

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

IS 1/3/08

P.L. 2005, CHAPTER 288, *approved January 9, 2006*
Senate, No. 1892 (*Second Reprint*)

1 AN ACT ¹[allowing] requiring¹ owners of pass-through entities to
2 credit certain payments the entities make on the owner's behalf
3 against the owners' estimated taxes, amending P.L.2002, c.40 ²,
4 P.L.1981, c.184,² and N.J.S.54A:9-6.

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

8
9 1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to
10 read as follows:

11 12. a. ~~(1)~~ A partnership that is not a qualified investment
12 partnership or an investment club and that is not listed on a United
13 States national stock exchange shall¹ [, on or before the 15th day of
14 the fourth month succeeding the close of each privilege period, remit]
15 ²[be subject to¹] . on or before the 15th day of the fourth month
16 succeeding the close of each privilege period, remit² a payment of tax.
17 The amount of tax shall be equal to the sum of: all of the share of the
18 entire net income of the partnership for that privilege period of all
19 nonresident noncorporate partners, multiplied by an allocation factor
20 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
21 based on the allocation fractions of the partnership for that privilege
22 period, and multiplied by .0637 plus all of the share of the entire net
23 income of the partnership for that privilege period of all nonresident
24 corporate partners, multiplied by an allocation factor determined,
25 pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the
26 allocation fractions of the partnership for that privilege period, and
27 multiplied by .09.

28 ~~(2)~~ ²(a)² A partnership that is subject to the tax payment
29 requirements of paragraph (1) of this subsection¹ [~~may~~]shall¹ make
30 ²[~~advance~~]installment² payments of ²25% of ² that tax on or before
31 the 15th day of² each of² the fourth month, sixth month and ninth
32 month of the privilege period and on or before the 15th day of the first
33 month succeeding the close of the privilege period² [¹, in accordance
34 with regulations promulgated by the director¹]² .

35 ²(b) A partnership required to make an installment payment
36 pursuant to subparagraph (a) of this paragraph shall be deemed to
37 make an installment payment subject to the provisions of section 5 of
38 P.L.1981, c.184 (C.54:10A-15.4) and shall be liable for any additions
39 to tax provided thereunder.²

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

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted November 15, 2004.

² Assembly AAP committee amendments adopted December 8, 2005.

1 b. An amount of tax paid by a partnership pursuant to ²paragraph
2 (1) of ² subsection a. of this section ²and an installment payment paid
3 pursuant to subparagraph (a) of paragraph (2) of subsection a. of this
4 section² shall be credited to accounts of its nonresident partners in
5 proportion to each nonresident partner's share of allocated entire net
6 income and the multiplier rate for that partner class under subsection
7 a. of this section ¹[as of the date of its receipt by the director]¹, and
8 each amount of tax so credited shall be deemed to have been paid by
9 the respective partner in respect of the privilege period or taxable year
10 of the partner.

11 c. For the purposes of this section:

12 "Investment club" means an entity: that is classified as a partnership
13 for federal income tax purposes; all of the owners of which are
14 individuals; all of the assets of which are securities, cash, or cash
15 equivalents; the market value of the total assets of which do not
16 exceed, as measured on the last day of its privilege period, an amount
17 equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and
18 which is not required to register itself or its membership interests with
19 the federal Securities and Exchange Commission; provided that
20 beginning with privilege periods commencing on or after January 1,
21 2003 the director shall prescribe the total asset value amounts which
22 shall apply by increasing the \$250,000 total asset amount and the per
23 owner \$35,000 amount hereinabove by an inflation adjustment factor,
24 which amounts shall be rounded to the next highest multiple of \$100.
25 The inflation adjustment factor shall be equal to the factor calculated
26 by dividing the consumer price index for urban wage earners and
27 clerical workers for the nation, as prepared by the United States
28 Department of Labor for September of the calendar year prior to the
29 calendar year in which the privilege period begins, by that index for
30 September of 2001;

31 "Nonresident noncorporate partner" means, an individual, an estate
32 or a trust subject to taxation pursuant to the "New Jersey Gross
33 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
34 taxpayer or a resident estate or trust under that act;

35 "Nonresident corporate partner" means a partner that is not an
36 individual, an estate or a trust subject to taxation pursuant to the "New
37 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
38 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
39 (C.54:10A-3), and that does not maintain a regular place of business
40 in this State other than a statutory office; and

41 "Partner" means an owner of an interest in the partnership, in
42 whatever manner that owner and ownership interest are designated.
43 (cf: P.L.2003, c.256, s.1)

44

45 ²2. Section 5 of P.L.1981, c.184 (C.54:10A-15.4) is amended to
46 read as follows:

1 5. a. In case of any underpayment of an installment payment by a
2 taxpayer, there shall be added to the tax for the fiscal or calendar
3 accounting year an amount determined by applying the rate established
4 in this section to the amount of the underpayment for the period of the
5 underpayment.

6 b. For purposes of subsection a., the amount of underpayment
7 shall be the excess of:

8 (1) The lesser of the amount of the installment payment which
9 would be required to be paid if all installment payments and all
10 payments of tax made pursuant to subsection a. of section 12 of
11 P.L.2002, c.40 (C.54:10A-15.11) and credited to the taxpayer
12 pursuant to subsection b. of section 12 of P.L.2002, c.40 were equal
13 to 90% of the tax shown on the return for the fiscal or calendar
14 accounting year, or if no return was filed, 90% of the tax for that year,
15 or 100% of the tax shown on the tax return of the taxpayer for the
16 preceding taxable year over

17 (2) The amount, if any, of the installment payment paid on or
18 before the last date prescribed for payment.

19 c. For purposes of subsection a., the period of the underpayment
20 shall run from the date the installment payment was required to be paid
21 to whichever of the following dates is the earlier:

22 (1) The fifteenth day of the fourth month after the close of the
23 fiscal or calendar accounting year.

24 (2) With respect to any portion of the underpayment, the date on
25 which that portion is paid.

26 For purposes of this subsection, a payment of any installment
27 payment shall be considered a payment of any previous underpayment
28 only to the extent that payment exceeds the amount of the installment
29 payment determined under subsection b. (1) for that installment
30 payment.

31 d. Notwithstanding the provisions of the preceding subsections,
32 the addition to the tax with respect to any underpayment of any
33 installment payment shall not be imposed if the total amount of all
34 installment payments made on or before the last date prescribed for the
35 payment of that installment equals or exceeds the amount which would
36 have been required to be paid on or before that date if the total amount
37 of all installment payments were the lesser of (1) or (2) as follows:

38 (1) An amount equal to the tax computed at the rates applicable to
39 the current fiscal or calendar accounting year but otherwise on the
40 basis of the facts shown on the return of the taxpayer for, and the law
41 applicable to, the preceding fiscal or calendar accounting year; or

42 (2) An amount equal to 90% of the tax for the current fiscal or
43 calendar accounting year computed by placing on an annualized basis
44 the taxable entire net income and entire net worth:

45 (a) For the first three months of the current fiscal or calendar
46 accounting year, in the case of the installment payment required to be

1 paid in the fourth month,

2 (b) For the first three months or for the first five months of the
3 current fiscal or calendar accounting year, in the case of the
4 installment payment required to be paid in the sixth month,

5 (c) For the first six months or for the first eight months of the
6 current fiscal or calendar accounting year, in the case of the
7 installment payment required to be paid in the ninth month,

8 (d) For the first nine months or for the first 11 months of the
9 current fiscal or calendar accounting year, in the case of the
10 installment payment required to be paid in the 12th month, and

11 (e) For the last three months of the preceding taxable year, in the
12 case of the installment payment required to be paid in the first month
13 of the current fiscal or calendar accounting year.

14 e. Any taxpayer who shall fail to pay, or shall underpay by more
15 than 10% of the amount due, any installment payment required
16 pursuant to this act, shall pay, in addition to the tax, interest on the
17 amount of underpayment as provided in the State Tax Uniform
18 Procedure Law, R.S.54:48-1 et seq.²

19 (cf: P.L.1998, c.106, s.1)

20

21 ²[2.] 3.² N.J.S.54A:9-6 is amended to read as follows:

22 54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax
23 return. In case of failure to file a tax return under this act on or before
24 the prescribed date (determined with regard to any extension of time
25 for filing), unless it is shown that such failure is due to reasonable
26 cause and not due to willful neglect, there shall be added to the
27 amount required to be shown as tax on such return such amount as is
28 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
29 seq. For this purpose, the amount of tax required to be shown on the
30 return shall be reduced by the amount of any part of the tax which is
31 paid on or before the date prescribed for payment of the tax and by the
32 amount of any credit against the tax which may be claimed upon the
33 return.

34 (b) Deficiency due to negligence. If any part of a deficiency is due
35 to negligence or intentional disregard of this act or rules or regulations
36 hereunder (but without intent to defraud), there shall be added to the
37 tax an amount equal to 10% of the deficiency.

38 (c) Failure to file declaration or underpayment of estimated tax.
39 If any taxpayer fails to file a declaration of estimated tax or fails to pay
40 all or any part of an installment of estimated tax, the taxpayer shall be
41 deemed to have made an underpayment of estimated tax except as
42 provided pursuant to subsection (d) of this section. There shall be
43 added to the tax for the taxable year an amount at the rate as is
44 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
45 seq., upon the amount of the underpayment for the period of the
46 underpayment but not beyond the 15th day of the fourth month

1 following the close of the taxable year. The amount of underpayment
2 shall be the excess of the lesser of: (1) the amount of the installment
3 which would be required to be paid if the estimated tax were equal to
4 80% of the tax (two-thirds of the tax for farmers referred to in
5 subsection (e) of section 54A:8-4) shown on the return for the taxable
6 year (or if no return was filed, of the tax for such year), or (2) 100%
7 of the tax shown on the tax return of the taxpayer for the preceding
8 taxable year; over the amount, if any, of the installment paid on or
9 before the last day prescribed for such payment. No underpayment
10 shall be deemed to exist with respect to a declaration or installment
11 otherwise due on or after the taxpayer's death.

12 (d) Exception to addition for underpayment of estimated tax. The
13 addition to tax under subsection (c) with respect to any underpayment
14 of any installment shall not be imposed if the total amount of all
15 payments of estimated tax and all payments of tax made pursuant to
16 subsection a. of section 12 of P.L.2002, c.40 (C.54:10A-15.11) and
17 credited to the taxpayer pursuant to subsection b. of section 12 of
18 P.L.2002, c.40 made on or before the last date prescribed for the
19 payment of such installment equals or exceeds whichever of the
20 following set forth in paragraphs (1) and (2) and subject to paragraph
21 (3) is the lesser--

22 (1) The amount which would have been required to be paid on or
23 before such date if the estimated tax were whichever of the following
24 is the least--

25 (A) An amount equal to 100% of the tax shown on the return of
26 the taxpayer for the preceding taxable year, except as provided
27 pursuant to paragraph (3) of this subsection, if a return showing a
28 liability for tax was filed by the taxpayer for the preceding taxable year
29 and such preceding year was a taxable year of 12 months, or

30 (B) An amount equal to 100% of the tax computed, except as
31 provided pursuant to paragraph (3) of this subsection, at the rates
32 applicable to the taxable year, on the basis of the taxpayer's status with
33 respect to the taxpayer's personal exemptions for the taxable year, but
34 otherwise on the basis of the facts shown on the taxpayer's return for,
35 and the law applicable to, the preceding taxable year, or

36 (C) An amount equal to 80% of the tax for the taxable year
37 (two-thirds of the tax for farmers referred to in subsection (e) of
38 section 54A:8-4) computed by placing on an annualized basis the
39 income for the months in the taxable year ending before the month in
40 which the installment is required to be paid (or, in the case of a trust
41 or estate, the income for the months ending before the date one month
42 before the month in which the installment is required). For purposes
43 of this subparagraph, the income shall be placed on an annualized basis
44 by--

45 (i) Multiplying by 12 (or, in the case of a taxable year of less than
46 12 months, the number of months in the taxable year) the income for

1 the months in the taxable year ending before the month in which the
2 installment is required to be paid (or, in the case of a trust or estate,
3 the income for the months ending before the date one month before
4 the month in which the installment is required),

5 (ii) Dividing the resulting amount by the number of months in the
6 taxable year ending before the month in which such installment date
7 falls (or, in the case of a trust or estate, the number of months ending
8 before the date one month before the month in which such installment
9 date falls), and

10 (iii) Deducting from such amount the deductions for personal
11 exemptions allowable for the taxable year (such personal exemptions
12 being determined as of the last date prescribed for payment of the
13 installment); or

14 (2) An amount equal to 90% of the tax computed, at the rates
15 applicable to the taxable year, on the basis of the actual income for the
16 months in the taxable year ending before the month in which the
17 installment is required to be paid.

18 (3) If the taxable gross income shown on the return of the taxpayer
19 for the preceding taxable year exceeds \$150,000 (\$75,000 in the case
20 of a married individual within the meaning of section 7703 of the
21 federal Internal Revenue Code of 1986, 26 U.S.C. s.7703, filing
22 separately for the taxable year for which the amount of the installment
23 is being determined) subparagraphs (A) and (B) of paragraph (1) of
24 this subsection shall be applied by substituting "110%" for "100%".
25 For purposes of this paragraph, "taxable gross income" means gross
26 income after any allowable deductions under chapter 3 or 3A of the
27 "New Jersey Gross Income Tax Act" (C.54A:3-1 et seq and 54A:3A-1
28 et seq); or, in the case of a trust or estate, gross income after any
29 allowable deductions or exemptions, income commissions and amounts
30 distributed or credited to beneficiaries; and "gross income" for a
31 nonresident means gross income calculated as if such nonresident were
32 a resident.

33 (e) Deficiency due to fraud. If any part of a deficiency is due to
34 fraud, there shall be added to the tax an amount equal to 50% of the
35 deficiency. This amount shall be in lieu of any other addition to tax
36 imposed by subsection (a) or (b).

37 (f) Nonwillful failure to pay withholding tax. If any employer,
38 without intent to evade or defeat any tax imposed by this act or the
39 payment thereof, shall fail to make a return and pay a tax withheld by
40 him at the time required by or under the provisions of section 54A:7-4,
41 such employer shall be liable for such tax and shall pay the same
42 together with interest thereon and the addition to tax provided in
43 subsection (a), and such interest and addition to tax shall not be
44 charged to or collected from the employee by the employer. The
45 director shall have the same rights and powers for the collection of
46 such tax, interest and addition to tax against such employer as are now

1 prescribed by this act for the collection of tax against an individual
2 taxpayer.

3 (g) Willful failure to collect and pay over tax. Any person required
4 to collect, truthfully account for, and pay over the tax imposed by this
5 act who willfully fails to collect such tax or truthfully account for and
6 pay over such tax or willfully attempts in any manner to evade or
7 defeat the tax or the payment thereof, shall, in addition to other
8 penalties provided by law, be liable to a penalty equal to the total
9 amount of the tax evaded, or not collected, or not accounted for and
10 paid over. No addition to tax under subsection (b) or (c) shall be
11 imposed for any offense to which this subsection applies.

12 (h) Failure to file certain information returns. In case of each
13 failure to file a statement of a payment to another person, required
14 under authority of subsection (c) of section 54A:8-6 (relating to
15 information at source, including the duplicate statement of tax
16 withheld on wages) on the date prescribed therefor (determined with
17 regard to any extension of time for filing), unless it is shown that such
18 failure is due to reasonable cause and not to willful neglect, there shall,
19 upon notice and demand by the director and in the same manner as tax,
20 be paid by the person so failing to file the statement, a penalty of \$2.00
21 for each statement not so filed, but the total amount imposed on the
22 delinquent person for all such failures during any calendar year shall
23 not exceed \$2,000.00.

24 (i) Additional penalty. Any person who with fraudulent intent shall
25 fail to pay, or to deduct or withhold and pay, any tax, or to make,
26 render, sign or certify any return or declaration of estimated tax or to
27 supply any information within the time required by or under this act,
28 shall be liable to penalty of not more than \$5,000.00, in addition to any
29 other amounts required under this act, to be imposed, assessed and
30 collected by the director. The director shall have the power, in his
31 discretion, to waive, reduce or compromise any penalty under this
32 subsection.

33 (j) Additions treated as tax. The additions to tax and penalties
34 provided by this section shall be paid upon notice and demand and
35 shall be assessed, collected and paid in the same manner as taxes and
36 any reference in this act to income tax or tax imposed by this act, shall
37 be deemed also to refer to the additions to tax and penalties provided
38 by this section. For purposes of section 54A:9-2, this subsection shall
39 not apply to:

40 (1) Any addition to tax under subsection (a) except as to that
41 portion attributable to a deficiency;

42 (2) Any addition to tax under subsection (e); and

43 (3) Any additional penalty under subsection (i).

44 (k) Determination of deficiency. For purposes of subsections (b)
45 and (c), the amount shown as the tax by the taxpayer upon his return
46 shall be taken into account in determining the amount of the deficiency

1 only if such return was filed on or before the last day prescribed for
2 the filing of such return, determined with regard to any extension of
3 time for such filing.

4 (l) Person defined. For purposes of subsections (f), (g), (h) and (i),
5 the term person or employer includes an individual, corporation or
6 partnership or an officer or employee of any corporation (including a
7 dissolved corporation) or a member or employee of any partnership,
8 who as such officer, employee, or member is under a duty to perform
9 the act in respect of which the violation occurs.

10 (cf: P.L.1998, c.106, s.16)

11

12 ²[3.] 4.² This act shall take effect immediately and apply to
13 ¹[privilege periods ending after] ²[taxable years] privilege periods²
14 beginning on or after January 1 next following¹ enactment.

15

16

17

18

19 Requires partners and other owners of pass-through entities to credit
20 payments made on their behalf against estimated taxes to end "double
21 withholding."

SENATE, No. 1892

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED OCTOBER 4, 2004

Sponsored by:

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

SYNOPSIS

Allows partners and other owners of pass-through entities to credit the payments that the entity makes on their behalf against their estimated taxes to end "double withholding."

CURRENT VERSION OF TEXT

As introduced.



S1892 INVERSO

2

1 AN ACT allowing owners of pass-through entities to credit certain
2 payments the entities make on the owner's behalf against the
3 owners' estimated taxes, amending P.L.2002, c.40 and
4 N.J.S.54A:9-6.

5

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

8

9 1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to
10 read as follows:

11 12. a. (1) A partnership that is not a qualified investment
12 partnership or an investment club and that is not listed on a United
13 States national stock exchange shall, on or before the 15th day of the
14 fourth month succeeding the close of each privilege period, remit a
15 payment of tax. The amount of tax shall be equal to the sum of: all of
16 the share of the entire net income of the partnership for that privilege
17 period of all nonresident noncorporate partners, multiplied by an
18 allocation factor determined, pursuant to section 6 of P.L.1945, c.162
19 (C.54:10A-6), based on the allocation fractions of the partnership for
20 that privilege period, and multiplied by .0637 plus all of the share of
21 the entire net income of the partnership for that privilege period of all
22 nonresident corporate partners, multiplied by an allocation factor
23 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
24 based on the allocation fractions of the partnership for that privilege
25 period, and multiplied by .09.

26 (2) A partnership that is subject to the tax payment requirements
27 of paragraph (1) of this subsection may make advance payments of
28 that tax on or before the 15th day of the fourth month, sixth month
29 and ninth month of the privilege period and on or before the 15th day
30 of the first month succeeding the close of the privilege period.

31 b. An amount of tax paid by a partnership pursuant to subsection
32 a. of this section shall be credited to accounts of its nonresident
33 partners in proportion to each nonresident partner's share of allocated
34 entire net income and the multiplier rate for that partner class under
35 subsection a. of this section as of the date of its receipt by the director,
36 and each amount of tax so credited shall be deemed to have been paid
37 by the respective partner in respect of the privilege period or taxable
38 year of the partner.

39 c. For the purposes of this section:

40 "Investment club" means an entity: that is classified as a partnership
41 for federal income tax purposes; all of the owners of which are
42 individuals; all of the assets of which are securities, cash, or cash
43 equivalents; the market value of the total assets of which do not

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.

S1892 INVERSO

1 exceed, as measured on the last day of its privilege period, an amount
2 equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and
3 which is not required to register itself or its membership interests with
4 the federal Securities and Exchange Commission; provided that
5 beginning with privilege periods commencing on or after January 1,
6 2003 the director shall prescribe the total asset value amounts which
7 shall apply by increasing the \$250,000 total asset amount and the per
8 owner \$35,000 amount hereinabove by an inflation adjustment factor,
9 which amounts shall be rounded to the next highest multiple of \$100.
10 The inflation adjustment factor shall be equal to the factor calculated
11 by dividing the consumer price index for urban wage earners and
12 clerical workers for the nation, as prepared by the United States
13 Department of Labor for September of the calendar year prior to the
14 calendar year in which the privilege period begins, by that index for
15 September of 2001;

16 "Nonresident noncorporate partner" means, an individual, an estate
17 or a trust subject to taxation pursuant to the "New Jersey Gross
18 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
19 taxpayer or a resident estate or trust under that act;

20 "Nonresident corporate partner" means a partner that is not an
21 individual, an estate or a trust subject to taxation pursuant to the "New
22 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
23 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
24 (C.54:10A-3), and that does not maintain a regular place of business
25 in this State other than a statutory office; and

26 "Partner" means an owner of an interest in the partnership, in
27 whatever manner that owner and ownership interest are designated.
28 (cf: P.L.2003, c.256, s.1)

29

30 2. N.J.S.54A:9-6 is amended to read as follows:

31 54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax
32 return. In case of failure to file a tax return under this act on or before
33 the prescribed date (determined with regard to any extension of time
34 for filing), unless it is shown that such failure is due to reasonable
35 cause and not due to willful neglect, there shall be added to the
36 amount required to be shown as tax on such return such amount as is
37 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
38 seq. For this purpose, the amount of tax required to be shown on the
39 return shall be reduced by the amount of any part of the tax which is
40 paid on or before the date prescribed for payment of the tax and by the
41 amount of any credit against the tax which may be claimed upon the
42 return.

43 (b) Deficiency due to negligence. If any part of a deficiency is due
44 to negligence or intentional disregard of this act or rules or regulations
45 hereunder (but without intent to defraud), there shall be added to the
46 tax an amount equal to 10% of the deficiency.

S1892 INVERSO

1 (c) Failure to file declaration or underpayment of estimated tax.
2 If any taxpayer fails to file a declaration of estimated tax or fails to pay
3 all or any part of an installment of estimated tax, the taxpayer shall be
4 deemed to have made an underpayment of estimated tax except as
5 provided pursuant to subsection (d) of this section. There shall be
6 added to the tax for the taxable year an amount at the rate as is
7 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
8 seq., upon the amount of the underpayment for the period of the
9 underpayment but not beyond the 15th day of the fourth month
10 following the close of the taxable year. The amount of underpayment
11 shall be the excess of the lesser of: (1) the amount of the installment
12 which would be required to be paid if the estimated tax were equal to
13 80% of the tax (two-thirds of the tax for farmers referred to in
14 subsection (e) of section 54A:8-4) shown on the return for the taxable
15 year (or if no return was filed, of the tax for such year), or (2) 100%
16 of the tax shown on the tax return of the taxpayer for the preceding
17 taxable year; over the amount, if any, of the installment paid on or
18 before the last day prescribed for such payment. No underpayment
19 shall be deemed to exist with respect to a declaration or installment
20 otherwise due on or after the taxpayer's death.

21 (d) Exception to addition for underpayment of estimated tax. The
22 addition to tax under subsection (c) with respect to any underpayment
23 of any installment shall not be imposed if the total amount of all
24 payments of estimated tax and all payments of tax made pursuant to
25 subsection a. of section 12 of P.L.2002, c.40 (C.54:10A-15.11) and
26 credited to the taxpayer pursuant to subsection b. of section 12 of
27 P.L.2002, c.40 made on or before the last date prescribed for the
28 payment of such installment equals or exceeds whichever of the
29 following set forth in paragraphs (1) and (2) and subject to paragraph
30 (3) is the lesser--

31 (1) The amount which would have been required to be paid on or
32 before such date if the estimated tax were whichever of the following
33 is the least--

34 (A) An amount equal to 100% of the tax shown on the return of
35 the taxpayer for the preceding taxable year, except as provided
36 pursuant to paragraph (3) of this subsection, if a return showing a
37 liability for tax was filed by the taxpayer for the preceding taxable year
38 and such preceding year was a taxable year of 12 months, or

39 (B) An amount equal to 100% of the tax computed, except as
40 provided pursuant to paragraph (3) of this subsection, at the rates
41 applicable to the taxable year, on the basis of the taxpayer's status with
42 respect to the taxpayer's personal exemptions for the taxable year, but
43 otherwise on the basis of the facts shown on the taxpayer's return for,
44 and the law applicable to, the preceding taxable year, or

45 (C) An amount equal to 80% of the tax for the taxable year
46 (two-thirds of the tax for farmers referred to in subsection (e) of

1 section 54A:8-4) computed by placing on an annualized basis the
2 income for the months in the taxable year ending before the month in
3 which the installment is required to be paid (or, in the case of a trust
4 or estate, the income for the months ending before the date one month
5 before the month in which the installment is required). For purposes
6 of this subparagraph, the income shall be placed on an annualized basis
7 by--

8 (i) Multiplying by 12 (or, in the case of a taxable year of less than
9 12 months, the number of months in the taxable year) the income for
10 the months in the taxable year ending before the month in which the
11 installment is required to be paid (or, in the case of a trust or estate,
12 the income for the months ending before the date one month before
13 the month in which the installment is required),

14 (ii) Dividing the resulting amount by the number of months in the
15 taxable year ending before the month in which such installment date
16 falls (or, in the case of a trust or estate, the number of months ending
17 before the date one month before the month in which such installment
18 date falls), and

19 (iii) Deducting from such amount the deductions for personal
20 exemptions allowable for the taxable year (such personal exemptions
21 being determined as of the last date prescribed for payment of the
22 installment); or

23 (2) An amount equal to 90% of the tax computed, at the rates
24 applicable to the taxable year, on the basis of the actual income for the
25 months in the taxable year ending before the month in which the
26 installment is required to be paid.

27 (3) If the taxable gross income shown on the return of the taxpayer
28 for the preceding taxable year exceeds \$150,000 (\$75,000 in the case
29 of a married individual within the meaning of section 7703 of the
30 federal Internal Revenue Code of 1986, 26 U.S.C. s.7703, filing
31 separately for the taxable year for which the amount of the installment
32 is being determined) subparagraphs (A) and (B) of paragraph (1) of
33 this subsection shall be applied by substituting "110%" for "100%".
34 For purposes of this paragraph, "taxable gross income" means gross
35 income after any allowable deductions under chapter 3 or 3A of the
36 "New Jersey Gross Income Tax Act" (C.54A:3-1 et seq and 54A:3A-1
37 et seq); or, in the case of a trust or estate, gross income after any
38 allowable deductions or exemptions, income commissions and amounts
39 distributed or credited to beneficiaries; and "gross income" for a
40 nonresident means gross income calculated as if such nonresident were
41 a resident.

42 (e) Deficiency due to fraud. If any part of a deficiency is due to
43 fraud, there shall be added to the tax an amount equal to 50% of the
44 deficiency. This amount shall be in lieu of any other addition to tax
45 imposed by subsection (a) or (b).

46 (f) Nonwillful failure to pay withholding tax. If any employer,

S1892 INVERSO

1 without intent to evade or defeat any tax imposed by this act or the
2 payment thereof, shall fail to make a return and pay a tax withheld by
3 him at the time required by or under the provisions of section 54A:7-4,
4 such employer shall be liable for such tax and shall pay the same
5 together with interest thereon and the addition to tax provided in
6 subsection (a), and such interest and addition to tax shall not be
7 charged to or collected from the employee by the employer. The
8 director shall have the same rights and powers for the collection of
9 such tax, interest and addition to tax against such employer as are now
10 prescribed by this act for the collection of tax against an individual
11 taxpayer.

12 (g) Willful failure to collect and pay over tax. Any person required
13 to collect, truthfully account for, and pay over the tax imposed by this
14 act who willfully fails to collect such tax or truthfully account for and
15 pay over such tax or willfully attempts in any manner to evade or
16 defeat the tax or the payment thereof, shall, in addition to other
17 penalties provided by law, be liable to a penalty equal to the total
18 amount of the tax evaded, or not collected, or not accounted for and
19 paid over. No addition to tax under subsection (b) or (c) shall be
20 imposed for any offense to which this subsection applies.

21 (h) Failure to file certain information returns. In case of each
22 failure to file a statement of a payment to another person, required
23 under authority of subsection (c) of section 54A:8-6 (relating to
24 information at source, including the duplicate statement of tax
25 withheld on wages) on the date prescribed therefor (determined with
26 regard to any extension of time for filing), unless it is shown that such
27 failure is due to reasonable cause and not to willful neglect, there shall,
28 upon notice and demand by the director and in the same manner as tax,
29 be paid by the person so failing to file the statement, a penalty of \$2.00
30 for each statement not so filed, but the total amount imposed on the
31 delinquent person for all such failures during any calendar year shall
32 not exceed \$2,000.00.

33 (i) Additional penalty. Any person who with fraudulent intent shall
34 fail to pay, or to deduct or withhold and pay, any tax, or to make,
35 render, sign or certify any return or declaration of estimated tax or to
36 supply any information within the time required by or under this act,
37 shall be liable to penalty of not more than \$5,000.00, in addition to any
38 other amounts required under this act, to be imposed, assessed and
39 collected by the director. The director shall have the power, in his
40 discretion, to waive, reduce or compromise any penalty under this
41 subsection.

42 (j) Additions treated as tax. The additions to tax and penalties
43 provided by this section shall be paid upon notice and demand and
44 shall be assessed, collected and paid in the same manner as taxes and
45 any reference in this act to income tax or tax imposed by this act, shall
46 be deemed also to refer to the additions to tax and penalties provided

S1892 INVERSO

1 by this section. For purposes of section 54A:9-2, this subsection shall
2 not apply to:

3 (1) Any addition to tax under subsection (a) except as to that
4 portion attributable to a deficiency;

5 (2) Any addition to tax under subsection (e); and

6 (3) Any additional penalty under subsection (i).

7 (k) Determination of deficiency. For purposes of subsections (b)
8 and (c), the amount shown as the tax by the taxpayer upon his return
9 shall be taken into account in determining the amount of the deficiency
10 only if such return was filed on or before the last day prescribed for
11 the filing of such return, determined with regard to any extension of
12 time for such filing.

13 (l) Person defined. For purposes of subsections (f), (g), (h) and (i),
14 the term person or employer includes an individual, corporation or
15 partnership or an officer or employee of any corporation (including a
16 dissolved corporation) or a member or employee of any partnership,
17 who as such officer, employee, or member is under a duty to perform
18 the act in respect of which the violation occurs.

19 (cf: P.L.1998, c.106, s.16)

20

21 3. This act shall take effect immediately and apply to privilege
22 periods ending after enactment.

23

24

25 STATEMENT

26

27 This bill allows partnerships and other pass-through entities that are
28 currently required to make annual tax payments on behalf of
29 nonresident partners to make partial payments earlier, so that the
30 partners may count those payments as part of their payment of
31 estimated taxes and end the effects of "double withholding."

32 The Business Tax Reform Act of 2002 enacted a new enforcement
33 method to assure tax compliance by out-of-State residents who receive
34 income as partners in New Jersey businesses. That act required most
35 "pass-through" entities like partnerships to make a payment on the
36 share of the New Jersey income of each nonresident owner at a 9%
37 rate for corporate owners and a 6.37% rate for individual owners, an
38 amount equivalent to withholding from the income of the entities'
39 owners. That amount may be credited to separate accounts for each
40 owner against their respective tax liabilities, again just like
41 withholding.

42 However, many professionals, those who are already in compliance
43 with the tax laws, themselves make quarterly payments of estimated
44 taxes.

45 The new withholding equivalent enacted by the Business Tax
46 Reform Act, imposed on top of the regular payment of estimated

S1892 INVERSO

1 taxes, has for some nonresident partners the effect of "double
2 withholding."

3 While the excess tax payments may be refunded after the affected
4 partners file their tax returns, "double withholding" creates cash-flow
5 problems for the partnerships, revenue measurement problems for the
6 State, and is not pleasant for the affected partners.

7 This bill eliminates the "double withholding" problem by allowing
8 the partnerships to make partial payments of their required payments
9 earlier, to coincide with the timing of estimated payments. This allows
10 the partners to take credit for the payments made by the partnerships
11 (which are already credited to the accounts of the partners) on the
12 dates that estimated payments are due. Credit for the timely payments
13 made by the partnership will allow the partners to reduce the amount
14 of the estimated payments they make themselves.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1892

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2005

The Assembly Appropriations Committee reports favorably Senate Bill No. 1892 (1R), with committee amendments.

Senate Bill No. 1892 (1R), as amended, requires partnerships and other pass-through entities, required under current law to make annual tax payments on behalf of nonresident partners and other owners, to make partial payments earlier. This schedule will allow the partners to count those payments as part of their payment of estimated taxes.

The Business Tax Reform Act of 2002 required most "pass-through" entities like partnerships to make a payment on the share of the New Jersey income of each nonresident owner to be credited to separate accounts for each owner against their respective tax liabilities, like withholding. However, many of these owners themselves make quarterly payments of estimated taxes, so this had the effect of requiring "double withholding."

This bill eliminates the "double withholding" problem by allowing the partnerships to make partial payments of their required payments earlier, to coincide with the timing of estimated payments, and by allowing the amount of the partnership payments to be credited against the partners' estimated payment liabilities. The advance tax partnership payments will be made on or before the 15th day of the fourth month, sixth month and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period.

As amended and reported by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill Nos. 4475 and 4432 reported by the committee.

FISCAL IMPACT:

While this bill will have no impact on the tax liability of nonresident owners, the crediting of the pass-through entity payments against estimated payments will allow taxpayers to reduce their estimated payments. This will reduce the amount of any temporary surpluses in the General Fund or Property Tax Relief Fund available

for deposit in the Cash Management Fund, which in turn will reduce the interest earned by the Cash Management Fund.

COMMITTEE AMENDMENTS:

The amendments specify the amount of the installment payments, provide penalties for late payments, and allow the partnerships making installment payments the same "safe harbors" to avoid application of penalties for underpayments as are allowed corporation business tax payers making estimated payments.

The amendments add a section to assure the proper crediting of the partnership installment payments against corporate estimated payments of corporation business tax, in parallel to the section already in the bill that credits partnership installment payments against gross income tax estimated payments.

The amendments also make technical corrections to the title and effective date of the bill.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1892

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 15, 2004

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1892.

As amended, this bill requires partnerships and other pass-through entities that are currently required to make annual tax payments on behalf of nonresident partners and other owners to make partial payments earlier, so that the partners may count those payments as part of their payment of estimated taxes. Advance tax payments will be made on or before the 15th day of the fourth month, sixth month and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period, in accordance with regulations promulgated by the director.

This bill eliminates the "double withholding" effect of business tax reforms enacted in 2002 by requiring the partnership to make the partial payments earlier, to coincide with the timing of estimated payments, thus allowing partners to reduce the amount of their estimated payments.

The committee amended the bill to require, rather than permit, the quarterly advance payments, as the bill originally provided, and to apply the changes effected by the bill to taxable years beginning on or after January 1 next following enactment, to allow adequate time for implementation.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1892

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2005

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1892 (1R).

This bill requires partnerships and other entities, the income of which is taxable to their owners rather than to the entity itself (so-called "pass-through" entities), which must make annual tax payments on behalf of nonresident owners, to make partial payments earlier than is currently required, so that the partners may count those payments as part of their payment of estimated taxes. Advance tax payments will be made on or before the 15th day of the fourth month, sixth month and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period, in accordance with regulations promulgated by the director.

This bill eliminates the "double withholding" effect of business tax reforms enacted in 2002 by requiring the partnership to make the partial payments earlier, to coincide with the timing of estimated payments, thus allowing partners to reduce the amount of their estimated payments.

FISCAL IMPACT

While this legislation will have no impact on the tax liability of nonresident owners, the crediting of the pass-through entity payments against estimated payments will allow taxpayers to reduce their estimated payments. This will reduce the amount of any temporary surpluses in the General Fund or Property Tax Relief Fund available for deposit in the Cash Management Fund, which in turn will reduce the interest earned by the Cash Management Fund.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 1892
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: DECEMBER 1, 2004

SUMMARY

- Synopsis:** Allows partners and other owners of pass-through entities to credit the payments that the entity makes on their behalf against their estimated taxes to end "double withholding."
- Type of Impact:** Decrease in transient General Fund and Property Tax Relief fund balances, with consequent decrease in Cash Management Fund revenues.
- Agencies Affected:** Department of the Treasury, Division of Taxation.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Unknown minimal decrease	Unknown minimal decrease	Unknown minimal decrease

- ! The bill allows the payments, made by pass-through entities on behalf of nonresident owners, to be applied to satisfy estimated payment requirements: the bill has no effect on the total amount paid on behalf of the nonresident owners and so will not interfere with "withholding" as a taxpayer compliance measure.
- ! The crediting of the pass-through entity payments against estimated payments will allow taxpayers to reduce their estimated payments. This will reduce the availability of any temporary surpluses in the General Fund or Property Tax Relief Fund available for deposit in the Cash Management Fund, which will reduce the interest earned by the Cash Management Fund.

BILL DESCRIPTION

Senate Bill No. 1892 of 2004 allows partnerships and other pass-through entities that are currently required to make annual tax payments on behalf of nonresident partners to make partial payments earlier, so that the partners may count those payments as part of their payment of estimated taxes and end the effects of "double withholding."

The Business Tax Reform Act of 2002, P.L.2002, c.40, enacted a new enforcement method to assure tax compliance by out-of-State residents who receive income as partners in New Jersey businesses. The act requires most "pass-through" entities taxed as partnerships to make a

payment on the share of the New Jersey income of each nonresident owner at a 9 percent rate for corporate owners and a 6.37 percent rate for individual owners, an amount equivalent to withholding from the income of the entities' owners. That amount is credited to separate accounts for each owner against their respective tax liabilities, again just like withholding.

However, many corporations and professional individuals, those already in compliance with the tax laws, themselves make quarterly payments of estimated corporation business tax and gross income tax. The new withholding equivalent enacted by the Business Tax Reform Act, imposed on top of the regular payment of estimated taxes, has for some nonresident partners the effect of "double withholding:" taxpayers may be making prepayments of as much as twice their final tax liability. These excess tax payments are refundable after the affected partners file their tax returns.

The bill allows the partnerships to make partial payments of their required payments earlier, to coincide with the timing of estimated payments under the gross income tax and the corporation business tax, and to take credit for the payments made by the partnerships (which are already credited to the accounts of the partners) against their estimated payments on the dates those estimated payments are due. The credit for the timely payments made by the partnership allows the partners to reduce the amount of the estimated payments they make themselves.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The bill has no effect on the total amount of "withholding" by partnerships, except to allow partnerships to make the withholding payments *earlier*. Therefore, it is not anticipated that the bill will interfere with the effectiveness of "withholding" as a taxpayer compliance measure.

The bill allows the withholding amounts to be applied to satisfy estimated payment requirements, and it is anticipated that taxpayers will reduce their estimated payments by the amount of the "withholding." While this will not affect the final liability of taxpayers, it will reduce the amount of estimated corporation business tax and gross income tax collected in excess of liability which must be refunded (or "float"). This will reduce the availability of any temporary surpluses in the General Fund or Property Tax Relief Fund available for deposit in the Cash Management Fund, which will minimally reduce the interest earned by the Cash Management Fund.

Section: *Revenue Finance and Appropriations*

Analyst: *Philip Liloia*
Lead Counsel

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

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

ASSEMBLY, No. 4475

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED DECEMBER 5, 2005

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

SYNOPSIS

Requires partners and other owners of pass-through entities to credit payments made on their behalf against estimated taxes to end "double withholding."

CURRENT VERSION OF TEXT

As introduced.



A4475 GREENWALD

2

1 AN ACT requiring owners of pass-through entities to credit certain
2 payments the entities make on the owner's behalf against the
3 owners' estimated taxes, amending P.L.2002, c.40 and
4 N.J.S.54A:9-6.

5

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

8

9 1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to
10 read as follows:

11 12. a. (1) A partnership that is not a qualified investment
12 partnership or an investment club and that is not listed on a United
13 States national stock exchange shall, on or before the 15th day of the
14 fourth month succeeding the close of each privilege period, remit a
15 payment of tax. The amount of tax shall be equal to the sum of: all of
16 the share of the entire net income of the partnership for that privilege
17 period of all nonresident noncorporate partners, multiplied by an
18 allocation factor determined, pursuant to section 6 of P.L.1945, c.162
19 (C.54:10A-6), based on the allocation fractions of the partnership for
20 that privilege period, and multiplied by .0637 plus all of the share of
21 the entire net income of the partnership for that privilege period of all
22 nonresident corporate partners, multiplied by an allocation factor
23 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
24 based on the allocation fractions of the partnership for that privilege
25 period, and multiplied by .09.

26 (2) (a) A partnership that is subject to the tax payment requirements
27 of paragraph (1) of this subsection shall make installment payments of
28 25% of that tax on or before the 15th day of each of the fourth month,
29 sixth month and ninth month of the privilege period and on or before
30 the 15th day of the first month succeeding the close of the privilege
31 period.

32 (b) A partnership required to make an installment payment pursuant
33 to subparagraph (a) of this paragraph shall be deemed to make an
34 installment payment subject to the provisions of section 5 of P.L.1981,
35 c.184 (C.54:10A-15.4) and shall be liable for any additions to tax
36 provided thereunder.

37 b. An amount of tax paid by a partnership pursuant to paragraph
38 (1) of subsection a. of this section and an installment payment paid
39 pursuant to subparagraph (a) of paragraph (2) of subsection a. of this
40 section shall be credited to accounts of its nonresident partners in
41 proportion to each nonresident partner's share of allocated entire net
42 income and the multiplier rate for that partner class under subsection
43 a. of this section as of the date of its receipt by the director, and each

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 amount of tax so credited shall be deemed to have been paid by the
2 respective partner in respect of the privilege period or taxable year of
3 the partner.

4 c. For the purposes of this section:

5 "Investment club" means an entity: that is classified as a partnership
6 for federal income tax purposes; all of the owners of which are
7 individuals; all of the assets of which are securities, cash, or cash
8 equivalents; the market value of the total assets of which do not
9 exceed, as measured on the last day of its privilege period, an amount
10 equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and
11 which is not required to register itself or its membership interests with
12 the federal Securities and Exchange Commission; provided that
13 beginning with privilege periods commencing on or after January 1,
14 2003 the director shall prescribe the total asset value amounts which
15 shall apply by increasing the \$250,000 total asset amount and the per
16 owner \$35,000 amount hereinabove by an inflation adjustment factor,
17 which amounts shall be rounded to the next highest multiple of \$100.
18 The inflation adjustment factor shall be equal to the factor calculated
19 by dividing the consumer price index for urban wage earners and
20 clerical workers for the nation, as prepared by the United States
21 Department of Labor for September of the calendar year prior to the
22 calendar year in which the privilege period begins, by that index for
23 September of 2001;

24 "Nonresident noncorporate partner" means, an individual, an estate
25 or a trust subject to taxation pursuant to the "New Jersey Gross
26 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
27 taxpayer or a resident estate or trust under that act;

28 "Nonresident corporate partner" means a partner that is not an
29 individual, an estate or a trust subject to taxation pursuant to the "New
30 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
31 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
32 (C.54:10A-3), and that does not maintain a regular place of business
33 in this State other than a statutory office; and

34 "Partner" means an owner of an interest in the partnership, in
35 whatever manner that owner and ownership interest are designated.
36 (cf: P.L.2003, c.256, s.1)

37

38 2. N.J.S.54A:9-6 is amended to read as follows:

39 54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax
40 return. In case of failure to file a tax return under this act on or before
41 the prescribed date (determined with regard to any extension of time
42 for filing), unless it is shown that such failure is due to reasonable
43 cause and not due to willful neglect, there shall be added to the
44 amount required to be shown as tax on such return such amount as is
45 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
46 seq. For this purpose, the amount of tax required to be shown on the

1 return shall be reduced by the amount of any part of the tax which is
2 paid on or before the date prescribed for payment of the tax and by the
3 amount of any credit against the tax which may be claimed upon the
4 return.

5 (b) Deficiency due to negligence. If any part of a deficiency is due
6 to negligence or intentional disregard of this act or rules or regulations
7 hereunder (but without intent to defraud), there shall be added to the
8 tax an amount equal to 10% of the deficiency.

9 (c) Failure to file declaration or underpayment of estimated tax.
10 If any taxpayer fails to file a declaration of estimated tax or fails to pay
11 all or any part of an installment of estimated tax, the taxpayer shall be
12 deemed to have made an underpayment of estimated tax except as
13 provided pursuant to subsection (d) of this section. There shall be
14 added to the tax for the taxable year an amount at the rate as is
15 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
16 seq., upon the amount of the underpayment for the period of the
17 underpayment but not beyond the 15th day of the fourth month
18 following the close of the taxable year. The amount of underpayment
19 shall be the excess of the lesser of: (1) the amount of the installment
20 which would be required to be paid if the estimated tax were equal to
21 80% of the tax (two-thirds of the tax for farmers referred to in
22 subsection (e) of section 54A:8-4) shown on the return for the taxable
23 year (or if no return was filed, of the tax for such year), or (2) 100%
24 of the tax shown on the tax return of the taxpayer for the preceding
25 taxable year; over the amount, if any, of the installment paid on or
26 before the last day prescribed for such payment. No underpayment
27 shall be deemed to exist with respect to a declaration or installment
28 otherwise due on or after the taxpayer's death.

29 (d) Exception to addition for underpayment of estimated tax. The
30 addition to tax under subsection (c) with respect to any underpayment
31 of any installment shall not be imposed if the total amount of all
32 payments of estimated tax and all payments of tax made pursuant to
33 subsection a. of section 12 of P.L.2002, c.40 (C.54:10A-15.11) and
34 credited to the taxpayer pursuant to subsection b. of section 12 of
35 P.L.2002, c.40 made on or before the last date prescribed for the
36 payment of such installment equals or exceeds whichever of the
37 following set forth in paragraphs (1) and (2) and subject to paragraph
38 (3) is the lesser--

39 (1) The amount which would have been required to be paid on or
40 before such date if the estimated tax were whichever of the following
41 is the least--

42 (A) An amount equal to 100% of the tax shown on the return of
43 the taxpayer for the preceding taxable year, except as provided
44 pursuant to paragraph (3) of this subsection, if a return showing a
45 liability for tax was filed by the taxpayer for the preceding taxable year
46 and such preceding year was a taxable year of 12 months, or

1 (B) An amount equal to 100% of the tax computed, except as
2 provided pursuant to paragraph (3) of this subsection, at the rates
3 applicable to the taxable year, on the basis of the taxpayer's status with
4 respect to the taxpayer's personal exemptions for the taxable year, but
5 otherwise on the basis of the facts shown on the taxpayer's return for,
6 and the law applicable to, the preceding taxable year, or

7 (C) An amount equal to 80% of the tax for the taxable year
8 (two-thirds of the tax for farmers referred to in subsection (e) of
9 section 54A:8-4) computed by placing on an annualized basis the
10 income for the months in the taxable year ending before the month in
11 which the installment is required to be paid (or, in the case of a trust
12 or estate, the income for the months ending before the date one month
13 before the month in which the installment is required). For purposes
14 of this subparagraph, the income shall be placed on an annualized basis
15 by--

16 (i) Multiplying by 12 (or, in the case of a taxable year of less than
17 12 months, the number of months in the taxable year) the income for
18 the months in the taxable year ending before the month in which the
19 installment is required to be paid (or, in the case of a trust or estate,
20 the income for the months ending before the date one month before
21 the month in which the installment is required),

22 (ii) Dividing the resulting amount by the number of months in the
23 taxable year ending before the month in which such installment date
24 falls (or, in the case of a trust or estate, the number of months ending
25 before the date one month before the month in which such installment
26 date falls), and

27 (iii) Deducting from such amount the deductions for personal
28 exemptions allowable for the taxable year (such personal exemptions
29 being determined as of the last date prescribed for payment of the
30 installment); or

31 (2) An amount equal to 90% of the tax computed, at the rates
32 applicable to the taxable year, on the basis of the actual income for the
33 months in the taxable year ending before the month in which the
34 installment is required to be paid.

35 (3) If the taxable gross income shown on the return of the taxpayer
36 for the preceding taxable year exceeds \$150,000 (\$75,000 in the case
37 of a married individual within the meaning of section 7703 of the
38 federal Internal Revenue Code of 1986, 26 U.S.C. s.7703, filing
39 separately for the taxable year for which the amount of the installment
40 is being determined) subparagraphs (A) and (B) of paragraph (1) of
41 this subsection shall be applied by substituting "110%" for "100%".
42 For purposes of this paragraph, "taxable gross income" means gross
43 income after any allowable deductions under chapter 3 or 3A of the
44 "New Jersey Gross Income Tax Act" (C.54A:3-1 et seq and
45 54A:3A-15 et seq); or, in the case of a trust or estate, gross income
46 after any allowable deductions or exemptions, income commissions

1 and amounts distributed or credited to beneficiaries; and "gross
2 income" for a nonresident means gross income calculated as if such
3 nonresident were a resident.

4 (e) Deficiency due to fraud. If any part of a deficiency is due to
5 fraud, there shall be added to the tax an amount equal to 50% of the
6 deficiency. This amount shall be in lieu of any other addition to tax
7 imposed by subsection (a) or (b).

8 (f) Nonwillful failure to pay withholding tax. If any employer,
9 without intent to evade or defeat any tax imposed by this act or the
10 payment thereof, shall fail to make a return and pay a tax withheld by
11 him at the time required by or under the provisions of section 54A:7-4,
12 such employer shall be liable for such tax and shall pay the same
13 together with interest thereon and the addition to tax provided in
14 subsection (a), and such interest and addition to tax shall not be
15 charged to or collected from the employee by the employer. The
16 director shall have the same rights and powers for the collection of
17 such tax, interest and addition to tax against such employer as are now
18 prescribed by this act for the collection of tax against an individual
19 taxpayer.

20 (g) Willful failure to collect and pay over tax. Any person required
21 to collect, truthfully account for, and pay over the tax imposed by this
22 act who willfully fails to collect such tax or truthfully account for and
23 pay over such tax or willfully attempts in any manner to evade or
24 defeat the tax or the payment thereof, shall, in addition to other
25 penalties provided by law, be liable to a penalty equal to the total
26 amount of the tax evaded, or not collected, or not accounted for and
27 paid over. No addition to tax under subsection (b) or (c) shall be
28 imposed for any offense to which this subsection applies.

29 (h) Failure to file certain information returns. In case of each
30 failure to file a statement of a payment to another person, required
31 under authority of subsection (c) of section 54A:8-6 (relating to
32 information at source, including the duplicate statement of tax
33 withheld on wages) on the date prescribed therefor (determined with
34 regard to any extension of time for filing), unless it is shown that such
35 failure is due to reasonable cause and not to willful neglect, there shall,
36 upon notice and demand by the director and in the same manner as tax,
37 be paid by the person so failing to file the statement, a penalty of \$2.00
38 for each statement not so filed, but the total amount imposed on the
39 delinquent person for all such failures during any calendar year shall
40 not exceed \$2,000.00.

41 (i) Additional penalty. Any person who with fraudulent intent shall
42 fail to pay, or to deduct or withhold and pay, any tax, or to make,
43 render, sign or certify any return or declaration of estimated tax or to
44 supply any information within the time required by or under this act,
45 shall be liable to penalty of not more than \$5,000.00, in addition to any
46 other amounts required under this act, to be imposed, assessed and

1 collected by the director. The director shall have the power, in his
2 discretion, to waive, reduce or compromise any penalty under this
3 subsection.

4 (j) Additions treated as tax. The additions to tax and penalties
5 provided by this section shall be paid upon notice and demand and
6 shall be assessed, collected and paid in the same manner as taxes and
7 any reference in this act to income tax or tax imposed by this act, shall
8 be deemed also to refer to the additions to tax and penalties provided
9 by this section. For purposes of section 54A:9-2, this subsection shall
10 not apply to:

11 (1) Any addition to tax under subsection (a) except as to that
12 portion attributable to a deficiency;

13 (2) Any addition to tax under subsection (e); and

14 (3) Any additional penalty under subsection (i).

15 (k) Determination of deficiency. For purposes of subsections (b)
16 and (c), the amount shown as the tax by the taxpayer upon his return
17 shall be taken into account in determining the amount of the deficiency
18 only if such return was filed on or before the last day prescribed for
19 the filing of such return, determined with regard to any extension of
20 time for such filing.

21 (l) Person defined. For purposes of subsections (f), (g), (h) and (i),
22 the term person or employer includes an individual, corporation or
23 partnership or an officer or employee of any corporation (including a
24 dissolved corporation) or a member or employee of any partnership,
25 who as such officer, employee, or member is under a duty to perform
26 the act in respect of which the violation occurs.

27 (cf: P.L.1998, c.106, s.16)

28

29 3. This act shall take effect immediately and apply to privilege
30 periods beginning on or after January 1 next following enactment.

31

32

33

STATEMENT

34

35 This bill requires partnerships and other pass-through entities,
36 required under current law to make annual tax payments on behalf of
37 nonresident partners and other owners, to make partial payments
38 earlier. This schedule will allow the partners to count those payments
39 as part of their payment of estimated taxes.

40 The Business Tax Reform Act of 2002 required most "pass-
41 through" entities like partnerships to make a payment on the share of
42 the New Jersey income of each nonresident owner to credited to
43 separate accounts for each owner against their respective tax liabilities,
44 like withholding. However, many of these owners themselves make
45 quarterly payments of estimated taxes, so this had the effect of
46 requiring "double withholding."

A4475 GREENWALD

8

1 This bill eliminates the "double withholding" problem by allowing
2 the partnerships to make partial payments of their required payments
3 earlier, to coincide with the timing of estimated payments, and by
4 allowing the amount of the partnership payments to be credited against
5 the partners' estimated payment liabilities. The advance tax partnership
6 payments will be made on or before the 15th day of the fourth month,
7 sixth month and ninth month of the privilege period and on or before
8 the 15th day of the first month succeeding the close of the privilege
9 period.

ASSEMBLY, No. 4432

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED DECEMBER 5, 2005

Sponsored by:

Assemblyman DAVID C. RUSSO

District 40 (Bergen, Essex and Passaic)

Assemblyman REED GUSCIORA

District 15 (Mercer)

SYNOPSIS

Requires partners and other owners of pass-through entities to credit payments made on their behalf against estimated taxes to end "double withholding."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/6/2005)

1 AN ACT requiring owners of pass-through entities to credit certain
2 payments the entities make on the owner's behalf against the
3 owners' estimated taxes, amending P.L.2002, c.40 and
4 N.J.S.54A:9-6.

5

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

8

9 1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to
10 read as follows:

11 12. a. (1) A partnership that is not a qualified investment
12 partnership or an investment club and that is not listed on a United
13 States national stock exchange shall ~~[, on or before the 15th day of the~~
14 ~~fourth month succeeding the close of each privilege period, remit]~~be
15 subject to a payment of tax. The amount of tax shall be equal to the
16 sum of: all of the share of the entire net income of the partnership for
17 that privilege period of all nonresident noncorporate partners,
18 multiplied by an allocation factor determined, pursuant to section 6 of
19 P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the
20 partnership for that privilege period, and multiplied by .0637 plus all
21 of the share of the entire net income of the partnership for that
22 privilege period of all nonresident corporate partners, multiplied by an
23 allocation factor determined, pursuant to section 6 of P.L.1945, c.162
24 (C.54:10A-6), based on the allocation fractions of the partnership for
25 that privilege period, and multiplied by .09.

26 (2) A partnership that is subject to the tax payment requirements
27 of paragraph (1) of this subsection shall make advance payments of
28 that tax on or before the 15th day of the fourth month, sixth month
29 and ninth month of the privilege period and on or before the 15th day
30 of the first month succeeding the close of the privilege period, in
31 accordance with regulations promulgated by the director.

32 b. An amount of tax paid by a partnership pursuant to subsection
33 a. of this section shall be credited to accounts of its nonresident
34 partners in proportion to each nonresident partner's share of allocated
35 entire net income and the multiplier rate for that partner class under
36 subsection a. of this section [as of the date of its receipt by the
37 director], and each amount of tax so credited shall be deemed to have
38 been paid by the respective partner in respect of the privilege period
39 or taxable year of the partner.

40 c. For the purposes of this section:

41 "Investment club" means an entity: that is classified as a partnership
42 for federal income tax purposes; all of the owners of which are
43 individuals; all of the assets of which are securities, cash, or cash

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

Matter underlined thus is new matter.

1 equivalents; the market value of the total assets of which do not
2 exceed, as measured on the last day of its privilege period, an amount
3 equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and
4 which is not required to register itself or its membership interests with
5 the federal Securities and Exchange Commission; provided that
6 beginning with privilege periods commencing on or after January 1,
7 2003 the director shall prescribe the total asset value amounts which
8 shall apply by increasing the \$250,000 total asset amount and the per
9 owner \$35,000 amount hereinabove by an inflation adjustment factor,
10 which amounts shall be rounded to the next highest multiple of \$100.
11 The inflation adjustment factor shall be equal to the factor calculated
12 by dividing the consumer price index for urban wage earners and
13 clerical workers for the nation, as prepared by the United States
14 Department of Labor for September of the calendar year prior to the
15 calendar year in which the privilege period begins, by that index for
16 September of 2001;

17 "Nonresident noncorporate partner" means, an individual, an estate
18 or a trust subject to taxation pursuant to the "New Jersey Gross
19 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
20 taxpayer or a resident estate or trust under that act;

21 "Nonresident corporate partner" means a partner that is not an
22 individual, an estate or a trust subject to taxation pursuant to the "New
23 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
24 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162
25 (C.54:10A-3), and that does not maintain a regular place of business
26 in this State other than a statutory office; and

27 "Partner" means an owner of an interest in the partnership, in
28 whatever manner that owner and ownership interest are designated.
29 (cf: P.L.2003, c.256, s.1)

30

31 2. N.J.S.54A:9-6 is amended to read as follows:

32 54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax
33 return. In case of failure to file a tax return under this act on or before
34 the prescribed date (determined with regard to any extension of time
35 for filing), unless it is shown that such failure is due to reasonable
36 cause and not due to willful neglect, there shall be added to the
37 amount required to be shown as tax on such return such amount as is
38 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
39 seq. For this purpose, the amount of tax required to be shown on the
40 return shall be reduced by the amount of any part of the tax which is
41 paid on or before the date prescribed for payment of the tax and by the
42 amount of any credit against the tax which may be claimed upon the
43 return.

44 (b) Deficiency due to negligence. If any part of a deficiency is due
45 to negligence or intentional disregard of this act or rules or regulations
46 hereunder (but without intent to defraud), there shall be added to the

1 tax an amount equal to 10% of the deficiency.

2 (c) Failure to file declaration or underpayment of estimated tax.
3 If any taxpayer fails to file a declaration of estimated tax or fails to pay
4 all or any part of an installment of estimated tax, the taxpayer shall be
5 deemed to have made an underpayment of estimated tax except as
6 provided pursuant to subsection (d) of this section. There shall be
7 added to the tax for the taxable year an amount at the rate as is
8 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
9 seq., upon the amount of the underpayment for the period of the
10 underpayment but not beyond the 15th day of the fourth month
11 following the close of the taxable year. The amount of underpayment
12 shall be the excess of the lesser of: (1) the amount of the installment
13 which would be required to be paid if the estimated tax were equal to
14 80% of the tax (two-thirds of the tax for farmers referred to in
15 subsection (e) of section 54A:8-4) shown on the return for the taxable
16 year (or if no return was filed, of the tax for such year), or (2) 100%
17 of the tax shown on the tax return of the taxpayer for the preceding
18 taxable year; over the amount, if any, of the installment paid on or
19 before the last day prescribed for such payment. No underpayment
20 shall be deemed to exist with respect to a declaration or installment
21 otherwise due on or after the taxpayer's death.

22 (d) Exception to addition for underpayment of estimated tax. The
23 addition to tax under subsection (c) with respect to any underpayment
24 of any installment shall not be imposed if the total amount of all
25 payments of estimated tax and all payments of tax made pursuant to
26 subsection a. of section 12 of P.L.2002, c.40 (C.54:10A-15.11) and
27 credited to the taxpayer pursuant to subsection b. of section 12 of
28 P.L.2002, c.40 made on or before the last date prescribed for the
29 payment of such installment equals or exceeds whichever of the
30 following set forth in paragraphs (1) and (2) and subject to paragraph
31 (3) is the lesser--

32 (1) The amount which would have been required to be paid on or
33 before such date if the estimated tax were whichever of the following
34 is the least--

35 (A) An amount equal to 100% of the tax shown on the return of
36 the taxpayer for the preceding taxable year, except as provided
37 pursuant to paragraph (3) of this subsection, if a return showing a
38 liability for tax was filed by the taxpayer for the preceding taxable year
39 and such preceding year was a taxable year of 12 months, or

40 (B) An amount equal to 100% of the tax computed, except as
41 provided pursuant to paragraph (3) of this subsection, at the rates
42 applicable to the taxable year, on the basis of the taxpayer's status with
43 respect to the taxpayer's personal exemptions for the taxable year, but
44 otherwise on the basis of the facts shown on the taxpayer's return for,
45 and the law applicable to, the preceding taxable year, or

46 (C) An amount equal to 80% of the tax for the taxable year

1 (two-thirds of the tax for farmers referred to in subsection (e) of
2 section 54A:8-4) computed by placing on an annualized basis the
3 income for the months in the taxable year ending before the month in
4 which the installment is required to be paid (or, in the case of a trust
5 or estate, the income for the months ending before the date one month
6 before the month in which the installment is required). For purposes
7 of this subparagraph, the income shall be placed on an annualized basis
8 by--

9 (i) Multiplying by 12 (or, in the case of a taxable year of less than
10 12 months, the number of months in the taxable year) the income for
11 the months in the taxable year ending before the month in which the
12 installment is required to be paid (or, in the case of a trust or estate,
13 the income for the months ending before the date one month before
14 the month in which the installment is required),

15 (ii) Dividing the resulting amount by the number of months in the
16 taxable year ending before the month in which such installment date
17 falls (or, in the case of a trust or estate, the number of months ending
18 before the date one month before the month in which such installment
19 date falls), and

20 (iii) Deducting from such amount the deductions for personal
21 exemptions allowable for the taxable year (such personal exemptions
22 being determined as of the last date prescribed for payment of the
23 installment); or

24 (2) An amount equal to 90% of the tax computed, at the rates
25 applicable to the taxable year, on the basis of the actual income for the
26 months in the taxable year ending before the month in which the
27 installment is required to be paid.

28 (3) If the taxable gross income shown on the return of the taxpayer
29 for the preceding taxable year exceeds \$150,000 (\$75,000 in the case
30 of a married individual within the meaning of section 7703 of the
31 federal Internal Revenue Code of 1986, 26 U.S.C. s.7703, filing
32 separately for the taxable year for which the amount of the installment
33 is being determined) subparagraphs (A) and (B) of paragraph (1) of
34 this subsection shall be applied by substituting "110%" for "100%".
35 For purposes of this paragraph, "taxable gross income" means gross
36 income after any allowable deductions under chapter 3 or 3A of the
37 "New Jersey Gross Income Tax Act" (C.54A:3-1 et seq and
38 **[54A:3A-1] 54A:3A-15** et seq); or, in the case of a trust or estate,
39 gross income after any allowable deductions or exemptions, income
40 commissions and amounts distributed or credited to beneficiaries; and
41 "gross income" for a nonresident means gross income calculated as if
42 such nonresident were a resident.

43 (e) Deficiency due to fraud. If any part of a deficiency is due to
44 fraud, there shall be added to the tax an amount equal to 50% of the
45 deficiency. This amount shall be in lieu of any other addition to tax
46 imposed by subsection (a) or (b).

1 (f) Nonwillful failure to pay withholding tax. If any employer,
2 without intent to evade or defeat any tax imposed by this act or the
3 payment thereof, shall fail to make a return and pay a tax withheld by
4 him at the time required by or under the provisions of section 54A:7-4,
5 such employer shall be liable for such tax and shall pay the same
6 together with interest thereon and the addition to tax provided in
7 subsection (a), and such interest and addition to tax shall not be
8 charged to or collected from the employee by the employer. The
9 director shall have the same rights and powers for the collection of
10 such tax, interest and addition to tax against such employer as are now
11 prescribed by this act for the collection of tax against an individual
12 taxpayer.

13 (g) Willful failure to collect and pay over tax. Any person required
14 to collect, truthfully account for, and pay over the tax imposed by this
15 act who willfully fails to collect such tax or truthfully account for and
16 pay over such tax or willfully attempts in any manner to evade or
17 defeat the tax or the payment thereof, shall, in addition to other
18 penalties provided by law, be liable to a penalty equal to the total
19 amount of the tax evaded, or not collected, or not accounted for and
20 paid over. No addition to tax under subsection (b) or (c) shall be
21 imposed for any offense to which this subsection applies.

22 (h) Failure to file certain information returns. In case of each
23 failure to file a statement of a payment to another person, required
24 under authority of subsection (c) of section 54A:8-6 (relating to
25 information at source, including the duplicate statement of tax
26 withheld on wages) on the date prescribed therefor (determined with
27 regard to any extension of time for filing), unless it is shown that such
28 failure is due to reasonable cause and not to willful neglect, there shall,
29 upon notice and demand by the director and in the same manner as tax,
30 be paid by the person so failing to file the statement, a penalty of \$2.00
31 for each statement not so filed, but the total amount imposed on the
32 delinquent person for all such failures during any calendar year shall
33 not exceed \$2,000.00.

34 (i) Additional penalty. Any person who with fraudulent intent shall
35 fail to pay, or to deduct or withhold and pay, any tax, or to make,
36 render, sign or certify any return or declaration of estimated tax or to
37 supply any information within the time required by or under this act,
38 shall be liable to penalty of not more than \$5,000.00, in addition to any
39 other amounts required under this act, to be imposed, assessed and
40 collected by the director. The director shall have the power, in his
41 discretion, to waive, reduce or compromise any penalty under this
42 subsection.

43 (j) Additions treated as tax. The additions to tax and penalties
44 provided by this section shall be paid upon notice and demand and
45 shall be assessed, collected and paid in the same manner as taxes and
46 any reference in this act to income tax or tax imposed by this act, shall

1 be deemed also to refer to the additions to tax and penalties provided
2 by this section. For purposes of section 54A:9-2, this subsection shall
3 not apply to:

4 (1) Any addition to tax under subsection (a) except as to that
5 portion attributable to a deficiency;

6 (2) Any addition to tax under subsection (e); and

7 (3) Any additional penalty under subsection (i).

8 (k) Determination of deficiency. For purposes of subsections (b)
9 and (c), the amount shown as the tax by the taxpayer upon his return
10 shall be taken into account in determining the amount of the deficiency
11 only if such return was filed on or before the last day prescribed for
12 the filing of such return, determined with regard to any extension of
13 time for such filing.

14 (l) Person defined. For purposes of subsections (f), (g), (h) and (i),
15 the term person or employer includes an individual, corporation or
16 partnership or an officer or employee of any corporation (including a
17 dissolved corporation) or a member or employee of any partnership,
18 who as such officer, employee, or member is under a duty to perform
19 the act in respect of which the violation occurs.

20 (cf: P.L.1998, c.106, s.16)

21

22 3. This act shall take effect immediately and apply to taxable years
23 beginning on or after January 1 next following enactment.

24

25

26

STATEMENT

27

28 This bill requires partnerships and other entities, the income of
29 which is taxable to their owners rather than to the entity itself (so-
30 called "pass-through" entities), which must make annual tax payments
31 on behalf of nonresident owners, to make partial payments earlier than
32 is currently required, so that the partners may count those payments
33 as part of their payment of estimated taxes. Advance tax payments
34 will be made on or before the 15th day of the fourth month, sixth
35 month and ninth month of the privilege period and on or before the
36 15th day of the first month succeeding the close of the privilege
37 period, in accordance with regulations promulgated by the director.

38 This bill eliminates the "double withholding" effect of business tax
39 reforms enacted in 2002 by requiring the partnership to make the
40 partial payments earlier, to coincide with the timing of estimated
41 payments, thus allowing partners to reduce the amount of their
42 estimated payments.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 4475 and 4432**

STATE OF NEW JERSEY

DATED: DECEMBER 8, 2005

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 4475 and 4432.

This Assembly Committee Substitute for Assembly Bill Nos. 4475 and 4432 requires partnerships and other pass-through entities, required under current law to make annual tax payments on behalf of nonresident partners and other owners, to make partial payments earlier. This schedule will allow the partners to count those payments as part of their payment of estimated taxes.

The Business Tax Reform Act of 2002 required most "pass-through" entities like partnerships to make a payment on the share of the New Jersey income of each nonresident owner to be credited to separate accounts for each owner against their respective tax liabilities, like withholding. However, many of these owners themselves make quarterly payments of estimated taxes, so this had the effect of requiring "double withholding."

This substitute eliminates the "double withholding" problem by allowing the partnerships to make partial payments of their required payments earlier, to coincide with the timing of estimated payments, and by allowing the amount of the partnership payments to be credited against the partners' estimated payment liabilities. The advance tax partnership payments will be made on or before the 15th day of the fourth month, sixth month and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period.

As substituted and reported by the committee, this bill is identical to Senate Bill No. 1892 (1R) as amended and reported by the committee.

FISCAL IMPACT:

While this substitute will have no impact on the tax liability of nonresident owners, the crediting of the pass-through entity payments against estimated payments will allow taxpayers to reduce their estimated payments. This will reduce the amount of any temporary surpluses in the General Fund or Property Tax Relief Fund available

for deposit in the Cash Management Fund, which in turn will reduce the interest earned by the Cash Management Fund.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 4475 and 4432
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: FEBRUARY 16, 2006

SUMMARY

Synopsis: Requires partners and other owners of pass-through entities to credit payments made on their behalf against estimated taxes to end "double withholding."

Type of Impact: Revenue loss to Cash Management Fund.

Agencies Affected: Department of the Treasury, Division of Taxation.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Minimal	Minimal	Minimal

- ! The bill has no impact on the final tax liability of the nonresident owners of partnerships and other pass-through entities.
- ! The crediting of the pass-through entity payments against estimated payments allows corporation business tax and gross income tax payers to reduce their estimated payments; this reduces the amount of any temporary surpluses in the General Fund or Property Tax Relief Fund available for deposit in the Cash Management Fund, which in turn reduces the interest earned by the Cash Management Fund.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill Nos. 4475 and 4432 of 2004 requires partnerships and other pass-through entities, required under current law to make annual tax payments on behalf of nonresident partners and other owners, to make partial payments earlier. This schedule will allow the partners to count those payments as part of their payment of estimated taxes.

The Business Tax Reform Act of 2002 required most "pass-through" entities like partnerships to make a payment on the share of the New Jersey income of each nonresident owner to be credited to separate accounts for each owner against their respective tax liabilities, like withholding. However, many of these owners themselves make quarterly payments of estimated taxes, so requiring prepayments from two sources had the effect of requiring "double

withholding."

This bill eliminates the "double withholding" problem by allowing the partnerships to make partial payments of their required payments earlier, to coincide with the timing of estimated payments, and by allowing the amount of the partnership payments to be credited against the partners' estimated payment liabilities. The advance tax partnership payments will be made on or before the 15th day of the fourth month, sixth month and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

While this bill will have no impact on the final tax liability of nonresident owners, the crediting of the payments made by the pass-through entities against estimated payments will allow corporation business tax and gross income tax payers to reduce their estimated payments. This will reduce the amount of any temporary surpluses in the General Fund or Property Tax Relief Fund available for deposit in the Cash Management Fund, which in turn will reduce the interest earned by the Cash Management Fund.

Section: *Revenue, Finance and Appropriations*

Analyst: *Philip N. Liloia*
Lead Counsel

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

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