

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3045

STATE OF NEW JERSEY

DATED: JUNE 21, 2001

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3045.

This Assembly Committee Substitute for Assembly Bill No. 3045 closes a gap in the administration of the taxes imposed on the owners of limited partnerships and limited liability companies.

This substitute provides a mechanism, similar to the consent and deemed payment provisions put in place for the owners of Subchapter S corporations by P.L.1993, c.173, that assures the fair taxation of the owners of limited liability companies and limited partnerships. Under this substitute, a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership that is classified as a partnership for federal tax purposes may obtain the consent of each of its owners that are not individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq. (for example, each owner that is itself a corporation) that this State has the right and jurisdiction to tax the owner's income derived from the activities of the limited liability company or limited partnership in New Jersey. A business that does not have the consent of all of its owners must pay a corporation business tax liability, on behalf of its nonconsenting owners, on each of the nonconsenting owner's shares of the business' New Jersey income.

A number of organizations, because of their distinctive characteristics, are exempted from certain provisions of the substitute. Limited liability companies and limited partnerships that have been listed on national stock exchanges (which have many owners, with the ownership changing from day to day) are exempt from the coverage of the substitute. Owner organizations that are exempt by statute from the corporation business tax are exempt from the deemed payment provisions: their liabilities would, in any case, be zero. "Qualified investment partnerships," limited liability companies or limited partnerships with more than 10 owners, none of whom owns more than 50% of the entity, and that derive at least 90% of their income from financial transactions, are exempt from making payments on behalf of their owners.

For each "privilege period" (tax year) of a limited liability company or limited partnership, the company or partnership must make a payment on the 15th day of the fourth month following the close of the period (in most cases, April 15) equal to the corporation business tax imposed at its highest rate on the income shares of the organization's owners that have not themselves consented to New Jersey taxation (no amount is paid on behalf of owners that have consented to taxation).

These payment amounts are credited to accounts for the nonconsenting owners, who may let them stand in payment of their liabilities or who may consent to taxation and, as part of that process, apply for refunds of any amounts in excess of their actual liability paid on their behalf.

The limited liability companies and limited partnerships will also make estimated payments of their nonconsenting members' current years' taxes on 15th day of the fourth month of the privilege period (again, usually April 15th). These payments will be based, where appropriate, on the prior year's income of the company or partnership.

The substitute is effective, retroactively, for privilege periods beginning on or after January 1, 2001. Transition provisions exempt the companies and partnerships from making estimated payments for tax year 2001 (those payments would have been due April 15, 2001) and reduce the final payment of tax on behalf of the nonconsenting members for 2001, due in 2002, to 45% of the amount otherwise due to account for the enactment of the new provisions in the middle of a tax period.

FISCAL IMPACT:

The Department of the Treasury has not provided any information that would allow an estimate of the revenue impact of this Administration initiative. The Office of Legislative Services does not have any information available to it that would enable it to make a revenue estimate.