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"Tax-loss carry extended," The Record, 11-25-08, p. B03

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P.L. 2008, CHAPTER 102, *approved November 24, 2008*
Senate, No. 2130

1 AN ACT increasing the carryover period of the net operating loss
2 deduction under the corporation business tax, amending
3 P.L.1945, c.162.

4

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

7

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

47 (h) "Taxpayer" shall mean any corporation, and any partnership
48 required, or consenting, to report or to pay taxes, interest or

1 penalties under this act. "Taxpayer" shall not include a partnership
2 that is listed on a United States national stock exchange.

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

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

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

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

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

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

32 (A) The amount of any specific exemption or credit allowed in
33 any law of the United States imposing any tax on or measured by
34 the income of corporations.

35 (B) Any part of any income from dividends or interest on any
36 kind of stock, securities or indebtedness, except as provided in
37 paragraph (5) of subsection (k) of this section.

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

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

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

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

20 (ii) For the periods set forth in subparagraph (F)(i) of this
21 subsection, any amount, except with respect to qualified mass
22 commuting vehicles as described in section 168(f)(8)(D)(v) of the
23 Internal Revenue Code as in effect immediately prior to January 1,
24 1984, which the taxpayer claimed as a deduction in computing
25 federal income tax pursuant to a qualified lease agreement under
26 paragraph (8) of that section.

27 The director shall promulgate rules and regulations necessary to
28 carry out the provisions of this section, which rules shall provide,
29 among others, the manner in which the remaining life of property
30 shall be reported.

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

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

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

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

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

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

45 (J) Amounts deducted for federal tax purposes pursuant to
46 section 199 of the federal Internal Revenue Code of 1986, 26
47 U.S.C. s.199, except that this exclusion shall not apply to amounts
48 deducted pursuant to that section that are exclusively based upon

1 domestic production gross receipts of the taxpayer which are
2 derived only from any lease, rental, license, sale, exchange, or other
3 disposition of qualifying production property which the taxpayer
4 demonstrates to the satisfaction of the director was manufactured or
5 produced by the taxpayer in whole or in significant part within the
6 United States but not qualified production property that was grown
7 or extracted by the taxpayer. "Manufactured or produced" as used
8 in this paragraph shall be limited to performance of an operation or
9 series of operations the object of which is to place items of tangible
10 personal property in a form, composition, or character different
11 from that in which they were acquired. The change in form,
12 composition, or character shall be a substantial change, and result in
13 a transformation of property into a different or substantially more
14 usable product.

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

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

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

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

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

38 (ii) Making or placing deposits with foreign persons which are
39 banks or foreign branches of banks (including foreign subsidiaries)
40 or foreign branches of the taxpayers or with other international
41 banking facilities;

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

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

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

4 (5) Entire net income shall exclude 100% of dividends which
5 were included in computing such taxable income for federal income
6 tax purposes, paid to the taxpayer by one or more subsidiaries
7 owned by the taxpayer to the extent of the 80% or more ownership
8 of investment described in subsection (d) of this section and shall
9 exclude 50% of dividends which were included in computing such
10 taxable income for federal income tax purposes, paid to the
11 taxpayer by one or more subsidiaries owned by the taxpayer to the
12 extent of 50% or more ownership of investment, such ownership of
13 investment calculated in the same manner as the 80% or more of
14 ownership of investment is calculated as described in subsection (d)
15 of this section.

16 (6) (A) Net operating loss deduction. There shall be allowed as a
17 deduction for the privilege period the net operating loss carryover to
18 that period.

19 (B) Net operating loss carryover. A net operating loss for any
20 privilege period ending after June 30, 1984 shall be a net operating
21 loss carryover to each of the seven privilege periods following the
22 period of the loss and a net operating loss for any privilege period
23 ending after June 30, 2009 shall be a net operating loss carryover to
24 each of the twenty privilege periods following the period of the
25 loss. The entire amount of the net operating loss for any privilege
26 period (the "loss period") shall be carried to the earliest of the
27 privilege periods to which the loss may be carried. The portion of
28 the loss which shall be carried to each of the other privilege periods
29 shall be the excess, if any, of the amount of the loss over the sum of
30 the entire net income, computed without the exclusions permitted in
31 paragraphs (4) and (5) of this subsection or the net operating loss
32 deduction provided by subparagraph (A) of this paragraph, for each
33 of the prior privilege periods to which the loss may be carried.

34 (C) Net operating loss. For purposes of this paragraph the term
35 "net operating loss" means the excess of the deductions over the
36 gross income used in computing entire net income without the net
37 operating loss deduction provided for in subparagraph (A) of this
38 paragraph and the exclusions in paragraphs (4) and (5) of this
39 subsection.

40 (D) Change in ownership. Where there is a change in 50% or
41 more of the ownership of a corporation because of redemption or
42 sale of stock and the corporation changes the trade or business
43 giving rise to the loss, no net operating loss sustained before the
44 changes may be carried over to be deducted from income earned
45 after such changes. In addition where the facts support the premise
46 that the corporation was acquired under any circumstances for the
47 primary purpose of the use of its net operating loss carryover, the
48 director may disallow the carryover.

1 (E) Notwithstanding the provisions of this paragraph (6) of
2 subsection (k) of this section to the contrary, for privilege periods
3 beginning during calendar year 2002 and calendar year 2003, no
4 deduction for any net operating loss carryover shall be allowed and
5 for privilege periods beginning during calendar year 2004 and
6 calendar year 2005, there shall be allowed as a deduction for the
7 privilege period so much of the net operating loss carryover as
8 reduces entire net income otherwise calculated by 50%. If and only
9 to the extent that any net operating loss carryover deduction is
10 disallowed by reason of this subparagraph (E), the date on which
11 the amount of the disallowed net operating loss carryover deduction
12 would otherwise expire shall be extended by a period equal to the
13 period for which application of the net operating loss was
14 disallowed by this subparagraph.

15 Provided, that this subparagraph (E) shall not restrict the
16 surrender or acquisition of corporation business tax benefit
17 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
18 7.42a) and shall not restrict the application of corporation business
19 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
20 (C.54:10A-4.2).

21 (7) The entire net income of gas, electric and gas and electric
22 public utilities that were subject to the provisions of P.L.1940, c.5
23 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
24 substituting the New Jersey depreciation allowance for federal tax
25 depreciation with respect to assets placed in service prior to January
26 1, 1998. For gas, electric, and gas and electric public utilities that
27 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
28 seq.) prior to 1998, the New Jersey depreciation allowance shall be
29 computed as follows: All depreciable assets placed in service prior
30 to January 1, 1998 shall be considered a single asset account. The
31 New Jersey tax basis of this depreciable asset account shall be an
32 amount equal to the carryover adjusted basis for federal income tax
33 purposes on December 31, 1997 of all depreciable assets in service
34 on December 31, 1997, increased by the excess, of the "net carrying
35 value," defined to be adjusted book basis of all assets and liabilities,
36 excluding deferred income taxes, recorded on the public utility's
37 books of account on December 31, 1997, over the carryover
38 adjusted basis for federal income tax purposes on December 31,
39 1997 of all assets and liabilities owned by the gas, electric, or gas
40 and electric public utility as of December 31, 1997. "Books of
41 account" for gas, gas and electric, and electric public utilities means
42 the uniform system of accounts as promulgated by the Federal
43 Energy Regulatory Commission and adopted by the Board of Public
44 Utilities. The following adjustments to entire net income shall be
45 made pursuant to this section:

46 (A) Depreciation for property placed in service prior to January
47 1, 1998 shall be adjusted as follows:

1 (i) Depreciation for federal income tax purposes shall be
2 disallowed in full.

3 (ii) A deduction shall be allowed for the New Jersey
4 depreciation allowance. The New Jersey depreciation allowance
5 shall be computed for the single asset account described above
6 based on the New Jersey tax basis as adjusted above as if all assets
7 in the single asset account were first placed in service on January 1,
8 1998. Depreciation shall be computed using the straight line
9 method over a thirty-year life. A full year's depreciation shall be
10 allowed in the initial tax year. No half-year convention shall apply.
11 The depreciable basis of the single account shall be reduced by the
12 adjusted federal tax basis of assets sold, retired, or otherwise
13 disposed of during any year on which gain or loss is recognized for
14 federal income tax purposes as described in subparagraph (B) of
15 this paragraph.

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

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

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

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

37 (10) Entire net income shall exclude all income of an alien
38 corporation the activities of which are limited in this State to
39 investing or trading in stocks and securities for its own account,
40 investing or trading in commodities for its own account, or any
41 combination of those activities, within the meaning of section 864
42 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
43 effect on December 31, 1998. Notwithstanding the previous
44 sentence, if an alien corporation undertakes one or more infrequent,
45 extraordinary or non-recurring activities, including but not limited
46 to the sale of tangible property, only the income from such
47 infrequent, extraordinary or non-recurring activity shall be subject
48 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et

1 seq.), and that amount of income subject to tax shall be determined
2 without regard to the allocation to that specific transaction of any
3 general business expense of the taxpayer and shall be specifically
4 assigned to this State for taxation by this State without regard to
5 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this
6 paragraph, "alien corporation" means a corporation organized under
7 the laws of a jurisdiction other than the United States or its political
8 subdivisions.

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

17 (12) (A) Notwithstanding the provisions of subsection (k) of
18 section 168 of the federal Internal Revenue Code of 1986, 26
19 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
20 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
21 law, for property acquired after September 10, 2001, the
22 depreciation deduction otherwise allowed pursuant to section 167 of
23 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
24 be determined pursuant to the provisions of the federal Internal
25 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
26 December 31, 2001.

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

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

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

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

47 (m) "Financial business corporation" shall mean any corporate
48 enterprise which is (1) in substantial competition with the business

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

36 (n) "International banking facility" shall mean a set of asset and
37 liability accounts segregated on the books and records of a
38 depository institution, United States branch or agency of a foreign
39 bank, or an Edge or Agreement Corporation that includes only
40 international banking facility time deposits and international
41 banking facility extensions of credit as such terms are defined in
42 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
43 board of governors of the Federal Reserve System, 12 CFR Part
44 204, effective December 3, 1981. In the event that the United
45 States enacts a law, or the board of governors of the Federal
46 Reserve System adopts a regulation which amends the present
47 definition of international banking facility or of such facilities' time
48 deposits or extensions of credit, the Commissioner of Banking and

1 Insurance shall forthwith adopt regulations defining such terms in
2 the same manner as such terms are set forth in the laws of the
3 United States or the regulations of the board of governors of the
4 Federal Reserve System. The regulations of the Commissioner of
5 Banking and Insurance shall thereafter provide the applicable
6 definitions.

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

10 (p) "New Jersey S corporation" means a corporation that is an S
11 corporation; which has made a valid election pursuant to section 3
12 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
13 corporation continuously since the effective date of the valid
14 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
15 5.22).

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

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

31 (s) "Savings institution" means a state or federally chartered
32 building and loan association, savings and loan association, or
33 savings bank.

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

36 (cf: P.L.2005, c.127, s.1)

37

38 2. This act shall take effect immediately and shall apply to net
39 operating losses accruing for privilege periods ending after June 30,
40 2009.

41

42

43

STATEMENT

44

45 This bill extends from seven to twenty years the number of tax
46 years in which corporation business taxpayers can deduct from
47 taxable income net operating losses sustained in previous tax years.
48 The extension mirrors carryforward provisions in the federal tax

1 code and in tax codes of many other states, notably of New York,
2 Pennsylvania, Connecticut, and Delaware. Carryforward provisions
3 allow businesses to average their income over a time period that
4 more closely corresponds to their investment horizon.

5 New Jersey's economy has underperformed in recent years
6 relative to the rest of the nation, in part due to the inconsistent
7 taxation of businesses. Even though the enactment of this
8 legislation does not turn New Jersey into the state with the
9 business-friendliest system of taxation, it does nonetheless make
10 New Jersey more welcoming to businesses and thus encourage them
11 to invest and create employment in the Garden State.

12

13

14

15

16 _____
17 Increases carryover period of net operating loss deduction under
corporation business tax.

SENATE, No. 2130

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED OCTOBER 2, 2008

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex)

Senator BARBARA BUONO

District 18 (Middlesex)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblyman JOSEPH VAS

District 19 (Middlesex)

Assemblywoman NELLIE POU

District 35 (Bergen and Passaic)

Co-Sponsored by:

Senators Sarlo, Turner, Beck, Kyrillos, Oroho, Assemblyman Chiusano, Assemblywomen Karrow, McHose, Assemblymen Malone, O'Scanlon, Assemblywoman Addiego, Assemblyman Rudder, Assemblywoman Vainieri Huttel, Assemblyman DeCroce, Assemblywoman Greenstein, Assemblymen Schaer, Moriarty, Assemblywomen Love, Evans and Assemblyman Cryan

SYNOPSIS

Increases carryover period of net operating loss deduction under corporation business tax.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 10/28/2008)

1 AN ACT increasing the carryover period of the net operating loss
2 deduction under the corporation business tax, amending
3 P.L.1945, c.162.

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (J) Amounts deducted for federal tax purposes pursuant to
41 section 199 of the federal Internal Revenue Code of 1986, 26
42 U.S.C. s.199, except that this exclusion shall not apply to amounts
43 deducted pursuant to that section that are exclusively based upon
44 domestic production gross receipts of the taxpayer which are
45 derived only from any lease, rental, license, sale, exchange, or other
46 disposition of qualifying production property which the taxpayer
47 demonstrates to the satisfaction of the director was manufactured or
48 produced by the taxpayer in whole or in significant part within the

1 United States but not qualified production property that was grown
2 or extracted by the taxpayer. "Manufactured or produced" as used
3 in this paragraph shall be limited to performance of an operation or
4 series of operations the object of which is to place items of tangible
5 personal property in a form, composition, or character different
6 from that in which they were acquired. The change in form,
7 composition, or character shall be a substantial change, and result in
8 a transformation of property into a different or substantially more
9 usable product.

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

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

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

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

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

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

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

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

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

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

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

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

12 (B) Net operating loss carryover. A net operating loss for any
13 privilege period ending after June 30, 1984 shall be a net operating
14 loss carryover to each of the seven privilege periods following the
15 period of the loss and a net operating loss for any privilege period
16 ending after June 30, 2009 shall be a net operating loss carryover to
17 each of the twenty privilege periods following the period of the
18 loss. The entire amount of the net operating loss for any privilege
19 period (the "loss period") shall be carried to the earliest of the
20 privilege periods to which the loss may be carried. The portion of
21 the loss which shall be carried to each of the other privilege periods
22 shall be the excess, if any, of the amount of the loss over the sum of
23 the entire net income, computed without the exclusions permitted in
24 paragraphs (4) and (5) of this subsection or the net operating loss
25 deduction provided by subparagraph (A) of this paragraph, for each
26 of the prior privilege periods to which the loss may be carried.

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

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

42 (E) Notwithstanding the provisions of this paragraph (6) of
43 subsection (k) of this section to the contrary, for privilege periods
44 beginning during calendar year 2002 and calendar year 2003, no
45 deduction for any net operating loss carryover shall be allowed and
46 for privilege periods beginning during calendar year 2004 and
47 calendar year 2005, there shall be allowed as a deduction for the
48 privilege period so much of the net operating loss carryover as

1 reduces entire net income otherwise calculated by 50%. If and only
2 to the extent that any net operating loss carryover deduction is
3 disallowed by reason of this subparagraph (E), the date on which
4 the amount of the disallowed net operating loss carryover deduction
5 would otherwise expire shall be extended by a period equal to the
6 period for which application of the net operating loss was
7 disallowed by this subparagraph.

8 Provided, that this subparagraph (E) shall not restrict the
9 surrender or acquisition of corporation business tax benefit
10 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
11 7.42a) and shall not restrict the application of corporation business
12 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
13 (C.54:10A-4.2).

14 (7) The entire net income of gas, electric and gas and electric
15 public utilities that were subject to the provisions of P.L.1940, c.5
16 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
17 substituting the New Jersey depreciation allowance for federal tax
18 depreciation with respect to assets placed in service prior to January
19 1, 1998. For gas, electric, and gas and electric public utilities that
20 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
21 seq.) prior to 1998, the New Jersey depreciation allowance shall be
22 computed as follows: All depreciable assets placed in service prior
23 to January 1, 1998 shall be considered a single asset account. The
24 New Jersey tax basis of this depreciable asset account shall be an
25 amount equal to the carryover adjusted basis for federal income tax
26 purposes on December 31, 1997 of all depreciable assets in service
27 on December 31, 1997, increased by the excess, of the "net carrying
28 value," defined to be adjusted book basis of all assets and liabilities,
29 excluding deferred income taxes, recorded on the public utility's
30 books of account on December 31, 1997, over the carryover
31 adjusted basis for federal income tax purposes on December 31,
32 1997 of all assets and liabilities owned by the gas, electric, or gas
33 and electric public utility as of December 31, 1997. "Books of
34 account" for gas, gas and electric, and electric public utilities means
35 the uniform system of accounts as promulgated by the Federal
36 Energy Regulatory Commission and adopted by the Board of Public
37 Utilities. The following adjustments to entire net income shall be
38 made pursuant to this section:

39 (A) Depreciation for property placed in service prior to January
40 1, 1998 shall be adjusted as follows:

41 (i) Depreciation for federal income tax purposes shall be
42 disallowed in full.

43 (ii) A deduction shall be allowed for the New Jersey
44 depreciation allowance. The New Jersey depreciation allowance
45 shall be computed for the single asset account described above
46 based on the New Jersey tax basis as adjusted above as if all assets
47 in the single asset account were first placed in service on January 1,
48 1998. Depreciation shall be computed using the straight line

1 method over a thirty-year life. A full year's depreciation shall be
2 allowed in the initial tax year. No half-year convention shall apply.
3 The depreciable basis of the single account shall be reduced by the
4 adjusted federal tax basis of assets sold, retired, or otherwise
5 disposed of during any year on which gain or loss is recognized for
6 federal income tax purposes as described in subparagraph (B) of
7 this paragraph.

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

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

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

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

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

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

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

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

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

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

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

39 (m) "Financial business corporation" shall mean any corporate
40 enterprise which is (1) in substantial competition with the business
41 of national banks and which (2) employs moneyed capital with the
42 object of making profit by its use as money, through discounting
43 and negotiating promissory notes, drafts, bills of exchange and
44 other evidences of debt; buying and selling exchange; making of or
45 dealing in secured or unsecured loans and discounts; dealing in
46 securities and shares of corporate stock by purchasing and selling
47 such securities and stock without recourse, solely upon the order
48 and for the account of customers; or investing and reinvesting in

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

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

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

4 (p) "New Jersey S corporation" means a corporation that is an S
5 corporation; which has made a valid election pursuant to section 3
6 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
7 corporation continuously since the effective date of the valid
8 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
9 5.22).

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

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

25 (s) "Savings institution" means a state or federally chartered
26 building and loan association, savings and loan association, or
27 savings bank.

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

30 (cf: P.L.2005, c.127, s.1)

31

32 2. This act shall take effect immediately and shall apply to net
33 operating losses accruing for privilege periods ending after June 30,
34 2009.

35

36

37

STATEMENT

38

39 This bill extends from seven to twenty years the number of tax
40 years in which corporation business taxpayers can deduct from
41 taxable income net operating losses sustained in previous tax years.
42 The extension mirrors carryforward provisions in the federal tax
43 code and in tax codes of many other states, notably of New York,
44 Pennsylvania, Connecticut, and Delaware. Carryforward provisions
45 allow businesses to average their income over a time period that
46 more closely corresponds to their investment horizon.

47 New Jersey's economy has underperformed in recent years
48 relative to the rest of the nation, in part due to the inconsistent

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14

1 taxation of businesses. Even though the enactment of this
2 legislation does not turn New Jersey into the state with the
3 business-friendliest system of taxation, it does nonetheless make
4 New Jersey more welcoming to businesses and thus encourage them
5 to invest and create employment in the Garden State.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2130

STATE OF NEW JERSEY

DATED: OCTOBER 6, 2008

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2130.

Senate Bill No. 2130 extends from seven to twenty years the number of tax years in which corporation business taxpayers can deduct from taxable income net operating losses sustained in previous tax years. The change is applicable to net operating losses realized in privilege periods ending after June 30, 2009.

FISCAL IMPACT:

The Office of Legislative Services (OLS) states that the bill will not affect State finances until fiscal year 2018, when it may first generate an annual revenue loss to the State General Fund. The OLS cannot quantify the revenue loss, given a lack of data on net operating losses.

There will be no fiscal impact prior to fiscal year 2018 because the bill will only apply to net operating losses created as of fiscal year 2010, and because the current seven-year carryforward period applies to the fiscal year 2010 net operating losses before the extension is brought to bear on them, first in fiscal year 2018.

A revenue loss may accrue in fiscal year 2018 and thereafter if corporate taxpayers had tax liabilities against which they may apply net operating losses sustained eight to twenty years prior but which the taxpayers could not offset against tax liabilities in the seven years immediately following the creation of the net operating losses.

FISCAL NOTE
SENATE, No. 2130
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: OCTOBER 14, 2008

SUMMARY

Synopsis: Increases carryover period of net operating loss deduction under corporation business tax.

Type of Impact: Annual Foregone State General Fund, County, and Municipal Revenue Starting in Fiscal Year 2018.

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

Executive Estimate

Fiscal Impact	<u>Fiscal Year 2009</u> through Fiscal Year 2017	<u>Fiscal Year 2018 and Thereafter</u>
State Revenue Loss	\$0	Indeterminate

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2009</u> through Fiscal Year 2017	<u>Fiscal Year 2018 and Thereafter</u>
State Revenue Loss	\$0	Indeterminate — See Comments Below
Local Revenue Loss	\$0	Indeterminate — See Comments Below

- The Office of Legislative Services (OLS) **concur**s with the Executive that the bill could not affect State finances until fiscal year 2018, when it could begin to generate an annual revenue loss to the State General Fund. The OLS notes further that the bill could also yield a moderate revenue loss to county and local governments through special dedications applying to corporation business tax (CBT) payments by banks, financial institutions, and electric, natural gas, and telecommunications utilities.
- Any revenue loss would accrue in fiscal year 2018 and thereafter if corporate taxpayers had sufficient tax liabilities against which they could apply net operating losses (NOLs) sustained eight to twenty years prior but which the taxpayers could not offset against tax liabilities in the seven years immediately following the creation of the NOL.

BILL DESCRIPTION

Senate Bill No. 2130 of 2008 extends from seven to twenty years the number of tax years in which corporation business taxpayers can deduct from taxable income net operating losses (NOLs) sustained in previous tax years. The change applies to NOLs realized in tax years ending after June 30, 2009.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Division of Taxation in the Department of the Treasury projects that the bill would result in an indeterminate annual revenue loss to the State as of fiscal year 2018.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive that the bill could not affect State finances until fiscal year 2018, when it could first generate an annual revenue loss to the State General Fund. The OLS notes further that the bill could also yield a moderate revenue loss to county and local governments through special dedications applying to corporation business tax (CBT) payments by banks, financial institutions, and electric, natural gas, and telecommunications utilities. The office, however, cannot quantify the revenue loss, for it lacks data on a) the annual creation of NOLs, b) the annual use of NOLs, c) the cumulative total of outstanding NOLs, and d) the annual total of expiring NOLs. In general, a revenue loss would accrue in fiscal year 2018 and thereafter if corporate taxpayers had sufficient tax liabilities against which they could apply NOLs sustained eight to twenty years prior but which the taxpayers could not offset against tax liabilities in the seven years immediately following the creation of the NOL.

The bill could not produce a revenue loss until fiscal year 2018, as the increase in the NOL carryforward from seven to twenty years would only apply to NOLs realized in tax years ending after June 30, 2009. Accordingly, NOLs earned in fiscal year 2010 would be the first to be subject to the extension. Through fiscal year 2017 taxpayers would deduct these NOLs from their taxable income in accordance with the existing seven-year carryforward period—the bill would thus not impact revenue collections in those years. It would, on the contrary, affect NOLs that taxpayers could not apply against their taxable income during the seven years following the creation of an NOL. Such NOLs could cause a revenue loss as of the eighth year following their creation, or fiscal year 2018 for the first class of NOLs subject to the legislation, to the extent that corporations have tax liabilities in years eight through twenty after the creation of an NOL against which they could apply the NOL.

The OLS notes that 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 the increased lifespan of NOLs would lower these collections by unknown amounts as of fiscal year 2018.

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 the increased lifespan of NOLs would lower this amount as of fiscal year 2018. 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.

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.).

ASSEMBLY, No. 3124

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED SEPTEMBER 22, 2008

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblyman JOSEPH VAS

District 19 (Middlesex)

Assemblywoman NELLIE POU

District 35 (Bergen and Passaic)

Co-Sponsored by:

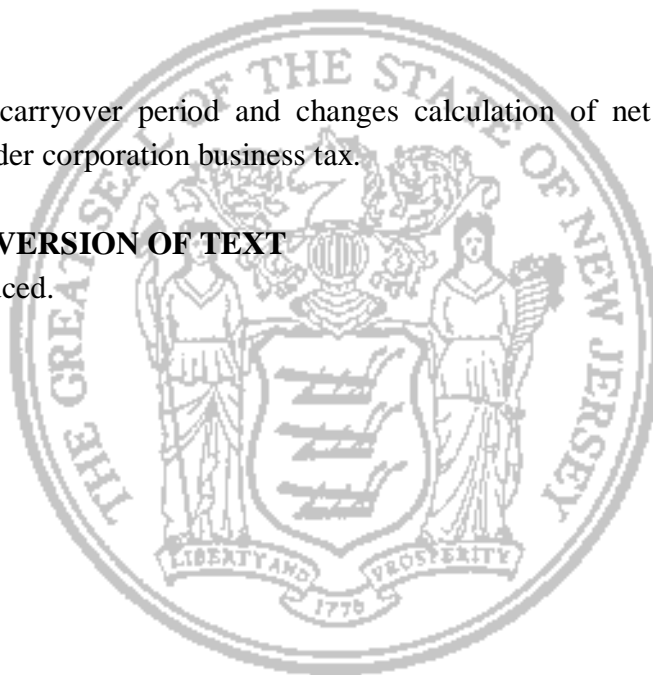
**Assemblyman Chiusano, Assemblywomen Karrow, McHose,
Assemblymen Malone, O'Scanlon, Assemblywoman Addiego and
Assemblyman Rudder**

SYNOPSIS

Increases carryover period and changes calculation of net operating loss deduction under corporation business tax.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/7/2008)

1 AN ACT increasing the carryover period and changing the
2 calculation of the net operating loss deduction under the
3 corporation business tax, amending P.L.1945, c.162.

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (J) Amounts deducted for federal tax purposes pursuant to
41 section 199 of the federal Internal Revenue Code of 1986, 26
42 U.S.C. s.199, except that this exclusion shall not apply to amounts
43 deducted pursuant to that section that are exclusively based upon
44 domestic production gross receipts of the taxpayer which are
45 derived only from any lease, rental, license, sale, exchange, or other
46 disposition of qualifying production property which the taxpayer
47 demonstrates to the satisfaction of the director was manufactured or
48 produced by the taxpayer in whole or in significant part within the

1 United States but not qualified production property that was grown
2 or extracted by the taxpayer. "Manufactured or produced" as used
3 in this paragraph shall be limited to performance of an operation or
4 series of operations the object of which is to place items of tangible
5 personal property in a form, composition, or character different
6 from that in which they were acquired. The change in form,
7 composition, or character shall be a substantial change, and result in
8 a transformation of property into a different or substantially more
9 usable product.

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

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

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

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

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

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

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

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

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

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

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

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

12 (B) Net operating loss carryover. A net operating loss for any
13 privilege period ending after June 30, 1984 shall be a net operating
14 loss carryover to each of the seven privilege periods following the
15 period of the loss and a net operating loss for any privilege period
16 ending after June 30, 2009 shall be a net operating loss carryover to
17 each of the twenty privilege periods following the period of the
18 loss. The entire amount of the net operating loss for any privilege
19 period (the "loss period") shall be carried to the earliest of the
20 privilege periods to which the loss may be carried. The portion of
21 the loss which shall be carried to each of the other privilege periods
22 shall be the excess, if any, of the amount of the loss over the sum of
23 the entire net income, computed without the exclusion[s] permitted
24 in paragraph[s] (4) [and (5)] of this subsection or the net operating
25 loss deduction provided by subparagraph (A) of this paragraph, for
26 each of the prior privilege periods to which the loss may be carried.

27 (C) Net operating loss. For purposes of this paragraph the term
28 "net operating loss" means the excess of the deductions over the
29 gross income used in computing entire net income without the net
30 operating loss deduction provided for in subparagraph (A) of this
31 paragraph and the exclusion[s] in paragraph[s] (4) [and (5)] of
32 this subsection.

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

42 (E) Notwithstanding the provisions of this paragraph (6) of
43 subsection (k) of this section to the contrary, for privilege periods
44 beginning during calendar year 2002 and calendar year 2003, no
45 deduction for any net operating loss carryover shall be allowed and
46 for privilege periods beginning during calendar year 2004 and
47 calendar year 2005, there shall be allowed as a deduction for the
48 privilege period so much of the net operating loss carryover as

1 reduces entire net income otherwise calculated by 50%. If and only
2 to the extent that any net operating loss carryover deduction is
3 disallowed by reason of this subparagraph (E), the date on which
4 the amount of the disallowed net operating loss carryover deduction
5 would otherwise expire shall be extended by a period equal to the
6 period for which application of the net operating loss was
7 disallowed by this subparagraph.

8 Provided, that this subparagraph (E) shall not restrict the
9 surrender or acquisition of corporation business tax benefit
10 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
11 7.42a) and shall not restrict the application of corporation business
12 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
13 (C.54:10A-4.2).

14 (7) The entire net income of gas, electric and gas and electric
15 public utilities that were subject to the provisions of P.L.1940, c.5
16 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
17 substituting the New Jersey depreciation allowance for federal tax
18 depreciation with respect to assets placed in service prior to January
19 1, 1998. For gas, electric, and gas and electric public utilities that
20 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
21 seq.) prior to 1998, the New Jersey depreciation allowance shall be
22 computed as follows: All depreciable assets placed in service prior
23 to January 1, 1998 shall be considered a single asset account. The
24 New Jersey tax basis of this depreciable asset account shall be an
25 amount equal to the carryover adjusted basis for federal income tax
26 purposes on December 31, 1997 of all depreciable assets in service
27 on December 31, 1997, increased by the excess, of the "net carrying
28 value," defined to be adjusted book basis of all assets and liabilities,
29 excluding deferred income taxes, recorded on the public utility's
30 books of account on December 31, 1997, over the carryover
31 adjusted basis for federal income tax purposes on December 31,
32 1997 of all assets and liabilities owned by the gas, electric, or gas
33 and electric public utility as of December 31, 1997. "Books of
34 account" for gas, gas and electric, and electric public utilities means
35 the uniform system of accounts as promulgated by the Federal
36 Energy Regulatory Commission and adopted by the Board of Public
37 Utilities. The following adjustments to entire net income shall be
38 made pursuant to this section:

39 (A) Depreciation for property placed in service prior to January
40 1, 1998 shall be adjusted as follows:

41 (i) Depreciation for federal income tax purposes shall be
42 disallowed in full.

43 (ii) A deduction shall be allowed for the New Jersey
44 depreciation allowance. The New Jersey depreciation allowance
45 shall be computed for the single asset account described above
46 based on the New Jersey tax basis as adjusted above as if all assets
47 in the single asset account were first placed in service on January 1,
48 1998. Depreciation shall be computed using the straight line

1 method over a thirty-year life. A full year's depreciation shall be
2 allowed in the initial tax year. No half-year convention shall apply.
3 The depreciable basis of the single account shall be reduced by the
4 adjusted federal tax basis of assets sold, retired, or otherwise
5 disposed of during any year on which gain or loss is recognized for
6 federal income tax purposes as described in subparagraph (B) of
7 this paragraph.

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

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

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

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

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

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

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

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

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

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

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

39 (m) "Financial business corporation" shall mean any corporate
40 enterprise which is (1) in substantial competition with the business
41 of national banks and which (2) employs moneyed capital with the
42 object of making profit by its use as money, through discounting
43 and negotiating promissory notes, drafts, bills of exchange and
44 other evidences of debt; buying and selling exchange; making of or
45 dealing in secured or unsecured loans and discounts; dealing in
46 securities and shares of corporate stock by purchasing and selling
47 such securities and stock without recourse, solely upon the order
48 and for the account of customers; or investing and reinvesting in

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

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

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

4 (p) "New Jersey S corporation" means a corporation that is an S
5 corporation; which has made a valid election pursuant to section 3
6 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
7 corporation continuously since the effective date of the valid
8 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
9 5.22).

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

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

25 (s) "Savings institution" means a state or federally chartered
26 building and loan association, savings and loan association, or
27 savings bank.

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

30 (cf: P.L.2005, c.127, s.1)

31

32 2. This act shall take effect immediately and shall apply to net
33 operating losses accruing for privilege periods ending after June 30,
34 2009.

35

36

37

STATEMENT

38

39 This bill revises the treatment of net operating losses under the
40 corporation business tax to support businesses and promote job
41 creation. Specifically, the bill extends from seven to twenty years
42 the number of tax years in which corporation business taxpayers can
43 deduct from taxable income net operating losses sustained in
44 previous tax years. The extension mirrors carryforward provisions
45 in the federal tax code and in tax codes of many other states,
46 notably of New York, Pennsylvania, Connecticut, and Delaware.
47 Carryforward provisions allow businesses to average their income

1 over a time period that more closely corresponds to their investment
2 horizon.

3 The bill also removes the existing requirement that businesses
4 must lower their operating loss carryforward by the amount they
5 deduct from “entire net income” for dividend payments that
6 businesses receive from their subsidiaries. This change lowers
7 businesses’ tax liabilities.

8 New Jersey’s economy has underperformed in recent years
9 relative to the rest of the nation. The excessive taxation of
10 businesses contributes critically to this malaise. The Tax
11 Foundation’s “2008 State Business Tax Climate Index,” for
12 example, accords New Jersey the second worst state business tax
13 climate and the tenth worst corporate income tax in the nation.
14 Even though the enactment of this legislation does not turn New
15 Jersey into the state with the business-friendliest system of taxation,
16 it does nonetheless make New Jersey more welcoming to businesses
17 and thus encourage them to invest and create employment in the
18 Garden State.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3124

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 6, 2008

The Assembly Budget Committee reports favorably Assembly Bill No. 3124, with committee amendments.

The bill, as amended, extends from seven to twenty years the number of tax years in which corporation business taxpayers can deduct from taxable income net operating losses sustained in previous tax years. The extension mirrors carryforward provisions in the federal tax code and in tax codes of many other states, notably of New York, Pennsylvania, Connecticut, and Delaware. Carryforward provisions allow businesses to average their income over a time period that more closely corresponds to their investment horizon.

As amended and reported by the committee, this bill is identical to Senate Bill No. 2130.

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the bill will not affect State finances until fiscal year 2018, when it may first generate an annual revenue loss to the State General Fund. The OLS cannot quantify the revenue loss, given a lack of data on net operating losses.

There will be no fiscal impact prior to fiscal year 2018 because the bill only applies to net operating losses created as of fiscal year 2010, and because the current seven-year carryforward period applies to the fiscal year 2010 net operating losses before the extension is first brought to bear on them in fiscal year 2018.

A revenue loss may accrue in fiscal year 2018 and thereafter if corporate taxpayers had tax liabilities against which they may apply net operating losses sustained eight to twenty years prior but which the taxpayers could not offset against tax liabilities in the seven years immediately following the creation of the net operating losses.

COMMITTEE AMENDMENTS:

The amendments delete a provision eliminating the current requirement that businesses lower their net operating loss carryforward by the amount they exclude from “entire net income” for dividend payments that businesses receive from their subsidiaries.

FISCAL NOTE
 [First Reprint]
ASSEMBLY, No. 3124
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: OCTOBER 17, 2008

SUMMARY

Synopsis: Increases carryover period of net operating loss deduction under corporation business tax.

Type of Impact: Annual Foregone State General Fund, County, and Municipal Revenue Starting in Fiscal Year 2018.

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

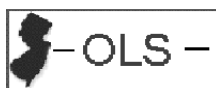
Executive Estimate

Fiscal Impact	<u>Fiscal Year 2009</u> through Fiscal Year 2017	<u>Fiscal Year 2018 and Thereafter</u>
State Revenue Loss	\$0	Indeterminate

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2009</u> through Fiscal Year 2017	<u>Fiscal Year 2018 and Thereafter</u>
State Revenue Loss	\$0	Indeterminate - See comments below
Local Revenue Loss	\$0	Indeterminate - See comments below

- The Office of Legislative Services (OLS) **concurs** with the Executive that the bill could not affect State finances until fiscal year 2018, when it could begin to generate an annual revenue loss to the State General Fund. The OLS notes further that the bill could also yield a moderate revenue loss to county and local governments through special dedications applying to corporation business tax (CBT) payments by banks, financial institutions, and electric, natural gas, and telecommunications utilities.
- Any revenue loss would accrue in fiscal year 2018 and thereafter if corporate taxpayers had sufficient tax liabilities against which they could apply net operating losses (NOLs) sustained eight to twenty years prior but which the taxpayers could not offset against tax liabilities in the seven years immediately following the creation of the NOL.



BILL DESCRIPTION

Assembly Bill No. 3124 (1R) of 2008 extends from seven to twenty years the number of tax years in which corporation business taxpayers can deduct from taxable income net operating losses (NOLs) sustained in previous tax years. The change applies to NOLs realized in tax years ending after June 30, 2009.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Division of Taxation in the Department of the Treasury projects that the bill would result in an indeterminate annual revenue loss to the State as of fiscal year 2018.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive that the bill could not affect State finances until fiscal year 2018, when it could first generate an annual revenue loss to the State General Fund. The OLS notes further that the bill could also yield a moderate revenue loss to county and local governments through special dedications applying to corporation business tax (CBT) payments by banks, financial institutions, and electric, natural gas, and telecommunications utilities. The office, however, cannot quantify the revenue loss, for it lacks data on a) the annual creation of NOLs, b) the annual use of NOLs, c) the cumulative total of outstanding NOLs, and d) the annual total of expiring NOLs. In general, a revenue loss would accrue in fiscal year 2018 and thereafter if corporate taxpayers had sufficient tax liabilities against which they could apply NOLs sustained eight to twenty years prior but which the taxpayers could not offset against tax liabilities in the seven years immediately following the creation of the NOL.

The bill could not produce a revenue loss until fiscal year 2018, as the increase in the NOL carryforward from seven to twenty years would only apply to NOLs realized in tax years ending after June 30, 2009. Accordingly, NOLs earned in fiscal year 2010 would be the first to be subject to the extension. Through fiscal year 2017 taxpayers would deduct these NOLs from their taxable income in accordance with the existing seven-year carryforward period—the bill would thus not impact revenue collections in those years. It would, on the contrary, affect NOLs that taxpayers could not apply against their taxable income during the seven years following the creation of an NOL. Such NOLs could cause a revenue loss as of the eighth year following their creation, or fiscal year 2018 for the first class of NOLs subject to the legislation, to the extent that corporations have tax liabilities in years eight through twenty after the creation of an NOL against which they could apply the NOL.

The OLS notes that 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 the increased lifespan of NOLs would lower these collections by unknown amounts as of fiscal year 2018.

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 the increased lifespan of NOLs would lower this amount as of fiscal year 2018. 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.

Section: Revenue, Finance and Appropriations

Analyst: Thomas Koenig
Senior Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

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

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Governor

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Immediate Release:

Date: November 24, 2008

For More Information:

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Governor Corzine Signs Legislation Aimed at Encouraging Business Growth

Extension of carry-forward provision of operating losses will encourage entrepreneurial firms in NJ

TRENTON – In a move aimed at helping the New Jersey business community through one of the worst national economic downturns in decades, Governor Jon S. Corzine today signed legislation to ease the tax burden on businesses by allowing them to carry operating losses forward for up to 20 years.

“Fast-growth businesses, high-tech businesses, businesses focusing on the industries of the future inevitably

...sustain significant losses in the initial years of start-up, losses that can take years to recoup," Governor Corzine said. "This legislation sends a clear message to those firms: you are welcome in New Jersey, and we will work with you so we can grow and prosper together."

The bill, S-2130, is a key part of the economic assistance and recovery plan Governor Corzine announced in October. The bill extends the net operating loss carry-forward from seven to 20 years, which means that New Jersey law will now mirror the federal tax code and the tax codes of many other states.

"Now more than ever, this bill is desperately needed," said Senator Richard J. Codey (D-Essex), sponsor of the bill. "With many businesses struggling and others facing still unforeseen losses, we need to do all we can to help them weather the storm. This bill will also help New Jersey stay competitive with many of our neighboring states that have similar provisions."

The change will allow businesses to more equitably balance profits with losses over 20 years instead of seven years when calculating corporate tax liabilities to the state, creating a more level playing field that is expected to encourage companies to invest in New Jersey. The longer period aims to help New Jersey's economy by making state law more consistent with the rest of the country, thus making the Garden State more competitive as a location for new businesses, relocations, and expansions.

"This is aimed squarely at the small businesses that are the lifeblood of this state," said Assemblyman Louis Greenwald (D-Camden), lead Assembly sponsor of the bill. "Small businesses need every chance to stay competitive, invest in their operations and retain precious jobs. This move is just what these tough times require and builds on other vital steps we've taken to ensure businesses that employ our residents remain strong."

Status of Economic Assistance and Recovery Plan Legislation

November 24, 2008

Immediate Relief (two bills)

- **Energy Relief, Legal Assistance, Food Assistance**

Status: Passed Assembly 67-10 on 11/17; Senate vote (final passage) set for 11/24.

- **Property Tax Relief for Seniors -- Expansion of Senior Freeze**

Status: Passed Assembly 77-1 on 11/17; Senate vote (final passage) set for 11/24.

Business Stimulus (three bills)

- **EDA Main Street Assistance program**

Status: Passed Assembly 61-17 on 10/27; amended in Senate; Senate vote set for 11/24; Requires Assembly vote on amended bill.

- **INVEST NJ Business Grant Program**

Status: Passed Assembly 55-23 on 11/17; Senate vote (final passage) set for 11/24.

- **Urban Enterprise Zone (UEZ) Enhancement**

Status: Passed Assembly 72-6 on 11/17; to be amended in Senate; Requires Assembly vote on amended bill.

Foreclosure Relief (two bills)

- **Mortgage Stabilization and Relief Act**

Status: Senate vote set for 11/24; Requires Assembly vote.

- **Foreclosure Prevention/Neighborhood Stabilization**

Status: Passed Assembly 47-26-5 on 11/17; Senate vote (final passage) set for 11/24.

Improving Business Climate (two bills)

- **Extension of Net Operating Loss Carry forward from 7 years to 20 years**

Status: Bill passed in Senate 38-0 on 10/23 and in Assembly 79-0 on 10/27; signed by Governor 11/24.

Eliminate throw out rule and regular place of business requirement under SB.

Status: Passed Assembly 79-0 on 10/27; amended in Senate; Assembly vote required on amended bill.

###

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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