ASSEMBLY COMMERCE, TOURISM, GAMING AND MILITARY AND VETERANS' AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1962

STATE OF NEW JERSEY

DATED: JUNE 4, 2001

The Senate Commerce, Tourism, Gaming and Military and Veterans' Affairs Committee reports favorably Senate, No. 1962.

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

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

However, it appears that the use of some of these entities in New Jersey that were created to avoid a double level of taxation is resulting in the avoidance of even a single taxation of their income derived from their New Jersey activities. When the tax rate on Subchapter S corporations was lowered in New Jersey pursuant to P.L.1993, c.173, an administrative mechanism was put in place to assure the fair taxation of the owners of those corporations. The Subchapter S corporation owners were given a choice of consenting to the normal New Jersey taxation of the income they derived or, if they did not so consent, of having the S corporation withhold their taxes,.

This bill provides a similar mechanism for the taxation of limited corporate owners of limited liability companies and limited partnerships. A limited liability company, foreign limited liability company, limited partnership or foreign limited partnership that is classified as a partnership for federal tax purposes is required to 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 entire income derived from the business. A business that does not have the consent for one of that group of its owners must pay corporation business tax on its nonconsenting owner's share of the business' New Jersey income.

Under the bill, a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership that: (1)

is classified as a partnership for federal tax purposes, (2) properly complies with the requirement to obtain consents from its corporate owners, and (3) pays the taxes of any of its corporate owners that do not consent to New Jersey taxation, is relieved of any other obligations under the corporation business tax. A business that does not comply with the consent and payment requirements becomes a corporation business taxpayer itself.