

SENATE, No. 1962

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 4, 2000

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris)

Senator ROBERT E. LITTELL

District 24 (Sussex, Hunterdon and Morris)

SYNOPSIS

Concerns payment obligations of certain partnerships and limited liability companies and certain of their partners and members under the corporation business tax.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning payment obligations of certain partnerships and
2 limited liability companies and their partners and members under the
3 corporation business tax, amending and supplementing P.L.1945,
4 c.162.

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

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

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

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

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

18 (c) "Corporation" shall mean any corporation, joint-stock company
19 or association and any business conducted by a trustee or trustees
20 wherein interest or ownership is evidenced by a certificate of interest
21 or ownership or similar written instrument.

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

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 paid foreign tax credits or for the purpose of status as a controlled
2 foreign corporation. In calculating the net worth of a taxpayer entitled
3 to reduction for investment in subsidiaries, the amount of liabilities of
4 the taxpayer shall be reduced by such proportion of the liabilities as
5 corresponds to the ratio which the excluded portion of the subsidiary
6 values bears to the total assets of the taxpayer.

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

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

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

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

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

39 (h) "Taxpayer" shall mean any corporation , limited liability
40 company, foreign limited liability company, limited partnership or
41 foreign limited partnership required to report or to pay taxes, interest
42 or penalties under this act.

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

46 (j) Except as herein provided, "privilege period" shall mean the

1 calendar or fiscal accounting period for which a tax is payable under
2 this act.

3 (k) "Entire net income" shall mean total net income from all
4 sources, whether within or without the United States, and shall include
5 the gain derived from the employment of capital or labor, or from both
6 combined, as well as profit gained through a sale or conversion of
7 capital assets. For the purpose of this act, the amount of a taxpayer's
8 entire net income shall be deemed prima facie to be equal in amount to
9 the taxable income, before net operating loss deduction and special
10 deductions, which the taxpayer is required to report, or, if the taxpayer
11 is classified as a partnership for federal tax purposes, would otherwise
12 be required to report, to the United States Treasury Department for
13 the purpose of computing its federal income tax; provided, however,
14 that in the determination of such entire net income,

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

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

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

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

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

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

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

39 (F) (i) The amount by which depreciation reported to the United
40 States Treasury Department for property placed in service on and after
41 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
42 years beginning on and after the effective date of P.L.1993, c.172, for
43 purposes of computing federal taxable income in accordance with
44 section 168 of the Internal Revenue Code in effect after December 31,
45 1980, exceeds the amount of depreciation determined in accordance
46 with the Internal Revenue Code provisions in effect prior to
47 January 1, 1981, but only with respect to a taxpayer's accounting

1 period ending after December 31, 1981; provided, however, that
2 where a taxpayer's accounting period begins in 1981 and ends in 1982,
3 no modification shall be required with respect to this paragraph (F) for
4 the report filed for such period with respect to property placed in
5 service during that part of the accounting period which occurs in 1981.
6 The provisions of this subparagraph shall not apply to assets placed in
7 service prior to January 1, 1998 of a gas, gas and electric, and electric
8 public utility that was subject to the provisions of P.L.1940, c.5
9 (C.54:30A-49 et seq.) prior to 1998.

10 (ii) For the periods set forth in subparagraph (F)(i) of this
11 subsection, any amount, except with respect to qualified mass
12 commuting vehicles as described in section 168(f)(8)(D)(v) of the
13 Internal Revenue Code as in effect immediately prior to January 1,
14 1984, which the taxpayer claimed as a deduction in computing federal
15 income tax pursuant to a qualified lease agreement under paragraph
16 (8) of that section.

17 The director shall promulgate rules and regulations necessary to
18 carry out the provisions of this section, which rules shall provide,
19 among others, the manner in which the remaining life of property shall
20 be reported.

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

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

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

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

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

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

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

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

22 (ii) Making or placing deposits with foreign persons which are
23 banks or foreign branches of banks (including foreign subsidiaries) or
24 foreign branches of the taxpayers or with other international banking
25 facilities;

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

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

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

33 (5) Entire net income shall exclude 100% of dividends which were
34 included in computing such taxable income for federal income tax
35 purposes, paid to the taxpayer by one or more subsidiaries owned by
36 the taxpayer to the extent of the 80% or more ownership of investment
37 described in subsection (d) of this section. With respect to other
38 dividends, entire net income shall not include 50% of the total included
39 in computing such taxable income for federal income tax purposes.

40 (6) (A) Net operating loss deduction. There shall be allowed as
41 a deduction for the taxable year the net operating loss carryover to
42 that year.

43 (B) Net operating loss carryover. A net operating loss for any
44 taxable year ending after June 30, 1984 shall be a net operating loss
45 carryover to each of the seven years following the year of the loss. The
46 entire amount of the net operating loss for any taxable year (the "loss

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

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

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

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

1 (A) Depreciation for property placed in service prior to January 1,
2 1998 shall be adjusted as follows:

3 (i) Depreciation for federal income tax purposes shall be
4 disallowed in full.

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

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

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

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

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

37 (10) Entire net income shall exclude all income of an alien
38 corporation the activities of which are limited in this State to investing
39 or trading in stocks and securities for its own account, investing or
40 trading in commodities for its own account, or any combination of
41 those activities, within the meaning of section 864 of the federal
42 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on
43 December 31, 1998. Notwithstanding the previous sentence, if an
44 alien corporation undertakes one or more infrequent, extraordinary or
45 non-recurring activities, including but not limited to the sale of
46 tangible property, only the income from such infrequent, extraordinary

1 or non-recurring activity shall be subject to the tax imposed pursuant
2 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income
3 subject to tax shall be determined without regard to the allocation to
4 that specific transaction of any general business expense of the
5 taxpayer and shall be specifically assigned to this State for taxation by
6 this State without regard to section 6 of P.L.1945, c.162
7 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"
8 means a corporation organized under the laws of a jurisdiction other
9 than the United States or its political subdivisions.

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

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

1 pawnbrokers, and State banks and trust companies.

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

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

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

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

30 (cf: P.L.1999, c.369)

31

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

34 5. The franchise tax to be annually assessed to and paid by each
35 taxpayer shall be the sum of the amount computed under subsection
36 (a) hereof, or in the alternative to the amount computed under
37 subsection (a) hereof, the amount computed under subsection (f)
38 hereof, and the amount computed under subsection (c) hereof:

39 (a) That portion of its entire net worth as may be allocable to this
40 State as provided in section 6, multiplied by the following rates: 2
41 mills per dollar on the first \$100,000,000.00 of allocated net worth;
42 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill
43 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar
44 on all amounts of allocated net worth in excess of \$300,000,000.00;
45 provided, however, that with respect to reports covering accounting
46 or privilege periods set forth below, the rate shall be that percentage
47 of the rate set forth in this subsection for the appropriate year:

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

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

(c) (1) For a taxpayer that is not a New Jersey S corporation, 31/4% of its entire net income or such portion thereof as may be allocable to this State as provided in section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1967, the rate shall be 41/4%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 51/2%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 71/2%; and that with respect to reports covering [accounting or] privilege periods or parts thereof ending after December 31, 1979, the rate shall be 9%; provided however, that for a taxpayer that has entire net income of \$100,000 or less for a privilege period and is not a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership the rate for that privilege period shall be 71/2%.

(2) For a taxpayer that is a New Jersey S corporation, for privilege periods ending on or before June 30, 1998 the rate determined by subtracting the maximum tax bracket rate provided under N.J.S.54A:2-1 for the privilege period from the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this subsection for the privilege period and for privilege periods ending on or after July 1, 1998 the rate shall be 2%, provided however that for a taxpayer that has entire net income of \$100,000 or less for a privilege period ending on or after July 1, 1998, the rate for that privilege period shall be 0.5%, multiplied by its entire net income that is not subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10); plus

(3) For a taxpayer that is a New Jersey S corporation, in addition to the amount, if any, determined under paragraph (2) of this subsection, the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this

1 subsection for the privilege period multiplied by its entire net income
 2 that is subject to federal income taxation or such portion thereof as
 3 may be allocable to this State pursuant to sections 6 through 10 of
 4 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

5 (d) Provided, however, that the franchise tax to be annually
 6 assessed to and paid by any investment company or real estate
 7 investment trust, which has elected to report as such and has filed its
 8 return in the form and within the time provided in this act and the rules
 9 and regulations promulgated in connection therewith, shall, in the case
 10 of an investment company, be measured by 25% of its entire net
 11 income and 25% of its entire net worth, and in the case of a real estate
 12 investment trust, by 4% of its entire net income and 15% of its entire
 13 net worth, at the rates hereinbefore set forth for the computation of
 14 tax on net income and net worth, respectively, but in no case less than
 15 \$250, and further provided, however, that the franchise tax to be
 16 annually assessed to and paid by a regulated investment company
 17 which for a period covered by its report satisfies the requirements of
 18 Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal
 19 Revenue Code shall be \$250.

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

28	Period Beginning	Domestic	Foreign
29	In Calendar Year	Corporation	Corporation
30		Minimum Tax	Minimum
31	1994	\$ 50	\$100
32	1995	\$100	\$200
33	1996	\$150	\$200
34	1997	\$200	\$200

35 and provided further that the director shall adjust the minimum tax for
 36 accounting or privilege periods beginning in each fifth year following
 37 calendar year 1997 and each fifth year thereafter by multiplying the
 38 minimum tax for periods beginning in 1997 by an amount equal to one
 39 plus 75% of the increase, if any, in the annual average total producer
 40 price index for finished goods published by the federal Department of
 41 Labor, Bureau of Labor Statistics, for the year preceding the
 42 determination year over such index for calendar year 1996 which
 43 adjusted minimum tax amount shall be rounded to the next highest
 44 multiple of \$10.

45 (f) In lieu of the portion of the tax based on net worth and to be
 46 computed under subsection (a) of this section, any taxpayer, the value

1 of whose total assets everywhere, less reasonable reserves for
2 depreciation, as of the close of the period covered by its report,
3 amounts to less than \$150,000, may elect to pay the tax shown in a
4 table which shall be promulgated by the director.

5 (g) Provided however, that there shall be no franchise tax annually
6 assessed pursuant to this section to a taxpayer that is a limited liability
7 company or foreign limited liability company classified as a partnership
8 for federal income tax purposes and that is in compliance with the
9 provisions of section 3 of P.L. , c. (C.)(now pending before
10 the Legislature as this bill) or a taxpayer that is a limited partnership
11 or foreign limited partnership classified as a partnership for federal
12 income tax purposes and that is in compliance with the provisions of
13 section 4 of P.L. , c. (C.)(now pending before the
14 Legislature as this bill).

15 (cf: P.L.1997, c.40)

16
17 3. (New section) a. A limited liability company or foreign limited
18 liability company that is classified as a partnership for federal income
19 tax purposes may obtain and retain in its records for inspection by the
20 director the consent of each of its members that are not individuals,
21 trusts or estates subject to the "New Jersey Gross Income Tax Act",
22 N.J.S.54A:1-1 et seq., to the following jurisdictional requirements in
23 a form prescribed by the Director of the Division of Taxation: that this
24 State shall have the right and jurisdiction to tax and collect the tax on
25 the entire net income allocated to the member of the limited liability
26 company or foreign limited liability company.

27 b. A limited liability company or foreign limited liability company
28 that has not obtained and retained the written consent of one or more
29 of its members that are not individuals, trusts or estates subject to the
30 "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, at
31 the time of filing the report required by subsection b. of
32 N.J.S.54A:8-6, remit a payment of tax equal to the entire net income
33 allocated to the nonconsenting members for the privilege period,
34 multiplied by the maximum rate set forth at paragraph (1) of
35 subsection (c) of section 5 of P.L.1945, c. 162 (C.54:10A-5) for the
36 privilege period. The limited liability company or foreign limited
37 liability company shall have the right, but not the obligation, to recover
38 from the nonconsenting members such payments made by the
39 company.

40
41 4. (New section) a. A limited partnership or foreign limited
42 partnership that is classified as a partnership for federal tax purposes
43 shall obtain and retain in its records for inspection by the director the
44 consent of each of its partners, both general and limited, that are not
45 individuals, trusts or estates subject to the "New Jersey Gross Income
46 Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional

1 requirement in a form prescribed by the Director of the Division of
2 Taxation: that this State shall have the right and jurisdiction to tax and
3 collect the tax on the entire net income allocated to the member of the
4 limited liability company or foreign limited liability company.

5 b. A limited partnership or foreign limited partnership which has
6 not obtained and retained the written consent of one or more of its
7 partners that are not individuals, trusts or estates subject to the "New
8 Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, at the
9 time of filing the report required by subsection b. of N.J.S.54A:8-6,
10 remit a payment of tax equal to the entire net income allocated to the
11 nonconsenting partners for the privilege period, multiplied by the
12 maximum rate set forth at paragraph (1) of subsection (c) of section
13 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period. The
14 limited partnership or foreign partnership shall have the right, but not
15 the obligation, to recover from the nonconsenting partner payments
16 made by the partnership.

17
18 5. (New section) a. The director shall adopt regulations in
19 accordance with the "Administrative Procedure Act," P.L.1968, c.410
20 (C.52:14B-1 et seq.), and prescribe forms to administer the provisions
21 of this act.

22 b. Notwithstanding the provisions of P.L.1968, c.410 to the
23 contrary, the director may adopt immediately upon filing with the
24 Office of Administrative Law, such regulations as the director deems
25 necessary to implement the provisions of this act, which regulations
26 shall be effective for a period not to exceed 180 days from the date of
27 the filing. The regulations may thereafter be amended, adopted or
28 readopted by the director as the director deems necessary in
29 accordance with the requirements of P.L.1968, c.410.

30
31 6. This act shall take effect immediately and sections 3 and 4 shall
32 apply to privilege periods beginning on or after January 1, 2001.

33 34 35 STATEMENT

36
37 This bill closes a gap in the administration of the taxes imposed on
38 the owners of limited partnerships and limited liability companies.

39 Limited partnerships and limited liability companies are relatively
40 new forms of business entities that have become popular because they
41 combine some of the tax advantages of a pass-through entity such as
42 a general partnership (e.g., lack of an entity-level tax and a distributee-
43 level tax on distributed earnings) and the sort of limited liability for
44 owners that is provided by the corporate form of organization.

45 However, it appears that the use of some of these entities in New
46 Jersey that were created to avoid a double level of taxation is resulting

1 in the avoidance of even a single taxation of their income derived from
2 their New Jersey activities. When the tax rate on Subchapter
3 S corporations was lowered in New Jersey pursuant to P.L.1993,
4 c.173, an administrative mechanism was put in place to assure the fair
5 taxation of the owners of those corporations. The Subchapter S
6 corporation owners were given a choice of consenting to the normal
7 New Jersey taxation of the income they derived or, if they did not so
8 consent, of having the S corporation withhold their taxes,.

9 This bill provides a similar mechanism for the taxation of limited
10 corporate owners of limited liability companies and limited
11 partnerships. A limited liability company, foreign limited liability
12 company, limited partnership or foreign limited partnership that is
13 classified as a partnership for federal tax purposes is required to obtain
14 the consent of each of its owners that are not individuals, trusts or
15 estates subject to the "New Jersey Gross Income Tax Act",
16 N.J.S.54A:1-1 et seq. (for example, each owner that is itself a
17 corporation) that this State has the right and jurisdiction to tax the
18 entire income derived from the business. A business that does not
19 have the consent for one of that group of its owners must pay
20 corporation business tax on its nonconsenting owner's share of the
21 business' New Jersey income.

22 A limited liability company, foreign limited liability company,
23 limited partnership or foreign limited partnership (that is classified as
24 a partnership for federal tax purposes) that properly complies with the
25 requirement to obtain consents from its corporate owners and that
26 pays the taxes of any of its corporate owners that do not consent to
27 New Jersey taxation is relieved of any other obligations under the
28 corporation business tax. A business that does not comply with the
29 consent and payment requirements becomes a corporation business
30 taxpayer itself.