

# 54:18A-6

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2005 **CHAPTER:** 128

**NJSA:** 54:18A-6 (Modifies the insurance premiums tax treatment of health service corporations)

**BILL NO:** A4401 (Substituted for S3006)

**SPONSOR(S):** Roberts and Cohen

**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](#) (Assembly Committee Substitute for A4401 enacted)

### A4401

[SPONSOR'S STATEMENT:](#) (Begins on page 20 of original bill) [Yes](#)

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

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

### S3006

[SPONSOR'S STATEMENT:](#) (Begins on page 3 of original bill) [Yes](#)

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

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

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

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**HEARINGS:**

No

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No

IS 7/11/07

P.L. 2005, CHAPTER 128, *approved July 2, 2005*  
Assembly Committee Substitute for  
Assembly, No. 4401

1 **AN ACT** modifying the insurance premiums tax treatment of health  
2 service corporations, amending P.L.1945, c.132.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 6 of P.L.1945, c.132 (C.54:18A-6) is amended to read  
8 as follows:

9 6. a. In the event that the taxable premiums collected by any  
10 company, as specified in sections 2 and 3 of this act, and all of its  
11 affiliates as defined in the chapter entitled "Insurance Holding  
12 Company Systems," P.L.1970, c.22 (C.17:27A-1 et seq.), during any  
13 year ending December 31, exceed twelve and one-half percentum (12  
14 1/2%) of the total premiums collected by the company and all of its  
15 affiliates during the same year on all policies and contracts of  
16 insurance, whenever and wherever issued, the taxable premiums of  
17 such company shall not exceed a sum equal to twelve and one-half  
18 percentum (12 1/2%) of such company's total premiums collected  
19 during the same year on all policies and contracts of insurance,  
20 whenever and wherever issued, calculated as specified in sections 4  
21 and 5 of this act; provided, however, a company to which section 2 of  
22 this act (C.54:18A-2) applies shall in no event be deemed to be an  
23 affiliate of a company to which section 3 of this act (C. 54:18A-3)  
24 applies and provided, further, that as to any company licensed in this  
25 State prior to June 30, 1984, the taxable premiums of that company  
26 shall be calculated without regard to the premiums collected by any  
27 affiliate.

28 b. On and after January 1, 2005 the provisions of subsection a. of  
29 this section shall not apply to a health service corporation established  
30 pursuant to the provisions of P.L.1985, c.236 (C.17:48A-1 et seq.).  
31 (cf: P.L.1989, c.315, s.1)

32  
33 2. Section 16 of P.L.1945, c.132 (C.54:18A-9) is amended to read  
34 as follows:

35 16. a. This act shall not apply to any fraternal beneficiary society.  
36 For the purposes of this act, "insurance company" shall include a  
37 corporation, and any person, partnership or unincorporated association  
38 required as an insurer to procure from the Commissioner of Banking  
39 and Insurance the certificate prescribed by section 1 of an act entitled  
40 "An act to regulate the transaction of the business of insurance by

**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 individuals, partnerships and unincorporated associations in this State"  
2 approved July 11, 1939 (P.L.1939, c.188; C.17:49-1), or under any  
3 other statute now in force or hereafter enacted, engaging in any kind  
4 or kinds of business specified in R.S.17:17-1, subject to the insurance  
5 laws of this State; provided, however, that no company or society,  
6 which by its act or certificate of incorporation has for its object the  
7 assistance of sick, needy or disabled members, the defraying of funeral  
8 expenses of deceased members and the provision for the wants of the  
9 surviving spouses and families of members after death, shall be deemed  
10 an insurance company within the purview of this act.

11 b. (1) For the purposes of P.L.1945, c.132 (C.54:18A-1 et seq.),  
12 "insurance company" shall include, beginning January 1, 1992, a health  
13 service corporation established pursuant to the provisions of P.L.1985,  
14 c.236 (C.17:48E-1 et seq.), with respect to its experience rated health  
15 insurance. An "insurance company" shall also include any life,  
16 accident, or health insurance company in which a health service  
17 corporation owns stock, controls, or otherwise becomes affiliated  
18 with, as provided in subsection e. of section 3 of P.L.1985, c.236  
19 (C.17:48E-3).

20 (2) For the purposes of P.L.1945, c.132 (C.54:18A-1 et seq.),  
21 "insurance company" shall include, beginning January 1, 2005, a health  
22 service corporation established pursuant to the provisions of P.L.1985,  
23 c.236 (C.17:48E-1 et seq.), with respect to its experience rated and  
24 community rated health insurance. An "insurance company" shall also  
25 include any life, accident, or health insurance company in which a  
26 health service corporation owns stock, controls, or otherwise becomes  
27 affiliated with, as provided in subsection e. of section 3 of P.L.1985,  
28 c.236 (C.17:48E-3).

29 (cf: P.L.1989, c.295, s.3)

30

31 3. This act shall take effect immediately.

32

33

34

35

36 \_\_\_\_\_  
37 Modifies the insurance premiums tax treatment of health service  
corporations.

# ASSEMBLY, No. 4401

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 27, 2005

**Sponsored by:**

**Assemblyman JOSEPH J. ROBERTS, JR.**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Concerns State tax treatment of insurance companies and certain business tax deductions.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT concerning State tax treatment of insurance companies and  
2 certain business tax deductions, amending P.L.1945, c.132, and  
3 amending and supplementing P.L.1945, c.162.

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

7  
8 1. Section 16 of P.L.1945, c.132 (C.54:18A-9) is amended to read  
9 as follows:

10 16. a. This act shall not apply to any fraternal beneficiary society.  
11 For the purposes of this act, "insurance company" shall include a  
12 corporation, and any person, partnership or unincorporated association  
13 required as an insurer to procure from the Commissioner of Banking  
14 and Insurance the certificate prescribed by section 1 of an act entitled  
15 "An act to regulate the transaction of the business of insurance by  
16 individuals, partnerships and unincorporated associations in this State"  
17 approved July 11, 1939 (P.L.1939, c.188; C.17:49-1), or under any  
18 other statute now in force or hereafter enacted, engaging in any kind  
19 or kinds of business specified in R.S.17:17-1, subject to the insurance  
20 laws of this State; provided, however, that no company or society,  
21 which by its act or certificate of incorporation has for its object the  
22 assistance of sick, needy or disabled members, the defraying of funeral  
23 expenses of deceased members and the provision for the wants of the  
24 surviving spouses and families of members after death, shall be deemed  
25 an insurance company within the purview of this act.

26 b. (1) For the purposes of P.L.1945, c.132 (C.54:18A-1 et seq.),  
27 "insurance company" shall include, beginning January 1, 1992, a health  
28 service corporation established pursuant to the provisions of P.L.1985,  
29 c.236 (C.17:48E-1 et seq.), with respect to its experience rated health  
30 insurance. An "insurance company" shall also include any life,  
31 accident, or health insurance company in which a health service  
32 corporation owns stock, controls, or otherwise becomes affiliated  
33 with, as provided in subsection e. of section 3 of P.L.1985, c.236  
34 (C.17:48E-3).

35 (2) For the purposes of P.L.1945, c.132 (C.54:18A-1 et seq.),  
36 "insurance company" shall include, beginning January 1, 2006, a health  
37 service corporation established pursuant to the provisions of P.L.1985,  
38 c.236 (C.17:48E-1 et seq.), with respect to its experience rated and  
39 community rated health insurance. An "insurance company" shall also  
40 include any life, accident, or health insurance company in which a  
41 health service corporation owns stock, controls, or otherwise becomes  
42 affiliated with, as provided in subsection e. of section 3 of P.L.1985,  
43 c.236 (C.17:48E-3).

**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     c. For the purposes of P.L.1945, c.132 (C.54:18A-1 et seq.),  
2     "insurance company" shall include, beginning January 1, 2006, a health  
3     maintenance organization established pursuant to the provisions of  
4     P.L.1973, c.337 (C.26:2J-1 et seq.), a dental plan organization  
5     established pursuant to the provisions of P.L.1979, c.478 (C.17:48D-1  
6     et seq.), a dental service corporation established pursuant to P.L.1968,  
7     c.305 (C.17:48C-1 et seq).  
8     (cf: P.L.1989, c.295, s.3)

9  
10     2. Section 3 of P.L.1945, c.162 (C.54:10A-3) is amended to read  
11 as follows:

12     3. The following corporations shall be exempt from the tax  
13 imposed by this act:

14     (a) Corporations subject to a tax assessed upon the basis of gross  
15 receipts, other than the alternative minimum assessment determined  
16 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a)[, and  
17 corporations subject to a tax assessed upon the basis of insurance  
18 premiums collected];

19     (b) Corporations which operate regular route autobus service within  
20 this State under operating authority conferred pursuant to R.S.48:4-3,  
21 provided, however, that such corporations shall not be exempt from  
22 the tax on net income imposed by section 5(c) of P.L.1945, c.162  
23 (C.54:10A-5);

24     (c) Railroad, canal corporations, production credit associations  
25 organized under the Farm Credit Act of 1933, or agricultural  
26 cooperative associations incorporated or domesticated under or  
27 subject to chapter 13 of Title 4 of the Revised Statutes and exempt  
28 under Subtitle A, Chapter 1F, Part IV, Section 521 of the federal  
29 Internal Revenue Code (26 U.S.C. s.521);

30     (d) Cemetery corporations not conducted for pecuniary profit or  
31 any private shareholder or individual;

32     (e) Nonprofit corporations, associations or organizations  
33 established, organized or chartered, without capital stock, under the  
34 provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of  
35 the New Jersey Statutes or under a special charter or under any similar  
36 general or special law of this or any other state, and not conducted for  
37 pecuniary profit of any private shareholders or individual;

38     (f) Sewerage and water corporations subject to a tax under the  
39 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) or any statute or  
40 law imposing a similar tax or taxes;

41     (g) Nonstock corporations organized under the laws of this State  
42 or of any other state of the United States to provide mutual ownership  
43 housing under federal law by tenants, provided, however, that the  
44 exemption hereunder shall continue only so long as the corporations  
45 remain subject to rules and regulations of the Federal Housing  
46 Authority and the Commissioner of the Federal Housing Authority

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1 holds membership certificates in the corporations and the corporate  
2 property is encumbered by a mortgage deed or deed of trust insured  
3 under the National Housing Act (48 Stat.1246) as amended by  
4 subsequent Acts of Congress. In order to be exempted under this  
5 subsection, corporations shall annually file a report on or before  
6 August 15 with the commissioner, in the form required by the  
7 commissioner, to claim such exemption, and shall pay a filing fee of  
8 \$25.00;

9 (h) Corporations not for profit organized under any law of this  
10 State where the primary purpose thereof is to provide for its  
11 shareholders or members housing in a retirement community as the  
12 same is defined under the provisions of the "Retirement Community  
13 Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.);

14 (i) Corporations which are licensed as insurance companies under  
15 the laws of another state, including corporations which are surplus  
16 lines insurers declared eligible by the Commissioner of Banking and  
17 Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to  
18 insure risks within this State; and

19 (j) (1) Municipal electric corporations that were in existence as of  
20 January 1, 1995 provided that all of their income is from sales,  
21 exchanges or deliveries of electricity derived from customers using  
22 electricity within their municipal boundaries; and (2) Municipal electric  
23 utilities that were in existence as of January 1, 1995 provided that all  
24 of their income is from sales, exchanges or deliveries of electricity  
25 derived from customers using electricity within their franchise area  
26 existing as of January 1, 1995. If a municipal electric corporation  
27 derives income from sales, exchanges or deliveries of electricity from  
28 customers using the electricity outside its municipal boundaries, such  
29 municipal electric corporation shall be subject to the tax imposed by  
30 this act on all income. If a municipal electric utility derives income  
31 from sales, exchanges or deliveries of electricity from customers using  
32 electricity outside its franchise area existing as of January 1, 1995,  
33 such municipal electric utility shall be subject to the tax imposed by the  
34 act on all income.

35 (cf: P.L.2002, c.40, s.2)

36

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

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

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

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

46 (c) "Corporation" shall mean any corporation, joint-stock company



1 or association and any business conducted by a trustee or trustees  
2 wherein interest or ownership is evidenced by a certificate of interest  
3 or ownership or similar written instrument, any other entity classified  
4 as a corporation for federal income tax purposes, and any state or  
5 federally chartered building and loan association or savings and loan  
6 association.

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

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

42 If in the opinion of the commissioner, the corporation's books do  
43 not disclose fair valuations the commissioner may make a reasonable  
44 determination of the net worth which, in his opinion, would reflect the  
45 fair value of the assets, exclusive of subsidiary investments as defined  
46 aforesaid, carried on the books of the corporation, in accordance with

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1 sound accounting principles, and such determination shall be used as  
2 net worth for the purpose of this act.

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

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

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

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

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

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

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

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

44 (1) Entire net income shall exclude for the periods set forth in  
45 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
46 to qualified mass commuting vehicles as described in section

1 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
2 prior to January 1, 1984, which is included in a taxpayer's federal  
3 taxable income solely as a result of an election made pursuant to the  
4 provisions of paragraph (8) of that section.

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

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

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

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

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

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

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

41 (ii) For the periods set forth in subparagraph (F)(i) of this  
42 subsection, any amount, except with respect to qualified mass  
43 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
44 Internal Revenue Code as in effect immediately prior to January 1,  
45 1984, which the taxpayer claimed as a deduction in computing federal

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1 income tax pursuant to a qualified lease agreement under paragraph  
2 (8) of that section.

3 The director shall promulgate rules and regulations necessary to  
4 carry out the provisions of this section, which rules shall provide,  
5 among others, the manner in which the remaining life of property shall  
6 be reported.

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

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

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

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

1 a rate three percentage points less than the rate of tax applied to  
2 taxable interest by this State.

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

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

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

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

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

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

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

42 (ii) Making or placing deposits with foreign persons which are  
43 banks or foreign branches of banks (including foreign subsidiaries) or  
44 foreign branches of the taxpayers or with other international banking  
45 facilities;

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

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

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

8 (5) ~~Entire~~ (A) Except as provided in subparagraph (B) of this  
9 paragraph, net income shall exclude 100% of dividends which were  
10 included in computing such taxable income for federal income tax  
11 purposes, paid to the taxpayer by one or more subsidiaries owned by  
12 the taxpayer to the extent of the 80% or more ownership of investment  
13 described in subsection (d) of this section and shall exclude 50% of  
14 dividends which were included in computing such taxable income for  
15 federal income tax purposes, paid to the taxpayer by one or more  
16 subsidiaries owned by the taxpayer to the extent of 50% or more  
17 ownership of investment, such ownership of investment calculated in  
18 the same manner as the 80% or more of ownership of investment is  
19 calculated as described in subsection (d) of this section.

20 (B) Entire net income shall include 100% of dividends taken into  
21 account pursuant to subsection (a) of section 965 of the federal  
22 Internal Revenue Code of 1986, 26 U.S.C. s.965, for purposes of the  
23 federal temporary dividends received deduction.

24 (6) (A) Net operating loss deduction. There shall be allowed as a  
25 deduction for the privilege period the net operating loss carryover to  
26 that period.

27 (B) Net operating loss carryover. A net operating loss for any  
28 privilege period ending after June 30, 1984 shall be a net operating  
29 loss carryover to each of the seven privilege periods following the  
30 period of the loss. The entire amount of the net operating loss for any  
31 privilege period (the "loss period") shall be carried to the earliest of  
32 the privilege periods to which the loss may be carried. The portion of  
33 the loss which shall be carried to each of the other privilege periods  
34 shall be the excess, if any, of the amount of the loss over the sum of  
35 the entire net income, computed without the exclusions permitted in  
36 paragraphs (4) and (5) of this subsection or the net operating loss  
37 deduction provided by subparagraph (A) of this paragraph, for each of  
38 the prior privilege periods to which the loss may be carried.

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

44 (D) Change in ownership. Where there is a change in 50% or more  
45 of the ownership of a corporation because of redemption or sale of  
46 stock and the corporation changes the trade or business giving rise to

1 the loss, no net operating loss sustained before the changes may be  
2 carried over to be deducted from income earned after such changes.  
3 In addition where the facts support the premise that the corporation  
4 was acquired under any circumstances for the primary purpose of the  
5 use of its net operating loss carryover, the director may disallow the  
6 carryover.

7 (E) Notwithstanding the provisions of this paragraph (6) of  
8 subsection (k) of this section to the contrary, for privilege periods  
9 beginning during calendar year 2002 and calendar year 2003, no  
10 deduction for any net operating loss carryover shall be allowed and for  
11 privilege periods beginning during calendar year 2004 and calendar  
12 year 2005, there shall be allowed as a deduction for the privilege  
13 period so much of the net operating loss carryover as reduces entire  
14 net income otherwise calculated by 50%. If and only to the extent that  
15 any net operating loss carryover deduction is disallowed by reason of  
16 this subparagraph (E), the date on which the amount of the disallowed  
17 net operating loss carryover deduction would otherwise expire shall be  
18 extended by a period equal to the period for which application of the  
19 net operating loss was disallowed by this subparagraph.

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

25 (7) The entire net income of gas, electric and gas and electric public  
26 utilities that were subject to the provisions of P.L.1940, c.5  
27 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
28 the New Jersey depreciation allowance for federal tax depreciation  
29 with respect to assets placed in service prior to January 1, 1998. For  
30 gas, electric, and gas and electric public utilities that were subject to  
31 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,  
32 the New Jersey depreciation allowance shall be computed as follows:  
33 All depreciable assets placed in service prior to January 1, 1998 shall  
34 be considered a single asset account. The New Jersey tax basis of this  
35 depreciable asset account shall be an amount equal to the carryover  
36 adjusted basis for federal income tax purposes on December 31, 1997  
37 of all depreciable assets in service on December 31, 1997, increased  
38 by the excess, of the "net carrying value," defined to be adjusted book  
39 basis of all assets and liabilities, excluding deferred income taxes,  
40 recorded on the public utility's books of account on December 31,  
41 1997, over the carryover adjusted basis for federal income tax  
42 purposes on December 31, 1997 of all assets and liabilities owned by  
43 the gas, electric, or gas and electric public utility as of December 31,  
44 1997. "Books of account" for gas, gas and electric, and electric public  
45 utilities means the uniform system of accounts as promulgated by the  
46 Federal Energy Regulatory Commission and adopted by the Board of

1 Public Utilities. The following adjustments to entire net income shall  
2 be made pursuant to this section:

3 (A) Depreciation for property placed in service prior to January 1,  
4 1998 shall be adjusted as follows:

5 (i) Depreciation for federal income tax purposes shall be disallowed  
6 in full.

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

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

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

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

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

39 (10) Entire net income shall exclude all income of an alien  
40 corporation the activities of which are limited in this State to investing  
41 or trading in stocks and securities for its own account, investing or  
42 trading in commodities for its own account, or any combination of  
43 those activities, within the meaning of section 864 of the federal  
44 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on  
45 December 31, 1998. Notwithstanding the previous sentence, if an alien  
46 corporation undertakes one or more infrequent, extraordinary or



1 non-recurring activities, including but not limited to the sale of  
2 tangible property, only the income from such infrequent, extraordinary  
3 or non-recurring activity shall be subject to the tax imposed pursuant  
4 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income  
5 subject to tax shall be determined without regard to the allocation to  
6 that specific transaction of any general business expense of the  
7 taxpayer and shall be specifically assigned to this State for taxation by  
8 this State without regard to section 6 of P.L.1945, c.162  
9 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"  
10 means a corporation organized under the laws of a jurisdiction other  
11 than the United States or its political subdivisions.

12 (11) No deduction shall be allowed for research and experimental  
13 expenditures, to the extent that those research and experimental  
14 expenditures are qualified research expenses or basic research  
15 payments for which an amount of credit is claimed pursuant to section  
16 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and  
17 experimental expenditures are also used to compute a federal credit  
18 claimed pursuant to section 41 of the federal Internal Revenue Code  
19 of 1986, 26 U.S.C. s.41.

20 (12) (A) Notwithstanding the provisions of subsection (k) of  
21 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
22 s.168, subsection (b) of section 1400L of the federal Internal Revenue  
23 Code of 1986, 26 U.S.C. s.1400L, or any other federal law, for  
24 property acquired after September 10, 2001, the depreciation  
25 deduction otherwise allowed pursuant to section 167 of the federal  
26 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined  
27 pursuant to the provisions of the federal Internal Revenue Code of  
28 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001.

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

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

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

46 (l) "Real estate investment trust" shall mean any corporation, trust

1 or association qualifying and electing to be taxed as a real estate  
2 investment trust under federal law.

3 (m) "Financial business corporation" shall mean any corporate  
4 enterprise which is (1) in substantial competition with the business of  
5 national banks and which (2) employs moneyed capital with the object  
6 of making profit by its use as money, through discounting and  
7 negotiating promissory notes, drafts, bills of exchange and other  
8 evidences of debt; buying and selling exchange; making of or dealing  
9 in secured or unsecured loans and discounts; dealing in securities and  
10 shares of corporate stock by purchasing and selling such securities and  
11 stock without recourse, solely upon the order and for the account of  
12 customers; or investing and reinvesting in marketable obligations  
13 evidencing indebtedness of any person, copartnership, association or  
14 corporation in the form of bonds, notes or debentures commonly  
15 known as investment securities; or dealing in or underwriting  
16 obligations of the United States, any state or any political subdivision  
17 thereof, or of a corporate instrumentality of any of them. This shall  
18 include, without limitation of the foregoing, business commonly  
19 known as industrial banks, dealers in commercial paper and  
20 acceptances, sales finance, personal finance, small loan and mortgage  
21 financing businesses, as well as any other enterprise employing  
22 moneyed capital coming into competition with the business of national  
23 banks; provided that the holding of bonds, notes, or other evidences  
24 of indebtedness by individual persons not employed or engaged in the  
25 banking or investment business and representing merely personal  
26 investments not made in competition with the business of national  
27 banks, shall not be deemed financial business. Nor shall "financial  
28 business" include national banks, production credit associations  
29 organized under the Farm Credit Act of 1933 or the Farm Credit Act  
30 of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
31 insurance companies duly authorized to transact business in this State,  
32 security brokers or dealers or investment companies or bankers not  
33 employing moneyed capital coming into competition with the business  
34 of national banks, real estate investment trusts, or any of the following  
35 entities organized under the laws of this State: credit unions, savings  
36 banks, savings and loan and building and loan associations,  
37 pawnbrokers, and State banks and trust companies.

38 (n) "International banking facility" shall mean a set of asset and  
39 liability accounts segregated on the books and records of a depository  
40 institution, United States branch or agency of a foreign bank, or an  
41 Edge or Agreement Corporation that includes only international  
42 banking facility time deposits and international banking facility  
43 extensions of credit as such terms are defined in section 204.8(a)(2)  
44 and section 204.8(a)(3) of Regulation D of the board of governors of  
45 the Federal Reserve System, 12 CFR Part 204, effective December 3,  
46 1981. In the event that the United States enacts a law, or the board

1 of governors of the Federal Reserve System adopts a regulation which  
2 amends the present definition of international banking facility or of  
3 such facilities' time deposits or extensions of credit, the Commissioner  
4 of Banking and Insurance shall forthwith adopt regulations defining  
5 such terms in the same manner as such terms are set forth in the laws  
6 of the United States or the regulations of the board of governors of the  
7 Federal Reserve System. The regulations of the Commissioner of  
8 Banking and Insurance shall thereafter provide the applicable  
9 definitions.

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

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

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

19 (r) "Qualified investment partnership" means a partnership under  
20 this act that has more than 10 members or partners with no member or  
21 partner owning more than a 50% interest in the entity and that derives  
22 at least 90% of its gross income from dividends, interest, payments  
23 with respect to securities loans, and gains from the sale or other  
24 disposition of stocks or securities or foreign currencies or  
25 commodities or other similar income (including but not limited to gains  
26 from swaps, options, futures or forward contracts) derived with  
27 respect to its business of investing or trading in those stocks,  
28 securities, currencies or commodities, but "investment partnership"  
29 shall not include a "dealer in securities" within the meaning of section  
30 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

31 (s) "Savings institution" means a state or federally chartered  
32 building and loan association, savings and loan association, or savings  
33 bank.

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

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

37

38 4. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read  
39 as follows:

40 5. The franchise tax to be annually assessed to and paid by each  
41 taxpayer shall be the greater of the amount computed pursuant to this  
42 section or, in the case of corporations that are not subject to a tax  
43 assessed upon the basis of insurance premiums collected, the  
44 alternative minimum assessment computed pursuant to section 7 of  
45 P.L.2002, c.40 (C.54:10A-5a) and, in the case of corporations subject  
46 to a tax assessed upon the basis of insurance premiums collected, the

1 alternative minimum assessment computed pursuant to section 5 of  
 2 P.L. , c. (C. )(pending before the Legislature as this bill);  
 3 provided however, that in the case of a taxpayer that is a New Jersey  
 4 S corporation, an investment company, a professional corporation  
 5 organized pursuant to P.L.1969, c. 232 (C.14A:17-1 et seq.) or a  
 6 similar corporation for profit organized for the purpose of rendering  
 7 professional services under the laws of another state, or a person  
 8 operating on a cooperative basis under Part I of Subchapter T of the  
 9 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,there  
 10 shall be no alternative minimum assessment computed pursuant to  
 11 section 7 of P.L.2002, c.40 (C.54:10A-5a).

12 The amount computed pursuant to this section shall be the sum of  
 13 the amount computed under subsection (a) hereof, or in the alternative  
 14 to the amount computed under subsection (a) hereof, the amount  
 15 computed under subsection (f) hereof, and the amount computed  
 16 under subsection (c) hereof:

17 (a) That portion of its entire net worth as may be allocable to this  
 18 State as provided in section 6, multiplied by the following rates: 2  
 19 mills per dollar on the first \$100,000,000.00 of allocated net worth;  
 20 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill  
 21 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar  
 22 on all amounts of allocated net worth in excess of \$300,000,000.00;  
 23 provided, however, that with respect to reports covering accounting  
 24 or privilege periods set forth below, the rate shall be that percentage  
 25 of the rate set forth in this subsection for the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be
31 April 1, 1983	75%
32 July 1, 1984	50%
33 July 1, 1985	25%
34 July 1, 1986	0

35 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

36 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3  
 37 1/4% of its entire net income or such portion thereof as may be  
 38 allocable to this State as provided in section 6 of P.L.1945, c.162  
 39 (C.54:10A-6) plus such portion thereof as is specifically assigned to  
 40 this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1);  
 41 provided, however, that with respect to reports covering accounting  
 42 or privilege periods or parts thereof ending after December 31, 1967,  
 43 the rate shall be 4 1/4%; and that with respect to reports covering  
 44 accounting or privilege periods or parts thereof ending after  
 45 December 31, 1971, the rate shall be 5 1/2%; and that with respect to  
 46 reports covering accounting or privilege periods or parts thereof

1 ending after December 31, 1974, the rate shall be 7 1/2%; and that  
2 with respect to reports covering privilege periods or parts thereof  
3 ending after December 31, 1979, the rate shall be 9%; provided  
4 however, that for a taxpayer that has entire net income of \$100,000 or  
5 less for a privilege period and is not a partnership the rate for that  
6 privilege period shall be 7 1/2% and provided further that for a  
7 taxpayer that has entire net income of \$50,000 or less for a privilege  
8 period and is not a partnership the rate for that privilege period shall  
9 be 6 1/2%.

10 (2) For a taxpayer that is a New Jersey S corporation:

11 (i) for privilege periods ending on or before June 30, 1998 the rate  
12 determined by subtracting the maximum tax bracket rate provided  
13 under N.J.S.54A:2-1 for the privilege period from the tax rate that  
14 would otherwise be applicable to the taxpayer's entire net income for  
15 the privilege period if the taxpayer were not an S corporation provided  
16 under paragraph (1) of this subsection for the privilege period; and

17 (ii) For a taxpayer that has entire net income in excess of \$100,000  
18 for the privilege period, for privilege periods ending on or after July 1,  
19 1998, but on or before June 30, 2001, the rate shall be 2%,

20 for privilege periods ending on or after July 1, 2001, but on or  
21 before June 30, 2006, the rate shall be 1.33%,

22 for privilege periods ending on or after July 1, 2006, but on or  
23 before June 30, 2007, the rate shall be 0.67%, and

24 for privilege periods ending on or after July 1, 2007 there shall be  
25 no rate of tax imposed under this paragraph, and

26 (iii) For a taxpayer that has entire net income of \$100,000 or less  
27 for privilege periods ending on or after July 1, 1998, but on or before  
28 June 30, 2001 the rate for that privilege period shall be 0.5%, and for  
29 privilege periods ending on or after July 1, 2001 there shall be no rate  
30 of tax imposed under this paragraph.

31 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or  
32 (iii) of this paragraph shall be multiplied by its entire net income that  
33 is not subject to federal income taxation or such portion thereof as  
34 may be allocable to this State pursuant to sections 6 through 10 of  
35 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such portion  
36 thereof as is specifically assigned to this State as provided in section  
37 5 of P.L.1993, c.173 (C.54:10A-6.1).

38 (3) For a taxpayer that is a New Jersey S corporation, in addition  
39 to the amount, if any, determined under paragraph (2) of this  
40 subsection, the tax rate that would otherwise be applicable to the  
41 taxpayer's entire net income for the privilege period if the taxpayer  
42 were not an S corporation provided under paragraph (1) of this  
43 subsection for the privilege period multiplied by its entire net income  
44 that is subject to federal income taxation or such portion thereof as  
45 may be allocable to this State pursuant to sections 6 through 10 of  
46 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

1 (d) Provided, however, that the franchise tax to be annually  
 2 assessed to and paid by any investment company or real estate  
 3 investment trust, which has elected to report as such and has filed its  
 4 return in the form and within the time provided in this act and the rules  
 5 and regulations promulgated in connection therewith, shall, in the case  
 6 of an investment company, be measured by 40% of its entire net  
 7 income and 40% of its entire net worth, and in the case of a real estate  
 8 investment trust, by 4% of its entire net income and 15% of its entire  
 9 net worth, at the rates hereinbefore set forth for the computation of  
 10 tax on net income and net worth, respectively, but in no case less than  
 11 \$250, and further provided, however, that the franchise tax to be  
 12 annually assessed to and paid by a regulated investment company  
 13 which for a period covered by its report satisfies the requirements of  
 14 Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal  
 15 Revenue Code shall be \$250.

16 (e) The tax assessed to any taxpayer pursuant to this section shall  
 17 not be less than \$25 in the case of a domestic corporation, \$50 in the  
 18 case of a foreign corporation, or \$250 in the case of an investment  
 19 company or regulated investment company. Provided however, that  
 20 for privilege periods beginning in calendar year 1994 and thereafter the  
 21 minimum taxes for taxpayers other than an investment company or a  
 22 regulated investment company shall be as provided in the following  
 23 schedule:

24	Period Beginning	Domestic	Foreign
25	In Calendar Year	Corporation	Corporation
26		Minimum Tax	Minimum Tax
27	1994	\$ 50	\$100
28	1995	\$100	\$200
29	1996	\$150	\$200
30	1997	\$200	\$200
31	1998	\$200	\$200
32	1999	\$200	\$200
33	2000	\$200	\$200
34	2001	\$210	\$210

35 and for calendar year 2002 and thereafter the minimum tax for all  
 36 taxpayers shall be \$500; provided however, that for a taxpayer that is  
 37 a member of an affiliated group or a controlled group pursuant to  
 38 section 1504 or 1563 of the federal Internal Revenue Code of 1986,  
 39 26 U.S.C. s.1504 or 1563, and whose group has total payroll of  
 40 \$5,000,000 or more for the privilege period, the minimum tax shall be  
 41 \$2,000 for the privilege period; and provided further that the director  
 42 shall adjust the minimum tax amounts for privilege periods beginning  
 43 in each fifth year following calendar year 2002 and each fifth year  
 44 thereafter by multiplying the minimum tax for periods beginning in  
 45 2002 by an amount equal to one plus 75% of the increase, if any, in  
 46 the annual average total producer price index for finished goods

1 published by the federal Department of Labor, Bureau of Labor  
2 Statistics, for the year preceding the determination year over such  
3 index for calendar year 2001, which adjusted minimum tax amount  
4 shall be rounded to the next highest multiple of \$10.

5 (f) In lieu of the portion of the tax based on net worth and to be  
6 computed under subsection (a) of this section, any taxpayer, the value  
7 of whose total assets everywhere, less reasonable reserves for  
8 depreciation, as of the close of the period covered by its report,  
9 amounts to less than \$150,000, may elect to pay the tax shown in a  
10 table which shall be promulgated by the director.

11 (g) Provided however, that for privilege periods beginning on or  
12 after January 1, 2001 but before January 1, 2002 the franchise tax  
13 annually assessed to and paid by a taxpayer:

14 (1) that is a limited liability company or foreign limited liability  
15 company classified as a partnership for federal income tax purposes  
16 shall be the amount determined pursuant to the provisions of section  
17 3 of P.L.2001, c.136 (C.54:10A-15.6); or

18 (2) that is a limited partnership or foreign limited partnership  
19 classified as a partnership for federal income tax purposes shall be the  
20 amount determined pursuant to the provisions of section 4 of  
21 P.L.2001, c.136 (C.54:10A-15.7).

22 (h) Provided however, that for privilege periods beginning on or  
23 after January 1, 2002 the franchise tax annually assessed to and paid  
24 by a taxpayer that is a partnership shall be the amount determined  
25 pursuant to the provisions of section 12 of P.L.2002, c.40  
26 (C.54:10A-15.11).

27 (i) Notwithstanding the provisions of subsection c. of this section  
28 to the contrary, and notwithstanding the provisions of subsection (B)  
29 of section 6 of P.L.1945, c.162 (C.54:10A-6) to the contrary, the  
30 amount by which the exclusion of receipts from the denominator of the  
31 sales fraction pursuant to subsection (B) of section 6 of P.L.1945,  
32 c.162 (C.54:10A-6) increases the liability of all of the members of an  
33 affiliated group or a controlled group pursuant to section 1504 or  
34 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504  
35 or 1563, over that liability calculated without application of the  
36 exclusion for a privilege period shall not exceed \$5,000,000. If the  
37 exclusion of receipts from the denominator of the sales fraction  
38 pursuant to subsection (B) would otherwise increase the liability of all  
39 of the members of an affiliated group or a controlled group by more  
40 than \$5,000,000 for a privilege period, then the amount of liability in  
41 excess of \$5,000,000 due to the exclusion of receipts from the  
42 denominator shall be abated, and the abated liability shall be allocated  
43 among the members of the affiliated group or the controlled group in  
44 proportion to each member's increase in liability due to the exclusion  
45 of such receipts; provided however, that the director may allow a  
46 single corporation within the affiliated group or controlled group to

1 act as the key corporation for the abatement, in such manner as the  
2 director may prescribe.

3 (cf: P.L.2002, c.40, s.6)

4

5 5. (New section) For privilege periods ending after the effective  
6 date of PL. , c. (now pending as this bill), the alternative minimum  
7 assessment shall be equal to 1% of the net written premiums received  
8 in the privilege period. "Net written premiums received" means direct  
9 premiums as reported on the annual financial statement submitted  
10 pursuant to section 9 of P.L.1973, c.337 (C.26:2J-9), but excluding  
11 premiums for private passenger automobile insurance.

12

13 6. Section 6 of P.L.1945, c.132 (C.54:18A-6) is amended to read  
14 as follows:

15 6. [In] Except for an insurer or corporation that is a "carrier," as  
16 defined pursuant to section 1 of P.L.1999, c.409 (C.17:48H-1), in the  
17 event that the taxable premiums collected by any company, as specified  
18 in sections 2 and 3 of this act, and all of its affiliates as defined in the  
19 chapter entitled "Insurance Holding Company Systems," P.L.1970,  
20 c.22 (C.17:27A-1 et seq.), during any year ending December 31,  
21 exceed twelve and one-half percentum (12 1/2%) of the total  
22 premiums collected by the company and all of its affiliates during the  
23 same year on all policies and contracts of insurance, whenever and  
24 wherever issued, the taxable premiums of such company shall not  
25 exceed a sum equal to twelve and one-half percentum (12 1/2%) of  
26 such company's total premiums collected during the same year on all  
27 policies and contracts of insurance, whenever and wherever issued,  
28 calculated as specified in sections 4 and 5 of this act; provided,  
29 however, a company to which section 2 of this act (C.54:18A-2)  
30 applies shall in no event be deemed to be an affiliate of a company to  
31 which section 3 of this act (C. 54:18A-3) applies and provided,  
32 further, that as to any company licensed in this State prior to June 30,  
33 1984, the taxable premiums of that company shall be calculated  
34 without regard to the premiums collected by any affiliate.

35 (cf: P.L.1989, c.315, s.1)

36

37 7. This act shall take effect immediately and sections 2 through 4  
38 shall apply to privilege periods ending after its enactment.

39

40

41

#### STATEMENT

42

43 This bill concerns State tax treatment of insurance companies and  
44 certain business tax deductions.

45 The bill provides for uniformity in the taxation of all small and  
46 group health insurance carriers operating in this State. The bill



1 imposes the insurance premium tax on HMO's and dental plan  
2 organizations (DPO's), both of which are currently subject to the  
3 corporation business tax. In addition, the bill also subjects dental  
4 service organizations (DSO's), currently exempt from taxation, and all  
5 premiums of health services corporations (HSC's), specifically Horizon  
6 Blue Cross/Blue Shield, to the insurance premium tax. Currently, only  
7 experience rated, or group insurance premiums of HSC's are subject  
8 to the insurance premium tax while individual and small group  
9 insurance premiums of HSC's are not.

10 The bill imposes the corporation business tax on all of the insurers  
11 that are currently exempt from corporation business tax as  
12 corporations subject to a tax assessed upon the basis of insurance  
13 premiums collected. The bill provides an alternative minimum  
14 assessment under the corporation business tax for the corporations  
15 subject to a tax assessed upon the basis of insurance premiums  
16 collected, equal to 1% of the net written premiums received in the  
17 privilege period other than premiums for private passenger automobile  
18 insurance, in parallel with the alternative minimum assessment  
19 currently imposed under the corporation business tax for corporations  
20 that do not pay a tax assessed upon the basis of insurance premiums  
21 collected.

22 The bill repeals the maximum tax rule which caps taxable premiums  
23 at 12.5% of total premiums for any company whose taxable premiums  
24 in New Jersey exceed 12.5% of its total worldwide taxable premiums.  
25 A carrier which qualifies for this preferential tax treatment (of which  
26 there is only one at present, Horizon Blue Cross/Blue Shield) currently  
27 pays an effective premiums tax rate of 0.25%.

28 The bill disallows the dividends-received deduction under the  
29 corporation business tax for dividends that are taken into account for  
30 the temporary federal dividends received deduction under 26 U.S.C.  
31 s.965. Currently, the corporation business tax excludes from taxable  
32 income 100 percent of dividends received from companies in which the  
33 taxpayer has an ownership interest of 80 percent or more; and  
34 excludes 50 percent of dividends for which the taxpayer has an  
35 ownership interest of 50 percent or more. Certain dividends received  
36 by a U.S. corporation from controlled foreign corporations are eligible  
37 for a temporary 85-percent federal tax dividends-received deduction.  
38 This federal deduction is available only for dividends received either  
39 during the taxpayer's first tax year beginning after October 21, 2004,  
40 or during the taxpayer's last tax year beginning before October 22,  
41 2004. This bill allows those extraordinary foreign dividends to be  
42 subject to State taxation.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 4401

# STATE OF NEW JERSEY

DATED: JUNE 29, 2005

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4401.

This Assembly Committee Substitute for Assembly Bill No. 4401 modifies the insurance premiums tax treatment of health service corporations.

Specifically, this substitute imposes the insurance premium tax on and all premiums of health services corporations (HSC's). Currently, only "experience rated," or group insurance, premiums of HSC's are subject to the insurance premium tax while individual and small group insurance premiums of HSC's are not.

The substitute limits the maximum tax rule which caps taxable premiums at 12.5% of total premiums for any company whose taxable premiums in New Jersey exceed 12.5% of its total worldwide taxable premiums. A health carrier which qualifies for this preferential tax treatment currently pays an effective tax rate of 0.25%. This substitute excludes all a health service corporations established pursuant to the provisions of P.L.1985, c.236 (C.17:48A-1 et seq.) from the coverage of the cap.

#### FISCAL IMPACT:

The combined revenue effects of imposing the insurance premiums tax on all insurers and of eliminating the maximum tax rule has been estimated by the Office of Legislative Services at an increase of approximately \$40 million annually.

# SENATE, No. 3006

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 30, 2005

**Sponsored by:**  
**Senator BARBARA BUONO**  
**District 18 (Middlesex)**

### **SYNOPSIS**

Modifies the insurance premiums tax treatment of health service corporations.

### **CURRENT VERSION OF TEXT**

As introduced.



S3006 BUONO

2

1 AN ACT modifying the insurance premiums tax treatment of health  
2 service corporations, amending P.L.1945, c.132.

3

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

6

7 1. Section 6 of P.L.1945, c.132 (C.54:18A-6) is amended to read  
8 as follows:

9 6. a. In the event that the taxable premiums collected by any  
10 company, as specified in sections 2 and 3 of this act, and all of its  
11 affiliates as defined in the chapter entitled "Insurance Holding  
12 Company Systems," P.L.1970, c.22 (C.17:27A-1 et seq.), during any  
13 year ending December 31, exceed twelve and one-half percentum (12  
14 1/2%) of the total premiums collected by the company and all of its  
15 affiliates during the same year on all policies and contracts of  
16 insurance, whenever and wherever issued, the taxable premiums of  
17 such company shall not exceed a sum equal to twelve and one-half  
18 percentum (12 1/2%) of such company's total premiums collected  
19 during the same year on all policies and contracts of insurance,  
20 whenever and wherever issued, calculated as specified in sections 4  
21 and 5 of this act; provided, however, a company to which section 2 of  
22 this act (C.54:18A-2) applies shall in no event be deemed to be an  
23 affiliate of a company to which section 3 of this act (C. 54:18A-3)  
24 applies and provided, further, that as to any company licensed in this  
25 State prior to June 30, 1984, the taxable premiums of that company  
26 shall be calculated without regard to the premiums collected by any  
27 affiliate.

28 b. On and after January 1, 2005 the provisions of subsection a. of  
29 this section shall not apply to a health service corporation established  
30 pursuant to the provisions of P.L.1985, c.236 (C.17:48A-1 et seq.).  
31 (cf: P.L.1989, c.315, s.1)

32

33 2. Section 16 of P.L.1945, c.132 (C.54:18A-9) is amended to  
34 read as follows:

35 16. a. This act shall not apply to any fraternal beneficiary society.  
36 For the purposes of this act, "insurance company" shall include a  
37 corporation, and any person, partnership or unincorporated association  
38 required as an insurer to procure from the Commissioner of Banking  
39 and Insurance the certificate prescribed by section 1 of an act entitled  
40 "An act to regulate the transaction of the business of insurance by  
41 individuals, partnerships and unincorporated associations in this State"  
42 approved July 11, 1939 (P.L.1939, c.188; C.17:49-1), or under any  
43 other statute now in force or hereafter enacted, engaging in any kind

**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 or kinds of business specified in R.S.17:17-1, subject to the insurance  
2 laws of this State; provided, however, that no company or society,  
3 which by its act or certificate of incorporation has for its object the  
4 assistance of sick, needy or disabled members, the defraying of funeral  
5 expenses of deceased members and the provision for the wants of the  
6 surviving spouses and families of members after death, shall be deemed  
7 an insurance company within the purview of this act.

8 b. (1) For the purposes of P.L.1945, c.132 (C.54:18A-1 et seq.),  
9 "insurance company" shall include, beginning January 1, 1992, a health  
10 service corporation established pursuant to the provisions of P.L.1985,  
11 c.236 (C.17:48E-1 et seq.), with respect to its experience rated health  
12 insurance. An "insurance company" shall also include any life,  
13 accident, or health insurance company in which a health service  
14 corporation owns stock, controls, or otherwise becomes affiliated  
15 with, as provided in subsection e. of section 3 of P.L.1985, c.236  
16 (C.17:48E-3).

17 (2) For the purposes of P.L.1945, c.132 (C.54:18A-1 et seq.),  
18 "insurance company" shall include, beginning January 1, 2005, a health  
19 service corporation established pursuant to the provisions of P.L.1985,  
20 c.236 (C.17:48E-1 et seq.), with respect to its experience rated and  
21 community rated health insurance. An "insurance company" shall also  
22 include any life, accident, or health insurance company in which a  
23 health service corporation owns stock, controls, or otherwise becomes  
24 affiliated with, as provided in subsection e. of section 3 of P.L.1985,  
25 c.236 (C.17:48E-3).

26 (cf: P.L.1989, c.295, s.3)

27

28 3. This act shall take effect immediately.

29

30

31

#### STATEMENT

32

33 This bill modifies the insurance premiums tax treatment of health  
34 service corporations.

35 The bill excludes health service corporations from coverage under  
36 the insurance premiums tax maximum tax rule. That rule caps taxable  
37 premiums at 12.5% of total premiums for any company whose taxable  
38 premiums in New Jersey exceed 12.5% of its total worldwide taxable  
39 premiums. This bill excludes health service corporations from  
40 coverage by the cap.

41 The bill also modifies the premiums of a health service corporation  
42 that are subject to insurance premiums tax. Currently, a health service  
43 corporation is subject to tax only with respect to its experience rated  
44 health insurance, which excludes from taxation individual and small  
45 group insurance premiums. This bill eliminates that limitation to

**S3006 BUONO**

4

- 1 experience rated health insurance, allowing all of the premiums of a
- 2 health service corporation to be subject to insurance premiums
- 3 taxation.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 3006

# STATE OF NEW JERSEY

DATED: JULY 1, 2005

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3006.

This bill modifies the insurance premiums tax treatment of health service corporations.

Specifically, this bill imposes the insurance premium tax on all premiums of health services corporations (HSC's). Currently, only "experience rated," or group insurance, premiums of HSC's are subject to the insurance premium tax while individual and small group insurance premiums of HSC's are not.

The bill limits the maximum tax rule which caps taxable premiums at 12.5% of total premiums for any company whose taxable premiums in New Jersey exceed 12.5% of its total worldwide taxable premiums. A health carrier which qualifies for this preferential tax treatment currently pays an effective tax rate of 0.25%. This bill excludes all health service corporations established pursuant to the provisions of P.L.1985, c.236 (C.17:48A-1 et seq.) from the coverage of the cap.

#### FISCAL IMPACT:

The combined revenue effects of imposing the insurance premiums tax on all insurers and of eliminating the maximum tax rule has been estimated by the Office of Legislative Services at an increase of approximately \$40 million annually.