

N.J.S.A. 54:10A-4 (f) & (g)

Legislative Notes on N.J.S.A. 54:10A-4 (f) and 4 (g)
(Corporation Business Tax Act - Definitions of (f) "Investment company" and (g) "Regulated investment company".)

Laws of 1945, C. 162, A395

(Provided franchise tax for corporate business to replace tax on intangible personal property and capital stock tax).

March 27 - Introduced by W.H. Jones.
April 2 - Hearing (not recorded).
April 6 - Reported, amended. 2nd reading. Passed in Assembly, amended.
April 9 - Received in Senate. 2nd reading. Passed in Senate.
April 13 - Approved.

The term "Regulated investment company" was not included in the original A395, but was defined in the amended version (A395 § 4 OCR).

"Regulated investment company" shall mean any corporation which, for the period covered by its report, is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789, as amended) and meets the requirements of and is taxable under "Supplement Q" of the Internal Revenue Code (53 Stat. 1, 98, as amended).

974.90 N.J. Commission on Taxation of Intangible
T235 Personal Property. Report of...1945.
1945

The report listed above is mentioned in the Statement to A395 set out below.

STATEMENT TO A 395

The purposes of this bill are:

- (1) To establish a simple and defensible tax on corporate business in lieu of an ad valorem tax on intangible personalty and the present capital stock tax, as part of the program recommended in the Report of the Commission on Taxation of Intangible Personal Property (March 26, 1945), to eliminate "tax lightning" on intangibles.

- (2) To provide a yield sufficient to justify the abandonment of the present authorized tax on corporate intangibles. It is estimated that this yield will be between \$6,000,000 and \$7,000,000 annually, beginning in 1946.
- (3) To provide a tax base which would relieve the burden of taxes on real estate throughout the State. This is accomplished by applying \$4,000,000 of the anticipated yield to reduce the State school tax on local property.
- (4) To have due regard for the tremendous tax burdens of the present day and for the competitive conditions that exist between New Jersey and its neighboring States, in taking this first step in State-wide corporate tax adjustment since 1884.

Hearings were held and recorded.

See

974.90 NJ Commission on Taxation of Intangible
T235 Personal Property. Hearings 1945.
1945b

Laws of 1947, C. 50 A464

Amended 1945 Corporation Tax Act as recommended by Commission on State Tax Policy; defined "investment company".

March 24 - Introduced by Dixon.
March 31 - 2nd reading.
April 7 - Amended. Passed in Assembly, amended.
April 7 - Received in Senate.
April 14 - 2nd reading. Passed in Senate.
April 14 - Approved.

STATEMENT TO A464

This bill incorporates the several changes in the Corporation Business Tax Act (1945) recommended in the Second Report of the Commission on State Tax Policy.

The bill also provides for a "Short Rate Table" which may be used by corporations having total assets of less than one hundred thousand dollars (\$100,000.00), in lieu of the detailed form of tax return now required. It is estimated that some twenty-five thousand domestic and foreign corporations will be able to compute their tax on this convenient basis.

The bill also contains a number of changes in the corporate franchise tax law which a year's experience in its administration has proved to be desirable. These administrative changes are recommended by the Department of Taxation and Finance.

Assembly Bill No. 464 shows that the definition of "Regulated Investment company" was deleted and that a new term, "Investment company" was defined. (Copy of original A464 § 4 (f) enclosed).

"Investment Company" was defined in L 1947, C. 50 s 4 (f) as,

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

974.90 N.J. Commission on State Tax Policy.
T235 First Report. 1946.
1946

974.90 N.J. Commission on State Tax Policy.
T235 Second report. 1947.
1947

Laws of 1948, C. 459 § 1 A552

Defined "Regulated investment company" and fixed lower tax basis for regulated investment companies than for other investment companies.

A552

August 23 - Introduced by Mackey.
August 27 - Passed in Assembly.
Sept. 1 - Passed in Senate.
Oct. 27 - Approved.

Not amended during passage.

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

The statement to A552 reads:

The object of this bill is to prescribe a more equitable measure for the assessment of the tax on regulated investment companies doing business in New Jersey. Neighboring States have accorded more favorable and realistic tax treatment to regulated investment companies and there has been an exodus of such companies from the State. This bill is designed to remedy this situation.

Laws of 1971, C. 267 A2510

Broadens the definition of "Investment Company"; applicable to taxpayers whose accounting periods end after June 30, 1971.

June 14 - Introduced by De Korte.
June 14 - Passed both houses under emergency resolution.
July 21 - Approved.

This amendment which deleted § 4 (f) (3) was not amended during passage and had no statement of purpose.

Governor's Statement on signing into law Assembly Bill No. 2510 is enclosed.

9/20/1975

ASSEMBLY, No. 464

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1947

By Mr. DIXON

Referred to Committee on Taxation

AN Act to amend and supplement "An act to provide for the imposition of a franchise tax upon certain corporations and for the distribution of the proceeds thereof, repealing sections 54:13 1 through 54:13 8 and chapter thirty-two-A of Title 54 of the Revised Statutes, and making an appropriation for the administration of such tax," approved April thirteenth, one thousand nine hundred and forty-five (P. L. 1945, c. 162).

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

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

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

5 (a) "Commissioner" shall mean the director of the division of tax-
6 tion of the State Department of Taxation and Finance.

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

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

13 (d) "Net worth" shall mean the aggregate of the values disclosed by
14 the books of the corporation for (1) issued and outstanding capital stock,

15 (2) paid-in or capital surplus, (3) earned surplus and undivided profits,
16 (4) surplus reserves which can reasonably be expected to accrue to holders
17 or owners of equitable shares, not including reasonable valuation reserves,
18 such as reserves for depreciation or obsolescence or depletion and (5) the
19 amount of all indebtedness owing directly or indirectly to holders of ten per
20 centum (10%) or more of the aggregate outstanding shares of the taxpay-
21 er's capital stock of all classes, as of the close of a calendar or fiscal year.
22 However, if in the opinion of the commissioner, the corporation's books do
23 not disclose fair valuations the commissioner may make a reasonable deter-
24 mination of the net worth which, in his opinion, would reflect the fair value of
25-26 the assets carried on the books of the corporation, in accordance with sound
27 accounting principles, and such determination shall be used as net worth for
28 the purpose of this act.

29 (c) "Indebtedness owing directly or indirectly" shall include, without
30 limitation thereto, all indebtedness owing to any stockholder or shareholder
31 and to members of his immediate family where a stockholder and members
32 of his immediate family together or in the aggregate own ten per centum
33 (10%) or more of the aggregate outstanding shares of the taxpayer's capi-
34 tal stock of all classes.

35 (f) "Investment company" shall mean any corporation whose business
36 during the period covered by its report consisted, to the extent of at least
37 ninety per centum (90%) thereof of holding, investing and reinvesting in
38 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
39 other securities for its own account, but this shall not include any corpora-
40 tion which: (1) is a merchant or a dealer of stocks, bonds and other secur-
41 ities, regularly engaged in buying the same and selling the same to cus-
42 tomers; or (2) had less than ninety per centum (90%) of its average gross
43 assets in New Jersey, at cost, invested in stocks, bonds, debentures, mort-
44 gages, notes, patents, patent rights or other securities or consisting of cash
45 on deposit during the period covered by its report; or (3) owned more than
46 ten per centum (10%) of either the aggregate outstanding shares of capi-

47 tal stock of all classes entitled to vote, or of the aggregate outstanding shares
 47A of nonvoting capital stock, of any other corporation, during the period cov-
 47B ered by its report.

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

50 (h) "Fiscal year" shall mean an accounting period ending on any day
 51 other than the last day of December.

52 (i) "Privilege year" shall mean the calendar year in and for which a
 53 tax is payable under this act.

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

3 5. The franchise tax to be annually assessed to and paid by each tax-
 4 payer shall be measured by the greater of:

5 (a) that portion of its entire net worth as may be allocable to this
 6 State as provided in section six; or

7 (b) that proportion of its entire net worth as the average value of
 8 its total assets in this State during the period covered by its report is to
 9 the average value of its total assets everywhere during such period (for
 10 the purpose of which there shall be included as within this State all in-
 11 tangible personal property of domestic corporations not having a busi-
 12 ness situs outside this State, one-half of the value of such property having
 13 a business situs outside this State, and the entire amount of the
 14 intangible personal property of foreign corporations as would have
 15 a business situs within this State for the purpose of a property tax);
 16 at the rate of 8/10 of a mill per dollar on the first one hundred million dollars
 17 (\$100,000,000.00) of allocated net worth; 4/10 of a mill per dollar on the
 18 second hundred million dollars (\$100,000,000.00); 3/10 of a mill per dollar on
 19 the third one hundred million dollars (\$100,000,000.00); and 2/10 of a mill
 20 per dollar on all amounts of allocated net worth in excess of three hundred
 21 million dollars (\$300,000,000.00).

22 (c) *Provided, however,* that the franchise tax to be annually as-
 23 sessed to and paid by any investment company shall be measured by
 24 twenty-five per centum (25%) of its entire net worth, at the rates here-
 25 inabove set forth but in no case less than one hundred dollars (\$100.00),
 26 unless the taxpayer shall elect to remain taxable pursuant to any other
 27-33 subsection of this section.

34 (d) The tax assessed to any taxpayer pursuant to this act, notwith-
 35 standing the provisions of the preceding subsections of this section, shall
 36 not be less than the greater of 2/10 of a mill per dollar of total assets al-
 37 located to this State in accordance with subsection (b) hereof, and
 38 twenty-five dollars (\$25.00) in the case of a domestic corporation, or fifty
 39 dollars (\$50.00) in the case of a foreign corporation.

40 (e) In lieu of the tax imposed by subsections (a), (b), (c) and (d)
 41 of this section, any taxpayer, the value of whose total assets everywhere,
 42 less reasonable reserves for depreciation, as of the close of the period
 43 covered by its report, amounts to less than one hundred thousand dollars
 44 (\$100,000.00), may elect to pay the tax shown in the following table:

	The tax shall be			
	If total assets are at least	But less than	For Domestic Corporations	For Foreign Corporations
45	\$ 0	\$ 45,000	\$ 25.00	\$ 50.00
46	45,000	50,000	28.00	50.00
47	50,000	55,000	32.00	50.00
48	55,000	60,000	35.00	50.00
49	60,000	65,000	38.00	50.00
50	65,000	70,000	41.00	50.00
51	70,000	75,000	45.00	50.00
52	75,000	80,000	48.00	50.00
53	80,000	85,000	51.00	51.00
54	85,000	90,000	54.00	54.00
55	90,000	95,000	58.00	58.00
56	95,000	100,000	61.00	61.00

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

3 10. Whenever it shall appear to the commissioner that any taxpayer con-
4 ducts its business or maintains its records in such manner as either directly
5 or indirectly to distort its true net worth under this act or the proportion
6 thereof properly allocable to this State, or that any taxpayer maintains a
7 place of business outside this State, or that any agreement, understanding
8 or arrangement exists between a taxpayer and any other corporation or any
9 person or firm, for the purpose of evading tax under this act, or whereby the
10 activity, business, receipts or net worth of the taxpayer is improperly or
11 inaccurately reflected, the commissioner is authorized and empowered in his
12 discretion and in such manner as he may determine to adjust and redeter-
13 mine such net worth, and to adjust items of gross receipts, tangible property
14 and payrolls within and without the State and the allocation of net worth,
15 or to make such other adjustments in any tax report or tax returns as may
16 be necessary. The commissioner may require any person or corporation to
17 submit such information under oath, or to permit such examination of its
18 books, papers and documents, as may be necessary to enable him to de-
19 termine the existence, nature or extent of an agreement, understanding or
20 arrangement to which this section relates, whether or not such person or
21 corporation is subject to the tax imposed by this act.

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

3 11. Any receiver, referee, trustee, assignee or other fiduciary, or any
4 officer or agent appointed by any court, to conduct the business or conserve
5 the assets of any corporation shall be subject to the tax imposed by this act
6 in the same manner and to the same extent as a corporation hereunder.

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

3 13. In the case of any corporation which organizes or qualifies on or
4 after January first in any year no tax shall be payable in such privilege

5 year; *provided, however*, that this section shall not apply to a foreign cor-
6 poration, which after January first, one thousand nine hundred and thirty-
7 seven, and prior to the year in which it qualifies, possessed the privilege of
8 exercising its corporate franchise in this State, or did business, or employed
9 or owned capital or property, or maintained an office in this State.

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

3 15. The tax imposed by this act shall be due and payable with respect
4 to the calendar year one thousand nine hundred and forty-six, and each year
5 thereafter, measured by the taxpayer's net worth as of the close of the calen-
6 dar year or of its fiscal year next preceding the privilege year, except that
7 in the case of a taxpayer whose fiscal year ends not later than June thirtieth
8 in the privilege year such measure shall be as of the close of such fiscal year.
9 For the purpose of this section every taxpayer shall use the same calendar
10 or fiscal year upon which it reports to the United States Treasury Depart-
11 ment for Federal income tax purposes.

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

3 17. (a) On or before the fifteenth day of April, in the case of taxpayers
4 reporting on a calendar year basis, and on or before the fifteenth day of
5 April or the fifteenth day of the fourth month following the close of
6 a fiscal year, whichever is later, in the case of taxpayers reporting on a
7 fiscal year basis, each taxpayer shall duly execute and file a tax return with
8 the commissioner, in such form and containing such information as he may
9 prescribe, which return shall truly and accurately, set forth its liability
10 under this act; and the full amount of the tax hereunder shall be due and pay-
11 able to the commissioner on or before the date prescribed herein for the filing
12 of the return; *provided, however*, that for the privilege year one thousand
12a nine hundred and forty-seven any return and tax payment which under the
12b foregoing provisions of this section would be due on or before the fifteenth
12c day of April or on or before the fifteenth day of May shall be due on or be-

12b fore the thirty-first day of May, one thousand nine hundred and forty-seven.

13 (b) Any taxpayer which shall fail to file its return when due shall be
14 liable to a penalty of two dollars (\$2.00) for each day of delinquency, which
15 penalty shall be payable to, and recoverable by, the commissioner as a part
16 of the tax herein imposed. If any tax be not paid when the same becomes
17 due, as herein provided, there shall be added to the amount of the tax a sum
18 equivalent to five per centum (5%) thereof, as a penalty, and, in addition
19 thereto, interest at the rate of one per centum (1%) per month or fraction
20 thereof from the date the tax became due until the same be paid. The com-
21 missioner, if satisfied that the failure to comply with any provision of this
22 section was excusable, may abate or remit the whole or part of any penalty.

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

3 19. The commissioner may grant a reasonable extension of time for the
4 filing of returns or the payment of tax, or both, under such rules and regula-
5 tions as he shall prescribe, which rules and regulations may require the filing
6 of a tentative return and the payment of an estimated tax, but no such ex-
7 tension shall be granted beyond the first day of December of the privilege
8 year. If the time for filing the return shall be extended, the payment of the
9 portion of the tax remaining to be paid, if any, shall be postponed to the date
10 fixed by the extension of the time for the filing of the return, but in every
11 such case the corporation shall pay, in addition to the unpaid portion of the
12 tax, interest thereon at the rate of six per centum (6%) per annum from the
13 time when the return originally was required to be filed to the date of actual
14 payment under the extension; *provided*, that if such unpaid portion of the tax
15 is not paid within the time fixed under the extension, the interest on such un-
16 paid portion shall be computed at the rate of one per centum (1%) per month
17 or fraction thereof to be calculated from the date the tax was originally due to
18 the date of actual payment.

1 9. Section twenty-three of the act of which this act is amendatory is
2 amended to read as follows:

3 23. The administration, collection and enforcement of the tax imposed by
4 this act shall be subject to the provisions of the State tax uniform procedure
5 law as therein provided (chapters forty-eight through fifty-two of Title 54
6 of the Revised Statutes) to the extent that the provisions of such law are
7 not inconsistent with any provision of this act.

1 10. The act of which this act is amendatory and supplementary is
2 amended by adding a new section, numbered 19:1, to read as follows:

3 19:1. (a) After a final return in due form is filed, the commissioner shall
4 cause the same to be examined and may make such further audit or in-
5 vestigation or reaudit as he may deem necessary, and if therefrom he shall
6 determine that there is a deficiency with respect to the payment of any tax
7 due under this act, he shall assess or reassess the additional taxes, penalties
8 and interest due the State, give notice of such assessment or reassessment
9 to the taxpayer, and make demand upon him for payment. There shall be
10 added to the amount of any deficiency assessment or reassessment interest
11 at the rate of one per centum (1%) for each month or fraction thereof to be
12 calculated from the date the tax was originally due and payable until the
13 date of actual payment. If the failure to pay any such tax when due is ex-
14 plained to the satisfaction of the commissioner, he may remit or waive the
15 payment of any interest charge in excess of the rate of one-half of one per
16 centum ($\frac{1}{2}\%$) per month.

17 (b) Except in the case of a willful, false or fraudulent return with in-
18 tent to evade the tax, the amount of tax due under any return duly made
19 under this act shall be finally determined by the commissioner within five
20 years after such return shall have been filed.

1 11. The act of which this act is amendatory and supplementary is
2 amended by adding a new section, numbered 19:2, to read as follows:

3 19:2. (a) Any aggrieved taxpayer may, within three months after any
4 decision, order, finding, assessment or action of the commissioner made pur-

5 suant to the provisions of this act, appeal therefrom to the Division of Tax
6 Appeals, by filing a petition of appeal with said division in the manner and
7 form prescribed by the said division and on giving security, approved by the
8 commissioner, conditioned to pay the tax heretofore levied, if the same re-
9 mains unpaid, with interest and costs.

10 (b) No such appeal shall stay the collection of any tax or the enforce-
11 ment of the same by entry as a judgment, unless by order of such division,
12 and then only after security approved by the commissioner or said division
13 has been furnished to the commissioner. The judgment or order of the Divi-
14 sion of Tax Appeals respecting any matter arising under the provisions of
15 this subtitle may be reviewed by certiorari in the same manner as other judg-
16 ments of said division.

1 12. This act shall take effect immediately, and shall apply to taxes due
2 and payable in the year one thousand nine hundred and forty-seven and
3 thereafter.

STATEMENT

This bill incorporates the several changes in the Corporation Business Tax Act (1945) recommended in the Second Report of the Commission on State Tax Policy.

The bill also provides for a "Short Rate Table" which may be used by corporations having total assets of less than one hundred thousand dollars (\$100,000.00), in lieu of the detailed form of tax return now required. It is estimated that some twenty-five thousand domestic and foreign corporations will be able to compute their tax on this convenient basis.

The bill also contains a number of changes in the corporate franchise tax law which a year's experience in its administration has proved to be desirable. These administrative changes are recommended by the Department of Taxation and Finance.

MAY 21, 1971

FOR RELEASE
IMMEDIATE

Governor William T. Cahill today signed into law Assembly Bill 2510 which amends the Corporation Business Tax Act by deleting the ten percent stock ownership requirements in the case of investment companies.

"The effect of such an amendment," the Governor said, "permits a corporation otherwise qualified, to obtain the benefits of the twenty-five percent allocation provision although it may hold ten percent or more of the stock of another corporation. This means that such companies will pay taxes on the basis of twenty-five percent of their net income and twenty-five percent of their net worth instead of 100 percent as previously required."

At the same time, the Governor stressed that "there would be no revenue loss from existing taxpayers" under the provisions of this legislation. He said that a survey of the 300 largest corporate tax returns plus a random survey of other corporate tax returns confirmed this.

"While there will be no anticipated loss of revenue to the State," the Governor said, "the signing of this bill should stimulate more companies to locate in New Jersey with resultant increased job opportunities and added revenues to the State."

Present at the signing was Russell McFall, President of the Western Union Telegraph Company. McFall's interest in the legislation was manifested by this announcement that Western Union will be the first company to take advantage of the legislation by relocating in New Jersey.

The Governor said that on September 1st, Western Union, a corporation that qualifies under the new legislation, will move from New York City to Mahwah.

The Governor went on to say that this would not be the only benefit to the State of New Jersey "in as much as investment companies today

-more-

transportation problem. The tax would be retroactive to January 1, 1971.

APPROVED AUGUST 4, 1975

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 3339

STATE OF NEW JERSEY

INTRODUCED APRIL 21, 1975

By Assemblyman PERSKIE

Referred to Committee on Taxation

AN ACT to amend the "Financial Business Tax Law (1946)," approved April 26, 1946 (P. L. 1946, c. 174) and to amend and supplement the "Corporation Business Tax Act (1945)," approved April 13, 1945 (P. L. 1945, c. 162) and repealing sections 7, 20 and 21 of P. L. 1946, c. 174.

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

1 1. Section 2 of P. L. 1946, c. 174 (C. 54:10B-2) is amended to
2 read as follows:

3 2. Definitions. For the purposes of this act, unless the context
4 otherwise requires:

5 (a) "Director" shall mean the Director of the Division of Tax-
6 ation of the State Department of the Treasury.

7 (b) "Financial business" shall mean all business enterprise
8 *except those organized or operating in a corporate capacity* which
9 is (1) in substantial competition with the business of national
10 banks and which (2) employs moneyed capital with the object of
11 making profit by its use as money, through discounting and negotiat-
12 ing promissory notes, drafts, bills of exchange and other evidences
13 of debt; buying and selling exchange; making of or dealing in
14 secured or unsecured loans and discounts; dealing in securities and
15 shares of corporate stock by purchasing and selling such securities
16 and stock without recourse, solely upon the order and for the
17 account of customers; or investing and reinvesting in marketable
18 obligations evidencing indebtedness of any person, copartnership,
19 association or corporation in the form of bonds, notes or debentures
20 commonly known as investment securities; or dealing in or under-
21 writing obligations of the United States, any State or any political
22 subdivision thereof, or of a corporate instrumentality of any 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.**

23 them. This shall include, without limitation of the foregoing busi-
 24 ness commonly known as industrial banks, dealers in commercial
 25 paper and acceptances, sales finance, personal finance, small loan
 26 and mortgage financing businesses, as well as any other enterprise
 27 employing moneyed capital coming into competition with the busi-
 28 ness of national banks; provided, that the holding of bonds, notes,
 29 or other evidense of indebtedness by individual persons not em-
 30 ployed or engaged in the banking or investment business and rep-
 31 resenting merely personal investments not made in competition
 32 with the business of national banks, shall not be deemed financial
 33-34 business. Nor shall "financial business" include national banks,
 35 production credit associations organized under the Farm Credit
 36 Act of 1933, stock and mutual insurance companies duly autho-
 37 rized to transact business in this State, security brokers or dealers
 38 or investment companies or bankers not employing moneyed capital
 39 coming into competition with the business of national banks, real
 40 estate investment trusts, or any of the following entities organized
 41 ~~under~~ under the laws of this State: credit unions, savings banks, savings
 42 and loan and building and loan associations, pawnbrokers, and
 43 State banks and trust companies.

44 (c) "Net worth" shall mean:

45 **[(1)** In the case of a corporation—the aggregate of the values
 46 disclosed by the books of the corporation for (1) issued and out-
 47 standing capital stock, (2) paid-in or capital surplus, (3) earned
 48 surplus and undivided profits, (4) surplus reserves which can
 49 reasonably be expected to accrue to holders or owners of equita-
 50 ble shares, excluding reasonable valuation reserves and (5) the
 51 amount of all indebtedness owing directly or indirectly to holders
 52 of 10% or more of the aggregate outstanding shares of the tax-
 53 payer's capital stock of all classes, as of the close of a tax year.]

54 **[(2)]** In the case of a partnership, individual proprietorship,
 55 joint venture or any other unincorporated association—the aggre-
 56 gate of the values disclosed by the books of the taxpayer for capital
 57 and undivided profits; provided, that there shall be no deduction
 58 from assets of debts owing to partners, proprietors or members,
 59 as of the close of a tax year.

60 (d) "Tax year" shall mean the calendar year with respect to
 61 which a tax is measured pursuant to this act.

62 (e) "Taxpayer" shall mean any person, ~~copartnership~~ partnership[,] or as-
 63 sociation [or corporation] subject to taxation under this act.

1 2. Section 3 of P. L. 1946, c. 174 (C. 54:10B-3) is amended to
 2 read as follows:

3 3. There is hereby imposed upon every person, copartnership~~[,]~~
 4 and association ~~[and corporation]~~ doing a financial business in
 5 this State, an annual excise tax, payable in the year 1970 and in
 6 each year thereafter, at the rate of 1½% upon its net worth, less
 7 the deductions hereinafter allowed, as of the close of the preceding
 8 calendar year, but in no event less than \$25.00. Such tax shall also
 9 be in lieu of any State franchise tax or of any State or local taxation
 10 of, upon or measured by personal property entering into the de-
 11 termination of net worth.

1 3. Section 4 of P. L. 1946, c. 174 (C. 54:10B-4) is amended to
 2 read as follows:

3 4. A person, partnership~~[,]~~ or association ~~[or corporation]~~
 4 shall not be deemed to be doing financial business, by reason of (1)
 5 the maintenance of cash balances with banks or trust companies
 6 in this State, or (2) the ownership of shares of stock or securities
 7 in this State if such shares or securities are pledged as collateral
 8 security, or deposited with one or more banks or trust companies,
 9 or brokers who are members of a recognized security exchange,
 10 in safe-keeping or custody accounts, or kept in safe deposit boxes,
 11 or (3) the taking of any action by any such bank or trust company
 12 or broker, which is incidental to the rendering of safe-keeping or
 13 custodian service.

1 4. Section 8 of P. L. 1946, c. 174 (C. 54:10B-8) is amended to
 2 read as follows:

3 8. A taxpayer doing business in more than one state ~~[directly or~~
 4 ~~through a wholly-owned subsidiary having capital stock with a~~
 5 ~~par value or stated value of \$5,000.00 or less]~~ shall allocate the
 6 value of its net worth (after allowable deductions) within this
 7 State, which allocated value shall be the measure of its tax pursuant
 8 to this act, according to the proportion of its gross business in this
 9 State to its gross business everywhere during the tax year,
 10 determined as the sum of:

11 (a) Fees, commissions or other compensation for financial ser-
 12 vices rendered within this State;

13 (b) Gross profits from trading in stocks, bonds, or other securi-
 14 ties managed within this State;

15 (c) Interest and dividends received on loans, stocks, bonds and
 16 other securities managed within this State;

17 (d) Interest charged to customers, at places of business main-
 18 tained within this State, for carrying debit balances of margin
 19 accounts, without deduction of any costs incurred in carrying
 20 such accounts; and

21 (e) Any other gross income resulting from the operation of
 22 financial business within this State;
 23 divided by the aggregate amount of such items of the taxpayer
 24 everywhere.

1 5. Section 12 of P. L. 1946, c. 174 (C. 54:10B-12) is amended to
 2 read as follows:

3 12. No taxpayer shall dissolve, liquidate or distribute any assets
 4 in dissolution or liquidation[, nor shall any foreign corporation
 5 withdraw from the State,] without having first duly filed its return
 6 under this act and paid or secured the tax, interest and penalties
 7 due thereon for the preceding tax year and for the year in which
 8 such dissolution[, or liquidation [or withdrawal] occurs, as well
 9 as all delinquent taxes, interest, and penalties then due. For the
 10 purpose of determining the tax due with respect to the year in
 11 which dissolution[, or liquidation [or withdrawal] occurs, the tax
 12 year shall be deemed to have closed on the last day of the month
 13 in which the taxpayer ceases to do business in this State; and the
 14 amount of tax due hereunder shall be such proportion of the tax
 15 for a full tax year as the number of months in the tax year so
 16 determined is to 12; provided, that in no event shall the last day
 17 of doing business be deemed to have occurred more than 30 days
 18 prior to the filing of a duly executed tax return and the payment
 19 of the tax due as shown therein for the tax year in which such
 20 dissolution[, or liquidation[, or withdrawal] occurs.

1 6. Section 17 of P. L. 1946, c. 174 (C. 54:10B-17) is amended to
 2 read as follows:

3 17. The director shall design a form of return and forms for such
 4 additional statements or schedules as he may require to be filed
 5 therewith. Such forms shall provide for the setting forth of such
 6 facts as the director may deem necessary for the proper enforce-
 7 ment of this act. He shall cause a supply thereof to be printed and
 8 shall furnish appropriate blank forms to each taxpayer upon
 9 application or otherwise as he may deem necessary. Failure to
 10 receive a form shall not relieve any taxpayer from the obligation
 11 to file a return under the provisions of this act. Each such return
 12 shall be made upon the oath or affirmation [of the president, vice-
 13 president, or secretary or treasurer of a corporation, or] of a
 14 partner or proprietor [in the case of other taxpayers,] and in the
 15 case of a taxpayer in liquidation or in the hands of a receiver or
 16 trustee, shall be made on the oath or affirmation of the person
 17 responsible for the conduct of the affairs of such taxpayer.

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

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

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

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

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

14 (d) "Net worth" shall mean the aggregate of the values dis-
15 closed by the books of the corporation for (1) issued and outstand-
16 ing capital stock, (2) paid-in or capital surplus, (3) earned surplus
17 and undivided profits, (4) surplus reserves which can reasonably
18 be expected to accrue to holders or owners of equitable shares, not
19 including reasonable valuation reserves, such as reserves for de-
20 preciation or obsolescence or depletion, and (5) the amount of all
21 indebtedness owing directly or indirectly to holders of 10% or more
22 of the aggregate outstanding shares of the taxpayer's capital stock
23 of all classes, as of the close of a calendar or fiscal year. The fore-
24 going aggregate of values shall be reduced by 50% of the amount
25 disclosed by the books of the corporation for investment in the
26 capital stock of one or more subsidiaries, which investment is de-
27 fined as ownership (1) of at least 80% of the total combined voting
28 power of all classes of stock of the subsidiary entitled to vote and
29 (2) of at least 80% of each class, if any, of nonvoting stock. In
30 the case of investment in an entity organized under the laws of a
31 foreign country, the foregoing requisite degree of ownership shall
32 effect a like reduction of such investment from net worth of the
33 taxpayer, if the foreign entity is considered a corporation for any
34 purpose under the United States Federal income tax laws, such as
35 (but not by way of sole examples) for the purpose of supplying
36 deemed-paid foreign tax credits or for the purpose of status as a
37 controlled foreign corporation. In calculating the net worth of a
38 taxpayer entitled to reduction for investment in subsidiaries, the
39 amount of liabilities of the taxpayer shall be reduced by such pro-
40 portion of the liabilities as corresponds to the ratio which the ex-
41 cluded portion of the subsidiary values bears to the total assets
42 of the taxpayer.

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

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

56 (f) "Investment company" shall mean any corporation whose
57 business during the period covered by its report consisted, to the
58 extent of at least 90% thereof of holding, investing and reinvesting
59 in stocks, bonds, notes, mortgages, debentures, patents, patent
60 rights and other securities for its own account, but this shall not
61 include any corporation which: (1) is a merchant or a dealer of
62 stocks, bonds and other securities, regularly engaged in buying the
63 same and selling the same to customers; or (2) had less than 90%
64 of its average gross assets in New Jersey, at cost, invested in
65 stocks, bonds, debentures, mortgages, notes, patents, patent rights
66 or other securities or consisting of cash on deposit during the period
67 covered by its report or (3) is a banking corporation or a financial
68 business corporation as defined in the Corporation Business Tax
69 Act.

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

74-75 (h) "Taxpayer" shall mean any corporation required to report
76 or to pay taxes, interest or penalties under this act.

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

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

83 (k) "Entire net income" shall mean total net income from all
84 sources, whether within or without the United States, and shall
85 include the gain derived from the employment of capital or labor,

86 or from both combined, as well as profit gained through a sale or
87 conversion of capital assets. For the purpose of this act, the
88 amount of a taxpayer's entire net income shall be deemed prima
89 facie to be equal in amount to the taxable income, before net op-
90 erating loss deduction and special deductions, which the taxpayer
91 is required to report to the United States Treasury Department
92 for the purpose of computing its Federal income tax; provided,
93 however, that in the determination of such entire net income,

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

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

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

107 (B) any part of any income from dividends or interest on any
108 kind of stock, securities or indebtedness, except as provided in
109 subsection (k)(1) of this section;

110 (C) taxes paid or accrued to the United States on or measured
111 by profits or income, or the tax imposed by this act, or any tax
112 paid or accrued with respect to subsidiary dividends excluded from
113 entire net income as provided in subsection (k)(1) of this section;

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

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

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

121 (ii) in full to the extent that it relates to bonds or other
122 evidences of indebtedness issued, with stock, pursuant to a
123 bona fide plan of reorganization, to persons, who, prior to
124 such reorganization, were bona fide creditors of the corpora-
125 tion or its predecessors, but were not stockholders or share-
126 holders thereof;

127 (3) The commissioner may, whenever necessary to properly

128 reflect the entire net income of any taxpayer, determine the year or
129 period in which any item of income or deduction shall be included,
130 without being limited to the method of accounting employed by
131 the taxpayer.

132 (l) "Real estate investment trust" shall mean any unincor-
133 porated trust or unincorporated association qualifying and electing
134 to be taxed as a real estate investment trust under Federal law.

135 (m) "*Financial business corporation*" shall mean any corporate
136 enterprise which is (1) in substantial competition with the business
137 of national banks and which (2) employs moneyed capital with the
138 object of making profit by its use as money, through discounting and
139 negotiating promissory notes, drafts, bills of exchange and other
140 evidences of debt; buying and selling exchange; making of or deal-
141 ing in secured or unsecured loans and discounts; dealing in securities
142 and shares of corporate stock by purchasing and selling such secu-
143 rities and stock without recourse, solely upon the order and for the
144 account of customers; or investing and reinvesting in marketable
145 obligations evidencing indebtedness of any person, copartnership,
146 association or corporation in the form of bonds, notes or debentures
147 commonly known as investment securities; or dealing in or under-
148 writing obligations of the United States, any State or any political
149 subdivision thereof, or of a corporate instrumentality of any of
150 them. This shall include, without limitation of the foregoing busi-
151 ness commonly known as industrial banks, dealers in commercial
152 paper and acceptances, sales finance, personal finance, small loan
153 and mortgage financing businesses, as well as any other enterprise
154 employing moneyed capital coming into competition with the busi-
155 ness of national banks; provided, that the holding of bonds, notes,
156 or other evidences of indebtedness by individual persons not em-
157 ployed or engaged in the banking or investment business and rep-
158 resenting merely personal investments not made in competition
159 with the business of national banks, shall not be deemed financial
160 business. Nor shall "financial business" include national banks,
161 production credit associations organized under the Farm Credit
162 Act of 1933, stock and mutual insurance companies duly autho-
163 rized to transact business in this State, security brokers or dealers
164 or investment companies or bankers not employing moneyed capital
165 coming into competition with the business of national banks, real
166 estate investment trusts, or any of the following entities organized
167 under the laws of this State: credit unions, savings banks, savings
168 and loan and building and loan associations, pawnbrokers, and
169 State banks and trust companies.

1 8. (New section) The aggregate amount of tax, penalty and
2 interest payable by financial business corporations pursuant to this
3 act shall upon payment be distributable among the State, the
4 various taxing districts and counties in which taxpayers hereunder
5 have maintained places of business at any time during the tax year.
6 On or before November 1 in each year the director shall determine
7 from receipts allocations contained in tax returns filed subsequent
8 to June 30 of the previous calendar year and prior to July 1 of the
9 current year the aggregate amount of tax, penalty and interest
10 attributable to places of business located in each of the various
11 taxing districts of this State during the tax year. The tax, penalty
12 and interest collected by the director shall be apportioned one-half
13 to the State, one-quarter to such county and one-quarter to the
14 taxing districts in which the financial business corporation has an
15 office or offices. Each county shall be entitled to receive out of the
16 one-quarter allocated to the counties that proportion thereof which
17 the receipts at all offices of such financial business corporations in
18 such county during the taxpayers' fiscal or calendar year accounting
19 period bear to the total receipts of all offices of such financial
20 business corporations in this State during the taxpayers' fiscal or
21 calendar year accounting period. Each taxing district is entitled
22 to that proportion of one-quarter of the tax collected by the
23 director as the receipts at all offices of such financial business
24 corporations in such district during the taxpayers' fiscal or calendar
25 year accounting period bear to the total receipts of all offices of
26 such financial business corporations in such county during the tax-
27 payers' fiscal or calendar year accounting period. The director
28 shall forthwith certify such apportionment to the State Treasurer
29 who shall upon proper audit transmit to each county treasurer
30 a certificate showing the amounts allocated to the taxing district
31 therein and shall on or before November 10 of the year in which
32 the taxes are payable draw and transmit his warrant upon the
33 State Treasurer in favor of the several county treasurers for the
34 amounts allotted to their several counties. Each county treasurer
35 shall forthwith and not later than December 15 pay to the collector
36 or other proper officer of each taxing district the amount allotted
37 thereto deducting, however, the amount due for county taxes from
38 the taxing district. The amount thus paid to the county and taxing
39 district shall be at the disposal of the proper authorities for public
40 purposes.

1 9. (New section) None of the taxes, penalties and interest col-
2 lected from financial business corporations pursuant to this act

3 shall be distributable to municipalities pursuant to P. L. 1966, c. 135
4 as amended and supplemented (C. 54:11D-1 et seq.).

1 10. (New section) During each of the years 1976, 1977 and 1978,
2 each financial business corporation shall pay as taxes under the
3 provisions of the act to which this act is a supplement, the greater
4 of a sum equal to the amount such financial business corpora-
5 tion paid pursuant to the "Financial Business Tax Law" P. L. 1946,
6 c. 174 (C. 54:10B-1, et seq.) in the calendar year 1975, or a sum
7 equal to the total of the taxes payable by such financial business
8 corporation pursuant to the "Corporation Business Tax Act,"
9 P. L. 1945, c. 162 (C. 54:10A-1 et seq.).

1 11. Sections 7 (C. 54:10B-7), 20 (C. 54:10B-20) and
2 21 (C. 54:10B-21) of P. L. 1946, c. 174 are repealed.

1 12. This act shall take effect immediately **but shall remain*
2 *inoperative until Assembly Bill No. 1915 now pending before the*
3 *Legislature is enacted and becomes operative** and shall be appli-
4 cable to all fiscal and calendar accounting periods ending after
5 December 31, 1974.

A3339 (1975)

10

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4 as amended and supplemented (C. 54:11D-1 et seq.).

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3 provisions of the act to which this act is a supplement, the greater
4 of a sum equal to the amount such financial business corpora-
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6 c. 174 (C. 54:10B-1, et seq.) in the calendar year 1975, or a sum
7 equal to the total of the taxes payable by such financial business
8 corporation pursuant to the "Corporation Business Tax Act,"
9 P. L. 1945, c. 162 (C. 54:10A-1 et seq.).

1 11. Sections 7 (C. 54:10B-7), 20 (C. 54:10B-20) and
2 21 (C. 54:10B-21) of P. L. 1946, c. 174 are repealed.

1 12. This act shall take effect immediately and shall be applicable
2 to all fiscal and calendar accounting periods ending after Decem-
3 ber 31, 1974.

STATEMENT

This bill is presented as part of the business tax reform package of the Assembly Taxation Committee. It replaces an unfair tax with a fairer one, and does not cost the State any revenue.

ASSEMBLY TAXATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3339

STATE OF NEW JERSEY

DATED: APRIL 28, 1975

This bill proposes to bring corporations now taxed under the Financial Business Tax Act under the provisions of the Corporation Franchise Tax Act. It is in keeping with the action of the committee in releasing Assembly Bill No. 1915 (OCR) favorably which brings Banking Corporations under the Corporation Franchise Tax Act, but remains inoperative until Assembly Bill No. 1915 is enacted.

Provision is made in the bill for the apportionment of receipts under this act among the counties and municipalities in the same account and same proportion as is presently made under the Financial Business Tax Act.

Furthermore, a "save harmless" provision is incorporated in the bill to insure that the revenues under this bill are equal to or greater than those due in 1975 under the Financial Business Tax Act.

The committee believes this to be a bill which should be acted upon favorably by the Legislature as a further step in restructuring business taxes in the State.

STATEMENT BY GOVERNOR BRENDAN BYRNE

August 4, 1975

A-3557

I have signed into law the supplemental appropriations bill and the tax and other revenue bills to finance it. These revenues will keep the buses and trains in operation and will restore the other programs that a majority of the Legislature adjudged to be vital to the public welfare.

Even with these restorations, New Jersey remains the most tight-fisted state in the nation. We will spend in this fiscal year about \$75 million less than we spent last year, despite the toll of continuing inflation which falls as heavily on government as it does on household budgets. And this Administration will continue its effort to cut corners and realize further economies wherever possible to make stretch every tax dollar as far as it will go.

The new taxes included in this revenue package are far less regressive than some of the taxes that the Legislature considered and wisely rejected. For the most part, the burden falls most heavily on segments of the economy that are able to bear that additional burden. And one of them -- the capital gains or unearned income tax -- is truly progressive.

Nevertheless, I take no particular pride in signing these taxes into law. And I noticed that few members of the Legislature exhibited much pride in enacting them. For this is strictly a stopgap revenue program and we must not lose sight of what it fails to do, as well as what it accomplishes.

This revenue package does nothing to meet our commitment -- the Legislature's and mine -- to fund the new education formula under which the State is to assume a greater portion of the costs of operating our public schools. The State Supreme Court has ordered that this be done and the Legislature has publicly declared its intention to deal with that commitment beginning on November 10.

* A-1915
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This revenue package does nothing to reform New Jersey's patchwork tax structure and provide relief from rising and too often confiscatory property taxes, a goal to which I remain personally committed. The most we can say for these new taxes is that they will not make that tax structure measurably more regressive than it is.

And several of the bills I signed today are, by design, temporary sources of revenue. The funds they provide will, of necessity, have to be replaced from some other source next year if the programs they finance are to continue. These temporary measures, together with other fiscal facts of life, increase the already inevitable need for substantial new revenues next year.

The Legislature has demonstrated dramatically in the past several months that there are no easy taxes -- nor should there be. The true test of a potential new tax or tax increase should not be whether it will be easy to pass, but how equitably its burden will be distributed on those who will pay it.

I am confident that the Legislature will work for true tax reform in addressing our unmet obligations in the months ahead. I will, as always, be ready to work with it in a pursuit of that goal.

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Attachment