multiplying
36 such entire net worth and entire net income, respectively, by an
37 allocation factor which is the property fraction, plus twice the sales
38 fraction plus the payroll fraction and the denominator of which is
39 four, except as the director may determine pursuant to section 8 of
40 P.L.1945, c.162 (C.54:10A-8), that is:

41 (A) The property fraction is the average value of the taxpayer's
42 real and tangible personal property within the State during the
43 period covered by its report divided by the average value of all the
44 taxpayer's real and tangible personal property wherever situated
45 during such period; provided, however, that for the purpose of
46 determining average value, the provisions with respect to
47 depreciation as set forth in subparagraph (F) of paragraph (2) of

1 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be
2 taken into account for arriving at such value.

3 (B) The sales fraction is the receipts of the taxpayer, computed
4 on the cash or accrual basis according to the method of accounting
5 used in the computation of its net income for federal tax purposes,
6 arising during such period from

7 (1) sales of its tangible personal property located within this
8 State at the time of the receipt of or appropriation to the orders
9 where shipments are made to points within this State,

10 (2) sales of tangible personal property located without the State
11 at the time of the receipt of or appropriation to the orders where
12 shipment is made to points within the State,

13 (3) (Deleted by amendment.)

14 (4) services performed within the State,

15 (5) rentals from property situated, and royalties from the use of
16 patents or copyrights, within the State,

17 (6) all other business receipts (excluding dividends excluded
18 from entire net income by paragraph (1) of subsection (k) of section
19 4 of P.L.1945, c.162 (C.54:10A-4)) earned within the State,

20 divided by the total amount of the taxpayer's receipts, similarly
21 computed, arising during such period from all sales of its tangible
22 personal property, services, rentals, royalties and all other business
23 receipts, whether within or without the State **];** provided however,
24 that if receipts would be assigned to a state, a possession or territory
25 of the United States or the District of Columbia or to any foreign
26 country in which the taxpayer is not subject to a tax on or measured
27 by profits or income, or business presence or business activity, then
28 the receipts shall be excluded from the denominator of the sales
29 fraction**].**

30 (C) The payroll fraction is the total wages, salaries and other
31 personal service compensation, similarly computed, during such
32 period of officers and employees within the State divided by the
33 total wages, salaries and other personal service compensation,
34 similarly computed, during such period of all the taxpayer's officers
35 and employees within and without the State.

36 ¹**【**In the case of a taxpayer which does not maintain a regular
37 place of business outside this State other than a statutory office, the
38 allocation factor shall be 100%.**】**¹

39 In the case of a banking corporation which maintains a regular
40 place of business outside this State other than a statutory office, and
41 which elects to take the exclusion from net worth provided in
42 subsection (d) of section 4 of P.L.1945, c.162 (C.54:10A-4) or the
43 deduction from entire net income provided in paragraph (4) of
44 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), the
45 allocation factor shall be computed and applied in accordance with
46 section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that
47 the numerators and the denominators of the fractions described in
48 (A), (B) or (C) above shall include all amounts attributable, directly

1 or indirectly, to the production of the eligible net income of an
2 international banking facility as defined in paragraph (4) of
3 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4),
4 whether or not such amounts are otherwise attributable to this State.
5 (cf: P.L.2002, c.40, s.8)

6

7 3. This act shall take effect immediately and apply to privilege
8 periods beginning on or after ~~July 1, 2008~~ July 1, 2010.

9

10

11

12

13 Eliminates throwout of receipts in allocation of entire net income
14 under the corporation business tax; eliminates "regular place of
15 business" requirement to allocate less than 100% of income to New
16 Jersey.

[Corrected Copy]

ASSEMBLY, No. 2722

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 19, 2008

Sponsored by:

Assemblyman JOSEPH VAS

District 19 (Middlesex)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman ALBERT COUTINHO

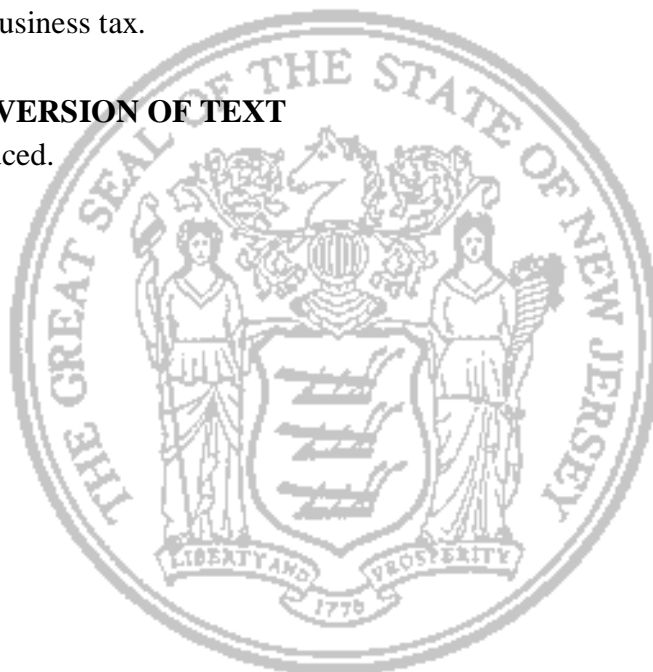
District 29 (Essex and Union)

SYNOPSIS

Eliminates throwout of receipts in allocation of entire net income under the corporation business tax.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/16/2008)

1 AN ACT eliminating the throwout of receipts in allocation of entire
 2 net income under the corporation business tax, amending
 3 P.L.1945, c.162.

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

7
 8 1. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read
 9 as follows:

10 5. The franchise tax to be annually assessed to and paid by each
 11 taxpayer shall be the greater of the amount computed pursuant to
 12 this section or the alternative minimum assessment computed
 13 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
 14 however, that in the case of a taxpayer that is a New Jersey S
 15 corporation, an investment company, a professional corporation
 16 organized pursuant to P.L.1969, c. 232 (C.14A:17-1 et seq.) or a
 17 similar corporation for profit organized for the purpose of rendering
 18 professional services under the laws of another state, or a person
 19 operating on a cooperative basis under Part I of Subchapter T of the
 20 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,
 21 there shall be no alternative minimum assessment computed
 22 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

23 The amount computed pursuant to this section shall be the sum
 24 of the amount computed under subsection (a) hereof, or in the
 25 alternative to the amount computed under subsection (a) hereof, the
 26 amount computed under subsection (f) hereof, and the amount
 27 computed under subsection (c) hereof:

28 (a) That portion of its entire net worth as may be allocable to
 29 this State as provided in section 6, multiplied by the following
 30 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated
 31 net worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
 32 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
 33 mill per dollar on all amounts of allocated net worth in excess of
 34 \$300,000,000.00; provided, however, that with respect to reports
 35 covering accounting or privilege periods set forth below, the rate
 36 shall be that percentage of the rate set forth in this subsection for
 37 the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
41 April 1, 1983	75%
42 July 1, 1984	50%
43 July 1, 1985	25%
44 July 1, 1986	0

45 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

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 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
2 1/4% of its entire net income or such portion thereof as may be
3 allocable to this State as provided in section 6 of P.L.1945, c.162
4 (C.54:10A-6) plus such portion thereof as is specifically assigned to
5 this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-
6 6.1); provided, however, that with respect to reports covering
7 accounting or privilege periods or parts thereof ending after
8 December 31, 1967, the rate shall be 4 1/4%; and that with respect
9 to reports covering accounting or privilege periods or parts thereof
10 ending after December 31, 1971, the rate shall be 5 1/2%; and that
11 with respect to reports covering accounting or privilege periods or
12 parts thereof ending after December 31, 1974, the rate shall be 7
13 1/2%; and that with respect to reports covering privilege periods or
14 parts thereof ending after December 31, 1979, the rate shall be 9%;
15 provided however, that for a taxpayer that has entire net income of
16 \$100,000 or less for a privilege period and is not a partnership the
17 rate for that privilege period shall be 7 1/2% and provided further
18 that for a taxpayer that has entire net income of \$50,000 or less for
19 a privilege period and is not a partnership the rate for that privilege
20 period shall be 6 1/2%.

21 (2) For a taxpayer that is a New Jersey S corporation:

22 (i) for privilege periods ending on or before June 30, 1998 the
23 rate determined by subtracting the maximum tax bracket rate
24 provided under N.J.S.54A:2-1 for the privilege period from the tax
25 rate that would otherwise be applicable to the taxpayer's entire net
26 income for the privilege period if the taxpayer were not an S
27 corporation provided under paragraph (1) of this subsection for the
28 privilege period; and

29 (ii) For a taxpayer that has entire net income in excess of
30 \$100,000 for the privilege period, for privilege periods ending on or
31 after July 1, 1998, but on or before June 30, 2001, the rate shall be
32 2%,

33 for privilege periods ending on or after July 1, 2001, but on or
34 before June 30, 2006, the rate shall be 1.33%,

35 for privilege periods ending on or after July 1, 2006, but on or
36 before June 30, 2007, the rate shall be 0.67%, and

37 for privilege periods ending on or after July 1, 2007 there shall
38 be no rate of tax imposed under this paragraph, and

39 (iii) For a taxpayer that has entire net income of \$100,000 or less
40 for privilege periods ending on or after July 1, 1998, but on or
41 before June 30, 2001 the rate for that privilege period shall be 0.5%,
42 and for privilege periods ending on or after July 1, 2001 there shall
43 be no rate of tax imposed under this paragraph.

44 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or
45 (iii) of this paragraph shall be multiplied by its entire net income
46 that is not subject to federal income taxation or such portion thereof
47 as may be allocable to this State pursuant to sections 6 through 10
48 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such

1 portion thereof as is specifically assigned to this State as provided
 2 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

3 (3) For a taxpayer that is a New Jersey S corporation, in
 4 addition to the amount, if any, determined under paragraph (2) of
 5 this subsection, the tax rate that would otherwise be applicable to
 6 the taxpayer's entire net income for the privilege period if the
 7 taxpayer were not an S corporation provided under paragraph (1) of
 8 this subsection for the privilege period multiplied by its entire net
 9 income that is subject to federal income taxation or such portion
 10 thereof as may be allocable to this State pursuant to sections 6
 11 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

12 (d) Provided, however, that the franchise tax to be annually
 13 assessed to and paid by any investment company or real estate
 14 investment trust, which has elected to report as such and has filed
 15 its return in the form and within the time provided in this act and
 16 the rules and regulations promulgated in connection therewith,
 17 shall, in the case of an investment company, be measured by 40% of
 18 its entire net income and 40% of its entire net worth, and in the case
 19 of a real estate investment trust, by 4% of its entire net income and
 20 15% of its entire net worth, at the rates hereinbefore set forth for the
 21 computation of tax on net income and net worth, respectively, but in
 22 no case less than \$250, and further provided, however, that the
 23 franchise tax to be annually assessed to and paid by a regulated
 24 investment company which for a period covered by its report
 25 satisfies the requirements of Chapter 1, Subchapter M, Part I,
 26 Section 852(a) of the federal Internal Revenue Code shall be \$250.

27 (e) The tax assessed to any taxpayer pursuant to this section
 28 shall not be less than \$25 in the case of a domestic corporation, \$50
 29 in the case of a foreign corporation, or \$250 in the case of an
 30 investment company or regulated investment company. Provided
 31 however, that for privilege periods beginning in calendar year 1994
 32 and thereafter the minimum taxes for taxpayers other than an
 33 investment company or a regulated investment company shall be as
 34 provided in the following schedule:

35	Period Beginning	Domestic	Foreign
36	In Calendar Year	Corporation	Corporation
37		Minimum Tax	Minimum Tax
38	1994	\$ 50	\$100
39	1995	\$100	\$200
40	1996	\$150	\$200
41	1997	\$200	\$200
42	1998	\$200	\$200
43	1999	\$200	\$200
44	2000	\$200	\$200
45	2001	\$210	\$210

46 and for calendar year 2002 through 2005 the minimum tax for all
 47 taxpayers shall be \$500, and for calendar year 2006 and thereafter
 48 the minimum tax shall be based on the New Jersey gross receipts, as

1 defined for the purposes of this section pursuant to section 7 of
 2 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the
 3 following schedule:

4	New Jersey Gross Receipts:	Minimum Tax:
5	Less than \$100,000	\$500
6	\$100,000 or more but	
7	less than \$250,000	\$750
8	\$250,000 or more but	
9	less than \$500,000	\$1,000
10	\$500,000 or more but	
11	less than \$1,000,000	\$1,500
12	\$1,000,000 or more	\$2,000

13 provided however, that for a taxpayer that is a member of an
 14 affiliated group or a controlled group pursuant to section 1504 or
 15 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
 16 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
 17 more for the privilege period, the minimum tax shall be \$2,000 for
 18 the privilege period.

19 (f) In lieu of the portion of the tax based on net worth and to be
 20 computed under subsection (a) of this section, any taxpayer, the
 21 value of whose total assets everywhere, less reasonable reserves for
 22 depreciation, as of the close of the period covered by its report,
 23 amounts to less than \$150,000, may elect to pay the tax shown in a
 24 table which shall be promulgated by the director.

25 (g) Provided however, that for privilege periods beginning on or
 26 after January 1, 2001 but before January 1, 2002 the franchise tax
 27 annually assessed to and paid by a taxpayer:

28 (1) that is a limited liability company or foreign limited liability
 29 company classified as a partnership for federal income tax purposes
 30 shall be the amount determined pursuant to the provisions of section
 31 3 of P.L.2001, c.136 (C.54:10A-15.6); or

32 (2) that is a limited partnership or foreign limited partnership
 33 classified as a partnership for federal income tax purposes shall be
 34 the amount determined pursuant to the provisions of section 4 of
 35 P.L.2001, c.136 (C.54:10A-15.7).

36 (h) Provided however, that for privilege periods beginning on or
 37 after January 1, 2002 the franchise tax annually assessed to and paid
 38 by a taxpayer that is a partnership shall be the amount determined
 39 pursuant to the provisions of section 12 of P.L.2002, c.40
 40 (C.54:10A-15.11).

41 (i) [Notwithstanding the provisions of subsection c. of this
 42 section to the contrary, and notwithstanding the provisions of
 43 subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6) to the
 44 contrary, the amount by which the exclusion of receipts from the
 45 denominator of the sales fraction pursuant to subsection (B) of
 46 section 6 of P.L.1945, c.162 (C.54:10A-6) increases the liability of
 47 all of the members of an affiliated group or a controlled group
 48 pursuant to section 1504 or 1563 of the federal Internal Revenue

1 Code of 1986, 26 U.S.C. s.1504 or 1563, over that liability
2 calculated without application of the exclusion for a privilege
3 period shall not exceed \$5,000,000. If the exclusion of receipts
4 from the denominator of the sales fraction pursuant to subsection
5 (B) would otherwise increase the liability of all of the members of
6 an affiliated group or a controlled group by more than \$5,000,000
7 for a privilege period, then the amount of liability in excess of
8 \$5,000,000 due to the exclusion of receipts from the denominator
9 shall be abated, and the abated liability shall be allocated among the
10 members of the affiliated group or the controlled group in
11 proportion to each member's increase in liability due to the
12 exclusion of such receipts; provided however, that the director may
13 allow a single corporation within the affiliated group or controlled
14 group to act as the key corporation for the abatement, in such
15 manner as the director may prescribe.】 (Deleted by amendment,
16 P.L. , c.) (pending before the Legislature as this bill)
17 (cf: P.L.2006, c.38, s.2)

18

19 2. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read
20 as follows:

21 6. In the case of a taxpayer which maintains a regular place of
22 business outside this State other than a statutory office, the portion
23 of its entire net worth to be used as a measure of the tax imposed by
24 subsection (a) of section 5 of P.L.1945, c.162 (C.54:10A-5), and the
25 portion of its entire net income to be used as a measure of the tax
26 imposed by subsection (c) of section 5 of P.L.1945, c.162
27 (C.54:10A-5), shall be determined by multiplying such entire net
28 worth and entire net income, respectively, by an allocation factor
29 which is the property fraction, plus twice the sales fraction plus the
30 payroll fraction and the denominator of which is four, except as the
31 director may determine pursuant to section 8 of P.L.1945, c.162
32 (C.54:10A-8), that is:

33 (A) The property fraction is the average value of the taxpayer's
34 real and tangible personal property within the State during the
35 period covered by its report divided by the average value of all the
36 taxpayer's real and tangible personal property wherever situated
37 during such period; provided, however, that for the purpose of
38 determining average value, the provisions with respect to
39 depreciation as set forth in subparagraph (F) of paragraph (2) of
40 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be
41 taken into account for arriving at such value.

42 (B) The sales fraction is the receipts of the taxpayer, computed
43 on the cash or accrual basis according to the method of accounting
44 used in the computation of its net income for federal tax purposes,
45 arising during such period from

46 (1) sales of its tangible personal property located within this
47 State at the time of the receipt of or appropriation to the orders
48 where shipments are made to points within this State,

1 (2) sales of tangible personal property located without the State
2 at the time of the receipt of or appropriation to the orders where
3 shipment is made to points within the State,

4 (3) (Deleted by amendment.)

5 (4) services performed within the State,

6 (5) rentals from property situated, and royalties from the use of
7 patents or copyrights, within the State,

8 (6) all other business receipts (excluding dividends excluded
9 from entire net income by paragraph (1) of subsection (k) of section
10 4 of P.L.1945, c.162 (C.54:10A-4)) earned within the State,

11 divided by the total amount of the taxpayer's receipts, similarly
12 computed, arising during such period from all sales of its tangible
13 personal property, services, rentals, royalties and all other business
14 receipts, whether within or without the State [; provided however,
15 that if receipts would be assigned to a state, a possession or territory
16 of the United States or the District of Columbia or to any foreign
17 country in which the taxpayer is not subject to a tax on or measured
18 by profits or income, or business presence or business activity, then
19 the receipts shall be excluded from the denominator of the sales
20 fraction].

21 (C) The payroll fraction is the total wages, salaries and other
22 personal service compensation, similarly computed, during such
23 period of officers and employees within the State divided by the
24 total wages, salaries and other personal service compensation,
25 similarly computed, during such period of all the taxpayer's officers
26 and employees within and without the State.

27 In the case of a taxpayer which does not maintain a regular place
28 of business outside this State other than a statutory office, the
29 allocation factor shall be 100%.

30 In the case of a banking corporation which maintains a regular
31 place of business outside this State other than a statutory office, and
32 which elects to take the exclusion from net worth provided in
33 subsection (d) of section 4 of P.L.1945, c.162 (C.54:10A-4) or the
34 deduction from entire net income provided in paragraph (4) of
35 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), the
36 allocation factor shall be computed and applied in accordance with
37 section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that
38 the numerators and the denominators of the fractions described in
39 (A), (B) or (C) above shall include all amounts attributable, directly
40 or indirectly, to the production of the eligible net income of an
41 international banking facility as defined in paragraph (4) of
42 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4),
43 whether or not such amounts are otherwise attributable to this State.
44 (cf: P.L.2002, c.40, s.8)

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46 3. This act shall take effect immediately and apply to privilege
47 periods beginning on or after July 1, 2008.

STATEMENT

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This bill eliminates the so-called “throwout” provision of the corporation business tax.

Under the apportionment formula that is currently used for determining the portion of a corporation’s entire net income that is taxable by New Jersey, the sales fraction is the most heavily weighted factor. Some of those sales are made in states where the corporation is not subject to tax. Currently, a provision of the allocation formula omits these sales from the denominator of the sales fraction. This “throwout” of sales assigned to states where the corporation is not subject to tax increases the sales fraction, which increases the portion of the entire net income of a corporation allocated to New Jersey.

This bill eliminates that throwout provision, and also eliminates a corresponding provision that currently limits the increase in tax liability related to the throwout rule for affiliated groups of corporations.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2722

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 23, 2008

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2722, with committee amendments.

The bill, as amended, eliminates the so-called sales "throwout" provision of the apportionment formula under the corporation business tax and eliminates the "regular place of business" requirement to allocate less than 100% of income to New Jersey.

Throwout. Each state that imposes a corporate income tax determines the portion of the total income of a corporation that will be subject to its state tax by using formulas that measure activities of the corporation that have been assigned to that state. The proportion of the income of the corporation subject to tax by a state is determined by the proportion of some activity in the state to the total of such activity of the corporation. The New Jersey corporation business tax currently uses a three fraction formula that is "sales weighted." The sales fraction accounts for 50% of the apportionment of income to this State and the property and payroll fractions each account for 25% of the apportionment.

Some of a corporation's sales are made in states where the corporation is not subject to state income tax, either because the state has no income tax, the state chooses not to impose its tax on all taxable activities, or because the corporation only engages in activities that are protected from taxation by federal law. Currently, a provision of the apportionment formula omits these sales from the denominator of the sales fraction. This "throwout" of sales assigned to states where the corporation is not subject to tax increases the sales fraction, which increases the portion of the entire net income of a corporation apportioned to New Jersey.

This bill eliminates that throwout provision, and also eliminates a corresponding provision that currently limits the increase in tax liability related to the throwout rule for affiliated groups of corporations.

Regular place of business requirement. Under current law, a New Jersey business must have a "regular place of business" in another state to take advantage of the apportionment formula and

apportion less than 100% of its income to New Jersey. A "regular place of business" is a bona fide office, maintained by the taxpayer with at least one employee of the taxpayer. This bill eliminates that requirement of a regular place of business in another state, and allows all taxpayers to use the apportionment formula.

FISCAL IMPACT:

The Division of Taxation in the Department of the Treasury anticipates that provisions of this bill eliminating the throwout provisions would reduce State General Fund collections by approximately \$89 million per year. The division anticipates that the provisions of this bill eliminating the "regular place of business" requirement for using the apportionment formula would reduce State General Fund collections by approximately \$60 million per year.

COMMITTEE AMENDMENTS:

The amendments add the provision eliminating the "regular place of business requirement," change the effective date of the bill so that the provisions of the bill first apply to privilege periods beginning on July 1, 2010, and make technical changes to effectuate those changed provisions.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2722

STATE OF NEW JERSEY

DATED: OCTOBER 6, 2008

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 2722.

This bill eliminates the so-called “throwout” provision of the corporation business tax.

Under the apportionment formula that is currently used for determining the portion of a corporation’s entire net income that is taxable by New Jersey, the sales fraction is the most heavily weighted factor. Some of those sales are made in states where the corporation is not subject to tax. Currently, a provision of the allocation formula omits these sales from the denominator of the sales fraction. This “throwout” of sales assigned to states where the corporation is not subject to tax increases the sales fraction, which increases the portion of the entire net income of a corporation allocated to New Jersey.

This bill eliminates that throwout provision, and also eliminates a corresponding provision that currently limits the increase in tax liability related to the throwout rule for affiliated groups of corporations.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2722

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 13, 2008

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2722 (1R), with committee amendments.

As amended, the bill eliminates the so-called sales “throwout” provision of the apportionment formula under the corporation business tax and eliminates the “regular place of business” requirement to allocate less than 100% of income to New Jersey.

Throwout. Each state that imposes a corporate income tax determines the portion of the total income of a corporation that will be subject to its state tax by using formulas that measure activities of the corporation that have been assigned to that state. The proportion of the income of the corporation subject to tax by a state is determined by the proportion of some activity in the state to the total of such activity of the corporation. The New Jersey corporation business tax currently uses a three fraction formula that is “sales weighted.” The sales fraction accounts for 50% of the apportionment of income to this State and the property and payroll fractions each account for 25% of the apportionment.

Some of a corporation’s sales are made in states where the corporation is not subject to state income tax, either because the state has no income tax, the state chooses not to impose its tax on all taxable activities, or because the corporation only engages in activities that are protected from taxation by federal law. Currently, a provision of the apportionment formula omits these sales from the denominator of the sales fraction. This “throwout” of sales assigned to states where the corporation is not subject to tax increases the sales fraction, which increases the portion of the entire net income of a corporation apportioned to New Jersey.

This bill eliminates that throwout provision, and also eliminates a corresponding provision that currently limits the increase in tax liability related to the throwout rule for affiliated groups of corporations.

Regular place of business requirement. Under current law, a New Jersey business must have a “regular place of business” in another state to take advantage of the apportionment formula and

apportion less than 100% of its income to New Jersey. A "regular place of business" is a bona fide office, maintained by the taxpayer with at least one employee of the taxpayer. This bill eliminates that requirement of a regular place of business in another state, and allows all taxpayers to use the apportionment formula.

As amended, this bill is identical to the Senate Bill No. 3 (SCS).

COMMITTEE AMENDMENTS:

The amendments make a technical change related to the provision eliminating the "regular place of business requirement."

FISCAL IMPACT:

The Division of Taxation in the Department of the Treasury anticipates that provisions of this bill eliminating the throwout provisions would reduce State General Fund collections by approximately \$89 million per year. The division anticipates that the provisions of this bill eliminating the "regular place of business" requirement for using the apportionment formula would reduce State General Fund collections by approximately \$60 million per year.

FISCAL NOTE
ASSEMBLY, No. 2722
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: SEPTEMBER 16, 2008

SUMMARY

Synopsis: Eliminates throwout of receipts in allocation of entire net income under the corporation business tax.

Type of Impact: Annual Foregone State General Fund, County, and Municipal Revenue.

Agencies Affected: Department of the Treasury; County and Local Governments.

Executive Estimate

Fiscal Impact	<u>Fiscal Year 2009</u>	<u>Fiscal Year 2010</u>	<u>Fiscal Year 2011</u>
State Revenue Loss	\$89,000,000	\$89,000,000	\$89,000,000

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2009</u>	<u>Fiscal Year 2010</u>	<u>Fiscal Year 2011</u>
State Revenue Loss	Indeterminate - See Comments Below		
Local Revenue Loss	Indeterminate - See Comments Below		

- The Office of Legislative Services (OLS) can neither **concur nor disagree** with the Executive estimate, given that the Executive has not elaborated on the method and data underlying its projection and that a lack of data precludes the OLS from ascertaining its accuracy. The office agrees, however, that the bill would lower corporation business tax (CBT) revenues by shrinking taxpayers' tax base and liabilities. Nonetheless, it appears that the Executive fails to consider the attendant impact on county and local governments through special dedications applying to CBT payments by banks, financial institutions, and electric, natural gas, and telecommunications utilities.

BILL DESCRIPTION

Assembly Bill No. 2722 of 2008 eliminates the so-called "throw out" provision that is brought to bear on the sales fraction in determining a taxpayer's taxable net income under the New Jersey corporation business tax. Current law excludes from, or "throws out" of, the

denominator of the sales fraction sales the corporation makes in states that do not tax the corporation's net income. The bill includes these sales in the denominator of the sales fraction.

The State uses an apportionment formula to determine the share of a corporation's entire net income that is taxable by New Jersey. A corporation's tax base in New Jersey equals its profit multiplied by a fraction whose numerator is the corporation's property fraction plus its payroll fraction plus twice its sales fraction and whose denominator is four. The property, payroll, and sales fractions equal the portion that the corporation's economic activity in New Jersey represents in each category relative to the corporation's total economic activity.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Division of Taxation in the Department of the Treasury anticipates that this bill would reduce State General Fund collections by approximately \$89 million per year.

OFFICE OF LEGISLATIVE SERVICES

The OLS can neither concur nor disagree with the Executive estimate, given that the Executive has not elaborated on the method and data underlying its projection and that a lack of data precludes the OLS from ascertaining its accuracy. The office agrees, however, that the bill would lower corporation business tax (CBT) revenues by shrinking taxpayers' tax base and liabilities. Nonetheless, it appears that the Executive fails to consider the attendant impact on county and local governments through special dedications applying to CBT payments by banks, financial institutions, and electric, natural gas, and telecommunications utilities.

CBT on banks and financial institutions: The Executive estimate does not seem to address the bill's effect on county and municipal revenues through the CBT on banks and financial institutions. The State receives 50 percent of its proceeds, counties 25 percent, and municipalities 25 percent. For fiscal year 2009, the State anticipates \$86.4 million in State revenue from the CBT on banks and financial institutions, which represents 2.8 percent of \$3.089 billion in total anticipated CBT collections. If the Executive estimate of \$89 million in foregone State revenue was accurate, the bill would depress combined county and municipal revenues by \$2.5 million to \$2.7 million.

CBT on electric, natural gas, and telecommunications utilities: It is unclear if the Executive estimate addresses municipal revenues accruing through the CBT on electric, natural gas, and telecommunications utilities. For fiscal year 2009, the Executive expects \$105.2 million in such proceeds to support municipal finances. A reduction in CBT liabilities would lower that amount. However, existing statutes guarantee municipalities certain disbursements from the Energy Tax Receipts Property Tax Relief Fund, the depository of revenues accruing from the CBT on electric, natural gas, and telecommunications utilities. The OLS thus anticipates that other State General Fund revenue would likely have to cover any shortfall. If the Executive \$89 million estimate does not include an amount for the legislation's impact on CBT collections from electric, natural gas, and telecommunications utilities and the estimate is otherwise accurate, the OLS estimates that the bill would grow its estimated revenue loss by an additional \$3.0 million to \$3.2 million.

Impact on Hypothetical Corporation: In Table 1, the OLS illustrates the impact of the legislation on the taxable income in New Jersey of a hypothetical corporation with \$35 million in nationwide profits. Under current law, \$6,353,375 of the \$35 million is taxable by New Jersey, while only \$6,197,625 would be under the bill. The bill would thus decrease the corporation's taxable net income by \$155,750, or 2.45 percent. At a tax rate of 9 percent, the \$155,750 decrease in taxable income would translate into \$14,018 in tax savings.

The corporation makes \$160 million in sales nationwide, of which \$10 million occurs in New Jersey and \$20 million in states that do not tax the corporation's net income. Under current law, the corporation's sales fraction in the allocation formula is therefore 0.0714 (\$10 million/\$140 million, or New Jersey sales over nationwide sales less sales in states that do not tax the corporation's net income). Under the proposed bill, the sales fraction would be 0.0625, as sales in states that do not tax corporate profits would no longer be excluded from nationwide sales (\$10 million/\$160 million, or New Jersey sales over nationwide sales).

Consequently, the fraction of the corporation's \$35 million in nationwide net income that is taxable by New Jersey equals 18.15 percent under current law (a quarter of the sum of twice the 0.0714 sales fraction plus the 0.25 property fraction plus the 0.3333 payroll fraction). Under the bill, 17.7 percent of the corporation's \$35 million would be taxable by New Jersey (a quarter of the sum of twice the 0.0625 sales fraction plus the 0.25 property fraction plus the 0.3333 payroll fraction). The net result would be a \$155,750, or 2.45 percent, reduction in the corporation's taxable net income.

Table 1: Impact of Legislation on Hypothetical Corporation							
	In NJ	Total Domestic	Domestic Untaxed	Current Fractions	Proposed Fractions	Current Total Fraction	Proposed Total Fraction
Sales	\$10,000,000	\$160,000,000	\$20,000,000	0.0714	0.0625	0.1815	0.1770
Property	\$60,000,000	\$240,000,000	NA	0.2500	0.2500		
Payroll	\$25,000,000	\$75,000,000	NA	0.3333	0.3333		
						NJ Taxable Income	
Taxable Net Income		\$35,000,000				\$6,353,375	\$6,197,625

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Senior Fiscal Analyst*

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

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-1 et seq.).

FISCAL NOTE
 [Second Reprint]
ASSEMBLY, No. 2722
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: DECEMBER 5, 2008

SUMMARY

Synopsis: Eliminates throw out of receipts in allocation of entire net income under the corporation business tax; eliminates "regular place of business" requirement to allocate less than 100% of income to New Jersey.

Type of Impact: Annual Foregone State General Fund Revenue.

Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	<u>FY 2009 and 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
State Revenue Loss			
Throw out	\$0	\$89,000,000	\$89,000,000
Regular Place of Business	<u>\$0</u>	<u>\$60,000,000</u>	<u>\$60,000,000</u>
Total	\$0	\$149,000,000	\$149,000,000

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2009 and 2010</u>	<u>FY 2011 and Thereafter</u>
State Revenue Loss	\$0	Indeterminate - See comments below

- The Office of Legislative Services (OLS) can **neither concur nor disagree** with the Executive estimate, given that the Executive has not elaborated on the method and data underlying its projection and that a lack of data precludes the OLS from ascertaining its accuracy. The office agrees, however, that the bill would lower corporation business tax (CBT) revenues by shrinking taxpayers' tax base and liabilities in fiscal year 2011 and thereafter.

BILL DESCRIPTION

Assembly Bill No. 2722 (2R) of 2008 makes two revisions to the New Jersey corporation business tax applicable to tax years beginning on or after July 1, 2010. First, the legislation eliminates the so-called “throw out” provision that is brought to bear on the sales fraction in determining a taxpayer’s taxable net income. Current law excludes from, or “throws out” of, the denominator of the sales fraction sales the corporation makes in states that do not tax the corporation’s net income. The bill includes these sales in the denominator of the sales fraction.

The State uses an apportionment formula to determine the share of a corporation’s entire net income that is taxable by New Jersey. A corporation’s tax base in New Jersey equals its profit multiplied by a fraction whose numerator is the corporation’s property fraction plus its payroll fraction plus twice its sales fraction and whose denominator is four. The property, payroll, and sales fractions equal the portion that the corporation’s economic activity in New Jersey represents in each category relative to the corporation’s total economic activity.

This bill also eliminates the current requirement that only those taxpayers may take advantage of the apportionment formula and apportion less than 100 percent of their income to New Jersey that have a “regular place of business” in another state. Hence, the bill allows all taxpayers to use the apportionment formula.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Division of Taxation in the Department of the Treasury anticipates that this bill would reduce State General Fund collections by approximately \$149 million per year starting in fiscal year 2011. Of this total revenue loss, the division projects that \$89 million would accrue from the elimination of the “throw out” provision of the apportionment formula and \$60 million from allowing taxpayers without a regular place of business in another state to allocate less than 100 percent of income to New Jersey.

OFFICE OF LEGISLATIVE SERVICES

The OLS can neither concur nor disagree with the Executive estimate, given that the Executive has not elaborated on the method and data underlying its projection and that a lack of data precludes the OLS from ascertaining its accuracy. The office agrees, however, that the bill would lower corporation business tax (CBT) revenues by shrinking taxpayers’ tax base and liabilities in fiscal year 2011 and thereafter.

Impact of Elimination of Throw out Rule on Hypothetical Corporation: In Table 1, the OLS illustrates the impact of the elimination of the throw out rule on the taxable income in New Jersey of a hypothetical corporation with \$35 million in nationwide profits. Under current law, \$6,353,375 of the \$35 million is taxable by New Jersey, while only \$6,197,625 would be under the bill. The bill would thus decrease the corporation’s taxable net income by \$155,750, or 2.45 percent. At a tax rate of 9 percent, the \$155,750 decrease in taxable income would translate into \$14,018 in tax savings.

The corporation makes \$160 million in sales nationwide, of which \$10 million occurs in New Jersey and \$20 million in states that do not tax the corporation’s net income. Under current law,

the corporation's sales fraction in the allocation formula is therefore 0.0714 (\$10 million/\$140 million, or New Jersey sales over nationwide sales less sales in states that do not tax the corporation's net income). Under the proposed bill, the sales fraction would be 0.0625, as sales in states that do not tax corporate profits would no longer be excluded from nationwide sales (\$10 million/\$160 million, or New Jersey sales over nationwide sales).

Consequently, the fraction of the corporation's \$35 million in nationwide net income that is taxable by New Jersey equals 18.15 percent under current law (a quarter of the sum of twice the 0.0714 sales fraction plus the 0.25 property fraction plus the 0.3333 payroll fraction). Under the bill, 17.7 percent of the corporation's \$35 million would be taxable by New Jersey (a quarter of the sum of twice the 0.0625 sales fraction plus the 0.25 property fraction plus the 0.3333 payroll fraction). The net result would be a \$155,750, or 2.45 percent, reduction in the corporation's taxable net income.

Table 1: Impact of Elimination of Throw out Rule on Hypothetical Corporation							
	In NJ	Total Domestic	Domestic Untaxed	Current Fractions	Proposed Fractions	Current Total Fraction	Proposed Total Fraction
Sales	\$10,000,000	\$160,000,000	\$20,000,000	0.0714	0.0625	0.1815	0.1770
Property	\$60,000,000	\$240,000,000	NA	0.2500	0.2500		
Payroll	\$25,000,000	\$75,000,000	NA	0.3333	0.3333		
Taxable Net Income		\$35,000,000				NJ Taxable Income	
						\$6,353,375	\$6,197,625

Impact of Elimination of Regular Place of Business Restriction on Hypothetical Corporation: In Table 2, the OLS illustrates the impact of eliminating the current restriction that only those corporations may take advantage of the apportionment formula that have a regular place of business in another state. A hypothetical corporation has \$10 million in nationwide profits and no regular place of business outside of New Jersey. Under current law, the full \$10 million is taxable by New Jersey, while only \$9,090,909 would be under the bill. The bill would thus decrease the corporation's taxable net income by \$909,091, or 9.09 percent. At a tax rate of 9 percent, the \$909,091 decrease in taxable income would translate into \$81,818 in tax savings.

Under current law, 100 percent of the \$10 million in nationwide profit would be taxable for the hypothetical corporation. Under the bill, the corporation would be allowed to use the apportionment formula. Since 100 percent of the corporation's property and payroll is located in New Jersey, the property and payroll fractions would each be 1.00. However, given that the corporation makes \$55 million in sales nationwide, of which \$45 million occurs in New Jersey, the sales fraction in the allocation formula would be 0.8181 (\$45 million/\$55 million, or New Jersey sales over nationwide sales). Consequently, under the bill, 90.91 percent of the corporation's \$10 million would be taxable by New Jersey (a quarter of the sum of twice the 0.8181 sales fraction plus the 1.00 property fraction plus the 1.00 payroll fraction). The net result would be a \$909,091, or 9.09 percent, reduction in the corporation's taxable net income.

Table 2: Impact of Elimination of Regular Place of Business Restriction on Hypothetical Corporation							
	In NJ	Total Domestic	Domestic Untaxed	Current Fractions	Proposed Fractions	Current Total Fraction	Proposed Total Fraction
Sales	\$45,000,000	\$55,000,000	\$0	1.0000	0.8181	1.0000	0.9091
Property	\$30,000,000	\$30,000,000	NA	1.0000	1.0000		
Payroll	\$25,000,000	\$25,000,000	NA	1.0000	1.0000		
						NJ Taxable Income	
Taxable Net Income		\$10,000,000				\$10,000,000	\$9,090,909

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Senior Fiscal Analyst*

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

This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

SENATE, No. 3

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED OCTOBER 27, 2008

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex)

SYNOPSIS

Eliminates throwout of receipts in allocation of entire net income under the corporation business tax; eliminates "regular place of business" requirement to allocate less than 100% of income to New Jersey.

CURRENT VERSION OF TEXT

As introduced.



S3 CODEY

1 AN ACT eliminating the throwout of receipts in allocation of entire
2 net income under the corporation business tax and eliminating
3 the "regular place of business" requirement to allocate less than
4 100% of income to New Jersey, amending P.L.1945, c.162.

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

8
9 1. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read
10 as follows:

11 5. The franchise tax to be annually assessed to and paid by each
12 taxpayer shall be the greater of the amount computed pursuant to
13 this section or the alternative minimum assessment computed
14 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
15 however, that in the case of a taxpayer that is a New Jersey S
16 corporation, an investment company, a professional corporation
17 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a
18 similar corporation for profit organized for the purpose of rendering
19 professional services under the laws of another state, or a person
20 operating on a cooperative basis under Part I of Subchapter T of the
21 federal Internal Revenue Code of 1986, 26 U.S.C.s.1381 et seq.,
22 there shall be no alternative minimum assessment computed
23 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

24 The amount computed pursuant to this section shall be the sum
25 of the amount computed under subsection (a) hereof, or in the
26 alternative to the amount computed under subsection (a) hereof, the
27 amount computed under subsection (f) hereof, and the amount
28 computed under subsection (c) hereof:

29 (a) That portion of its entire net worth as may be allocable to
30 this State as provided in section 6, multiplied by the following
31 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated
32 net worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
33 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
34 mill per dollar on all amounts of allocated net worth in excess of
35 \$300,000,000.00; provided, however, that with respect to reports
36 covering accounting or privilege periods set forth below, the rate
37 shall be that percentage of the rate set forth in this subsection for
38 the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%

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.

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1 as may be allocable to this State pursuant to sections 6 through 10
2 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such
3 portion thereof as is specifically assigned to this State as provided
4 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

5 (3) For a taxpayer that is a New Jersey S corporation, in
6 addition to the amount, if any, determined under paragraph (2) of
7 this subsection, the tax rate that would otherwise be applicable to
8 the taxpayer's entire net income for the privilege period if the
9 taxpayer were not an S corporation provided under paragraph (1) of
10 this subsection for the privilege period multiplied by its entire net
11 income that is subject to federal income taxation or such portion
12 thereof as may be allocable to this State pursuant to sections 6
13 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

14 (d) Provided, however, that the franchise tax to be annually
15 assessed to and paid by any investment company or real estate
16 investment trust, which has elected to report as such and has filed
17 its return in the form and within the time provided in this act and
18 the rules and regulations promulgated in connection therewith,
19 shall, in the case of an investment company, be measured by 40% of
20 its entire net income and 40% of its entire net worth, and in the case
21 of a real estate investment trust, by 4% of its entire net income and
22 15% of its entire net worth, at the rates hereinbefore set forth for the
23 computation of tax on net income and net worth, respectively, but in
24 no case less than \$250, and further provided, however, that the
25 franchise tax to be annually assessed to and paid by a regulated
26 investment company which for a period covered by its report
27 satisfies the requirements of Chapter 1, Subchapter M, Part I,
28 Section 852(a) of the federal Internal Revenue Code shall be \$250.

29 (e) The tax assessed to any taxpayer pursuant to this section
30 shall not be less than \$25 in the case of a domestic corporation, \$50
31 in the case of a foreign corporation, or \$250 in the case of an
32 investment company or regulated investment company. Provided
33 however, that for privilege periods beginning in calendar year 1994
34 and thereafter the minimum taxes for taxpayers other than an
35 investment company or a regulated investment company shall be as
36 provided in the following schedule:

37	Period Beginning	Domestic	Foreign
38	In Calendar Year	Corporation	Corporation
39		Minimum Tax	Minimum Tax
40	1994	\$ 50	\$100
41	1995	\$100	\$200
42	1996	\$150	\$200
43	1997	\$200	\$200
44	1998	\$200	\$200
45	1999	\$200	\$200
46	2000	\$200	\$200
47	2001	\$210	\$210

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1 and for calendar year 2002 through 2005 the minimum tax for all
2 taxpayers shall be \$500, and for calendar year 2006 and thereafter
3 the minimum tax shall be based on the New Jersey gross receipts, as
4 defined for the purposes of this section pursuant to section 7 of
5 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the
6 following schedule:

7	New Jersey Gross Receipts:	Minimum Tax:
8	Less than \$100,000	\$500
9	\$100,000 or more but	
10	less than \$250,000	\$750
11	\$250,000 or more but	
12	less than \$500,000	\$1,000
13	\$500,000 or more but	
14	less than \$1,000,000	\$1,500
15	\$1,000,000 or more	\$2,000

16 provided however, that for a taxpayer that is a member of an
17 affiliated group or a controlled group pursuant to section 1504 or
18 1563 of the federal Internal Revenue Code of 1986, 26
19 U.S.C.s.1504 or 1563, and whose group has total payroll of
20 \$5,000,000 or more for the privilege period, the minimum tax shall
21 be \$2,000 for the privilege period.

22 (f) In lieu of the portion of the tax based on net worth and to be
23 computed under subsection (a) of this section, any taxpayer, the
24 value of whose total assets everywhere, less reasonable reserves for
25 depreciation, as of the close of the period covered by its report,
26 amounts to less than \$150,000, may elect to pay the tax shown in a
27 table which shall be promulgated by the director.

28 (g) Provided however, that for privilege periods beginning on or
29 after January 1, 2001 but before January 1, 2002 the franchise tax
30 annually assessed to and paid by a taxpayer:

31 (1) that is a limited liability company or foreign limited liability
32 company classified as a partnership for federal income tax purposes
33 shall be the amount determined pursuant to the provisions of section
34 3 of P.L.2001, c.136 (C.54:10A-15.6); or

35 (2) that is a limited partnership or foreign limited partnership
36 classified as a partnership for federal income tax purposes shall be
37 the amount determined pursuant to the provisions of section 4 of
38 P.L.2001, c.136 (C.54:10A-15.7).

39 (h) Provided however, that for privilege periods beginning on or
40 after January 1, 2002 the franchise tax annually assessed to and paid
41 by a taxpayer that is a partnership shall be the amount determined
42 pursuant to the provisions of section 12 of P.L.2002, c.40
43 (C.54:10A-15.11).

44 (i) [Notwithstanding the provisions of subsection c. of this
45 section to the contrary, and notwithstanding the provisions of
46 subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6) to the
47 contrary, the amount by which the exclusion of receipts from the
48 denominator of the sales fraction pursuant to subsection (B) of

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1 section 6 of P.L.1945, c.162 (C.54:10A-6) increases the liability of
2 all of the members of an affiliated group or a controlled group
3 pursuant to section 1504 or 1563 of the federal Internal Revenue
4 Code of 1986, 26 U.S.C.s.1504 or 1563, over that liability
5 calculated without application of the exclusion for a privilege
6 period shall not exceed \$5,000,000. If the exclusion of receipts
7 from the denominator of the sales fraction pursuant to subsection
8 (B) would otherwise increase the liability of all of the members of
9 an affiliated group or a controlled group by more than \$5,000,000
10 for a privilege period, then the amount of liability in excess of
11 \$5,000,000 due to the exclusion of receipts from the denominator
12 shall be abated, and the abated liability shall be allocated among the
13 members of the affiliated group or the controlled group in
14 proportion to each member's increase in liability due to the
15 exclusion of such receipts; provided however, that the director may
16 allow a single corporation within the affiliated group or controlled
17 group to act as the key corporation for the abatement, in such
18 manner as the director may prescribe.】 (Deleted by amendment,
19 P.L. , c.) (pending before the Legislature as this bill)
20 (cf: P.L.2006, c.38, s.2)

21

22 2. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read
23 as follows:

24 6. In the case of a taxpayer which maintains a regular place of
25 business outside this State other than a statutory office, the portion
26 of its entire net worth to be used as a measure of the tax imposed by
27 subsection (a) of section 5 of P.L.1945, c.162 (C.54:10A-5), and the
28 portion of its entire net income to be used as a measure of the tax
29 imposed by subsection (c) of section 5 of P.L.1945, c.162
30 (C.54:10A-5), shall be determined by multiplying such entire net
31 worth and entire net income, respectively, by an allocation factor
32 which is the property fraction, plus twice the sales fraction plus the
33 payroll fraction and the denominator of which is four, except as the
34 director may determine pursuant to section 8 of P.L.1945, c.162
35 (C.54:10A-8), that is:

36 (A) The property fraction is the average value of the taxpayer's
37 real and tangible personal property within the State during the
38 period covered by its report divided by the average value of all the
39 taxpayer's real and tangible personal property wherever situated
40 during such period; provided, however, that for the purpose of
41 determining average value, the provisions with respect to
42 depreciation as set forth in subparagraph (F) of paragraph (2) of
43 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be
44 taken into account for arriving at such value.

45 (B) The sales fraction is the receipts of the taxpayer, computed
46 on the cash or accrual basis according to the method of accounting
47 used in the computation of its net income for federal tax purposes,
48 arising during such period from

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1 (1) sales of its tangible personal property located within this
2 State at the time of the receipt of or appropriation to the orders
3 where shipments are made to points within this State,

4 (2) sales of tangible personal property located without the State
5 at the time of the receipt of or appropriation to the orders where
6 shipment is made to points within the State,

7 (3) (Deleted by amendment.)

8 (4) services performed within the State,

9 (5) rentals from property situated, and royalties from the use of
10 patents or copyrights, within the State,

11 (6) all other business receipts (excluding dividends excluded
12 from entire net income by paragraph (1) of subsection (k) of section
13 4 of P.L.1945, c.162 (C.54:10A-4)) earned within the State,

14 divided by the total amount of the taxpayer's receipts, similarly
15 computed, arising during such period from all sales of its tangible
16 personal property, services, rentals, royalties and all other business
17 receipts, whether within or without the State **【**; provided however,
18 that if receipts would be assigned to a state, a possession or territory
19 of the United States or the District of Columbia or to any foreign
20 country in which the taxpayer is not subject to a tax on or measured
21 by profits or income, or business presence or business activity, then
22 the receipts shall be excluded from the denominator of the sales
23 fraction**】**.

24 (C) The payroll fraction is the total wages, salaries and other
25 personal service compensation, similarly computed, during such
26 period of officers and employees within the State divided by the
27 total wages, salaries and other personal service compensation,
28 similarly computed, during such period of all the taxpayer's officers
29 and employees within and without the State.

30 **【**In the case of a taxpayer which does not maintain a regular
31 place of business outside this State other than a statutory office, the
32 allocation factor shall be 100%.**】**

33 In the case of a banking corporation which maintains a regular
34 place of business outside this State other than a statutory office, and
35 which elects to take the exclusion from net worth provided in
36 subsection (d) of section 4 of P.L.1945, c.162 (C.54:10A-4) or the
37 deduction from entire net income provided in paragraph (4) of
38 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), the
39 allocation factor shall be computed and applied in accordance with
40 section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that
41 the numerators and the denominators of the fractions described in
42 (A), (B) or (C) above shall include all amounts attributable, directly
43 or indirectly, to the production of the eligible net income of an
44 international banking facility as defined in paragraph (4) of
45 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4),
46 whether or not such amounts are otherwise attributable to this State.
47 (cf: P.L.2002, c.40, s.8)

1 3. This act shall take effect immediately and apply to privilege
2 periods beginning on or after July 1, 2010.

3

4

5

STATEMENT

6

7 This bill eliminates the so-called sales “throwout” provision of
8 the apportionment formula under the corporation business tax and
9 eliminates the "regular place of business" requirement to allocate
10 less than 100% of income to New Jersey.

11 Each state that imposes a corporate income tax determines the
12 portion of the total income of a corporation that will be subject to
13 its state tax by using formulas that measure activities of the
14 corporation that have been assigned to that state. The proportion of
15 the income of the corporation subject to tax by a state is determined
16 by the proportion of some activity in the state to the total of such
17 activity of the corporation. The New Jersey corporation business
18 tax currently uses a three fraction formula that is “sales weighted.”
19 The sales fraction accounts for 50% of the apportionment of income
20 to this State and the property and payroll fractions each account for
21 25% of the apportionment.

22 Some of a corporation’s sales are made in states where the
23 corporation is not subject to state income tax, either because the
24 state has no income tax, the state chooses not to impose its tax on
25 all taxable activities, or because the corporation only engages in
26 activities that are protected from taxation by federal law. Currently,
27 a provision of the apportionment formula omits these sales from the
28 denominator of the sales fraction. This “throwout” of sales
29 assigned to states where the corporation is not subject to tax
30 increases the sales fraction, which increases the portion of the entire
31 net income of a corporation apportioned to New Jersey.

32 This bill eliminates that throwout provision, and also eliminates
33 a corresponding provision that currently limits the increase in tax
34 liability related to the throwout rule for affiliated groups of
35 corporations.

36 Under current law, a New Jersey business must have a "regular
37 place of business" in another state to take advantage of the
38 apportionment formula and apportion less than 100% of its income
39 to New Jersey. A "regular place of business" is a bona fide office,
40 maintained by the taxpayer with at least one employee of the
41 taxpayer. This bill eliminates that requirement of a regular place of
42 business in another state, and allows all taxpayers to use the
43 apportionment formula.

SENATE, No. 1874

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 22, 2008

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Sussex, Hunterdon and Morris)

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Senators Bucco, Haines, O'Toole, T.Kean, Kyrillos and Sarlo

SYNOPSIS

Eliminates throwout of receipts in allocation of entire net income under the corporation business tax.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/14/2008)

S1874 OROHO, SWEENEY

1 AN ACT eliminating the throwout of receipts in allocation of entire
2 net income under the corporation business tax, amending
3 P.L.1945, c.162.

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

7
8 1. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read
9 as follows:

10 5. The franchise tax to be annually assessed to and paid by each
11 taxpayer shall be the greater of the amount computed pursuant to
12 this section or the alternative minimum assessment computed
13 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
14 however, that in the case of a taxpayer that is a New Jersey S
15 corporation, an investment company, a professional corporation
16 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a
17 similar corporation for profit organized for the purpose of rendering
18 professional services under the laws of another state, or a person
19 operating on a cooperative basis under Part I of Subchapter T of the
20 federal Internal Revenue Code of 1986, 26 U.S.C.s.1381 et seq.,
21 there shall be no alternative minimum assessment computed
22 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

23 The amount computed pursuant to this section shall be the sum
24 of the amount computed under subsection (a) hereof, or in the
25 alternative to the amount computed under subsection (a) hereof, the
26 amount computed under subsection (f) hereof, and the amount
27 computed under subsection (c) hereof:

28 (a) That portion of its entire net worth as may be allocable to
29 this State as provided in section 6, multiplied by the following
30 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated
31 net worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
32 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
33 mill per dollar on all amounts of allocated net worth in excess of
34 \$300,000,000.00; provided, however, that with respect to reports
35 covering accounting or privilege periods set forth below, the rate
36 shall be that percentage of the rate set forth in this subsection for
37 the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

45 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

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 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
2 1/4% of its entire net income or such portion thereof as may be
3 allocable to this State as provided in section 6 of P.L.1945, c.162
4 (C.54:10A-6) plus such portion thereof as is specifically assigned to
5 this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-
6 6.1); provided, however, that with respect to reports covering
7 accounting or privilege periods or parts thereof ending after
8 December 31, 1967, the rate shall be 4 1/4%; and that with respect
9 to reports covering accounting or privilege periods or parts thereof
10 ending after December 31, 1971, the rate shall be 5 1/2%; and that
11 with respect to reports covering accounting or privilege periods or
12 parts thereof ending after December 31, 1974, the rate shall be 7
13 1/2%; and that with respect to reports covering privilege periods or
14 parts thereof ending after December 31, 1979, the rate shall be 9%;
15 provided however, that for a taxpayer that has entire net income of
16 \$100,000 or less for a privilege period and is not a partnership the
17 rate for that privilege period shall be 7 1/2% and provided further
18 that for a taxpayer that has entire net income of \$50,000 or less for
19 a privilege period and is not a partnership the rate for that privilege
20 period shall be 6 1/2%.

21 (2) For a taxpayer that is a New Jersey S corporation:

22 (i) for privilege periods ending on or before June 30, 1998 the
23 rate determined by subtracting the maximum tax bracket rate
24 provided under N.J.S.54A:2-1 for the privilege period from the tax
25 rate that would otherwise be applicable to the taxpayer's entire net
26 income for the privilege period if the taxpayer were not an S
27 corporation provided under paragraph (1) of this subsection for the
28 privilege period; and

29 (ii) For a taxpayer that has entire net income in excess of
30 \$100,000 for the privilege period, for privilege periods ending on or
31 after July 1, 1998, but on or before June 30, 2001, the rate shall be
32 2%,

33 for privilege periods ending on or after July 1, 2001, but on or
34 before June 30, 2006, the rate shall be 1.33%,

35 for privilege periods ending on or after July 1, 2006, but on or
36 before June 30, 2007, the rate shall be 0.67%, and

37 for privilege periods ending on or after July 1, 2007 there shall
38 be no rate of tax imposed under this paragraph, and

39 (iii) For a taxpayer that has entire net income of \$100,000 or less
40 for privilege periods ending on or after July 1, 1998, but on or
41 before June 30, 2001 the rate for that privilege period shall be 0.5%,
42 and for privilege periods ending on or after July 1, 2001 there shall
43 be no rate of tax imposed under this paragraph.

44 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or
45 (iii) of this paragraph shall be multiplied by its entire net income
46 that is not subject to federal income taxation or such portion thereof
47 as may be allocable to this State pursuant to sections 6 through 10
48 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such

1 portion thereof as is specifically assigned to this State as provided
 2 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

3 (3) For a taxpayer that is a New Jersey S corporation, in
 4 addition to the amount, if any, determined under paragraph (2) of
 5 this subsection, the tax rate that would otherwise be applicable to
 6 the taxpayer's entire net income for the privilege period if the
 7 taxpayer were not an S corporation provided under paragraph (1) of
 8 this subsection for the privilege period multiplied by its entire net
 9 income that is subject to federal income taxation or such portion
 10 thereof as may be allocable to this State pursuant to sections 6
 11 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

12 (d) Provided, however, that the franchise tax to be annually
 13 assessed to and paid by any investment company or real estate
 14 investment trust, which has elected to report as such and has filed
 15 its return in the form and within the time provided in this act and
 16 the rules and regulations promulgated in connection therewith,
 17 shall, in the case of an investment company, be measured by 40% of
 18 its entire net income and 40% of its entire net worth, and in the case
 19 of a real estate investment trust, by 4% of its entire net income and
 20 15% of its entire net worth, at the rates hereinbefore set forth for the
 21 computation of tax on net income and net worth, respectively, but in
 22 no case less than \$250, and further provided, however, that the
 23 franchise tax to be annually assessed to and paid by a regulated
 24 investment company which for a period covered by its report
 25 satisfies the requirements of Chapter 1, Subchapter M, Part I,
 26 Section 852(a) of the federal Internal Revenue Code shall be \$250.

27 (e) The tax assessed to any taxpayer pursuant to this section
 28 shall not be less than \$25 in the case of a domestic corporation, \$50
 29 in the case of a foreign corporation, or \$250 in the case of an
 30 investment company or regulated investment company. Provided
 31 however, that for privilege periods beginning in calendar year 1994
 32 and thereafter the minimum taxes for taxpayers other than an
 33 investment company or a regulated investment company shall be as
 34 provided in the following schedule:

35	Period Beginning	Domestic	Foreign
36	In Calendar Year	Corporation	Corporation
37		Minimum Tax	Minimum Tax
38	1994	\$ 50	\$100
39	1995	\$100	\$200
40	1996	\$150	\$200
41	1997	\$200	\$200
42	1998	\$200	\$200
43	1999	\$200	\$200
44	2000	\$200	\$200
45	2001	\$210	\$210

46 and for calendar year 2002 through 2005 the minimum tax for all
 47 taxpayers shall be \$500, and for calendar year 2006 and thereafter
 48 the minimum tax shall be based on the New Jersey gross receipts, as

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1 defined for the purposes of this section pursuant to section 7 of
2 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the
3 following schedule:

New Jersey Gross Receipts:	Minimum Tax:
4 Less than \$100,000	\$500
5 \$100,000 or more but	
6 less than \$250,000	\$750
7 \$250,000 or more but	
8 less than \$500,000	\$1,000
9 \$500,000 or more but	
10 less than \$1,000,000	\$1,500
11 \$1,000,000 or more	\$2,000

12 provided however, that for a taxpayer that is a member of an
13 affiliated group or a controlled group pursuant to section 1504 or
14 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
15 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
16 more for the privilege period, the minimum tax shall be \$2,000 for
17 the privilege period.
18

19 (f) In lieu of the portion of the tax based on net worth and to be
20 computed under subsection (a) of this section, any taxpayer, the
21 value of whose total assets everywhere, less reasonable reserves for
22 depreciation, as of the close of the period covered by its report,
23 amounts to less than \$150,000, may elect to pay the tax shown in a
24 table which shall be promulgated by the director.

25 (g) Provided however, that for privilege periods beginning on or
26 after January 1, 2001 but before January 1, 2002 the franchise tax
27 annually assessed to and paid by a taxpayer:

28 (1) that is a limited liability company or foreign limited liability
29 company classified as a partnership for federal income tax purposes
30 shall be the amount determined pursuant to the provisions of section
31 3 of P.L.2001, c.136 (C.54:10A-15.6); or

32 (2) that is a limited partnership or foreign limited partnership
33 classified as a partnership for federal income tax purposes shall be
34 the amount determined pursuant to the provisions of section 4 of
35 P.L.2001, c.136 (C.54:10A-15.7).

36 (h) Provided however, that for privilege periods beginning on or
37 after January 1, 2002 the franchise tax annually assessed to and paid
38 by a taxpayer that is a partnership shall be the amount determined
39 pursuant to the provisions of section 12 of P.L.2002, c.40
40 (C.54:10A-15.11).

41 (i) [Notwithstanding the provisions of subsection c. of this
42 section to the contrary, and notwithstanding the provisions of
43 subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6) to the
44 contrary, the amount by which the exclusion of receipts from the
45 denominator of the sales fraction pursuant to subsection (B) of
46 section 6 of P.L.1945, c.162 (C.54:10A-6) increases the liability of
47 all of the members of an affiliated group or a controlled group
48 pursuant to section 1504 or 1563 of the federal Internal Revenue

1 Code of 1986, 26 U.S.C.s.1504 or 1563, over that liability
2 calculated without application of the exclusion for a privilege
3 period shall not exceed \$5,000,000. If the exclusion of receipts
4 from the denominator of the sales fraction pursuant to subsection
5 (B) would otherwise increase the liability of all of the members of
6 an affiliated group or a controlled group by more than \$5,000,000
7 for a privilege period, then the amount of liability in excess of
8 \$5,000,000 due to the exclusion of receipts from the denominator
9 shall be abated, and the abated liability shall be allocated among the
10 members of the affiliated group or the controlled group in
11 proportion to each member's increase in liability due to the
12 exclusion of such receipts; provided however, that the director may
13 allow a single corporation within the affiliated group or controlled
14 group to act as the key corporation for the abatement, in such
15 manner as the director may prescribe.】 (Deleted by amendment,
16 P.L. , c.) (pending before the Legislature as this bill)
17 (cf: P.L.2006, c.38, s.2)

18

19 2. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read
20 as follows:

21 6. In the case of a taxpayer which maintains a regular place of
22 business outside this State other than a statutory office, the portion
23 of its entire net worth to be used as a measure of the tax imposed by
24 subsection (a) of section 5 of P.L.1945, c.162 (C.54:10A-5), and the
25 portion of its entire net income to be used as a measure of the tax
26 imposed by subsection (c) of section 5 of P.L.1945, c.162
27 (C.54:10A-5), shall be determined by multiplying such entire net
28 worth and entire net income, respectively, by an allocation factor
29 which is the property fraction, plus twice the sales fraction plus the
30 payroll fraction and the denominator of which is four, except as the
31 director may determine pursuant to section 8 of P.L.1945, c.162
32 (C.54:10A-8), that is:

33 (A) The property fraction is the average value of the taxpayer's
34 real and tangible personal property within the State during the
35 period covered by its report divided by the average value of all the
36 taxpayer's real and tangible personal property wherever situated
37 during such period; provided, however, that for the purpose of
38 determining average value, the provisions with respect to
39 depreciation as set forth in subparagraph (F) of paragraph (2) of
40 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be
41 taken into account for arriving at such value.

42 (B) The sales fraction is the receipts of the taxpayer, computed
43 on the cash or accrual basis according to the method of accounting
44 used in the computation of its net income for federal tax purposes,
45 arising during such period from

46 (1) sales of its tangible personal property located within this
47 State at the time of the receipt of or appropriation to the orders
48 where shipments are made to points within this State,

1 (2) sales of tangible personal property located without the State
2 at the time of the receipt of or appropriation to the orders where
3 shipment is made to points within the State,

4 (3) (Deleted by amendment.)

5 (4) services performed within the State,

6 (5) rentals from property situated, and royalties from the use of
7 patents or copyrights, within the State,

8 (6) all other business receipts (excluding dividends excluded
9 from entire net income by paragraph (1) of subsection (k) of section
10 4 of P.L.1945, c.162 (C.54:10A-4)) earned within the State,

11 divided by the total amount of the taxpayer's receipts, similarly
12 computed, arising during such period from all sales of its tangible
13 personal property, services, rentals, royalties and all other business
14 receipts, whether within or without the State [; provided however,
15 that if receipts would be assigned to a state, a possession or territory
16 of the United States or the District of Columbia or to any foreign
17 country in which the taxpayer is not subject to a tax on or measured
18 by profits or income, or business presence or business activity, then
19 the receipts shall be excluded from the denominator of the sales
20 fraction].

21 (C) The payroll fraction is the total wages, salaries and other
22 personal service compensation, similarly computed, during such
23 period of officers and employees within the State divided by the
24 total wages, salaries and other personal service compensation,
25 similarly computed, during such period of all the taxpayer's officers
26 and employees within and without the State.

27 In the case of a taxpayer which does not maintain a regular place
28 of business outside this State other than a statutory office, the
29 allocation factor shall be 100%.

30 In the case of a banking corporation which maintains a regular
31 place of business outside this State other than a statutory office, and
32 which elects to take the exclusion from net worth provided in
33 subsection (d) of section 4 of P.L.1945, c.162 (C.54:10A-4) or the
34 deduction from entire net income provided in paragraph (4) of
35 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), the
36 allocation factor shall be computed and applied in accordance with
37 section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that
38 the numerators and the denominators of the fractions described in
39 (A), (B) or (C) above shall include all amounts attributable, directly
40 or indirectly, to the production of the eligible net income of an
41 international banking facility as defined in paragraph (4) of
42 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4),
43 whether or not such amounts are otherwise attributable to this State.
44 (cf: P.L.2002, c.40, s.8)

45

46 3. This act shall take effect immediately and apply to privilege
47 periods beginning on or after July 1, 2008.

STATEMENT

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This bill eliminates the so-called “throwout” provision of the corporation business tax.

Under the apportionment formula that is currently used for determining the portion of a corporation’s entire net income that is taxable by New Jersey, the sales fraction is the most heavily weighted factor. Some of those sales are made in states where the corporation is not subject to tax. Currently, a provision of the allocation formula omits these sales from the denominator of the sales fraction. This “throwout” of sales assigned to states where the corporation is not subject to tax increases the sales fraction, which increases the portion of the entire net income of a corporation allocated to New Jersey.

This bill eliminates that throwout provision, and also eliminates a corresponding provision that currently limits the increase in tax liability related to the throwout rule for affiliated groups of corporations.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, Nos. 3 and 1874

STATE OF NEW JERSEY

DATED: NOVEMBER 13, 2008

The Senate Budget and Appropriations Committee reports favorably the Senate Committee Substitute for Senate Bill Nos. 3 and 1874.

The substitute eliminates the so-called sales “throwout” provision of the apportionment formula under the corporation business tax and eliminates the "regular place of business" requirement to allocate less than 100% of income to New Jersey.

Throwout. Each state that imposes a corporate income tax determines the portion of the total income of a corporation that will be subject to its state tax by using formulas that measure activities of the corporation that have been assigned to that state. The proportion of the income of the corporation subject to tax by a state is determined by the proportion of some activity in the state to the total of such activity of the corporation. The New Jersey corporation business tax currently uses a three fraction formula that is “sales weighted.” The sales fraction accounts for 50% of the apportionment of income to this State and the property and payroll fractions each account for 25% of the apportionment.

Some of a corporation’s sales are made in states where the corporation is not subject to state income tax, either because the state has no income tax, the state chooses not to impose it’s tax on all taxable activities, or because the corporation only engages in activities that are protected from taxation by federal law. Currently, a provision of the apportionment formula omits these sales from the denominator of the sales fraction. This “throwout” of sales assigned to states where the corporation is not subject to tax increases the sales fraction, which increases the portion of the entire net income of a corporation apportioned to New Jersey.

This substitute eliminates that throwout provision, and also eliminates a corresponding provision that currently limits the increase in tax liability related to the throwout rule for affiliated groups of corporations.

Regular place of business requirement. Under current law, a New Jersey business must have a "regular place of business" in another state to take advantage of the apportionment formula and

apportion less than 100% of its income to New Jersey. A "regular place of business" is a bona fide office, maintained by the taxpayer with at least one employee of the taxpayer. This substitute eliminates that requirement of a regular place of business in another state, and allows all taxpayers to use the apportionment formula.

This substitute is identical to the Assembly Bill No. 2722 (1R) as amended by the committee.

FISCAL IMPACT:

The Division of Taxation in the Department of the Treasury anticipates that provisions of this substitute eliminating the throwout provisions would reduce State General Fund collections by approximately \$89 million per year. The division anticipates that the provisions of this substitute eliminating the "regular place of business" requirement for using the apportionment formula would reduce State General Fund collections by approximately \$60 million per year.

FISCAL NOTE
SENATE, No. 3
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: NOVEMBER 13, 2008

SUMMARY

Synopsis: Eliminates throwout of receipts in allocation of entire net income under the corporation business tax; eliminates "regular place of business" requirement to allocate less than 100 percent of income to New Jersey.

Type of Impact: Annual Foregone State General Fund, County, and Municipal Revenue.

Agencies Affected: Department of the Treasury;
County and Local Governments.

Executive Estimate

Fiscal Impact	<u>FY 2009 and 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
State Revenue Loss			
Throwout	\$0	\$89,000,000	\$89,000,000
Regular Place of Business	<u>\$0</u>	<u>\$60,000,000</u>	<u>\$60,000,000</u>
Total	\$0	\$149,000,000	\$149,000,000

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2009 and 2010</u>	<u>FY 2011 and Thereafter</u>
State Revenue Loss	\$0	Indeterminate - See comments below
Potential Local Revenue Loss	\$0	Indeterminate - See comments below

- The Office of Legislative Services (OLS) can **neither concur nor disagree** with the Executive estimate, given that the Executive has not elaborated on the method and data underlying its projection and that a lack of data precludes the OLS from ascertaining its accuracy. The office agrees, however, that the bill would lower corporation business tax (CBT) revenues by shrinking taxpayers' tax base and liabilities in fiscal year 2011 and thereafter.

BILL DESCRIPTION

Senate Bill No. 3 of 2008 makes two revisions to the New Jersey corporation business tax applicable to tax years beginning on or after July 1, 2010. First, the legislation eliminates the so-called “throw out” provision that is brought to bear on the sales fraction in determining a taxpayer’s taxable net income. Current law excludes from, or “throws out” of, the denominator of the sales fraction sales the corporation makes in states that do not tax the corporation’s net income. The bill includes these sales in the denominator of the sales fraction.

The State uses an apportionment formula to determine the share of a corporation’s entire net income that is taxable by New Jersey. A corporation’s tax base in New Jersey equals its profit multiplied by a fraction whose numerator is the corporation’s property fraction plus its payroll fraction plus twice its sales fraction and whose denominator is four. The property, payroll, and sales fractions equal the portion that the corporation’s economic activity in New Jersey represents in each category relative to the corporation’s total economic activity.

This bill also eliminates the current requirement that only those taxpayers may take advantage of the apportionment formula and apportion less than 100 percent of their income to New Jersey that have a “regular place of business” in another state. Hence, the bill allows all taxpayers to use the apportionment formula.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Division of Taxation in the Department of the Treasury anticipates that this bill would reduce State General Fund collections by approximately \$149 million per year starting in fiscal year 2011. Of this total revenue loss, the division projects that \$89 million would accrue from the elimination of the “throwout” provision of the apportionment formula and \$60 million from allowing taxpayers without a regular place of business in another state to allocate less than 100 percent of income to New Jersey.

OFFICE OF LEGISLATIVE SERVICES

The OLS can neither concur nor disagree with the Executive estimate, given that the Executive has not elaborated on the method and data underlying its projection and that a lack of data precludes the OLS from ascertaining its accuracy. The office agrees, however, that the bill would lower CBT revenues by shrinking taxpayers’ tax base and liabilities in fiscal year 2011 and thereafter. Nonetheless, it appears that the Executive fails to consider the attendant impact on county and local governments through special dedications applying to CBT payments by banks, financial institutions, and electric, natural gas, and telecommunications utilities.

Local Revenue Loss: The OLS notes that in addition to an unquantifiable State revenue loss the bill would also moderately reduce CBT revenues accruing to county and local governments through special dedications applying to CBT payments by banks, financial institutions, and electric, natural gas, and telecommunications utilities.

Statutorily, the State receives 50 percent of the proceeds from the CBT on banks and financial institutions, while counties and municipalities receive 25 percent each. Language provisions contained in appropriations acts for recent years, however, redirect the county and municipal portion of this revenue stream into the State General Fund. The OLS cannot predict

whether this redirection will be continued in future fiscal years or whether the county and municipal portions of the revenue stream will revert to counties and municipalities. For fiscal year 2009, the State anticipates \$86.4 million in State revenue from the CBT on banks and financial institutions, which represents 2.9 percent of \$3.003 billion in total anticipated CBT collections. A reduction in CBT liabilities due to enactment of the bill would lower these collections by unknown amounts as of fiscal year 2011.

The State also shares proceeds from the CBT on electric, natural gas, and telecommunications utilities with municipal governments. For fiscal year 2009, the Executive expects \$105.2 million in such proceeds to support municipal finances. A reduction in CBT liabilities due to enactment of the bill would lower these collections. However, existing statutes guarantee municipalities certain disbursements from the Energy Tax Receipts Property Tax Relief Fund, the depository of revenues accruing from the CBT on electric, natural gas, and telecommunications utilities. The OLS thus anticipates that other State General Fund revenue would likely have to cover any shortfall.

Impact of Elimination of Throwout Rule on Hypothetical Corporation: In Table 1, the OLS illustrates the impact of the elimination of the throwout rule on the taxable income in New Jersey of a hypothetical corporation with \$35 million in nationwide profits. Under current law, \$6,353,375 of the \$35 million is taxable by New Jersey, while only \$6,197,625 would be under the bill. The bill would thus decrease the corporation's taxable net income by \$155,750, or 2.45 percent. At a tax rate of 9 percent, the \$155,750 decrease in taxable income would translate into \$14,018 in tax savings.

The corporation makes \$160 million in sales nationwide, of which \$10 million occurs in New Jersey and \$20 million in states that do not tax the corporation's net income. Under current law, the corporation's sales fraction in the allocation formula is therefore 0.0714 (\$10 million/\$140 million, or New Jersey sales over nationwide sales less sales in states that do not tax the corporation's net income). Under the proposed bill, the sales fraction would be 0.0625, as sales in states that do not tax corporate profits would no longer be excluded from nationwide sales (\$10 million/\$160 million, or New Jersey sales over nationwide sales).

Consequently, the fraction of the corporation's \$35 million in nationwide net income that is taxable by New Jersey equals 18.15 percent under current law (a quarter of the sum of twice the 0.0714 sales fraction plus the 0.25 property fraction plus the 0.3333 payroll fraction). Under the bill, 17.7 percent of the corporation's \$35 million would be taxable by New Jersey (a quarter of the sum of twice the 0.0625 sales fraction plus the 0.25 property fraction plus the 0.3333 payroll fraction). The net result would be a \$155,750, or 2.45 percent, reduction in the corporation's taxable net income.

	In NJ	Total Domestic	Domestic Untaxed	Current Fractions	Proposed Fractions	Current Total Fraction	Proposed Total Fraction
Sales	\$10,000,000	\$160,000,000	\$20,000,000	0.0714	0.0625	0.1815	0.1770
Property	\$60,000,000	\$240,000,000	NA	0.2500	0.2500		
Payroll	\$25,000,000	\$75,000,000	NA	0.3333	0.3333		
Taxable Net Income		\$35,000,000				NJ Taxable Income	
						\$6,353,375	\$6,197,625

Impact of Elimination of Regular Place of Business Restriction on Hypothetical Corporation: In Table 2, the OLS illustrates the impact of eliminating the current restriction that only those corporations may take advantage of the apportionment formula that have a regular place of business in another state. A hypothetical corporation has \$10 million in nationwide profits and no regular place of business outside of New Jersey. Under current law, the full \$10 million is taxable by New Jersey, while only \$9,090,909 would be under the bill. The bill would thus decrease the corporation's taxable net income by \$909,091, or 9.09 percent. At a tax rate of 9 percent, the \$909,091 decrease in taxable income would translate into \$81,818 in tax savings.

Under current law, 100 percent of the \$10 million in nationwide profit would be taxable for the hypothetical corporation. Under the bill, the corporation would be allowed to use the apportionment formula. Since 100 percent of the corporation's property and payroll is located in New Jersey, the property and payroll fractions would each be 1.00. However, given that the corporation makes \$55 million in sales nationwide, of which \$45 million occurs in New Jersey, the sales fraction in the allocation formula would be 0.8181 (\$45 million/\$55 million, or New Jersey sales over nationwide sales). Consequently, under the bill, 90.91 percent of the corporation's \$10 million would be taxable by New Jersey (a quarter of the sum of twice the 0.8181 sales fraction plus the 1.00 property fraction plus the 1.00 payroll fraction). The net result would be a \$909,091, or 9.09 percent, reduction in the corporation's taxable net income.

	In NJ	Total Domestic	Domestic Untaxed	Current Fractions	Proposed Fractions	Current Total Fraction	Proposed Total Fraction
Sales	\$45,000,000	\$55,000,000	\$0	1.0000	0.8181	1.0000	0.9091
Property	\$30,000,000	\$30,000,000	NA	1.0000	1.0000		
Payroll	\$25,000,000	\$25,000,000	NA	1.0000	1.0000		
						NJ Taxable Income	
Taxable Net Income		\$10,000,000				\$10,000,000	\$9,090,909

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Senior Fiscal Analyst*

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

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-1 et seq.).



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JON S. CORZINE
Governor

For Immediate Release:

For Kids | **Effective:** December 19, 2008

For More Information:

Robert Corrales

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Governor Corzine Signs Legislation Encouraging Business Growth in NJ

TRENTON - Gov. Jon S. Corzine today signed legislation that will make New Jersey more attractive to businesses by reforming the state's corporate tax law - one of the final facets of the Governor's Economic Assistance and Recovery Plan.

The bill, A-2722/S-3, eliminates the so-called throw-out rule and the regular place of business requirement under state corporate business tax law.

"If we are to maintain and expand the New Jersey economy, we must employ every conceivable tool at our disposal

to encourage robust business growth," Governor Corzine said. "Through the modification and elimination of laws unfriendly to business, it speaks volumes to New Jersey's commitment to the state's economy and an open-door policy toward business enterprises in our state."

Under the throw-out rule, multi-state corporations are assessed corporate income tax liabilities based on an allocation formula that takes into account income from sales that are not taxed by other states.

"Protecting our businesses now will ensure that our economic engine will not stall if the economy continues to worsen," said Assemblyman Joseph Vas (D-Middlesex), who introduced the bill in May. "We have to be sure to remove any hurdles that are blocking economic development in these tough times."

This throw-out of sales not subjected to tax in other states has had the effect of increasing the amount of income subject to tax in New Jersey. The bill signed today by the Governor eliminates the throw-out provision, thus lowering multi-state corporations' tax liabilities here.

"During a time of national recession and economic uncertainty, this overhaul should be a welcome relief to businesses, particularly those that are struggling," said Senate President Richard J. Codey (D-Essex), a prime sponsor of the bill. "The elimination of the 'throw-out' rule will also create a more business-friendly environment for New Jersey to compete with the majority of other states."

The other reform involved New Jersey law that required corporations to have a regular place of business in another state in order for the corporation to apportion less than 100 percent of its income under the formula that determines taxes owed to New Jersey. A regular place of business was defined as a bona fide office maintained by at least one employee of the corporation.

"We are removing yet another obstacle and helping ensure businesses emerge strong from this global crisis," said Assemblyman Louis Greenwald (D-Camden). "Strong businesses mean good jobs for New Jerseyans, and ensuring we retain and create strong jobs is a priority."

"This law will make New Jersey's economy more competitive, increasing its ability to attract business and create job opportunities," said Senator Steve Oroho, (R-District 24). "The bill's success is proof that we can address this economic crisis with bipartisan cooperation and common sense. I applaud all who worked so hard to make it

possible."

The bill signed today eliminated the regular place of business requirement and allows corporations to apportion less than 100 percent of its income even if it does not maintain a regular place of business in another state.

###

Photos from Governor Corzine's public events are available in the Governor's Newsroom section on the State of New Jersey web page, <http://www.nj.gov/governor/news/>

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Office of the Governor

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Trenton, NJ 08625

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