

54:10A-4 to 9

LEGISLATIVE HISTORY CHECKLIST

NJSA 54:10A-4 tp 9

Laws of 1968 Chapter 250

Bill No. S837

Sponsor(s) Bateman & Forsythe

Date Introduced June 10, 1968

Committee: Assembly

Senate

Amended during passage Yes No

Date of passage: Assembly June 20, 1968

Senate June 17, 1968

Date of approval August 16, 1968

Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note Yes No

Veto message Yes No

Message on signing Yes No

Following were printed:

Reports Yes No

Hearings Yes No

This legislation recommended in :

974.90 N.J. Commn. on State Tax Policy.
T235 Twelfth report...Tax equity and tax relief: property,
1968a sales, corporation and death taxes. Trenton, May 1968.

10/4/76

DEPOSITORY COPY
Do Not Remove From Library

[OFFICIAL COPY REPRINT]

SENATE No. 837

STATE OF NEW JERSEY

INTRODUCED JUNE 10, 1968

By Senators BATEMAN AND FORSYTHE

(Without Reference)

AN ACT to amend the "Corporation Business Tax Act (1945)," approved April 13, 1945 (P. L. 1945, c. 162).

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

1 1. Section 4 of the act of which this act is amendatory is amended
2 to read as follows:

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

5 (a) "Commissioner" shall mean the Director of the Division of
6 Taxation of the State Department of the Treasury.

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

10 (c) "Corporation" shall mean any corporation, joint-stock com-
11 pany or association and any business conducted by a trustee or
12 trustees wherein interest or ownership is evidenced by a certificate
13 of interest or ownership or similar written instrument.

14 (d) "Net worth" shall mean the aggregate of the values dis-
15 closed by the books of the corporation for (1) issued and outstand-
16 ing capital stock, (2) paid-in or capital surplus, (3) earned surplus
17 and undivided profits, (4) surplus reserves which can reasonably be
18 expected to accrue to holders or owners of equitable shares, not
19 including reasonable valuation reserves, such as reserves for depre-
20 ciation or obsolescence or depletion, and (5) ***[50% of]*** the amount
21 of all indebtedness owing directly or indirectly to holders of 10% or
22 more of the aggregate outstanding shares of the taxpayer's capital
23 stock of all classes, as of the close of a calendar or fiscal year. *The*
24 *foregoing aggregate of values shall be reduced by 50% of the*
25 *amount disclosed by the books of the corporation for investment in*
26 *the capital stock of one or more subsidiaries, which investment is*
27 *defined as ownership (1) of at least 80% of the total combined vot-*

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

28 *ing power of all classes of stock of the subsidiary entitled to vote*
29 *and (2) of at least 80% of each class, if any, of nonvoting stock. In*
30 *the case of investment in an entity organized under the laws of a*
31 *foreign country, the foregoing requisite degree of ownership shall*
32 **[apply to exclude]* *effect a like reduction of* such investment*
33 *from net worth of the taxpayer, if the foreign entity is considered*
34 *a corporation for any purpose under the United States Federal*
35 *income tax laws, such as (but not by way of sole examples) for the*
36 *purpose of supplying deemed-paid foreign tax credits or for the*
37 *purpose of status as a controlled foreign corporation. *In calculat-*
37A *ing the net worth of a taxpayer entitled to reduction for investment*
37B *in subsidiaries, the amount of liabilities of the taxpayer shall be*
37C *reduced by such proportion of the liabilities as corresponds to the*
37D *ratio which the excluded portion of the subsidiary values bears to*
37E *the total assets of the taxpayer.**

38 **[However, if]** *If in the opinion of the commissioner, the corpora-*
39 *tion's books do not disclose fair valuations the commissioner may*
40 *make a reasonable determination of the net worth which, in his*
41 *opinion, would reflect the fair value of the assets, exclusive of sub-*
42 *sidary investments as defined aforesaid, carried on the books of*
43 *the corporation, in accordance with sound accounting principles,*
44 *and such determination shall be used as net worth for the purpose*
45 *of this act.*

46 (e) "Indebtedness owing directly or indirectly" shall include,
47 without limitation thereto, all indebtedness owing to any stock-
48 holder or shareholder and to members of his immediate family
49 where a stockholder and members of his immediate family together
50 or in the aggregate own 10% or more of the aggregate outstanding
51 shares of the taxpayer's capital stock of all classes.

52 (f) "Investment company" shall mean any corporation whose
53 business during the period covered by its report consisted, to the
54 extent of at least 90% thereof of holding, investing and reinvesting
55 in stocks, bonds, notes, mortgages, debentures, patents, patent
56 rights and other securities for its own account, but this shall not
57 include any corporation which: (1) is a merchant or a dealer of
58 stocks, bonds and other securities, regularly engaged in buying the
59 same and selling the same to customers; or (2) had less than 90%
60 of its average gross assets in New Jersey, at cost, invested in stocks,
61 bonds, debentures, mortgages, notes, patents, patent rights or other
62 securities or consisting of cash on deposit during the period covered
63 by its report; or (3) owned more than 10% of either the aggregate
64 outstanding shares of capital stock of all classes entitled to vote, or

65 of the aggregate outstanding shares of nonvoting capital stock, of
66 any other corporation, during the period covered by its report.

67 (g) "Regulated investment company" shall mean any corpora-
68 tion which for a period covered by its report, is registered and
69 regulated under the Investment Company Act of 1940 (54 Stat.
70 789), as amended.

71 (h) "Taxpayer" shall mean any corporation required to report
72 or to pay taxes, interest or penalties under this act.

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

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

79 (k) "Entire net income" shall mean total net income from all
80 sources, whether within or without the United States, and shall
81 include the gain derived from the employment of capital or labor,
82 or from both combined, as well as profit gained through a sale or
83 conversion of capital assets. For the purpose of this act, the amount
84 of a taxpayer's entire net income shall be deemed prima facie to be
85 equal in amount to the taxable income, before net operating loss
86 deduction and special deductions, which the taxpayer is required
87 to report to the United States Treasury Department for the pur-
88 pose of computing its Federal income tax; provided, however, that
89 in the determination of such entire net income,

90 (1) Entire net income shall ~~not include 50%~~ *exclude 100%* of
91 dividends which were included in computing such taxable income
92 for Federal income tax purposes~~;~~, *paid to the taxpayer by one*
93 *or more subsidiaries owned by the taxpayer to the extent of the*
94 *80% or more ownership of investment described in subsection (d)*
95 *of this section. With respect to other dividends, entire net income*
96 *shall not include 50% of the total included in computing such tax-*
97 *able income for Federal income tax purposes;*

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

100 (A) the amount of any specific exemption or credit allowed in any
101 law of the United States imposing any tax on or measured by the
102 income of corporations;

103 (B) any part of any income from dividends or interest on any
104 kind of stock, securities or indebtedness, except as provided in sub-
105 section (k) (1) of this section;

106 (C) taxes paid or accrued to the United States on or measured by
 107 profits or income, or the tax imposed by this act, *or any tax paid*
 108 *or accrued with respect to "subsidiary" dividends excluded from*
 109 *entire net income as provided in subsection (k) [1] (1)* of*
 109A *this section;*

110 (D) net operating losses sustained during any year or period
 111 other than that covered by the report;

112 (E) 90% of interest on indebtedness owing directly or indirectly
 113 to holders of 10% or more of the aggregate outstanding shares of
 114 the taxpayer's capital stock of all classes; except that such interest
 115 may, in any event, be deducted

116 (i) up to an amount not exceeding \$1,000.00,

117 (ii) in full to the extent that it relates to bonds or other
 118 evidences of indebtedness issued, with stock, pursuant to a
 119 bona fide plan of reorganization, to persons, who, prior to such
 120 reorganization, were bona fide creditors of the corporation or
 121 its predecessors, but were not stockholders or shareholders
 122 thereof;

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

1 2. Section 5 of the act of which this act is amendatory is amended
 2 to read as follows:

3 5. The franchise tax to be annually assessed to and paid by each
 4 taxpayer shall be the sum of the amount computed under subsection
 5 (a) [or (b)] hereof, [whichever is greater,] or, in the alternative to
 6 the [amounts] *amount* computed under subsection (a) [or (b)]
 7 hereof, the amount computed under subsection (f) hereof, and the
 8 amount computed under subsection (e) hereof* [;]* *.*

9 (a) that portion of its entire net worth as may be allocable to
 10 this State as provided in section 6 multiplied by the [rates set forth
 11 in subsection (b) of this section; or] *following rates: 2 mills per*
 12 *dollar on the first \$100,000,000.00 of allocated net worth; 4/10 of a*
 13 *mill per dollar on the second \$100,000,000.00; 3/10 of a mill per*
 14 *dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar on*
 15 *all amounts of allocated net worth in excess of \$300,000,000.00;*

16 (b) [that proportion of its entire net worth as the average value
 17 of its total assets in this State during the period covered by its
 18 report is to the average value of its assets everywhere during such
 19 period (for the purpose of which there shall be included as within

20 this State all intangible personal property of domestic corporations
 21 not having a business situs outside this State, and the entire amount
 22 of intangible personal property of foreign corporations as would
 23 have a business situs within this State for the purpose of a property
 24 tax) multiplied by the following rates: 2 mills per dollar on the
 25 first \$100,000,000.00 of allocated net worth; $\frac{1}{10}$ of a mill per dollar
 26 on the second \$100,000,000.00; $\frac{3}{10}$ of a mill per dollar on the third
 27 \$100,000,000.00; and $\frac{1}{10}$ of a mill per dollar on all amounts of
 28 allocated net worth in excess of \$300,000,000.00;] (*Deleted by*
 29 *amendment*)

30 (c) $3\frac{1}{4}\%$ of its entire net income or such portion thereof as may
 31 be allocable to this State as provided in section 6*; *provided,*
 31A *however that with respect to reports covering privilege periods or*
 31B *parts thereof ending after December 31, 1967, the rate shall be*
 31C *4 1/4%.**

32 (d) Provided, however, that the franchise tax to be annually
 33 assessed to and paid by any investment company or regulated in-
 34 vestment company which has elected to report as such and has filed
 35 its return in the form and within the time provided in this act and
 36 the rules and regulations promulgated in connection therewith,
 37 shall, in the case of an investment company, be measured by 25%
 38 of its entire net income and 25% of its entire net worth, and, in the
 39 case of a regulated investment company, by 4% of its entire net in-
 40 come and 15% of its entire net worth, at the rates hereinbefore set
 41 forth for the computation of tax on net income and net worth,
 42 respectively, but in no case less than \$250.00.

43 (e) The tax assessed to any taxpayer pursuant to [subsections
 44 (a) and (b)] *subsection (a)* of this section shall not be less than the
 45 greatest of (i) $\frac{1}{10}$ of a mill per dollar on the first \$100,000,000.00
 46 and $\frac{1}{10}$ of a mill per dollar on all amounts in excess of
 47 \$100,000,000.00 of ***[total assets]*** *the average of the taxpayer's*
 48 *real and tangible personal property within the State** allocated to
 49 this State in accordance with [subsection (b)] *paragraph (A)*
 50 *of section 6 hereof* [;]** *(in the case of a taxpayer which does not*
 51 *maintain a regular place of business outside this State other than*
 51A *a statutory office, the allocation shall be 100%);** or (ii) in the
 51B case of a domestic corporation, an amount measured by the
 51C number of shares which the taxpayer is authorized to issue as
 51D follows: where authorized capital stock does not exceed 5,000
 52 shares \$25.00; where the authorized capital stock is in excess of
 53 5,000 shares but does not exceed 10,000 shares \$55.00; and where the
 54 authorized capital stock exceeds 10,000 shares, for the first 10,000

55 shares \$55.00 and for each additional 10,000 shares or part thereof
 56 \$27.50, but not over \$100,000.00; or (iii) \$25.00 in the case of a
 57 domestic corporation, or \$50.00 in the case of a foreign corporation.

58 (f) In lieu of the portion of the tax based on net worth and to be
 59 computed under [subsections (a) and (b)] *subsection (a)* of this
 60 section, any taxpayer, the value of whose total assets everywhere,
 61 less reasonable reserves for depreciation, as of the close of the
 62 period covered by its report, amounts to less than \$150,000.00, may
 63 elect to pay the tax shown in the following table:

	If total assets are at least	But less than	The tax shall be	
			For Domestic Corporations	For Foreign Corporations
64	\$0 00	\$18,000 00	\$25 00	\$50 00
65	18,000 00	22,000 00	31 00	50 00
66	22,000 00	26,000 00	37 00	50 00
67	26,000 00	30,000 00	43 00	50 00
68	30,000 00	34,000 00	49 00	50 00
69	34,000 00	38,000 00	55 00	55 00
70	38,000 00	42,000 00	61 00	61 00
71	42,000 00	46,000 00	67 00	67 00
72	46,000 00	50,000 00	73 00	73 00
73	50,000 00	54,000 00	79 00	79 00
74	54,000 00	58,000 00	85 00	85 00
75	58,000 00	62,000 00	91 00	91 00
76	62,000 00	66,000 00	97 00	97 00
77	66,000 00	70,000 00	103 00	103 00
78	70,000 00	74,000 00	109 00	109 00
79	74,000 00	78,000 00	115 00	115 00
80	78,000 00	82,000 00	121 00	121 00
81	82,000 00	86,000 00	127 00	127 00
82	86,000 00	90,000 00	133 00	133 00
83	90,000 00	94,000 00	139 00	139 00
84	94,000 00	98,000 00	145 00	145 00
85	98,000 00	102,000 00	151 00	151 00
86	102,000 00	106,000 00	157 00	157 00
87	106,000 00	110,000 00	163 00	163 00
88	110,000 00	114,000 00	169 00	169 00
89	114,000 00	118,000 00	175 00	175 00
90	118,000 00	122,000 00	181 00	181 00
91	122,000 00	126,000 00	187 00	187 00
92	126,000 00	130,000 00	193 00	193 00
93	130,000 00	134,000 00	199 00	199 00
94	134,000 00	138,000 00	205 00	205 00

95	138,000 00	142,000 00	211 00	211 00
96	142,000 00	146,000 00	217 00	217 00
97	146,000 00	150,000 00	223 00	223 00

1 3. Section 6 of the act of which this act is amendatory is amended
2 to read as follows:

3 6. In the case of a taxpayer which maintains a regular place of
4 business outside this State other than a statutory office, the por-
5 tion of its entire net worth to be used as a measure of the tax
6 imposed by section 5(a) of this act, and the portion of its entire
7 net income to be used as a measure of the tax imposed by section
8 5(c) of this act, shall be determined by multiplying such entire
9 net worth and entire net income, respectively, by an allocation
10 factor which shall be the average of the fractions computed in
11 (A), (B) and (C) below, or of so many of them as may be ap-
12 plicable, that is:

13 (A) The average value of the taxpayer's real and tangible per-
14 sonal property within the State during the period covered by its
15 report divided by the average value of all the taxpayer's real and
16 tangible personal property wherever situated during such period;

17 (B) The receipts of the taxpayer, computed on the cash or ac-
18 crual basis according to the method of accounting used in the
19 computation of its net income for Federal tax purposes, arising
20 during such period from

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

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

28 (3) Deleted by amendment.

29 (4) services performed within the State,

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

32 (6) All other business receipts (*excluding dividends ex-*
33 *cluded from entire net income by subsection (k) (1) of section*
34 *4 hereof*) earned within the State, divided by the total amount
35 of the taxpayer's receipts, similarly computed, arising during
36 such period from all sales of its tangible personal property,
37 services, rentals, royalties and all other business receipts,
38 whether within or without the State;

39 (C) The total wages, salaries and other personal service com-

40 pension, similarly computed, during such period of officers and
 41 employees within the State divided by the total wages, salaries
 42 and other personal service compensation, similarly computed, dur-
 43 ing such period of all the taxpayer's officers and employees within
 44 and without the State.

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

1 4. Section 8 of the act of which this act is amendatory is amended
 2 to read as follows:

3 8. If it shall appear to the commissioner that an allocation factor
 4 determined pursuant to section 6 does not properly reflect the
 5 activity, business, receipts, capital, entire net worth or entire net
 6 income of a taxpayer reasonably attributable to the State, he may
 7 adjust it by:

8 (a) excluding one or more of the factors therein;

9 (b) including one or more other factors, such as expenses, pur-
 10 chases, contract values (minus subcontract values);

11 (c) excluding one or more assets in computing entire net worth;
 12 or

13 (d) excluding one or more assets in computing an allocation per-
 14 centage; or

15 (e) applying any other similar or different method calculated to
 16 effect a fair and proper allocation of the entire net income and the
 17 entire net worth reasonably attributable to the State.

18 **Nothing herein shall be construed to require or permit the com-
 19 missioner to adjust an allocation factor determined pursuant to
 20 section 5(b).]**

1 *5. Section 9 of the act of which this act is amendatory (C.
 2 54:10A-9) is amended to read as follows:

3 9. Any taxpayer which holds capital stock of a subsidiary during
 4 all or part of any year may, for the purposes of the tax imposed by
 5 this act, deduct from its net worth such proportion of the average
 6 value of such holdings less net liabilities (if any) to **[subsidiaries]**
 7 a subsidiary as corresponds to 50% of the ratio of the subsidiary's
 8 taxable net worth, for the same year under this act, to its entire net
 9 worth; provided, however, that if the subsidiary is subject to a
 10 franchise tax measured by gross receipts under any other law of
 11 this State, such deductible portion of such holdings shall **[be**
 12 **determined as]** correspond to 50% of the ratio of the subsidiary's
 13 business within the State to its business everywhere during its next
 14 preceding taxable year under such law. For the purpose of this

15 section, a subsidiary shall be deemed to be any corporation in which
16 a taxpayer is the **beneficial** owner of at least 80% of the total
17 combined voting power of all classes of stock entitled to vote and
18 of at least 80% **of the total number of shares of all other classes**
19 of stock except nonvoting stock which is limited and preferred as
20 to dividends] of each class, if any, of nonvoting stock.*

1 ***[5.]*** *6.* This act shall take effect immediately and shall be
2 applicable with respect to privilege periods **ending on and]***
3 *commencing** after December 31, 1968.

FISCAL NOTE TO
SENATE, No. 837

STATE OF NEW JERSEY

DATED: JUNE 20, 1968

Senate Bill No. 837 is an act that would amend the "Corporation Business Tax Act (1945)." It is designed to implement the recommendations contained in the twelfth report of the Commission on State Tax Policy with respect to the Corporation Business Tax Act, P. L. 1945, chapter 162.

Prior to Senate passage on June 17, 1968, Senate Bill No. 837 was amended to make it applicable only with respect to corporate privilege periods commencing after December 31, 1968. As a consequence, if enacted as amended, the State would suffer no revenue loss during fiscal 1968-69.

The Treasury Department estimates that enactment of Senate Bill No. 837 would result in a revenue loss to the State of about \$12.2 million in fiscal 1969-70. In subsequent years this, of course, would be a continuing loss.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

S-837

FROM: OFFICE OF THE GOVERNOR

FOR RELEASE: Friday,
August 16, 1968

Governor Richard J. Hughes today signed Senate Bill No. 837, which affects major revisions of the New Jersey Corporation Business Tax Law.

At a public signing attended by many of the leaders of commerce and industry in New Jersey, Governor Hughes approved a modernization of the so-called "allocation formula" whereby the income and net worth of multi-state corporations is divided and attributed to New Jersey. Senate Bill No. 837 will exclude all subsidiary capital from the base upon which New Jersey's corporations pay their income tax. In addition, only 50%, instead of the previously required 100%, of subsidiary capital will be included in the base upon which these corporations pay their net worth tax.

The Governor proclaimed these revisions as essential to the continuation of the equitable relationship between government and commerce in New Jersey. He said, "These adjustments derive from recommendations of the State Tax Policy Commission, which was established to insure that New Jersey is not left behind by other states whose tax policies have taken into account the multi-state nature of so much of today's big business. The division of income and net worth among several taxing jurisdictions, each with a legitimate interest in a business concern, presents one of the most complex and far-reaching questions which government must resolve. In New Jersey, by this change in our law, make crystal clear our determination to derive from industry and commerce no more than a full fair share of financial support."

The New Jersey Corporation Business Tax Law, first enacted in 1945, required that corporations doing business in New Jersey pay a dual tax to the state based upon both their net income and net worth. A careful formula was provided

for the computation of that portion of income and worth which was fairly attributable to operations here. With the growth of subsidiary operations and conglomerates, corporations headquartered in New Jersey with substantial business interests throughout the country and the world, found themselves doubly taxed on significant portions of non-New Jersey business.

The Governor commented, "New Jersey has offered to multi-state industry an attractive home base, from which both industry and the people of this state have long derived great benefit. To maintain that attraction we must be ever alert to changing commercial methods and incorporate them in our law."

The Governor further noted that Senate Bill No. 837 is in the best tradition of progressive legislation adopted in this state to assure an equitable tax structure to industries seeking a favorable location in which to locate and prosper. The spring of 1966 marked a high-water point in progressive legislation to assure New Jersey business fair treatment. It was at that time that the issues created by local taxation of personal property used in business were resolved by means of the so-called chapter 51 Tax Replacement Package. It was at that same time also that New Jersey acted to exempt industry from additional tax burdens on the specialized equipment necessary to protect the people from pollution of air and water.

In addition, the New Jersey State Economic Development Assistance Act and the creation of the Economic Policy Council in the Department of the Treasury both provided industry with comprehensive information needed for an intelligent determination of business location. The Area Redevelopment Law, too, provided assistance to industries locating in this state. The banking and commercial laws also received the helpful attention of 1966 legislature, which removed over-strict limitations upon the lending capacity of Savings and Loan Companies as well as Savings Banks and State Banks.

The Governor expressed his confidence that Senate Bill No. 837 carried on a carefully designed policy whereby the mutual obligations of government and business are recognized and fulfilled.

At the same time, the Governor emphasized that this measure, like the many preceding it, is primarily designed to protect the people of this State from unnecessary and damaging loss of industry at all levels. The Governor noted, "No corporation can continue its local operations where to do so imposes inequitable or unjust burdens upon its stockholders. The location of one's business is primarily a business decision and must be recognized as such. We in New Jersey hope to insure that such business decisions will favor our State."

The amendments to the Corporation Tax Law were under discussion for several years and have received the support of government and taxpayer groups as well as of industry.

The Governor expressed his thanks to all who assisted in the preparation and passage of this important law, particularly the prime sponsor, Senator Raymond Bateman.