

54:10A-4, 54:10A-6

LEGISLATIVE HISTORY CHECKLIST  
(Corporation Business  
Tax Act--amends--uncouple  
deductions from Federal Act)

NJSA 54:10A-4, 54:10A-6

LAWS 1982

CHAPTER 50

Bill No. A1475

Sponsor(s) Gormley

Date Introduced May 24, 1982

Committee: Assembly

Senate Revenue, Finance & Appropriations

Amended during passage Yes ~~XXX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly May 24, 1982

Senate June 17, 1982

Date of approval June 30, 1982

Following statements are attached if available:

Sponsor statement Yes ~~XXX~~ (Below)

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note ~~XXX~~ No

Veto Message ~~XXX~~ No

Message on signing ~~XXX~~ No

Following were printed:

Reports ~~XXX~~ No

Hearings ~~XXX~~ No

Sponsor's statement:

New Jersey deductions for depreciation would be uncoupled from federal depreciation allowances based upon the Accelerated Cost Recovery System (ACRS) beginning with tax years commencing in 1982.

Internal Revenue Code, Section 168, as mentioned in act--attached

6/22/81

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ASSEMBLY, No. 1475

STATE OF NEW JERSEY

INTRODUCED MAY 24, 1982

By Assemblyman GORMLEY

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

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

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

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

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

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

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

14 (d) "Net worth" shall mean the aggregate of the values dis-  
15 closed by the books of the corporation for (1) issued and outstand-  
16 ing capital stock, (2) paid-in or capital surplus, (3) earned surplus  
17 and undivided profits, (4) surplus reserves which can reasonably  
18 be expected to accrue to holders or owners of equitable shares, not  
19 including reasonable valuation reserves, such as reserves for de-  
20 preciation or obsolescence or depletion, and (5) the amount of all  
21 indebtedness owing directly or indirectly to holders of 10% or more  
22 of the aggregate outstanding shares of the taxpayer's capital stock

**Matter printed in italics thus is new matter.**

**Matter enclosed in asterisks or stars has been adopted as follows:**

**\*—Senate committee amendments adopted June 3, 1982.**

23 of all classes, as of the close of a calendar or fiscal year, other than  
24 indebtedness which is a result of a bona fide financing of motor  
25 vehicle inventory held for sale to customers while financing is pro-  
26 vided by a taxpayer customarily and routinely providing for this  
27 type of financing. *Notwithstanding the foregoing, net worth shall*  
28 *not include any deduction for the amount of the excess depreciation*  
29 *described in paragraph (2) (F) of subsection (k) of this section.*  
30 In the case of financial business corporations which are funded  
31 through debt from affiliated corporations, the debt to the affiliated  
32 corporations is not to be considered as "net worth" and in the case  
33 of banking corporations which are affiliates of bank holding compa-  
34 nies, as defined in 12 U. S. C. § 1841, and which are funded through  
35 debt from such bank holding companies, the debt to those bank hold-  
36 ing companies from its banking corporation affiliates is not to be  
37 considered as "net worth." The foregoing aggregate of values shall  
38 be reduced by 50% of the amount disclosed by the books of the  
39 corporation for investment in the capital stock of one or more sub-  
40 sidiaries, which investment is defined as ownership (1) of at least  
41 80% of the total combined voting power of all classes of stock of the  
42 subsidiary entitled to vote and (2) of at least 80% of the total num-  
43 ber of shares of all other classes of stock except nonvoting stock  
44 which is limited and preferred as to dividends. In the case of invest-  
45 ment in an entity organized under the laws of a foreign country, the  
46 foregoing requisite degree of ownership shall effect a like reduction  
47 of such investment from net worth of the taxpayer, if the foreign  
48 entity is considered a corporation for any purpose under the United  
49 States federal income tax laws, such as (but not by way of sole  
50 examples) for the purpose of supplying deemed-paid foreign tax  
51 credits or for the purpose of status as a controlled foreign corpo-  
52 ration. In calculating the net worth of a taxpayer entitled to reduc-  
53 tion for investment in subsidiaries, the amount of liabilities of the  
54 taxpayer shall be reduced by such proportion of the liabilities as  
55 corresponds to the ratio which the excluded portion of the sub-  
56 sidiary values bears to the total assets of the taxpayer.

57 If in the opinion of the commissioner, the corporation's books  
58 do not disclose fair valuations the commissioner may make a rea-  
59 sonable determination of the net worth which, in his opinion, would  
60 reflect the fair value of the assets, exclusive of subsidiary invest-  
61 ments as defined aforesaid, carried on the books of the corporation,  
62 in accordance with sound accounting principles, and such determi-  
63 nation shall be used as net worth for the purpose of this act.

64 (e) "Indebtedness owing directly or indirectly" shall include,  
65 without limitation thereto, all indebtedness owing to any stock-

66 holder or shareholder and to members of his immediate family  
67 where a stockholder and members of his immediate family to-  
68 gether or in the aggregate own 10% or more of the aggregate  
69 outstanding shares of the taxpayer's capital stock of all classes.

70 (f) "Investment company" shall mean any corporation whose  
71 business during the period covered by its report consisted, to the  
72 extent of at least 90% thereof of holding, investing and reinvesting  
73 in stocks, bonds, notes, mortgages, debentures, patents, patent  
74 rights and other securities for its own account, but this shall not  
75 include any corporation which: (1) is a merchant or a dealer of  
76 stocks, bonds and other securities, regularly engaged in buying the  
77 same and selling the same to customers; or (2) had less than 90%  
78 of its average gross assets in New Jersey, at cost, invested in  
79 stocks, bonds, debentures, mortgages, notes, patents, patent rights  
80 or other securities or consisting of cash on deposit during the period  
81 covered by its report or (3) is a banking corporation or a financial  
82 business corporation as defined in the Corporation Business Tax  
83 Act.

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

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

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

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

96 (k) "Entire net income" shall mean total net income from all  
97 sources, whether within or without the United States, and shall  
98 include the gain derived from the employment of capital or labor,  
99 or from both combined, as well as profit gained through a sale or  
100 conversion of capital assets. For the purpose of this act, the  
101 amount of a taxpayer's entire net income shall be deemed prima  
102 facie to be equal in amount to the taxable income, before net op-  
103 erating loss deduction and special deductions, which the taxpayer  
104 is required to report to the United States Treasury Department  
105 for the purpose of computing its federal income tax; provided,  
106 however, that in the determination of such entire net income,

107 (1) Entire net income shall exclude 100% of dividends which  
108 were included in computing such taxable income for federal income

109 tax purposes, paid to the taxpayer by one or more subsidiaries  
110 owned by the taxpayer to the extent of the 80% or more owner-  
111 ship of investment described in subsection (d) of this section. With  
112 respect to other dividends, entire net income shall not include 50%  
113 of the total included in computing such taxable income for federal  
114 income tax purposes. *\*Entire net income shall exclude for the*  
114A *periods set forth in paragraph (2) (F) (i) of this subsection, any*  
114B *amount, except with respect to property described in section*  
114C *168 (f) (8) (D) (iii) of the Internal Revenue Code, which is*  
114D *included in a taxpayer's federal taxable income solely as a result*  
114E *of an election made pursuant to the provisions of paragraph (8)*  
114F *of that section.\**

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

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

120 (B) Any part of any income from dividends or interest on any  
121 kind of stock, securities or indebtedness, except as provided in  
122 subsection (k) (1) of this section;

123 (C) Taxes paid or accrued to the United States on or measured  
124 by profits or income, or the tax imposed by this act, or any tax  
125 paid or accrued with respect to subsidiary dividends excluded from  
126 entire net income as provided in subsection (k) (1) of this section;

127 (D) Net operating losses sustained during any year or period  
128 other than that covered by the report;

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

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

134 (ii) In full to the extent that it relates to bonds or other  
135 evidences of indebtedness issued, with stock, pursuant to a  
136 bona fide plan of reorganization, to persons, who, prior to  
137 such reorganization, were bona fide creditors of the corpora-  
138 tion or its predecessors, but were not stockholders or share-  
139 holders thereof;

140 (iii) In full to the extent that it relates to debt of a financial  
141 business corporation owed to an affiliate corporation; pro-  
142 vided that such interest rate does not exceed 2% over prime  
143 rate; the prime rate to be determined by the Commissioner of  
144 Banking;

145 (iv) In full to the extent that it relates to financing of motor  
146 vehicle inventory held for sale to customers providing said  
147 indebtedness is owed to a taxpayer customarily and routinely  
148 providing this type of financing;

149 (v) In full to the extent it relates to debt of a banking cor-  
150 poration to a bank holding company, as defined in 12 U. S. C.  
151 § 1841, of which the banking corporation is a subsidiary.

152 (F) *\*(i)\* The amount by which depreciation reported to the*  
153 *United States Treasury Department for property placed in service*  
154 *on and after January 1, 1981, for purposes of computing federal*  
155 *taxable income in accordance with section 168 of the Internal*  
156 *Revenue Code in effect after December 31, 1980, exceeds the amount*  
157 *of depreciation determined in accordance with the Internal Revenue*  
158 *Code provisions in effect prior to January 1, 1981, but only with*  
159 *respect to a taxpayer's accounting period ending after December*  
160 *31, 1981, provided, however, that where a taxpayer's accounting*  
161 *period begins in 1981 and ends in 1982, no modification shall be*  
162 *required with respect to this paragraph (F) for the report filed for*  
163 *such period with respect to property placed in service during that*  
164 *part of the accounting period which occurs in 1981.*

164A *\*(ii) For the periods set forth in subparagraph (F) (i) of this*  
164B *subsection, any amount, except with respect to property described*  
164C *in section 168 (f) (8) (D) (iii) of the Internal Revenue Code, which*  
164D *the taxpayer claimed as a deduction in computing federal income*  
164E *tax pursuant to a qualified lease agreement under paragraph (8)*  
164F *of that section.\**

165 *The director shall promulgate rules and regulations necessary to*  
166 *carry out the provisions of this section which rules shall provide,*  
167 *among others, the manner in which the remaining life of property*  
168 *shall be reported.*

169 (3) The commissioner may, whenever necessary to properly  
170 reflect the entire net income of any taxpayer, determine the year or  
171 period in which any item of income or deduction shall be included,  
172 without being limited to the method of accounting employed by  
173 the taxpayer.

174 (1) "Real estate investment trust" shall mean any unincorpo-  
175 rated trust or unincorporated association qualifying and electing  
176 to be taxed as a real estate investment trust under federal law.

177 (m) "Financial business corporation" shall mean any corporate  
178 enterprise which is (1) in substantial competition with the business  
179 of national banks and which (2) employs moneyed capital with the  
180 object of making profit by its use as money, through discounting and  
181 negotiating promissory notes, drafts, bills of exchange and other

182 evidences of debt; buying and selling exchange; making of or deal-  
183 ing in secured or unsecured loans and discounts; dealing in securi-  
184 ties and shares of corporate stock by purchasing and selling such  
185 securities and stock without recourse, solely upon the order and for  
186 the account of customers; or investing and reinvesting in market-  
187 able obligations evidencing indebtedness of any person, copartner-  
188 ship, association or corporation in the form of bonds, notes or de-  
189 bentures commonly known as investment securities; or dealing in or  
190 underwriting obligations of the United States, any state or any  
191 political subdivision thereof, or of a corporate instrumentality of  
192 any of them. This shall include, without limitation of the foregoing  
193 business commonly known as industrial banks, dealers in commer-  
194 cial paper and acceptances, sales finance, personal finance, small  
195 loan and mortgage financing businesses, as well as any other enter-  
196 prise employing moneyed capital coming into competition with the  
197 business of national banks; provided, that the holding of bonds,  
198 notes, or other evidences of indebtedness by individual persons not  
199 employed or engaged in the banking or investment business and  
200 representing merely personal investments not made in competition  
201 with the business of national banks, shall not be deemed financial  
202 business. Nor shall "financial business" include national banks,  
203 production credit associations organized under the Farm Credit  
204 Act of 1933, stock and mutual insurance companies duly autho-  
205 rized to transact business in this State, security brokers or dealers  
206 or investment companies or bankers not employing moneyed capital  
207 coming into competition with the business of national banks, real  
208 estate investment trusts, or any of the following entities organized  
209 under the laws of this State: credit unions, savings banks, savings  
210 and loan and building and loan associations, pawnbrokers, and  
211 State banks and trust companies.

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

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

12 (A) The average value of the taxpayer's real and tangible per-  
13 sonal property within the State during the period covered by its

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

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

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

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

31 (3) (Deleted by amendment.)

32 (4) services performed within the State,

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

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

42 (C) The total wages, salaries and other personal service com-  
 43 pensation, similarly computed, during such period of officers and  
 44 employees within the State divided by the total wages, salaries  
 45 and other personal service compensation, similarly computed, dur-  
 46 ing such period of all the taxpayer's officers and employees within  
 47 and without the State.

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

1 3. This act shall take effect immediately.

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- (I) at the time the property is first placed in service under the lease, and
  - (II) at all times during the term of the lease,
- is not less than 10 percent of the adjusted basis of such property, and
- (iii) the term of the lease (including any extensions) does not exceed the greater of—
- (I) 90 percent of the useful life of such property for purposes of section 167, or
  - (II) 150 percent of the present class life of such property.

**(C) No other factors taken into account.**—If the requirements of subparagraphs (A) and (B) are met with respect to any transaction described in subparagraph (A), no other factors shall be taken into account in making a determination as to whether subparagraph (A) (i) or (ii) applies with respect to such transaction.

**(D) Qualified leased property defined.**—For purposes of subparagraph (A), the term “qualified leased property” means recovery property (other than a qualified rehabilitated building within the meaning of section 48(g)(1)) which is—

- (i) new section 38 property (as defined in section 48(b)) of the lessor which is leased within 3 months after such property was placed in service and which, if acquired by the lessee, would have been new section 38 property of the lessee,
- (ii) property—
  - (I) which was new section 38 property of the lessee,
  - (II) which was leased within 3 months after such property was placed in service by the lessee, and
  - (III) with respect to which the adjusted basis of the lessor does not exceed the adjusted basis of the lessee at the time of the lease, or
- (iii) property which is a qualified mass commuting vehicle (as defined in section 103(b)(9)) and which is financed in whole or in part by obligations the interest on which is excludable from income under section 103(a).

For purposes of this title (other than this subparagraph), any property described in clause (i) or (ii) to which subparagraph (A) applies shall be deemed originally placed in service not earlier than the date such property is used under the lease. In the case of property placed in service after December 31, 1980, and before the date of the enactment of this subparagraph, this subparagraph shall be applied by submitting “the date of the enactment of this subparagraph” for “such property was placed in service”.

**(E) Minimum investment.**—

**(i) In general.**—For purposes of subparagraph (A), the term “minimum investment” means the amount the lessor has at risk with respect to the property (other than financing from the lessee or a related party of the lessee).

**(ii) Special rule for purchase requirement.**—For purposes of clause (i), an agreement between the lessor and lessee requiring either or both parties to purchase or sell the qualified leased property at some price (whether or not fixed in the agreement) at the end of the lease term shall not affect the amount the lessor is treated as having at risk with respect to the property.