

# 54:10A-4

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2005 **CHAPTER:** 127

**NJSA:** 54:10A-4 (Concerns allowance of deduction for certain qualified production activities income)

**BILL NO:** A4294 (Substituted for S2638)

**SPONSOR(S):** Cryan and Vas

**DATE INTRODUCED:** June 27, 2005

**COMMITTEE:** **ASSEMBLY:** Budget  
**SENATE**

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:** **ASSEMBLY:** June 30, 2005

**SENATE:** June 30, 2005

**DATE OF APPROVAL:** July 2, 2005

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (Original version of bill enacted)

**A4294**

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

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**S2638**

[SPONSOR'S STATEMENT:](#) (Begins on page 13 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**SENATE:** Yes [6-20-2005 \(Bud & App\)](#)  
[6-29-2005 \(Bud & App\)](#)

**FLOOR AMENDMENT STATEMENT:** No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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IS 7/10/07

P.L. 2005, CHAPTER 127, *approved July 2, 2005*  
Assembly, No. 4294

1 **AN ACT** concerning the allowance of deductions for certain qualified  
2 production activities income under the corporation business tax and  
3 the gross income tax, amending P.L.1945, c.162 and supplementing  
4 Title 54A of the New Jersey Statutes.

5

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

8

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

12 (6) (A) Net operating loss deduction. There shall be allowed as a  
13 deduction for the privilege period the net operating loss carryover to  
14 that period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (o) "S corporation" means a corporation included in the definition  
46 of an "S corporation" pursuant to section 1361 of the federal Internal

1 Revenue Code of 1986, 26 U.S.C. s.1361.

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

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

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

20 (s) "Savings institution" means a state or federally chartered  
21 building and loan association, savings and loan association, or savings  
22 bank.

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

25 (cf: P.L.2004, c.65, s.24)

26

27 2. (New section) Notwithstanding the provisions of  
28 N.J.S.54A:5-1, if any, or any other law to the contrary, for the  
29 purposes of determining the amount of a category of income pursuant  
30 to N.J.S.54A:5-1 that is net of expenses, no amounts shall be taken as  
31 a deduction pursuant to section 199 of the federal Internal Revenue  
32 Code of 1986, 26 U.S.C. s.199, and the deduction of any amounts  
33 pursuant to section 199 of the federal Internal Revenue Code of 1986,  
34 26 U.S.C. s.199 shall be disallowed except that this disallowance shall  
35 not apply to amounts deducted pursuant to section 199 of the federal  
36 Internal Revenue Code of 1986 that are exclusively based upon  
37 domestic production gross receipts of the taxpayer or allocable to the  
38 taxpayer under that section which are derived only from any lease,  
39 rental, license, sale, exchange, or other disposition of qualifying  
40 production property which the taxpayer shall demonstrate to the  
41 satisfaction of the director was manufactured or produced by the  
42 taxpayer in whole or in significant part within the United States but  
43 not qualified production property that was grown or extracted by the  
44 taxpayer. "Manufactured or produced" as used in this paragraph shall  
45 be limited to performance of an operation or series of operations the  
46 object of which is to place items of tangible personal property in a

1 form, composition, or character different from that in which they were  
2 acquired. The change in form, composition, or character shall be a  
3 substantial change, and result in a transformation of property into a  
4 different or substantially more usable product.

5  
6 3. This act shall take effect immediately and section 1 shall apply  
7 to privilege periods beginning after December 31, 2004 and section  
8 2 shall apply to taxable years beginning after December 31, 2004.

9  
10  
11 STATEMENT

12  
13 This bill amends the corporation business tax and the gross income  
14 tax to disallow a deduction for certain qualified production activities  
15 income that was recently provided for federal income tax purposes  
16 under the American Jobs Creation Act of 2004 (Pub.L 108-377).

17 This income is defined in the federal law as profits — that is,  
18 receipts minus direct and allocated costs — from manufacturing,  
19 producing, growing or extracting, from food processing (but not retail  
20 food sales), from software development, from filmmaking and sound  
21 recordings, from the production of electricity, natural gas and potable  
22 water, and from construction, from engineering or architectural  
23 services performed in the United States for construction projects in the  
24 United States, and under some special circumstances from agricultural  
25 and horticultural production. Under the federal law, businesses for  
26 2005 can claim a deduction equal to 3 percent of qualified production  
27 activities income; the percentage gradually rises in succeeding years,  
28 reaching 9 percent for 2010.

29 This bill "uncouples" the corporation business tax and the gross  
30 income tax from these changes, a technique used in 1982 and  
31 thereafter to eliminate the fiscal impact of the federal Accelerated Cost  
32 Recovery System depreciation rates and in 2002 and thereafter to  
33 eliminate the fiscal impact of federal bonus depreciation under the  
34 federal Job Creation and Worker Assistance Act of 2002.

35 The uncoupling under this bill will not apply for the following  
36 categories of gross receipts: from qualifying production property  
37 which was manufactured or produced by the taxpayer. The  
38 uncoupling will apply to the other activities described above and that  
39 are set forth under the American Jobs Creation Act of 2004, and the  
40 uncoupling will apply to qualified production property that was grown  
41 or extracted by the taxpayer.

42  
43  
44  
45 Decouples corporation business tax and gross income tax from federal  
46 deduction of certain qualified production activities income.

# ASSEMBLY, No. 4294

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 27, 2005

**Sponsored by:**

**Assemblyman JOSEPH CRYAN**

**District 20 (Union)**

**Assemblyman JOSEPH VAS**

**District 19 (Middlesex)**

**Assemblyman JOSEPH R. MALONE, III**

**District 30 (Burlington, Mercer, Monmouth and Ocean)**

**Co-Sponsored by:**

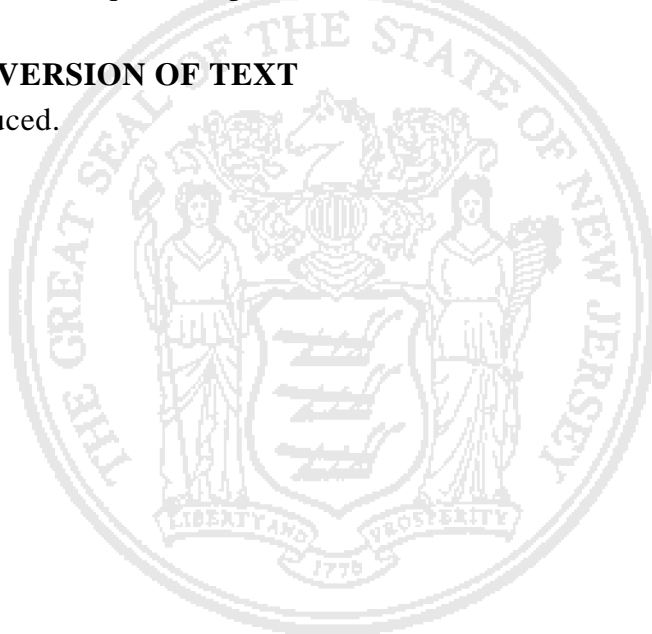
**Senator Bryant**

**SYNOPSIS**

Decouples corporation business tax and gross income tax from federal deduction of certain qualified production activities income.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 7/1/2005)**



1 AN ACT concerning the allowance of deductions for certain qualified  
2 production activities income under the corporation business tax and  
3 the gross income tax, amending P.L.1945, c.162 and supplementing  
4 Title 54A of the New Jersey Statutes.

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

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (ii) The amount of treble damages paid to the Department of  
45 Environmental Protection pursuant to subsection a. of section 7 of  
46 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the

1 department in removing, or arranging for the removal of, an  
2 unauthorized discharge upon failure of the discharger to comply with  
3 a directive from the department to remove, or arrange for the removal  
4 of, the discharge.

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

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

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

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

41 (J) Amounts deducted for federal tax purposes pursuant to section  
42 199 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.199,  
43 except that this exclusion shall not apply to amounts deducted  
44 pursuant to that section that are exclusively based upon domestic  
45 production gross receipts of the taxpayer which are derived only from  
46 any lease, rental, license, sale, exchange, or other disposition of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (E) Notwithstanding the provisions of this paragraph (6) of  
39 subsection (k) of this section to the contrary, for privilege periods  
40 beginning during calendar year 2002 and calendar year 2003, no  
41 deduction for any net operating loss carryover shall be allowed and for  
42 privilege periods beginning during calendar year 2004 and calendar  
43 year 2005, there shall be allowed as a deduction for the privilege  
44 period so much of the net operating loss carryover as reduces entire  
45 net income otherwise calculated by 50%. If and only to the extent  
46 that any net operating loss carryover deduction is disallowed by reason

1 of this subparagraph (E), the date on which the amount of the  
2 disallowed net operating loss carryover deduction would otherwise  
3 expire shall be extended by a period equal to the period for which  
4 application of the net operating loss was disallowed by this  
5 subparagraph.

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

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

35 (A) Depreciation for property placed in service prior to January 1,  
36 1998 shall be adjusted as follows:

37 (i) Depreciation for federal income tax purposes shall be disallowed  
38 in full.

39 (ii) A deduction shall be allowed for the New Jersey depreciation  
40 allowance. The New Jersey depreciation allowance shall be computed  
41 for the single asset account described above based on the New Jersey  
42 tax basis as adjusted above as if all assets in the single asset account  
43 were first placed in service on January 1, 1998. Depreciation shall be  
44 computed using the straight line method over a thirty-year life. A full  
45 year's depreciation shall be allowed in the initial tax year. No half-year  
46 convention shall apply. The depreciable basis of the single account



1 shall be reduced by the adjusted federal tax basis of assets sold,  
2 retired, or otherwise disposed of during any year on which gain or loss  
3 is recognized for federal income tax purposes as described in  
4 subparagraph (B) of this paragraph.

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

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

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

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

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

44 (11) No deduction shall be allowed for research and experimental  
45 expenditures, to the extent that those research and experimental  
46 expenditures are qualified research expenses or basic research

1 payments for which an amount of credit is claimed pursuant to section  
2 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and  
3 experimental expenditures are also used to compute a federal credit  
4 claimed pursuant to section 41 of the federal Internal Revenue Code  
5 of 1986, 26 U.S.C. s.41.

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

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

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

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

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

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

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

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

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

45 (p) "New Jersey S corporation" means a corporation that is an S  
46 corporation; which has made a valid election pursuant to section 3 of

1 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
2 corporation continuously since the effective date of the valid election  
3 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

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

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

17 (s) "Savings institution" means a state or federally chartered  
18 building and loan association, savings and loan association, or savings  
19 bank.

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

22 (cf: P.L.2004, c.65, s.24)

23

24 2. (New section) Notwithstanding the provisions of  
25 N.J.S.54A:5-1, if any, or any other law to the contrary, for the  
26 purposes of determining the amount of a category of income pursuant  
27 to N.J.S.54A:5-1 that is net of expenses, no amounts shall be taken as  
28 a deduction pursuant to section 199 of the federal Internal Revenue  
29 Code of 1986, 26 U.S.C. s.199, and the deduction of any amounts  
30 pursuant to section 199 of the federal Internal Revenue Code of 1986,  
31 26 U.S.C. s.199 shall be disallowed except that this disallowance shall  
32 not apply to amounts deducted pursuant to section 199 of the federal  
33 Internal Revenue Code of 1986 that are exclusively based upon  
34 domestic production gross receipts of the taxpayer or allocable to the  
35 taxpayer under that section which are derived only from any lease,  
36 rental, license, sale, exchange, or other disposition of qualifying  
37 production property which the taxpayer shall demonstrate to the  
38 satisfaction of the director was manufactured or produced by the  
39 taxpayer in whole or in significant part within the United States but  
40 not qualified production property that was grown or extracted by the  
41 taxpayer. "Manufactured or produced" as used in this paragraph shall  
42 be limited to performance of an operation or series of operations the  
43 object of which is to place items of tangible personal property in a  
44 form, composition, or character different from that in which they were  
45 acquired. The change in form, composition, or character shall be a  
46 substantial change, and result in a transformation of property into a

1 different or substantially more usable product.

2

3 3. This act shall take effect immediately and section 1 shall apply  
4 to privilege periods beginning after December 31, 2004 and section  
5 2 shall apply to taxable years beginning after December 31, 2004.

6

7

8

STATEMENT

9

10 This bill amends the corporation business tax and the gross income  
11 tax to disallow a deduction for certain qualified production activities  
12 income that was recently provided for federal income tax purposes  
13 under the American Jobs Creation Act of 2004 (Pub.L 108-377).

14 This income is defined in the federal law as profits — that is,  
15 receipts minus direct and allocated costs — from manufacturing,  
16 producing, growing or extracting, from food processing (but not retail  
17 food sales), from software development, from filmmaking and sound  
18 recordings, from the production of electricity, natural gas and potable  
19 water, and from construction, from engineering or architectural  
20 services performed in the United States for construction projects in the  
21 United States, and under some special circumstances from agricultural  
22 and horticultural production. Under the federal law, businesses for  
23 2005 can claim a deduction equal to 3 percent of qualified production  
24 activities income; the percentage gradually rises in succeeding years,  
25 reaching 9 percent for 2010.

26 This bill "uncouples" the corporation business tax and the gross  
27 income tax from these changes, a technique used in 1982 and  
28 thereafter to eliminate the fiscal impact of the federal Accelerated Cost  
29 Recovery System depreciation rates and in 2002 and thereafter to  
30 eliminate the fiscal impact of federal bonus depreciation under the  
31 federal Job Creation and Worker Assistance Act of 2002.

32 The uncoupling under this bill will not apply for the following  
33 categories of gross receipts: from qualifying production property  
34 which was manufactured or produced by the taxpayer. The  
35 uncoupling will apply to the other activities described above and that  
36 are set forth under the American Jobs Creation Act of 2004, and the  
37 uncoupling will apply to qualified production property that was grown  
38 or extracted by the taxpayer.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 4294

# STATE OF NEW JERSEY

DATED: JUNE 29, 2005

The Assembly Budget Committee reports favorably Assembly Bill No. 4294.

Assembly Bill No. 4294 amends the corporation business tax and the gross income tax to disallow a deduction for certain qualified production activities income that was recently provided for federal income tax purposes under the American Jobs Creation Act of 2004 (Pub.L 108-377).

This income is defined in the federal law as profits — that is, receipts minus direct and allocated costs — from United States manufacturing, producing, growing or extracting, from food processing (but not retail food sales), from software development, from filmmaking and sound recordings, from the production of electricity, natural gas and potable water, and from construction, from engineering or architectural services performed in the United States for construction projects in the United States, and under some special circumstances from agricultural and horticultural production in the United States. Under the federal tax law, for 2005 businesses can claim a federal deduction equal to 3 percent of qualified production activities income; the percentage gradually rises in succeeding years, reaching 9 percent for 2010.

This bill "uncouples" the corporation business tax and the gross income tax from these changes, a technique used in 1982 and thereafter to eliminate the fiscal impact of the federal Accelerated Cost Recovery System depreciation rates and in 2002 and thereafter to eliminate the fiscal impact of federal bonus depreciation under the federal Job Creation and Worker Assistance Act of 2002.

Under this bill, the uncoupling will not apply (that is, a deduction will be allowed for State tax purposes) for the gross receipts from qualifying production property which was manufactured or produced by the taxpayer. The uncoupling will apply (that is, the deduction will not be allowed) for gross receipts from the qualifying production property that was grown or extracted by the taxpayer and to the gross receipts from the other activities described above and that are set forth under the American Jobs Creation Act of 2004.

**FISCAL IMPACT:**

No information is available to the Office of Legislative Services (OLS) that would allow the OLS to accurately estimate the total amounts of qualified production activities income that would be deducted absent the provisions of the bill or that will remain deductible under the bill.

**SENATE, No. 2638**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED JUNE 16, 2005

**Sponsored by:**

**Senator WAYNE R. BRYANT**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Decouples corporation business tax and gross income tax from federal deduction of qualified production activities income.

**CURRENT VERSION OF TEXT**

As introduced.





S2638 BRYANT

2

1 AN ACT concerning the allowance of certain deductions of qualified  
2 production activities income, amending P.L.1945, c.162 and  
3 supplementing Title 54A of the New Jersey Statutes.

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

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

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

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

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

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

45 (i) "Fiscal year" shall mean an accounting period ending on any day  
46 other than the last day of December on the basis of which the taxpayer

1 is required to report for federal income tax purposes.

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

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

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

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

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

27 (A) The amount of any specific exemption or credit allowed in any  
28 law of the United States imposing any tax on or measured by the  
29 income of corporations[;].

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

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

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

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

43 (F) (i) The amount by which depreciation reported to the United  
44 States Treasury Department for property placed in service on and after  
45 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
46 years beginning on and after the effective date of P.L.1993, c.172, for

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

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

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

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

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

1 unauthorized discharge upon failure of the discharger to comply with  
2 a directive from the department to remove, or arrange for the removal  
3 of, the discharge.

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

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

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

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

40 (J) Amounts deducted for federal tax purposes pursuant to section  
41 199 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.199.

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

46 (4) There shall be allowed as a deduction from entire net income of

1 a banking corporation, to the extent not deductible in determining  
2 federal taxable income, the eligible net income of an international  
3 banking facility determined as follows:

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

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

10 (i) Making, arranging for, placing or carrying loans to foreign  
11 persons, provided, however, that in the case of a foreign person which  
12 is an individual, or which is a foreign branch of a domestic corporation  
13 (other than a bank), or which is a foreign corporation or foreign  
14 partnership which is controlled by one or more domestic corporations  
15 (other than banks), domestic partnerships or resident individuals, all  
16 the proceeds of the loan are for use outside of the United States;

17 (ii) Making or placing deposits with foreign persons which are  
18 banks or foreign branches of banks (including foreign subsidiaries) or  
19 foreign branches of the taxpayers or with other international banking  
20 facilities;

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

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

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

28 (5) Entire net income shall exclude 100% of dividends which were  
29 included in computing such taxable income for federal income tax  
30 purposes, paid to the taxpayer by one or more subsidiaries owned by  
31 the taxpayer to the extent of the 80% or more ownership of investment  
32 described in subsection (d) of this section and shall exclude 50% of  
33 dividends which were included in computing such taxable income for  
34 federal income tax purposes, paid to the taxpayer by one or more  
35 subsidiaries owned by the taxpayer to the extent of 50% or more  
36 ownership of investment, such ownership of investment calculated in  
37 the same manner as the 80% or more of ownership of investment is  
38 calculated as described in subsection (d) of this section.

39 (6) (A) Net operating loss deduction. There shall be allowed as a  
40 deduction for the privilege period the net operating loss carryover to  
41 that period.

42 (B) Net operating loss carryover. A net operating loss for any  
43 privilege period ending after June 30, 1984 shall be a net operating  
44 loss carryover to each of the seven privilege periods following the  
45 period of the loss. The entire amount of the net operating loss for any  
46 privilege period (the "loss period") shall be carried to the earliest of

1 the privilege periods to which the loss may be carried. The portion of  
2 the loss which shall be carried to each of the other privilege periods  
3 shall be the excess, if any, of the amount of the loss over the sum of  
4 the entire net income, computed without the exclusions permitted in  
5 paragraphs (4) and (5) of this subsection or the net operating loss  
6 deduction provided by subparagraph (A) of this paragraph, for each of  
7 the prior privilege periods to which the loss may be carried.

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

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

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

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

41 (7) The entire net income of gas, electric and gas and electric public  
42 utilities that were subject to the provisions of P.L.1940, c.5  
43 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
44 the New Jersey depreciation allowance for federal tax depreciation  
45 with respect to assets placed in service prior to January 1, 1998. For  
46 gas, electric, and gas and electric public utilities that were subject to

1 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,  
2 the New Jersey depreciation allowance shall be computed as follows:  
3 All depreciable assets placed in service prior to January 1, 1998 shall  
4 be considered a single asset account. The New Jersey tax basis of this  
5 depreciable asset account shall be an amount equal to the carryover  
6 adjusted basis for federal income tax purposes on December 31, 1997  
7 of all depreciable assets in service on December 31, 1997, increased  
8 by the excess, of the "net carrying value," defined to be adjusted book  
9 basis of all assets and liabilities, excluding deferred income taxes,  
10 recorded on the public utility's books of account on December 31,  
11 1997, over the carryover adjusted basis for federal income tax  
12 purposes on December 31, 1997 of all assets and liabilities owned by  
13 the gas, electric, or gas and electric public utility as of December 31,  
14 1997. "Books of account" for gas, gas and electric, and electric public  
15 utilities means the uniform system of accounts as promulgated by the  
16 Federal Energy Regulatory Commission and adopted by the Board of  
17 Public Utilities. The following adjustments to entire net income shall  
18 be made pursuant to this section:

19 (A) Depreciation for property placed in service prior to January 1,  
20 1998 shall be adjusted as follows:

21 (i) Depreciation for federal income tax purposes shall be disallowed  
22 in full.

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

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

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

43 (8) In the case of taxpayers that are gas, electric, gas and electric,  
44 or telecommunication public utilities as defined pursuant to subsection  
45 (q) of this section, the director shall have authority to promulgate rules  
46 and issue guidance correcting distortions and adjusting timing



1 differences resulting from the adoption of P.L.1997, c.162  
2 (C.54:10A-5.25 et al.).

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

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

28 (11) No deduction shall be allowed for research and experimental  
29 expenditures, to the extent that those research and experimental  
30 expenditures are qualified research expenses or basic research  
31 payments for which an amount of credit is claimed pursuant to section  
32 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and  
33 experimental expenditures are also used to compute a federal credit  
34 claimed pursuant to section 41 of the federal Internal Revenue Code  
35 of 1986, 26 U.S.C. s.41.

36 (12) (A) Notwithstanding the provisions of subsection (k) of  
37 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
38 s.168, subsection (b) of section 1400L of the federal Internal Revenue  
39 Code of 1986, 26 U.S.C. s.1400L, or any other federal law, for  
40 property acquired after September 10, 2001, the depreciation  
41 deduction otherwise allowed pursuant to section 167 of the federal  
42 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined  
43 pursuant to the provisions of the federal Internal Revenue Code of  
44 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001.

45 (B) The director shall prescribe the rules and regulations necessary  
46 to carry out the provisions of this paragraph, including, among others,

1 those for determining the adjusted basis of the acquired property for  
2 the purposes of the Corporation Business Tax Act (1945), P.L.1945,  
3 c.162.

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

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

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

19 (m) "Financial business corporation" shall mean any corporate  
20 enterprise which is (1) in substantial competition with the business of  
21 national banks and which (2) employs moneyed capital with the object  
22 of making profit by its use as money, through discounting and  
23 negotiating promissory notes, drafts, bills of exchange and other  
24 evidences of debt; buying and selling exchange; making of or dealing  
25 in secured or unsecured loans and discounts; dealing in securities and  
26 shares of corporate stock by purchasing and selling such securities and  
27 stock without recourse, solely upon the order and for the account of  
28 customers; or investing and reinvesting in marketable obligations  
29 evidencing indebtedness of any person, copartnership, association or  
30 corporation in the form of bonds, notes or debentures commonly  
31 known as investment securities; or dealing in or underwriting  
32 obligations of the United States, any state or any political subdivision  
33 thereof, or of a corporate instrumentality of any of them. This shall  
34 include, without limitation of the foregoing, business commonly  
35 known as industrial banks, dealers in commercial paper and  
36 acceptances, sales finance, personal finance, small loan and mortgage  
37 financing businesses, as well as any other enterprise employing  
38 moneyed capital coming into competition with the business of national  
39 banks; provided that the holding of bonds, notes, or other evidences  
40 of indebtedness by individual persons not employed or engaged in the  
41 banking or investment business and representing merely personal  
42 investments not made in competition with the business of national  
43 banks, shall not be deemed financial business. Nor shall "financial  
44 business" include national banks, production credit associations  
45 organized under the Farm Credit Act of 1933 or the Farm Credit Act  
46 of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual

1 insurance companies duly authorized to transact business in this State,  
2 security brokers or dealers or investment companies or bankers not  
3 employing moneyed capital coming into competition with the business  
4 of national banks, real estate investment trusts, or any of the following  
5 entities organized under the laws of this State: credit unions, savings  
6 banks, savings and loan and building and loan associations,  
7 pawnbrokers, and State banks and trust companies.

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

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

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

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

35 (r) "Qualified investment partnership" means a partnership under  
36 this act that has more than 10 members or partners with no member or  
37 partner owning more than a 50% interest in the entity and that derives  
38 at least 90% of its gross income from dividends, interest, payments  
39 with respect to securities loans, and gains from the sale or other  
40 disposition of stocks or securities or foreign currencies or  
41 commodities or other similar income (including but not limited to gains  
42 from swaps, options, futures or forward contracts) derived with  
43 respect to its business of investing or trading in those stocks,  
44 securities, currencies or commodities, but "investment partnership"  
45 shall not include a "dealer in securities" within the meaning of section  
46 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

1 (s) "Savings institution" means a state or federally chartered  
2 building and loan association, savings and loan association, or savings  
3 bank.

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

6 (cf: P.L.2004, c.65, s.24)

7  
8 2. (New section) Notwithstanding the provisions of N.J.S.54A:5-1,  
9 if any, or any other law to the contrary, for the purposes of  
10 determining the amount of a category of income pursuant to  
11 N.J.S.54A:5-1 that is net of expenses, no amounts shall be taken as a  
12 deduction pursuant to section 199 of the federal Internal Revenue  
13 Code of 1986, 26 U.S.C. s.199, and the deduction of any amounts  
14 pursuant to section 199 of the federal Internal Revenue Code of 1986,  
15 26 U.S.C. s.199 shall be disallowed.

16  
17 3. This act shall take effect immediately and section 1 shall apply  
18 to privilege periods beginning after December 31, 2004 and section  
19 2 shall apply to taxable years beginning after December 31 2004.

20  
21  
22 STATEMENT

23  
24 This bill amends the corporation business tax and the gross income  
25 tax to disallow a deduction for qualified production activities income  
26 that was recently provided for federal income tax purposes under the  
27 American Jobs Creation Act of 2004 (Pub.L 108-377).

28 This income is defined in the federal law as profits — that is,  
29 receipts minus direct and allocated costs — from manufacturing, from  
30 food processing (but not retail food sales), from software  
31 development, from filmmaking and sound recordings, from the  
32 production of electricity, natural gas and potable water, and from  
33 construction, from engineering or architectural services performed in  
34 the United States for construction projects in the United States, and  
35 under some special circumstances from agricultural and horticultural  
36 products. Under the federal law, businesses in 2005 can claim a  
37 deduction equal to 3 percent of qualified production activities income;  
38 the percentage gradually rises in succeeding years, reaching 9 percent  
39 in 2010.

40 This bill "uncouples" the corporation business tax and the gross  
41 income tax from these changes, a technique used in 1982 and  
42 thereafter to eliminate the fiscal impact of the federal Accelerated Cost  
43 Recovery System depreciation rates and in 2002 and thereafter to  
44 eliminate the fiscal impact of federal bonus depreciation under the  
45 federal Job Creation and Worker Assistance Act of 2002 .

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 2638

# STATE OF NEW JERSEY

DATED: JUNE 20, 2005

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2638.

This bill amends the corporation business tax and the gross income tax to disallow a deduction for qualified production activities income that was recently provided for federal income tax purposes under the American Jobs Creation Act of 2004 (Pub.L 108-377).

This income is defined in the federal law as profits — that is, receipts minus direct and allocated costs — from manufacturing, from food processing (but not retail food sales), from software development, from filmmaking and sound recordings, from the production of electricity, natural gas and potable water, and from construction, from engineering or architectural services performed in the United States for construction projects in the United States, and under some special circumstances from agricultural and horticultural products. Under the federal law, businesses in 2005 can claim a deduction equal to 3 percent of qualified production activities income; the percentage gradually rises in succeeding years, reaching 9 percent in 2010.

This bill "uncouples" the corporation business tax and the gross income tax from these changes, a technique used in 1982 and thereafter to eliminate the fiscal impact of the federal Accelerated Cost Recovery System depreciation rates and in 2002 and thereafter to eliminate the fiscal impact of federal bonus depreciation under the federal Job Creation and Worker Assistance Act of 2002.

#### FISCAL IMPACT:

No information is available to the Office of Legislative Services (OLS) that would allow the OLS to accurately estimate the amounts of qualified production activities income that would be deducted, absent the provisions of the bill. However, the absolute value may not be material.

It appears that the revenue estimates included in the Governor's proposed budget document for State Fiscal Year 2005-2006 do not include an adjustment for the qualified production activities income deduction, and that the OLS estimates, incorporating the same assumptions, also make no adjustment.

The revenue impact of this bill would, therefore, be to maintain the *status quo* as already reported.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 2638**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 29, 2005

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2638, with committee amendments.

This bill amends the corporation business tax and the gross income tax to disallow a deduction for certain qualified production activities income that was recently provided for federal income tax purposes under the American Jobs Creation Act of 2004 (Pub.L 108-377).

This income is defined in the federal law as profits — that is, receipts minus direct and allocated costs — from manufacturing, producing, growing or extracting, from food processing (but not retail food sales), from software development, from filmmaking and sound recordings, from the production of electricity, natural gas and potable water, and from construction, from engineering or architectural services performed in the United States for construction projects in the United States, and under some special circumstances from agricultural and horticultural production. Under the federal law, businesses for 2005 can claim a deduction equal to 3 percent of qualified production activities income; the percentage gradually rises in succeeding years, reaching 9 percent for 2010.

This bill "uncouples" the corporation business tax and the gross income tax from these changes, a technique used in 1982 and thereafter to eliminate the fiscal impact of the federal Accelerated Cost Recovery System depreciation rates and in 2002 and thereafter to eliminate the fiscal impact of federal bonus depreciation under the federal Job Creation and Worker Assistance Act of 2002.

#### COMMITTEE AMENDMENTS:

The committee amendments provide that the uncoupling under this bill will not apply for the following categories of gross receipts: from qualifying production property which was manufactured or produced by the taxpayer. With the committee amendments, the bill provides that the "uncoupling," and thus the disallowance of the deduction, will apply only to: (1) the other activities described above and that are set forth under the American Jobs Creation Act of 2004, and (2) qualified production property that was grown or extracted by the taxpayer.

**FISCAL IMPACT:**

No information is available to the Office of Legislative Services (OLS) that would allow the OLS to accurately estimate the amounts of qualified production activities income that would be deducted, absent the provisions of the bill.

It appears that the revenue estimates included in the Governor's proposed budget document for State Fiscal Year 2005-2006 do not include an adjustment for the qualified production activities income deduction, and that the OLS estimates, incorporating the same assumptions, also make no adjustment.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 2638**  
**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

DATED: JUNE 28, 2005

**SUMMARY**

- Synopsis:** Decouples corporation business tax and gross income tax from federal deduction of qualified production activities income.
- Type of Impact:** Limits corporation business tax revenue loss and gross income tax revenue loss.
- Agencies Affected:** Department of the Treasury, Division of Taxation.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Revenue</b>	Maintenance of revenue levels	Maintenance of revenue levels	Maintenance of revenue levels

- ! The bill decouples the corporation business tax and the gross income tax from the federal deduction for "qualified production activities income" by disallowing the deduction for State purposes.
- ! The bill maintains corporation business tax and gross income tax revenues at their current predicted levels. No information is currently available about actual business use of the deduction, so no estimate can be made of the amount of revenue maintained.

**BILL DESCRIPTION**

Senate Bill No. 2638 of 2005 amends the corporation business tax and the gross income tax to disallow a deduction for "qualified production activities income" that was recently provided for federal income tax purposes under the American Jobs Creation Act of 2004 (Pub.L 108-377).

"Qualified production activities income" is defined in the federal law as profits — that is, receipts minus direct and allocated costs — from manufacturing, from food processing (but not retail food sales), from software development, from film making and sound recordings, from the production of electricity, natural gas and potable water, and from construction, from engineering or architectural services performed in the United States for construction projects in the United States, and under some special circumstances from agricultural and horticultural products. Under the federal law, businesses in 2005 can claim a deduction equal to 3 percent of qualified production activities income; the percentage will rise gradually in succeeding years, reaching 9





percent in 2010.

Under the corporation business tax and the gross income tax, the starting point for determining State taxable income is federal taxable income. In general, any federal deduction that decreases federal taxable income automatically decreases State taxable income. This bill "uncouples" the corporation business tax and the gross income tax from the federal changes by disallowing the deduction for qualified production activities income for State purposes.

## FISCAL ANALYSIS

### *EXECUTIVE BRANCH*

None received.

### *OFFICE OF LEGISLATIVE SERVICES*

No information is available to the Office of Legislative Services that would allow the Office of Legislative Services to accurately estimate the amounts of qualified production activities income that would be deducted, absent the provisions of the bill. However, the absolute value may not be material.

It appears that the revenue estimates included in the Governor's proposed budget document for State Fiscal Year 2005-2006 do not include an adjustment for the qualified production activities income deduction, and that the Office of Legislative Services estimates, incorporating the same assumptions, also make no adjustment.

The revenue impact of this bill would, therefore, be to maintain the *status quo* as already reported.

Section: *Revenue, Finance and Appropriations*

Analyst: *Philip Liloia*  
*Lead Counsel*

Approved: *David J. Rosen*  
*Legislative Budget and Finance Officer*

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