

54:10A-5.40

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2009 **CHAPTER:** 72

NJSA: 54:10A-5.40 (Provides one year extension of 4% surcharge on corporation business tax liability and decouples corporation business tax from federal Internal Revenue Code deferral of certain discharge of indebtedness income)

BILL NO: A4105 (Substituted for S2014)

SPONSOR(S) Pou and Others

DATE INTRODUCED: June 11, 2009

COMMITTEE: **ASSEMBLY:** Budget

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 25, 2009

SENATE: June 25, 2009

DATE OF APPROVAL: June 29, 2009

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Original version of introduced bill enacted)

A4105

SPONSOR'S STATEMENT: (Begins on page 14 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

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

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes

S2014

SPONSOR'S STATEMENT: (Begins on page 14 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes

(continued)

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes 6-29-09

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Corzine signs, praises \$29B state budget," Courier-Post, 6-30-09, p.1B

"Tax amnesty nets \$725M, restores rebates," Asbury Park Press, 6-30-09, p.A3

"Gov. cites savings, GOP slams spending in \$29B budget," Asbury Park Press, 6-30-09, p.A1

"Corzine signs \$29B budget," Burlington County Times, 6-30-09

"Guv inks budget," The Trentonian, 6-30-09

"State budget reduces property tax rebates," Courier News, 6-30-09

"Corzine signs \$29B budget," The Record, 6-30-09, p. A04

"Jersey's \$29B budget takes effect," The Times, 6-30-09, p. A01

"Governor approves \$29B tab," The Star-Ledger, 6-30-09, p. 012

"Corzine signs \$28.9B state budget, while Republicans warn of future problems, The Press of Atlantic city, 6-30-09, p. A1

"'Proud' Corzine signs budget," The Philadelphia Inquirer, 6-30-09, p.B01

"Governor Corzine signs off on state budget cut to rebates, vice tax hikes," Gloucester County Times, 6-30-09

LAW/RWH

ASSEMBLY, No. 4105

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED JUNE 11, 2009

Sponsored by:

Assemblywoman NELLIE POU

District 35 (Bergen and Passaic)

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

Co-Sponsored by:

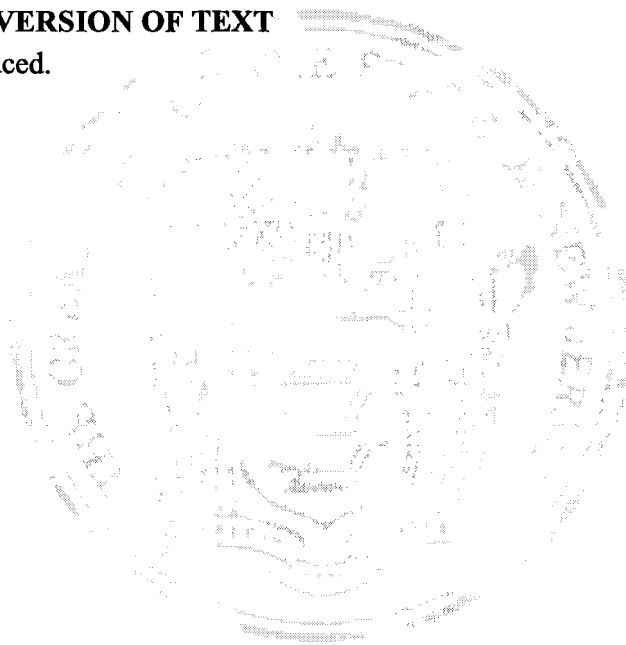
Senator Sweeney

SYNOPSIS

Provides one year extension of 4% surcharge on corporation business tax liability and decouples corporation business tax from federal Internal Revenue Code deferral of certain discharge of indebtedness income.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/26/2009)

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1 AN ACT concerning the corporation business tax, amending
2 P.L.2006, c.38 and P.L.1945, c.162.

3

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

6

7 1. Section 1 of P.L.2006, c.38 (C.54:10A-5.40) is amended to
8 read as follows:

9 1. In addition to the franchise tax paid by each taxpayer
10 determined pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
11 for privilege periods ending on or after July 1, 2006 but before July
12 1, **[2009]** 2010, each taxpayer shall be assessed and shall pay a
13 surtax equal to 4% of the amount of the liability determined
14 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) remaining
15 after application of any credits allowed against that liability other
16 than credits for installment payments, estimated payments made
17 with a request for an extension of time for filing a return, or
18 overpayments from prior privilege periods. The surtax imposed
19 under this section shall be due and payable in accordance with
20 section 15 of P.L.1945, c.162 (C.54:10A-15), and the surtax shall
21 be administered pursuant to the provisions of P.L.1945, c.162
22 (C.54:10A-1 et seq.). Notwithstanding the provisions of any other
23 law to the contrary, no credits shall be allowed against the surtax
24 liability computed under this section except for credits for
25 installment payments, estimated payments made with a request for
26 an extension of time for filing a return, or overpayments from prior
27 privilege periods.

28 (cf: P.L.2006, c.38, s.1)

29

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

47 (f) "Investment company" shall mean any corporation whose
48 business during the period covered by its report consisted, to the

1 extent of at least 90% thereof of holding, investing and reinvesting
2 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
3 and other securities for its own account, but this shall not include
4 any corporation which: (1) is a merchant or a dealer of stocks,
5 bonds and other securities, regularly engaged in buying the same
6 and selling the same to customers; or (2) had less than 90% of its
7 average gross assets in New Jersey, at cost, invested in stocks,
8 bonds, debentures, mortgages, notes, patents, patent rights or other
9 securities or consisting of cash on deposit during the period covered
10 by its report; or (3) is a banking corporation, a savings institution,
11 or a financial business corporation as defined in the Corporation
12 Business Tax Act.

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

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

21 "Fiscal year" shall mean an accounting period ending on any day
22 other than the last day of December on the basis of which the
23 taxpayer is required to report for federal income tax purposes.

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

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

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

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

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

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

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

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

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

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

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

38 (ii) For the periods set forth in subparagraph (F)(i) of this
39 subsection, any amount, except with respect to qualified mass
40 commuting vehicles as described in section 168(f)(8)(D)(v) of the
41 Internal Revenue Code as in effect immediately prior to January 1,
42 1984, which the taxpayer claimed as a deduction in computing
43 federal income tax pursuant to a qualified lease agreement under
44 paragraph (8) of that section.

45 The director shall promulgate rules and regulations necessary to
46 carry out the provisions of this section, which rules shall provide,
47 among others, the manner in which the remaining life of property
48 shall be reported.

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

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

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

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

43 A deduction shall also be permitted if the taxpayer establishes by
44 clear and convincing evidence, as determined by the director, that
45 the disallowance of a deduction is unreasonable, or the taxpayer and
46 the director agree in writing to the application or use of an
47 alternative method of apportionment under section 8 of P.L.1945,
48 c.162 (C.54:10A-8); nothing in this subsection shall be construed to

1 limit or negate the director's authority to otherwise enter into
2 agreements and compromises otherwise allowed by law.

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

14 (J) Amounts deducted for federal tax purposes pursuant to
15 section 199 of the federal Internal Revenue Code of 1986, 26
16 U.S.C. s.199, except that this exclusion shall not apply to amounts
17 deducted pursuant to that section that are exclusively based upon
18 domestic production gross receipts of the taxpayer which are
19 derived only from any lease, rental, license, sale, exchange, or other
20 disposition of qualifying production property which the taxpayer
21 demonstrates to the satisfaction of the director was manufactured or
22 produced by the taxpayer in whole or in significant part within the
23 United States but not qualified production property that was grown
24 or extracted by the taxpayer. "Manufactured or produced" as used
25 in this paragraph shall be limited to performance of an operation or
26 series of operations the object of which is to place items of tangible
27 personal property in a form, composition, or character different
28 from that in which they were acquired. The change in form,
29 composition, or character shall be a substantial change, and result in
30 a transformation of property into a different or substantially more
31 usable product.

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

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

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

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

47 (i) Making, arranging for, placing or carrying loans to foreign
48 persons, provided, however, that in the case of a foreign person

1 which is an individual, or which is a foreign branch of a domestic
2 corporation (other than a bank), or which is a foreign corporation or
3 foreign partnership which is controlled by one or more domestic
4 corporations (other than banks), domestic partnerships or resident
5 individuals, all the proceeds of the loan are for use outside of the
6 United States;

7 (ii) Making or placing deposits with foreign persons which are
8 banks or foreign branches of banks (including foreign subsidiaries)
9 or foreign branches of the taxpayers or with other international
10 banking facilities;

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

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

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

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

31 (6) (A) Net operating loss deduction. There shall be allowed as a
32 deduction for the privilege period the net operating loss carryover to
33 that period.

34 (B) Net operating loss carryover. A net operating loss for any
35 privilege period ending after June 30, 1984 shall be a net operating
36 loss carryover to each of the seven privilege periods following the
37 period of the loss and a net operating loss for any privilege period
38 ending after June 30, 2009 shall be a net operating loss carryover to
39 each of the twenty privilege periods following the period of the
40 loss. The entire amount of the net operating loss for any privilege
41 period (the "loss period") shall be carried to the earliest of the
42 privilege periods to which the loss may be carried. The portion of
43 the loss which shall be carried to each of the other privilege periods
44 shall be the excess, if any, of the amount of the loss over the sum of
45 the entire net income, computed without the exclusions permitted in
46 paragraphs (4) and (5) of this subsection or the net operating loss
47 deduction provided by subparagraph (A) of this paragraph, for each
48 of the prior privilege periods to which the loss may be carried.

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

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

16 (E) Notwithstanding the provisions of this paragraph (6) of
17 subsection (k) of this section to the contrary, for privilege periods
18 beginning during calendar year 2002 and calendar year 2003, no
19 deduction for any net operating loss carryover shall be allowed and
20 for privilege periods beginning during calendar year 2004 and
21 calendar year 2005, there shall be allowed as a deduction for the
22 privilege period so much of the net operating loss carryover as
23 reduces entire net income otherwise calculated by 50%. If and only
24 to the extent that any net operating loss carryover deduction is
25 disallowed by reason of this subparagraph (E), the date on which
26 the amount of the disallowed net operating loss carryover deduction
27 would otherwise expire shall be extended by a period equal to the
28 period for which application of the net operating loss was
29 disallowed by this subparagraph.

30 Provided, that this subparagraph (E) shall not restrict the
31 surrender or acquisition of corporation business tax benefit
32 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
33 7.42a) and shall not restrict the application of corporation business
34 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
35 (C.54:10A-4.2).

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

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

13 (A) Depreciation for property placed in service prior to January
14 1, 1998 shall be adjusted as follows:

15 (i) Depreciation for federal income tax purposes shall be
16 disallowed in full.

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

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

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

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

45 (9) Notwithstanding paragraph (1) of this subsection, entire net
46 income shall not include the income derived by a corporation
47 organized in a foreign country from the international operation of a
48 ship or ships, or from the international operation of aircraft, if such

1 income is exempt from federal taxation pursuant to section 883 of
2 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

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

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

31 (12) (A) Notwithstanding the provisions of subsection (k) of
32 section 168 of the federal Internal Revenue Code of 1986, 26
33 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
34 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
35 law, for property acquired after September 10, 2001, the
36 depreciation deduction otherwise allowed pursuant to section 167 of
37 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
38 be determined pursuant to the provisions of the federal Internal
39 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
40 December 31, 2001.

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

46 (13) (A) Notwithstanding the provisions of section 179 of the
47 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
48 property placed in service on or after January 1, 2004, the costs that

1 a taxpayer may otherwise elect to treat as an expense which is not
2 chargeable to a capital account shall be determined pursuant to the
3 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.
4 s.1 et seq.) in effect on December 31, 2002.

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

10 (14) Notwithstanding the provisions of subsection (i) of section
11 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
12 for privilege periods beginning after December 31, 2008 and before
13 January 1, 2011, entire net income shall include the amount of
14 discharge of indebtedness income excluded for federal income tax
15 purposes pursuant to subsection (i) of section 108 of the federal
16 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
17 periods beginning on or after January 1, 2014 and before January 1,
18 2019, entire net income shall exclude the amount of discharge of
19 indebtedness income included for federal income tax purposes,
20 pursuant to subsection (i) of section 108 of the federal Internal
21 Revenue Code of 1986 (26 U.S.C. s.108).

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

25 (m) "Financial business corporation" shall mean any corporate
26 enterprise which is (1) in substantial competition with the business
27 of national banks and which (2) employs moneyed capital with the
28 object of making profit by its use as money, through discounting
29 and negotiating promissory notes, drafts, bills of exchange and
30 other evidences of debt; buying and selling exchange; making of or
31 dealing in secured or unsecured loans and discounts; dealing in
32 securities and shares of corporate stock by purchasing and selling
33 such securities and stock without recourse, solely upon the order
34 and for the account of customers; or investing and reinvesting in
35 marketable obligations evidencing indebtedness of any person,
36 copartnership, association or corporation in the form of bonds,
37 notes or debentures commonly known as investment securities; or
38 dealing in or underwriting obligations of the United States, any
39 state or any political subdivision thereof, or of a corporate
40 instrumentality of any of them. This shall include, without
41 limitation of the foregoing, business commonly known as industrial
42 banks, dealers in commercial paper and acceptances, sales finance,
43 personal finance, small loan and mortgage financing businesses, as
44 well as any other enterprise employing moneyed capital coming
45 into competition with the business of national banks; provided that
46 the holding of bonds, notes, or other evidences of indebtedness by
47 individual persons not employed or engaged in the banking or
48 investment business and representing merely personal investments

1 not made in competition with the business of national banks, shall
2 not be deemed financial business. Nor shall "financial business"
3 include national banks, production credit associations organized
4 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
5 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
6 insurance companies duly authorized to transact business in this
7 State, security brokers or dealers or investment companies or
8 bankers not employing moneyed capital coming into competition
9 with the business of national banks, real estate investment trusts, or
10 any of the following entities organized under the laws of this State:
11 credit unions, savings banks, savings and loan and building and
12 loan associations, pawnbrokers, and State banks and trust
13 companies.

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

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

36 (p) "New Jersey S corporation" means a corporation that is an S
37 corporation; which has made a valid election pursuant to section 3
38 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
39 corporation continuously since the effective date of the valid
40 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
41 5.22).

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

44 (r) "Qualified investment partnership" means a partnership
45 under this act that has more than 10 members or partners with no
46 member or partner owning more than a 50% interest in the entity
47 and that derives at least 90% of its gross income from dividends,
48 interest, payments with respect to securities loans, and gains from

1 the sale or other disposition of stocks or securities or foreign
2 currencies or commodities or other similar income (including but
3 not limited to gains from swaps, options, futures or forward
4 contracts) derived with respect to its business of investing or
5 trading in those stocks, securities, currencies or commodities, but
6 "investment partnership" shall not include a "dealer in securities"
7 within the meaning of section 1236 of the federal Internal Revenue
8 Code of 1986, 26 U.S.C. s.1236.

9 (s) "Savings institution" means a state or federally chartered
10 building and loan association, savings and loan association, or
11 savings bank.

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

14 (cf: P.L.2008, c.102, s.1)

15
16 3. This act shall take effect immediately.

17
18 *SPONSOR'S* STATEMENT
19
20

21 This bill extends through corporation tax years ending before
22 July 1, 2010 the 4% surcharge on corporation business tax liability
23 that was originally imposed for corporation tax years ending in
24 State fiscal years 2007, 2008 and 2009.

25 This bill also decouples the corporation business tax from section
26 1231 of the federal American Recovery and Reinvestment Act of
27 2009, which added subsection (i) to section 108 of the Internal
28 Revenue Code, allowing businesses that repurchase debt in 2009
29 and 2010 to defer reporting discharge of indebtedness income as
30 taxable income until 2014 and then to spread this income over the
31 five tax years from 2014 through 2018. By decoupling New Jersey
32 from the new federal subsection (i), New Jersey corporate taxpayers
33 will not be able to defer this income but will be required to continue
34 reporting the income in the year it is earned. However, corporate
35 taxpayers will be able to exclude the income from New Jersey
36 taxable income in future years when it is required to be recognized
37 federally as taxable income under subsection (i), thus it will not be
38 taxed twice under the corporation business tax.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4105

STATE OF NEW JERSEY

DATED: JUNE 15, 2009

The Assembly Budget Committee reports favorably Assembly Bill No. 4105.

The bill extends through corporation tax years ending before July 1, 2010 the 4% surcharge on corporation business tax liability that was originally imposed for corporation tax years ending in State fiscal years 2007, 2008 and 2009.

This bill also decouples the corporation business tax from section 1231 of the federal American Recovery and Reinvestment Act of 2009 (ARRA), which added subsection (i) to section 108 of the federal Internal Revenue Code, allowing businesses that repurchase debt in 2009 and 2010 to defer reporting discharge of indebtedness income as taxable income until 2014 and then to spread this income over the five tax years from 2014 through 2018. By decoupling New Jersey from the new federal subsection (i), New Jersey corporate taxpayers will not be able to defer this income but will be required to continue reporting the income in the year it is earned. However, corporate taxpayers will be able to exclude the income from New Jersey taxable income in future years when it is required to be recognized federally as taxable income under subsection (i), thus it will not be taxed twice under the corporation business tax.

FISCAL IMPACT:

The fiscal note prepared by the Office of Legislative Services for this bill concurred with the Executive estimate that a one year extension of the 4.0 percent surtax is likely to generate \$80,000,000 in corporation business tax revenues in State fiscal year 2010. However, the fiscal note also indicated that there is a higher level of uncertainty regarding any estimates of the corporation business tax under current economic conditions.

Decoupling from section 1231 of ARRA is anticipated to avert a potential State revenue loss from corporations that repurchase certain kinds of debt in 2009 and 2010, generating what is usually taxable income from any decline in the value of that debt. Under a provision of ARRA, this taxable income is deferred to 2014, and, absent this bill, New Jersey's tax code would also allow a deferral. Decoupling from the federal law will prevent New Jersey corporate taxpayers from deferring this taxable income. A specific New Jersey value is

uncertain and depends on corporate repurchases of debt of unknown quantity and uncertain amounts, which are unknown because actual State specific tax and corporate debt data are not available. However, it may be noted that a report by the *Center on Budget and Policy Priorities* in May of 2009 indicated that the annual impact on New Jersey could range between approximately \$100 million and \$200 million in potential tax revenue reductions in Fiscal Years 2010 and 2011 if the corporation business tax is not decoupled from the federal internal revenue code in this regard. Enactment of this bill would avert a reduction in the CBT revenue estimates of an uncertain amount. The decoupling will, however, reduce CBT revenues in Fiscal Year 2014 and beyond by a comparable amount.

FISCAL NOTE
ASSEMBLY, No. 4105
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JUNE 24, 2009

SUMMARY

- Synopsis:** Provides one year extension of 4 percent surcharge on corporation business tax liability and decouples corporation business tax from federal Internal Revenue Code deferral of certain discharge of indebtedness income.
- Type of Impact:** Tax revenue increase to the General Fund.
- Agencies Affected:** Department of the Treasury.

Executive Estimate

Fiscal Impact	Fiscal Year 2010
State Revenue	\$80,000,000

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate of the potential revenue increase from this bill.
- The decoupling from section 1231 of the federal American Recovery and Reinvestment Act of 2009 (ARRA) is anticipated to avert a potential State revenue loss from corporations that repurchase certain kinds of debt in 2009 and 2010. However, a specific New Jersey value is uncertain and depends on corporate repurchases of debt of unknown quantity and uncertain amounts.

BILL DESCRIPTION

Assembly Bill No. 4105 of 2009 extends through corporation tax years ending before July 1, 2010 the 4 percent surcharge on corporation business tax liability that was originally imposed for corporation tax years ending in State fiscal years 2007, 2008 and 2009.

This bill also decouples the corporation business tax from section 1231 of the federal American Recovery and Reinvestment Act of 2009, which added subsection (i) to section 108 of the Internal Revenue Code, allowing businesses that repurchase debt in 2009 and 2010 to defer

reporting discharge of indebtedness income as taxable income until 2014 and then to spread this income over the five tax years from 2014 through 2018. By decoupling New Jersey from the new federal subsection (i), New Jersey corporate taxpayers will not be able to defer this income but will be required to continue reporting the income in the year it is earned. However, corporate taxpayers will be able to exclude the income from New Jersey taxable income in future years when it is required to be recognized federally as taxable income under subsection (i), thus it will not be taxed twice under the corporation business tax.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Treasurer has indicated in testimony before the Budget Committees of each House that the provisions included in this bill would increase State corporation business tax revenues by \$80,000,000 in Fiscal Year 2010. Decoupling from section 1231 of the federal American Recovery and Reinvestment Act of 2009 is expected to avert a potential State revenue loss.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) **concurs** with the Executive estimate of the potential revenue increase from this bill. A one year extension of the 4.0 percent surtax is approximately \$80.0 million relative to the approximately \$2.0 billion of estimated annual corporation business tax (CBT) revenues. The OLS notes that there is a higher level of uncertainty regarding any estimates of the CBT under current economic conditions. The CBT has been particularly volatile during the economic recession and financial crisis, resulting in a sharp revenue decline in excess of 20 percent in Fiscal Year 2008. Such economic volatility make accurate forecasting more problematic, even if the methodology is reasonable.

The decoupling from section 1231 of the federal American Recovery and Reinvestment Act of 2009 (ARRA) is anticipated to avert a potential State revenue loss from corporations that repurchase certain kinds of debt in 2009 and 2010, generating what is usually taxable income from any decline in the value of that debt. Under a provision of ARRA, this taxable income is deferred to 2014, and, absent this bill, New Jersey's tax code would also allow a deferral. Decoupling from the federal law will prevent New Jersey corporate taxpayers from deferring this taxable income. A specific New Jersey value is uncertain and depends on corporate repurchases of debt of unknown quantity and uncertain amounts, because actual State specific tax and corporate debt data are not available. However, a report by the *Center on Budget and Policy Priorities* in May of 2009 (<http://www.cbpp.org>) indicated that the annual impact on New Jersey could range between approximately \$100 million and \$200 million in potential tax revenue reductions in Fiscal Years 2010 and 2011, if the State tax code is not decoupled from the federal tax code in this regard. Enactment of this bill would avert a reduction in the CBT revenue estimates of an uncertain amount. The decoupling will, however, reduce CBT revenues in Fiscal Year 2014 and beyond by a comparable amount.

A4105

3

Section: Revenue, Finance and Appropriations

*Analyst: Martin Poethke
Lead 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.).

S2014 SWEENEY

14

1 currencies or commodities or other similar income (including but
2 not limited to gains from swaps, options, futures or forward
3 contracts) derived with respect to its business of investing or
4 trading in those stocks, securities, currencies or commodities, but
5 "investment partnership" shall not include a "dealer in securities"
6 within the meaning of section 1236 of the federal Internal Revenue
7 Code of 1986, 26 U.S.C.s.1236.

8 (s) "Savings institution" means a state or federally chartered
9 building and loan association, savings and loan association, or
10 savings bank.

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

13 (cf: P.L.2008, c.102, s.1)

14

15 3. This act shall take effect immediately.

16

17

18 SPONSOR'S STATEMENT

19

20 This bill extends through corporation tax years ending before
21 July 1, 2010 the 4% surcharge on corporation business tax liability
22 that was originally imposed for corporation tax years ending in
23 State fiscal years 2007, 2008 and 2009.

24 This bill also decouples the corporation business tax from section
25 1231 of the federal American Recovery and Reinvestment Act of
26 2009, which added subsection (i) to section 108 of the Internal
27 Revenue Code, allowing businesses that repurchase debt in 2009
28 and 2010 to defer reporting discharge of indebtedness income as
29 taxable income until 2014 and then to spread this income over the
30 five tax years from 2014 through 2018. By decoupling New Jersey
31 from the new federal subsection (i), New Jersey corporate taxpayers
32 will not be able to defer this income but will be required to continue
33 reporting the income in the year it is earned. However, corporate
34 taxpayers will be able to exclude the income from New Jersey
35 taxable income in future years when it is required to be recognized
36 federally as taxable income under subsection (i), thus it will not be
37 taxed twice under the corporation business tax.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2014

STATE OF NEW JERSEY

DATED: JUNE 15, 2009

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2014.

This bill extends through corporation tax years ending before July 1, 2010 the 4% surcharge on corporation business tax liability that was originally imposed for corporation tax years ending in State fiscal years 2007, 2008 and 2009.

This bill also decouples the corporation business tax from section 1231 of the federal American Recovery and Reinvestment Act of 2009 (ARRA), which added subsection (i) to section 108 of the federal Internal Revenue Code, allowing businesses that repurchase debt in 2009 and 2010 to defer reporting discharge of indebtedness income as taxable income until 2014 and then to spread this income over the five tax years from 2014 through 2018. By decoupling New Jersey from the new federal subsection (i), New Jersey corporate taxpayers will not be able to defer this income but will be required to continue reporting the income in the year it is earned. However, corporate taxpayers will be able to exclude the income from New Jersey taxable income in future years when it is required to be recognized federally as taxable income under subsection (i), thus it will not be taxed twice under the corporation business tax.

As reported by committee, this bill is identical to Assembly Bill No. 4105.

FISCAL IMPACT:

The fiscal note prepared by the Office of Legislative Services for this bill concurred with the Executive estimate that a one year extension of the 4.0 percent surtax is likely to generate \$80,000,000 in corporation business tax revenues in State fiscal year 2010. However, the fiscal note also indicated that there is a higher level of uncertainty regarding any estimates of the corporation business tax under current economic conditions.

Decoupling from section 1231 of ARRA is anticipated to avert a potential State revenue loss from corporations that repurchase certain kinds of debt in 2009 and 2010, generating what is usually taxable income from any decline in the value of that debt. Under a provision of ARRA, this taxable income is deferred to 2014, and, absent this bill, New Jersey's tax code would also allow a deferral. Decoupling from

the federal law will prevent New Jersey corporate taxpayers from deferring this taxable income. A specific New Jersey value is uncertain and depends on corporate repurchases of debt of unknown quantity and uncertain amounts, which are unknown because actual State specific tax and corporate debt data are not available. However, it may be noted that a report by the *Center on Budget and Policy Priorities* in May of 2009 indicated that the annual impact on New Jersey could range between approximately \$100 million and \$200 million in potential tax revenue reductions in Fiscal Years 2010 and 2011 if the corporation business tax is not decoupled from the federal internal revenue code in this regard. Enactment of this bill would avert a reduction in the CBT revenue estimates of an uncertain amount. The decoupling will, however, reduce CBT revenues in Fiscal Year 2014 and beyond by a comparable amount.

FISCAL NOTE
SENATE, No. 2014
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JUNE 22, 2009

SUMMARY

- Synopsis:** Provides one year extension of 4 percent surcharge on corporation business tax liability and decouples corporation business tax from federal Internal Revenue Code deferral of certain discharge of indebtedness income.
- Type of Impact:** Tax revenue increase to the General Fund.
- Agencies Affected:** Department of the Treasury.

Executive Estimate

Fiscal Impact	Fiscal Year 2010
State Revenue	\$80,000,000

- The Office of Legislative Services (OLS) concurs with the Executive estimate of the potential revenue increase from this bill.
- The decoupling from section 1231 of the federal American Recovery and Reinvestment Act of 2009 (ARRA) is anticipated to avert a potential State revenue loss from corporations that repurchase certain kinds of debt in 2009 and 2010. However, a specific New Jersey value is uncertain and depends on corporate repurchases of debt of unknown quantity and uncertain amounts.

BILL DESCRIPTION

Senate Bill No. 2014 of 2009 extends through corporation tax years ending before July 1, 2010 the 4 percent surcharge on corporation business tax liability that was originally imposed for corporation tax years ending in State fiscal years 2007, 2008 and 2009.

This bill also decouples the corporation business tax from section 1231 of the federal American Recovery and Reinvestment Act of 2009, which added subsection (i) to section 108 of the Internal Revenue Code, allowing businesses that repurchase debt in 2009 and 2010 to defer reporting discharge of indebtedness income as taxable income until 2014 and then to spread this income over the five tax years from 2014 through 2018. By decoupling New Jersey from the

new federal subsection (i), New Jersey corporate taxpayers will not be able to defer this income but will be required to continue reporting the income in the year it is earned. However, corporate taxpayers will be able to exclude the income from New Jersey taxable income in future years when it is required to be recognized federally as taxable income under subsection (i), thus it will not be taxed twice under the corporation business tax.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Treasurer has indicated in testimony before the Budget Committees of each House that the provisions included in this bill would increase State corporation business tax revenues by \$80,000,000 in Fiscal Year 2010. Decoupling from section 1231 of the federal American Recovery and Reinvestment Act of 2009 is expected to avert a potential State revenue loss.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) **concurs** with the Executive estimate of the potential revenue increase from this bill. A one year extension of the 4.0 percent surtax is approximately \$80.0 million relative to the approximately \$2.0 billion of estimated annual corporation business tax (CBT) revenues. The OLS notes that there is a higher level of uncertainty regarding any estimates of the CBT under current economic conditions. The CBT has been particularly volatile during the economic recession and financial crisis, resulting in a sharp revenue decline in excess of 20 percent in Fiscal Year 2008. Such economic volatility make accurate forecasting more problematic, even if the methodology is reasonable.

The decoupling from section 1231 of the federal American Recovery and Reinvestment Act of 2009 (ARRA) is anticipated to avert a potential State revenue loss from corporations that repurchase certain kinds of debt in 2009 and 2010, generating what is usually taxable income from any decline in the value of that debt. Under a provision of ARRA, this taxable income is deferred to 2014, and, absent this bill, New Jersey's tax code would also allow a deferral. Decoupling from the federal law will prevent New Jersey corporate taxpayers from deferring this taxable income. A specific New Jersey value is uncertain and depends on corporate repurchases of debt of unknown quantity and uncertain amounts, because actual State specific tax and corporate debt data are not available. However, a report by the *Center on Budget and Policy Priorities* in May of 2009 (<http://www.cbpp.org>) indicated that the annual impact on New Jersey could range between approximately \$100 million and \$200 million in potential tax revenue reductions in Fiscal Years 2010 and 2011, if the State tax code is not decoupled from the federal tax code in this regard. Enactment of this bill would avert a reduction in the CBT revenue estimates of an uncertain amount. The decoupling will, however, reduce CBT revenues in Fiscal Year 2014 and beyond by a comparable amount.

Section: Revenue, Finance and Appropriations

Analyst: Martin Poethke
Lead Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

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



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JON S. CORZINE
Governor

For Immediate Release:
Date: June 29, 2009

For More Information:
Robert Corrales

Phone: 609-777-2600

Governor Corzine Signs \$29 Billion State Budget That Reflects Ethic of Shared Responsibility

Amid deep national recession, FY2010 budget makes the right choices: It prioritizes education, health care and seniors at the same time it provides unprecedented relief from property taxes to all New Jerseyans and direct tax rebates to 1 million working families.

TRENTON – Governor Jon S. Corzine today signed legislation adopting a \$29 billion budget for FY2010 that is \$1.8 billion less than the first budget he signed four years ago.

"For over six decades, New Jersey Governors and Legislators have talked about the need to make state government leaner," Governor Corzine said. "But for over six decades, the size and cost have government have continued to grow – until now. The budget I signed is \$1.8 billion smaller than the first budget I signed in 2006 and is \$4 billion smaller than last year's budget, yet we have expanded my administration's unequalled investment in direct property tax relief for working families – \$7 billion in four years. We have proven that government can do more with less."

The bare-bones appropriations act (A-4100/S-2010) is an unprecedented reduction in the size of State government. Every department, agency and authority was ordered to make cuts. There were more than 850 line items eliminated or reduced – everything from \$300 million saved by renegotiating state worker union contracts to cutting up gas cards to consolidating office space and reducing the number of cars in the state motor pool.

Scarce resources presented tough choices, but the governor and Democratic lawmakers prioritized funding for education, health care and senior citizens. The budget also provides much-needed property tax relief for homeowners, including 1 million who will receive direct relief through rebate checks of as much as \$900 per household.

"Today, we can be proud of a budget that honors our commitment to our children, seniors, and the most vulnerable," Governor Corzine said. "It's a budget that protects the working-class taxpayer and one which asks a little more of those who can afford it. This budget reflects an ethic of shared responsibility."

The Governor thanked Democratic leaders in the Senate and the General Assembly for their efforts in holding public hearings and securing passage of the final spending plan.

"Everyone involved in crafting this year's budget should be commended for the level of civility and cooperation employed in a year that could have easily devolved into chaos," said Senate President Richard J. Codey (D-Essex). "Instead, what we have is a budget that is \$4 billion leaner, yet still provides vital services to our residents, and is being signed into law well before our deadline."

"We have always said that we would seek to provide as much property tax relief as possible, and this budget honors that commitment to put property taxpayers first," said Assembly Speaker Joseph J. Roberts, Jr. (D-Camden).

"Even with historic cuts, this budget focuses on our core mission as a state – educating our children, improving public health, keeping residents safe and providing vital property tax relief to middle-class families," said Assemblyman Louis Greenwald (D-Camden), chairman of the Assembly Budget Committee. "As other states continue to make unconscionable cuts to their residents' core values, we continue to strengthen ours."

More Information

[Ten Good Things in the FY2010 Budget](#)

[Video: What's in the FY2010 Budget?](#)

[FY2010 Budget Documents](#)

[Governor Recommends Restoration of Property Tax Relief](#)

The Governor earlier signed other budget related measures including:

- A-4101/S-2011 (Greenwald/Buono) – Makes FY 2009 supplemental appropriations totaling \$20,768,000 reduces FY 2009 appropriations by \$27,500,000 and amends and supplements various language provisions affecting appropriations in FY 2009
- A-4102/S-2015 (Watson Coleman/Buono) – Temporarily increases income tax rates for taxpayers with income exceeding \$400,000, temporarily adjusts property tax deduction for certain taxpayers with income exceeding \$150,000 and taxes New Jersey Lottery Prizes exceeding \$10,000
- A-4103/S-2012 (Diegnan/Codey) – Raises cigarette tax rate from \$2.575 to \$2.70 per pack and dedicates additional revenue to the Health Care Subsidy Fund
- A-4104/S-2013 (Wisniewski/Weinberg) – Increase tax rates on liquor and wines, vermouth, sparkling wines and hard cider and dedicates additional revenue to the Health Care Subsidy Fund
- A-4105/S-2014 (Pou, Evans/Sweeney) – Provides one year extension of 4% surcharge on corporation business tax liability and decouples corporation business tax from federal Internal Revenue Code deferral of certain discharge of indebtedness income
- A-4106/S-2018 (Green, Jasey/Sweeney) – Directs NJHMFA to transfer up to \$12 million in unencumbered reserves to the State for rental assistance program and makes appropriation
- A-4107/S-2017 (Quigley, Chivukula, Coutinho/Sweeney) – Directs EDA to transfer up to \$22 million in unencumbered reserves to qualifying capital investment grant component of InvestNJ Business Grant Program
- A-4108/S-2016 (Cryan, Coutinho/Sweeney) – Concerns taxation of certain lines of insurance and dedicates certain additional revenues to the Health Care Subsidy Fund
- S-2020/S-A-4109 (Codey/McKeon, Chivukula) – Provides for the allocation of the State's annual bond volume limits on certain bonds in accordance with the federal American Recovery and Reinvestment Act of 2009
- A-3973/S-2797 (McKeon, Gusciora/Beach, O'Toole) – Appropriates funds to DEP for clean water environmental infrastructure projects

Budget charts can be viewed on the New Jersey State Treasury web page,
<http://www.state.nj.us/treasury/omb/publications/10budget/index.shtml>

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