54:10A-5

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2008 **CHAPTER:** 120

NJSA: 54:10A-5 (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.)

BILL NO: A2722 (substituted for S3)

SPONSOR(S) Vas and others

DATE INTRODUCED: May 19, 2008

COMMITTEE: **ASSEMBLY:** Appropriations
Commerce and Economic Development

SENATE: Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 15, 2008

SENATE: November 24, 2008

DATE OF APPROVAL: December 19, 2008

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted)

A2722

SPONSOR'S STATEMENT: (Begins on page 8 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes Approp. 10-23-08
Commerce 10-6-08

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes 9-16-08
12-5-08

S3/S1874

SPONSOR'S STATEMENT S3: (Begins on page 8 of original bill) Yes

SPONSOR'S STATEMENT S1874: (Begins on page 8 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: 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)***

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

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

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

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

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

(a) That portion of its entire net worth as may be allocable to this State as provided in section 6, multiplied by the following rates: 2 mills per dollar on the first $100,000,000.00 of allocated net worth; 4/10 of a mill per dollar on the second $100,000,000.00; 3/10 of a mill per dollar on the third $100,000,000.00; and 2/10 of a mill per dollar on all amounts of allocated net worth in excess of $300,000,000.00; provided, however, that with respect to reports covering accounting or privilege periods set forth below, the rate shall be that percentage of the rate set forth in this subsection for 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:
[1]Assembly AAP committee amendments adopted October 23, 2008.
[2]Senate SBA committee amendments adopted November 13, 2008.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Period Beginning In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
1994	$ 50	$100
1995	$100	$200
1996	$150	$200

1997	$200	$200
1998	$200	$200
1999	$200	$200
2000	$200	$200
2001	$210	$210

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

New Jersey Gross Receipts:	Minimum Tax:
Less than $100,000	$500
$100,000 or more but less than $250,000	$750
$250,000 or more but less than $500,000	$1,000
$500,000 or more but less than $1,000,000	$1,500
$1,000,000 or more	$2,000

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

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

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

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

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

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

(i) ⟦Notwithstanding the provisions of subsection c. of this section to the contrary, and notwithstanding the provisions of subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6) to the contrary, the amount by which the exclusion of receipts from the denominator of the sales fraction pursuant to subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6) increases the liability of all of the members of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, over that liability calculated without application of the exclusion for a privilege period shall not exceed $5,000,000. If the exclusion of receipts from the denominator of the sales fraction pursuant to subsection (B) would otherwise increase the liability of all of the members of an affiliated group or a controlled group by more than $5,000,000 for a privilege period, then the amount of liability in excess of $5,000,000 due to the exclusion of receipts from the denominator shall be abated, and the abated liability shall be allocated among the members of the affiliated group or the controlled group in proportion to each member's increase in liability due to the exclusion of such receipts; provided however, that the director may allow a single corporation within the affiliated group or controlled group to act as the key corporation for the abatement, in such manner as the director may prescribe.⟧ <u>(Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)</u>

(cf: P.L.2006, c.38, s.2)

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

6. [2]⟦In the case of a taxpayer which maintains a regular place of business outside this State other than a statutory office, the⟧ <u>The</u>[2] portion of its entire net worth to be used as a measure of the tax imposed by subsection (a) of section 5 of P.L.1945, c.162 (C.54:10A-5), and the portion of its entire net income to be used as a measure of the tax imposed by subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5), shall be determined by multiplying such entire net worth and entire net income, respectively, by an allocation factor which is the property fraction, plus twice the sales fraction plus the payroll fraction and the denominator of which is four, except as the director may determine pursuant to section 8 of P.L.1945, c.162 (C.54:10A-8), that is:

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

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

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

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

(3) (Deleted by amendment.)

(4) services performed within the State,

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

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

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

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

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

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

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

3. This act shall take effect immediately and apply to privilege periods beginning on or after [1]**[**July 1, 2008**]** <u>July 1, 2010</u>[1].

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.

[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)

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

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

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

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

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

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

(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.

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

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

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

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

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

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

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

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

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

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

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

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

Period Beginning In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
1994	$ 50	$100
1995	$100	$200
1996	$150	$200
1997	$200	$200
1998	$200	$200
1999	$200	$200
2000	$200	$200
2001	$210	$210

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

New Jersey Gross Receipts:	Minimum Tax:
Less than $100,000	$500
$100,000 or more but less than $250,000	$750
$250,000 or more but less than $500,000	$1,000
$500,000 or more but less than $1,000,000	$1,500
$1,000,000 or more	$2,000

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

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

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

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

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

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

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

Code of 1986, 26 U.S.C. s.1504 or 1563, over that liability calculated without application of the exclusion for a privilege period shall not exceed $5,000,000. If the exclusion of receipts from the denominator of the sales fraction pursuant to subsection (B) would otherwise increase the liability of all of the members of an affiliated group or a controlled group by more than $5,000,000 for a privilege period, then the amount of liability in excess of $5,000,000 due to the exclusion of receipts from the denominator shall be abated, and the abated liability shall be allocated among the members of the affiliated group or the controlled group in proportion to each member's increase in liability due to the exclusion of such receipts; provided however, that the director may allow a single corporation within the affiliated group or controlled group to act as the key corporation for the abatement, in such manner as the director may prescribe.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

(cf: P.L.2006, c.38, s.2)

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

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

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

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

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

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

(3) (Deleted by amendment.)

(4) services performed within the State,

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

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

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

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

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

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

(cf: P.L.2002, c.40, s.8)

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

STATEMENT

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 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 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 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 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	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011
State Revenue Loss	$89,000,000	$89,000,000	$89,000,000

Office of Legislative Services Estimate

Fiscal Impact	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011
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.

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

Office of Legislative Services Estimate

Fiscal Impact	**FY 2009 and 2010**	**FY 2011 and Thereafter**
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		
						NJ Taxable Income	
Taxable Net Income		$35,000,000				$6,353,375	$6,197,625

<u>*Impact of Elimination of Regular Place of Business Restriction on Hypothetical Corporation:*</u> 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>
<tr><th colspan="8">Table 2: Impact of Elimination of Regular Place of Business Restriction on Hypothetical Corporation</th></tr>
<tr><th></th><th>In NJ</th><th>Total Domestic</th><th>Domestic Untaxed</th><th>Current Fractions</th><th>Proposed Fractions</th><th>Current Total Fraction</th><th>Proposed Total Fraction</th></tr>
<tr><td>Sales</td><td>$45,000,000</td><td>$55,000,000</td><td>$0</td><td>1.0000</td><td>0.8181</td><td rowspan="3">1.0000</td><td rowspan="3">0.9091</td></tr>
<tr><td>Property</td><td>$30,000,000</td><td>$30,000,000</td><td>NA</td><td>1.0000</td><td>1.0000</td></tr>
<tr><td>Payroll</td><td>$25,000,000</td><td>$25,000,000</td><td>NA</td><td>1.0000</td><td>1.0000</td></tr>
<tr><td rowspan="2">Taxable Net Income</td><td rowspan="2"></td><td rowspan="2">$10,000,000</td><td rowspan="2" colspan="3"></td><th colspan="2">NJ Taxable Income</th></tr>
<tr><td>$10,000,000</td><td>$9,090,909</td></tr>
</table>

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.

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

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

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

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

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

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

July 1, 1986 0

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

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

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

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

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

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

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

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

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

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

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

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

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

Period Beginning In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
1994	$ 50	$100
1995	$100	$200
1996	$150	$200
1997	$200	$200
1998	$200	$200
1999	$200	$200
2000	$200	$200
2001	$210	$210

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

New Jersey Gross Receipts:	Minimum Tax:
Less than $100,000	$500
$100,000 or more but less than $250,000	$750
$250,000 or more but less than $500,000	$1,000
$500,000 or more but less than $1,000,000	$1,500
$1,000,000 or more	$2,000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) (Deleted by amendment.)

(4) services performed within the State,

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

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

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

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

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

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

(cf: P.L.2002, c.40, s.8)

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

STATEMENT

This 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.

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.

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.

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)

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

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

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

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

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

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

(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 <u>thus</u> is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

Period Beginning In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
1994	$ 50	$100
1995	$100	$200
1996	$150	$200
1997	$200	$200
1998	$200	$200
1999	$200	$200
2000	$200	$200
2001	$210	$210

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

New Jersey Gross Receipts:	Minimum Tax:
Less than $100,000	$500
$100,000 or more but less than $250,000	$750
$250,000 or more but less than $500,000	$1,000
$500,000 or more but less than $1,000,000	$1,500
$1,000,000 or more	$2,000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) (Deleted by amendment.)

(4) services performed within the State,

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

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

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

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

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

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

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

STATEMENT

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	FY 2009 and 2010	FY 2011	FY 2012
State Revenue Loss			
Throwout	$0	$89,000,000	$89,000,000
Regular Place of Business	$0	$60,000,000	$60,000,000
Total	**$0**	**$149,000,000**	**$149,000,000**

Office of Legislative Services Estimate

Fiscal Impact	FY 2009 and 2010	FY 2011 and Thereafter
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.

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-OLS-

Legislative Budget and Finance Office
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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.

<u>*Impact of Elimination of Throwout Rule on Hypothetical Corporation:*</u> 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.

Table 1: Impact of Elimination of Throwout 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		
Property	$60,000,000	$240,000,000	NA	0.2500	0.2500	0.1815	0.1770
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

<u>Impact of Elimination of Regular Place of Business Restriction on Hypothetical Corporation:</u> 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*
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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.).

The State of New Jersey
Office of the Governor

JON S. CORZINE
Governor

For Immediate Release:
Date: December 19, 2008

For More Information:
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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.

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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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Oct 13, 2023

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