

54:10A-4

LEGISLATIVE HISTORY CHECKLIST
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(Corporations--deductibility of interest)

NJSA: 54:10A-4

LAWS OF: 1995 CHAPTER: 418

BILL NO: A2724

SPONSOR(S): Romano

DATE INTRODUCED: April 27, 1995

COMMITTEE: ASSEMBLY: Appropriations

SENATE: ---

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: December 18, 1995

SENATE: January 9, 1996

DATE OF APPROVAL: January 10, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: No

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

WRP:pp

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P.L.1995, CHAPTER 418, *approved January 10, 1996*
1995 Assembly No. 2724 (*First Reprint*)

1 **AN ACT** concerning the deductibility of interest owed to certain
2 stockholders of a corporation under the corporation business
3 tax, amending P.L.1945, c.162.

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

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

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

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

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

16 (c) "Corporation" shall mean any corporation, joint-stock
17 company or association and any business conducted by a trustee
18 or trustees wherein interest or ownership is evidenced by a
19 certificate of interest or ownership or similar written instrument.

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

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

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
Assembly AAP committee amendments adopted June 19, 1995.

1 examples) for the purpose of supplying deemed paid foreign tax
2 credits or for the purpose of status as a controlled foreign
3 corporation. In calculating the net worth of a taxpayer entitled
4 to reduction for investment in subsidiaries, the amount of
5 liabilities of the taxpayer shall be reduced by such proportion of
6 the liabilities as corresponds to the ratio which the excluded
7 portion of the subsidiary values bears to the total assets of the
8 taxpayer.

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

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

24 (e) "Indebtedness owing directly or indirectly" shall include,
25 without limitation thereto, all indebtedness owing to any
26 stockholder or shareholder and to members of his immediate
27 family where a stockholder and members of his immediate family
28 together or in the aggregate own 10% or more of the aggregate
29 outstanding shares of the taxpayer's capital stock of all classes.

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

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

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

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

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

1 (k) "Entire net income" shall mean total net income from all
2 sources, whether within or without the United States, and shall
3 include the gain derived from the employment of capital or labor,
4 or from both combined, as well as profit gained through a sale or
5 conversion of capital assets. For the purpose of this act, the
6 amount of a taxpayer's entire net income shall be deemed prima
7 facie to be equal in amount to the taxable income, before net
8 operating loss deduction and special deductions, which the
9 taxpayer is required to report to the United States Treasury
10 Department for the purpose of computing its federal income tax;
11 provided, however, that in the determination of such entire net
12 income,

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

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

23 (A) The amount of any specific exemption or credit allowed in
24 any law of the United States imposing any tax on or measured by
25 the income of corporations;

26 (B) Any part of any income from dividends or interest on any
27 kind of stock, securities or indebtedness, except as provided in
28 paragraph (5) of subsection (k) of this section;

29 (C) Taxes paid or accrued to the United States, a possession or
30 territory of the United States, a state, a political subdivision
31 thereof, or the District of Columbia on or measured by profits or
32 income, or business presence or business activity, or the tax
33 imposed by this act, or any tax paid or accrued with respect to
34 subsidiary dividends excluded from entire net income as provided
35 in paragraph (5) of subsection (k) of this section;

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

37 (E) ¹[90% of interest on indebtedness owing directly or
38 indirectly to holders of 10% or more of the aggregate outstanding
39 shares of the taxpayer's capital stock of all classes; except that
40 such interest may, in any event, be deducted:

41 (i) Up to an amount not exceeding \$1,000.00;

42 (ii) In full to the extent that it relates to bonds or other
43 evidences of indebtedness issued, with stock, pursuant to a bona
44 fide plan of reorganization, to persons, who, prior to such
45 reorganization, were bona fide creditors of the corporation or its
46 predecessors, but were not stockholders or shareholders thereof;

47 (iii) In full to the extent that it relates to debt of a financial
48 business corporation owed to an affiliate corporation; provided
49 that such interest rate does not exceed 2% over prime rate; the
50 prime rate to be determined by the Commissioner of Banking;

51 (iv) In full to the extent that it relates to financing of motor
52 [vehicle inventory] vehicles held for sale or lease to customers;
53 provided said indebtedness is owed to a taxpayer customarily and
54 routinely providing (his type of financing);

1 (v) In full to the extent it relates to debt of a banking
2 corporation to a bank holding company, of which the banking
3 corporation is a subsidiary, or to a debt of a banking corporation
4 to another banking corporation with respect to federal funds
5 transactions governed by section 23A of the Federal Reserve Act
6 (12 U.S.C. §371c.) when both banking corporations are
7 subsidiaries of the same bank holding company, as defined in 12
8 U.S.C. §1841.] (Deleted by amendment, P.L., c.) (now
9 pending before the Legislature as this bill)¹

10 (F) (i) The amount by which depreciation reported to the
11 United States Treasury Department for property placed in service
12 on and after January 1, 1981, but prior to taxpayer fiscal or
13 calendar accounting years beginning on and after the effective
14 date of P.L.1993, c.172, for purposes of computing federal
15 taxable income in accordance with section 168 of the Internal
16 Revenue Code in effect after December 31, 1980, exceeds the
17 amount of depreciation determined in accordance with the
18 Internal Revenue Code provisions in effect prior to January 1,
19 1981, but only with respect to a taxpayer's accounting period
20 ending after December 31, 1981; provided, however, that where a
21 taxpayer's accounting period begins in 1981 and ends in 1982, no
22 modification shall be required with respect to this paragraph (F)
23 for the report filed for such period with respect to property
24 placed in service during that part of the accounting period which
25 occurs in 1981.

26 (ii) For the periods set forth in subparagraph (F)(i) of this
27 subsection, any amount, except with respect to qualified mass
28 commuting vehicles as described in section 168(f)(8)(D)(v) of the
29 Internal Revenue Code as in effect immediately prior to January
30 1, 1984, which the taxpayer claimed as a deduction in computing
31 federal income tax pursuant to a qualified lease agreement under
32 paragraph (8) of that section.

33 The director shall promulgate rules and regulations necessary
34 to carry out the provisions of this section, which rules shall
35 provide, among others, the manner in which the remaining life of
36 property shall be reported.

37 (G) (1) The amount of any civil, civil administrative, or
38 criminal penalty or fine, including a penalty or fine under an
39 administrative consent order, assessed and collected for a
40 violation of a State or federal environmental law, an
41 administrative consent order, or an environmental ordinance or
42 resolution of a local governmental entity, and any interest earned
43 on the penalty or fine, and any economic benefits having accrued
44 to the violator as a result of a violation, which benefits are
45 assessed and recovered in a civil, civil administrative, or criminal
46 action, or pursuant to an administrative consent order. The
47 provisions of this paragraph shall not apply to a penalty or fine
48 assessed or collected for a violation of a State or federal
49 environmental law, or local environmental ordinance or
50 resolution, if the penalty or fine was for a violation that resulted
51 from fire, riot, sabotage, flood, storm event, natural cause, or
52 other act of God beyond the reasonable control of the violator, or
53 caused by an act or omission of a person who was outside the
54 reasonable control of the violator.

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

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

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

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

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

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

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

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

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

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

43 (5) Entire net income shall exclude 100% of dividends which
44 were included in computing such taxable income for federal
45 income tax purposes, paid to the taxpayer by one or more
46 subsidiaries owned by the taxpayer to the extent of the 80% or
47 more ownership of investment described in subsection (d) of this
48 section. With respect to other dividends, entire net income shall
49 not include 50% of the total included in computing such taxable
50 income for federal income tax purposes.

51 (6) (A) Net operating loss deduction. There shall be allowed as
52 a deduction for the taxable year the net operating loss carryover
53 to that year.

54 (B) Net operating loss carryover. A net operating loss for any

1 taxable year ending after June 30, 1984 shall be a net operating
2 loss carryover to each of the seven years following the year of
3 the loss. The entire amount of the net operating loss for any
4 taxable year (the "loss year") shall be carried to the earliest of
5 the taxable years to which the loss may be carried. The portion
6 of the loss which shall be carried to each of the other taxable
7 years shall be the excess, if any, of the amount of the loss over
8 the sum of the entire net income, computed without the
9 exclusions permitted in paragraphs (4) and (5) of this subsection
10 or the net operating loss deduction provided by subparagraph (A)
11 of this paragraph, for each of the prior taxable years to which the
12 loss may be carried.

13 (C) Net operating loss. For purposes of this paragraph the term
14 "net operating loss" means the excess of the deductions over the
15 gross income used in computing entire net income without the net
16 operating loss deduction provided for in subparagraph (A) of this
17 paragraph and the exclusions in paragraphs (4) and (5) of this
18 subsection.

19 (D) Change in ownership. Where there is a change in 50% or
20 more of the ownership of a corporation because of redemption or
21 sale of stock and the corporation changes the trade or business
22 giving rise to the loss, no net operating loss sustained before the
23 changes may be carried over to be deducted from income earned
24 after such changes. In addition where the facts support the
25 premise that the corporation was acquired under any
26 circumstances for the primary purpose of the use of its net
27 operating loss carryover, the director may disallow the carryover.

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

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

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

15 (n) "International banking facility" shall mean a set of asset
16 and liability accounts segregated on the books and records of a
17 depository institution, United States branch or agency of a
18 foreign bank, or an Edge or Agreement Corporation that includes
19 only international banking facility time deposits and international
20 banking facility extensions of credit as such terms are defined in
21 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
22 board of governors of the Federal Reserve System, 12 CFR Part
23 204, effective December 3, 1981. In the event that the United
24 States enacts a law, or the board of governors of the Federal
25 Reserve System adopts a regulation which amends the present
26 definition of international banking facility or of such facilities'
27 time deposits or extensions of credit, the Commissioner of
28 Banking shall forthwith adopt regulations defining such terms in
29 the same manner as such terms are set forth in the laws of the
30 United States or the regulations of the board of governors of the
31 Federal Reserve System. The regulations of the Commissioner of
32 Banking shall thereafter provide the applicable 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. §1361.

36 (p) "New Jersey S corporation" means a corporation that is an
37 S corporation; which has made a valid election pursuant to
38 section 3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been
39 an S corporation continuously since the effective date of the
40 valid election made pursuant to section 3 of P.L.1993, c.173
41 (C.54:10A-5.22).
42 (cf: P.L.1993, c.173, s.1)

43 2. This act shall take effect immediately and apply to fiscal or
44 calendar accounting years ending after its enactment.

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49 Eliminates the corporation business tax limitation on the
50 deduction of interest owed to certain related parties.

1 "financial business" include national banks, production credit
2 associations organized under the Farm Credit Act of 1933 or the
3 Farm Credit Act of 1971, Pub.L. 92-181 (12 U.S.C. § 2091 et
4 seq.), stock and mutual insurance companies duly authorized to
5 transact business in this State, security brokers or dealers or
6 investment companies or bankers not employing moneyed capital
7 coming into competition with the business of national banks, real
8 estate investment trusts, or any of the following entities
9 organized under the laws of this State: credit unions, savings
10 banks, savings and loan and building and loan associations,
11 pawnbrokers, and State banks and trust companies.

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

30 (o) "S corporation" means a corporation included in the
31 definition of an "S corporation" pursuant to section 1361 of the
32 federal Internal Revenue Code of 1986, 26 U.S.C. §1361.

33 (p) "New Jersey S corporation" means a corporation that is an
34 S corporation; which has made a valid election pursuant to
35 section 3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been
36 an S corporation continuously since the effective date of the
37 valid election made pursuant to section 3 of P.L.1993, c.173
38 (C.54:10A-5.22).
39 (cf: P.L.1993, c.173, s.1)

40 2. This act shall take effect immediately and apply to fiscal or
41 calendar accounting years ending after its enactment.

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44 SPONSOR'S STATEMENT

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46 This bill allows a taxpayer under the corporation business tax
47 to deduct as a business expense all of the interest it pays for
48 financing motor vehicles held for sale or lease. The corporation
49 business tax generally disallows the deduction of 90% of the
50 interest owed to holders of 10% or more of the capital of a
51 corporation. However, there are currently exceptions to allow
52 the deduction of 100% of the interest owed by a financial
53 corporation to an affiliate financial corporation, by a subsidiary
54 banking corporation making a federal funds transaction with its

A2724

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1 holding company or another subsidiary, and a motor vehicle
2 dealer financing sales inventory with a taxpayer that routinely
3 provides that type of financing. This bill expands the exemption
4 for taxpayers financing motor vehicles to allow the full deduction
5 whether the vehicles were for sale or lease and whether or not
6 the creditor routinely provided that type of financing.

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11 Allows deduction of 100% of interest on motor vehicle financing
12 owed to owner of 10% or more of corporate taxpayer under the
13 corporation business tax.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2724

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 1995

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2724, with committee amendments.

Assembly Bill No. 2724, as amended, allows a corporate taxpayer under the corporation business tax to deduct 100 percent of the interest owed directly or indirectly to a holder of 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

The corporation business tax currently disallows the deduction of 90% of the interest owed to holders of 10% or more of the capital of a corporation. However, there are currently statutory exceptions to allow the deduction of 100% of the interest owed by specific corporations involved in specific financing transactions with subsidiaries and several judicial decisions narrowing the application of the disallowance.

As amended, this bill is identical to Senate Bill No. 1924 (1R).

FISCAL IMPACT:

The Department of Treasury has reported that judicial decisions have make it easy to plan around the current provision of law that this bill would eliminate. Therefore, the provision being eliminated is no longer a significant source of revenue for the State and "merely represents a trap for the unwary taxpayer," according to the department.

COMMITTEE AMENDMENTS:

The committee amendments eliminate that portion of the corporation business tax which limits the deduction of interest owed by the corporation-taxpayer to certain parties related to the corporation.

The original version of the bill would have allowed a corporate taxpayer under the corporation business tax to deduct as a business expense all of the interest paid to owners of the corporate taxpayer for financing motor vehicles held for sale or lease.

LEGISLATIVE FISCAL ESTIMATE TO
ASSEMBLY, No. 2724

STATE OF NEW JERSEY

DATED: July 3, 1995

Assembly Bill No. 2724 of 1995 allows a corporate taxpayer under the corporation business tax to deduct as a business expense all of the interest it pays to owners of the corporate taxpayer for financing motor vehicles held for sale or lease.

The corporation business tax generally disallows the deduction of 90 percent of the interest owed to holders of 10 percent or more of the capital of a corporation. However, there is currently an exception that allows the deduction of 100 percent of the interest owed by a motor vehicle dealer financing sales inventory with a taxpayer that routinely provides that type of financing. The bill expands that exemption to allow the full deduction whether the vehicles were for sale or for lease and whether or not the creditor taxpayer routinely provided that type of financing to the debtor taxpayer.

No information was provided by the Office of Management and Budget on the fiscal impact of this bill, and no data are available to the Office of Legislative Services (OLS) on the annual amount of interest deductions limited by current law, or the amounts of interest that would become deductible pursuant to the bill. OLS notes, however, the recent case of Rollins Leasing v. Dir. of Tax., 279 N.J. Super 540 (App. Div. 1994), concerning the deductibility of interest owed by a subsidiary to its owner for financing on motor vehicles held for lease. The court held that the owner-creditor corporation could assign the debt to an unrelated third party and convert its position to that of guarantor of the debt. Because the subsidiary owed the debt to an unrelated third party, the interest was held to be fully deductible. Because the large corporations most affected by the limitation are also the corporations in the best position to structure a debt transaction like that in Rollins Leasing, the revenue impact of the statutory exemption under the bill may be minimal.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c. 67.