

SENATE, No. 2466

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JUNE 21, 2001

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (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.



S2466 BUCCO

2

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 is 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, or consenting, to report or to
42 pay taxes, interest or penalties under this act. "Taxpayer" shall not
43 include a limited liability company, foreign limited liability company,
44 limited partnership or foreign limited partnership that is listed on a
45 United States national stock exchange

46 (i) "Fiscal year" shall mean an accounting period ending on any day

1 other than the last day of December on the basis of which the taxpayer
2 is required to report for federal income tax purposes.

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

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

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

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

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

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

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

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

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

42 (F) (i) The amount by which depreciation reported to the United
43 States Treasury Department for property placed in service on and after
44 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
45 years beginning on and after the effective date of P.L.1993, c.172, for
46 purposes of computing federal taxable income in accordance with

1 section 168 of the Internal Revenue Code in effect after December 31,
2 1980, exceeds the amount of depreciation determined in accordance
3 with the Internal Revenue Code provisions in effect prior to January
4 1, 1981, but only with respect to a taxpayer's accounting period ending
5 after December 31, 1981; provided, however, that where a taxpayer's
6 accounting period begins in 1981 and ends in 1982, no modification
7 shall be required with respect to this paragraph (F) for the report filed
8 for such period with respect to property placed in service during that
9 part of the accounting period which occurs in 1981. The provisions
10 of this subparagraph shall not apply to assets placed in service prior to
11 January 1, 1998 of a gas, gas and electric, and electric public utility
12 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
13 seq.) prior to 1998.

14 (ii) For the periods set forth in subparagraph (F)(i) of this
15 subsection, any amount, except with respect to qualified mass
16 commuting vehicles as described in section 168(f)(8)(D)(v) of the
17 Internal Revenue Code as in effect immediately prior to January 1,
18 1984, which the taxpayer claimed as a deduction in computing federal
19 income tax pursuant to a qualified lease agreement under paragraph
20 (8) of that section.

21 The director shall promulgate rules and regulations necessary to
22 carry out the provisions of this section, which rules shall provide,
23 among others, the manner in which the remaining life of property shall
24 be reported.

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

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

1 a directive from the department to remove, or arrange for the removal
2 of, the discharge.

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

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

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

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

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

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

26 (ii) Making or placing deposits with foreign persons which are
27 banks or foreign branches of banks (including foreign subsidiaries) or
28 foreign branches of the taxpayers or with other international banking
29 facilities;

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

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

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

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

44 (6) (A) Net operating loss deduction. There shall be allowed as
45 a deduction for the taxable year the net operating loss carryover to
46 that year.

1 (B) Net operating loss carryover. A net operating loss for any
2 taxable year ending after June 30, 1984 shall be a net operating loss
3 carryover to each of the seven years following the year of the loss. The
4 entire amount of the net operating loss for any taxable year (the "loss
5 year") shall be carried to the earliest of the taxable years to which the
6 loss may be carried. The portion of the loss which shall be carried to
7 each of the other taxable years shall be the excess, if any, of the
8 amount of the loss over the sum of the entire net income, computed
9 without the exclusions permitted in paragraphs (4) and (5) of this
10 subsection or the net operating loss deduction provided by
11 subparagraph (A) of this paragraph, for each of the prior taxable years
12 to which the loss may be carried.

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

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

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

1 utilities means the uniform system of accounts as promulgated by the
2 Federal Energy Regulatory Commission and adopted by the Board of
3 Public Utilities. The following adjustments to entire net income shall
4 be made pursuant to this section:

5 (A) Depreciation for property placed in service prior to January 1,
6 1998 shall be adjusted as follows:

7 (i) Depreciation for federal income tax purposes shall be
8 disallowed in full.

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

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

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

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

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

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

1 December 31, 1998. Notwithstanding the previous sentence, if an
2 alien corporation undertakes one or more infrequent, extraordinary or
3 non-recurring activities, including but not limited to the sale of
4 tangible property, only the income from such infrequent, extraordinary
5 or non-recurring activity shall be subject to the tax imposed pursuant
6 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income
7 subject to tax shall be determined without regard to the allocation to
8 that specific transaction of any general business expense of the
9 taxpayer and shall be specifically assigned to this State for taxation by
10 this State without regard to section 6 of P.L.1945, c.162
11 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"
12 means a corporation organized under the laws of a jurisdiction other
13 than the United States or its political subdivisions.

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

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

1 employing moneyed capital coming into competition with the business
2 of national banks, real estate investment trusts, or any of the following
3 entities organized under the laws of this State: credit unions, savings
4 banks, savings and loan and building and loan associations,
5 pawnbrokers, and State banks and trust companies.

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

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

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

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

34 (r) "Qualified investment partnership" means a limited liability
35 company, foreign limited liability company, limited partnership or
36 foreign limited partnership treated as a partnership under this act that
37 has more than 10 members or partners with no member or partner
38 owning more than a 50% interest in the entity and that derives at least
39 90% of its gross income from dividends, interest, payments with
40 respect to securities loans, and gains from the sale or other disposition
41 of stocks or securities or foreign currencies or commodities or other
42 similar income (including but not limited to gains from swaps, options,
43 futures or forward contracts) derived with respect to its business of
44 investing or trading in those stocks, securities, currencies or
45 commodities, but "investment partnership" shall not include a "dealer
46 in securities" within the meaning of section 1236 of the federal Internal

1 Revenue Code of 1986, 26 U.S.C.s.1236.

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

3

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

6 5. The franchise tax to be annually assessed to and paid by each
7 taxpayer shall be the sum of the amount computed under subsection
8 (a) hereof, or in the alternative to the amount computed under
9 subsection (a) hereof, the amount computed under subsection (f)
10 hereof, and the amount computed under subsection (c) hereof:

11 (a) That portion of its entire net worth as may be allocable to this
12 State as provided in section 6, multiplied by the following rates: 2
13 mills per dollar on the first \$100,000,000.00 of allocated net worth;
14 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill
15 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar
16 on all amounts of allocated net worth in excess of \$300,000,000.00;
17 provided, however, that with respect to reports covering accounting
18 or privilege periods set forth below, the rate shall be that percentage
19 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

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

27 (c) (1) For a taxpayer that is not a New Jersey S corporation,
28 31/4% of its entire net income or such portion thereof as may be
29 allocable to this State as provided in section 6 of P.L.1945, c.162
30 (C.54:10A-6); provided, however, that with respect to reports
31 covering accounting or privilege periods or parts thereof ending after
32 December 31, 1967, the rate shall be 41/4%; and that with respect to
33 reports covering accounting or privilege periods or parts thereof
34 ending after December 31, 1971, the rate shall be 51/2%; and that with
35 respect to reports covering accounting or privilege periods or parts
36 thereof ending after December 31, 1974, the rate shall be 71/2%; and
37 that with respect to reports covering [accounting or] privilege periods
38 or parts thereof ending after December 31, 1979, the rate shall be 9%;
39 provided however, that for a taxpayer that has entire net income of
40 \$100,000 or less for a privilege period and is not a limited liability
41 company, foreign limited liability company, limited partnership or
42 foreign limited partnership the rate for that privilege period shall be
43 71/2%.

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

1 (i) for privilege periods ending on or before June 30, 1998 the rate
2 determined by subtracting the maximum tax bracket rate provided
3 under N.J.S.54A:2-1 for the privilege period from the tax rate that
4 would otherwise be applicable to the taxpayer's entire net income for
5 the privilege period if the taxpayer were not an S corporation provided
6 under paragraph (1) of this subsection for the privilege period; and
7 (ii) For a taxpayer that has entire net income in excess of \$100,000
8 for the privilege period, for privilege periods ending on or after July
9 1, 1998, but on or before June 30, 2001, the rate shall be 2%,
10 for privilege periods ending on or after July 1, 2001, but on or
11 before June 30, 2002, the rate shall be 1.33%,
12 for privilege periods ending on or after July 1, 2002, but on or
13 before June 30, 2003, the rate shall be 0.67%, and
14 for privilege periods ending on or after July 1, 2003 there shall be
15 no rate of tax imposed under this paragraph, and
16 (iii) For a taxpayer that has entire net income of \$100,000 or less
17 for privilege periods ending on or after July 1, 1998, but on or before
18 June 30, 2001 the rate for that privilege period shall be 0.5%, and for
19 privilege periods ending on or after July 1, 2001 there shall be no rate
20 of tax imposed under this paragraph,
21 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or
22 (iii) of this paragraph shall be multiplied by its entire net income that
23 is not subject to federal income taxation or such portion thereof as
24 may be allocable to this State pursuant to sections 6 through 10 of
25 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).
26 (3) For a taxpayer that is a New Jersey S corporation, in addition
27 to the amount, if any, determined under paragraph (2) of this
28 subsection, the tax rate that would otherwise be applicable to the
29 taxpayer's entire net income for the privilege period if the taxpayer
30 were not an S corporation provided under paragraph (1) of this
31 subsection for the privilege period multiplied by its entire net income
32 that is subject to federal income taxation or such portion thereof as
33 may be allocable to this State pursuant to sections 6 through 10 of
34 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).
35 (d) Provided, however, that the franchise tax to be annually
36 assessed to and paid by any investment company or real estate
37 investment trust, which has elected to report as such and has filed its
38 return in the form and within the time provided in this act and the rules
39 and regulations promulgated in connection therewith, shall, in the case
40 of an investment company, be measured by 25% of its entire net
41 income and 25% of its entire net worth, and in the case of a real estate
42 investment trust, by 4% of its entire net income and 15% of its entire
43 net worth, at the rates hereinbefore set forth for the computation of
44 tax on net income and net worth, respectively, but in no case less than
45 \$250, and further provided, however, that the franchise tax to be
46 annually assessed to and paid by a regulated investment company

1 which for a period covered by its report satisfies the requirements of
 2 Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal
 3 Revenue Code shall be \$250.

4 (e) The tax assessed to any taxpayer pursuant to this section shall
 5 not be less than \$25 in the case of a domestic corporation, \$50 in the
 6 case of a foreign corporation, or \$250 in the case of an investment
 7 company or regulated investment company. Provided however, that
 8 for accounting or privilege periods beginning in calendar year 1994
 9 and thereafter the minimum taxes for taxpayers other than an
 10 investment company or a regulated investment company shall be as
 11 provided in the following schedule:

12	Period Beginning	Domestic	Foreign
13	In Calendar Year	Corporation	Corporation
14		Minimum Tax	Minimum
15	1994	\$ 50	\$100
16	1995	\$100	\$200
17	1996	\$150	\$200
18	1997	\$200	\$200

19 and provided further that the director shall adjust the minimum tax for
 20 accounting or privilege periods beginning in each fifth year following
 21 calendar year 1997 and each fifth year thereafter by multiplying the
 22 minimum tax for periods beginning in 1997 by an amount equal to one
 23 plus 75% of the increase, if any, in the annual average total producer
 24 price index for finished goods published by the federal Department of
 25 Labor, Bureau of Labor Statistics, for the year preceding the
 26 determination year over such index for calendar year 1996 which
 27 adjusted minimum tax amount shall be rounded to the next highest
 28 multiple of \$10.

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

35 (g) Provided however, that the franchise tax annually assessed to
 36 and paid by a taxpayer:

37 (1) that is a limited liability company or foreign limited liability
 38 company classified as a partnership for federal income tax purposes
 39 shall be the amount determined pursuant to the provisions of section
 40 3 of P.L. , c. (C.)(now pending before the Legislature as this
 41 bill); or

42 (2) that is a limited partnership or foreign limited partnership
 43 classified as a partnership for federal income tax purposes shall be the
 44 amount determined pursuant to the provisions of section 4 of P.L. ,
 45 c. (C.)(now pending before the Legislature as this bill).

46 (cf: P.L.2001, c.23, s.1)

1 3. (New section) a. A limited liability company or foreign limited
2 liability company that is classified as a partnership for federal income
3 tax purposes may obtain and retain in its records for inspection by the
4 director the consent of each of its members that are not corporations
5 exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-
6 3), or individuals, trusts or estates subject to the "New Jersey Gross
7 Income Tax Act", N.J.S.54A:1-1 et seq., to the following
8 jurisdictional requirements in a form prescribed by the Director of the
9 Division of Taxation: that this State shall have the right and
10 jurisdiction to tax and collect the tax, hereby imposed, on the entire
11 net income of the member (1) based upon combining the respective
12 numerators and denominators of the allocation fractions of the
13 member with the member's share of the numerators and denominators
14 of the limited liability company or foreign limited liability company to
15 determine an allocation factor to be applied to the member's entire net
16 income, including the member's distributive share of the company
17 income, to determine the portion of the member's entire net income
18 allocated to this State if the relationship between the member and
19 limited liability company or foreign limited liability company is unitary,
20 or (2) based upon separately using the allocation fractions of the
21 limited liability company or foreign limited liability company to
22 determine the allocation factor to be applied to the member's
23 distributive share of the company income, using the allocation
24 fractions of the member to determine the allocation factor to be
25 applied to the member's entire net income excluding the member's
26 distributive share of the income of the limited liability company or
27 foreign limited liability company, and then combining those allocated
28 amounts of net income to determine the portion of the member's entire
29 net income allocated to this State if the relationship between the
30 member and limited liability company or foreign limited liability
31 company is not unitary.

32 b. A limited liability company or foreign limited liability company
33 that is not a qualified investment partnership and that has not obtained
34 and retained the written consent of one or more of its members that
35 are not corporations exempt from tax pursuant to section 3 of
36 P.L.1945, c.162 (C.54:10A-3), or individuals, trusts or estates subject
37 to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq.,
38 shall, on or before the 15th day of the fourth month succeeding the
39 close of each privilege period, remit a payment of tax equal to the
40 nonconsenting members' share of the entire net income of the limited
41 liability company or foreign limited liability company for that privilege
42 period, multiplied by an allocation factor determined, pursuant to
43 section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation
44 fractions of the limited liability company or foreign limited liability
45 company for that privilege period, and multiplied by the maximum rate
46 set forth at paragraph (1) of subsection (c) of section 5 of P.L.1945,

1 c. 162 (C.54:10A-5) for that privilege period. The limited liability
2 company or foreign limited liability company shall have the right, but
3 not the obligation, to recover from the nonconsenting members such
4 payments made by the company.

5 c. An amount of tax paid by a limited liability company or foreign
6 limited liability company pursuant to subsection b. of this section
7 attributable to a nonconsenting member shall be credited to the
8 member as of the date of its receipt by the director.

9
10 4. (New section) a. A limited partnership or foreign limited
11 partnership that is classified as a partnership for federal income tax
12 purposes may obtain and retain in its records for inspection by the
13 director the consent of each of its partners that are not corporations
14 exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-
15 3), or individuals, trusts or estates subject to the "New Jersey Gross
16 Income Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional
17 requirements in a form prescribed by the Director of the Division of
18 Taxation: that this State shall have the right and jurisdiction to tax and
19 collect the tax, hereby imposed, on the entire net income of the partner
20 (1) based upon combining the respective numerators and denominators
21 of the allocation fractions of the partner with the partner's share of the
22 numerators and denominators of the limited partnership or foreign
23 limited partnership to determine an allocation factor to be applied to
24 the partner's entire net income, including the partner's distributive
25 share of the partnership income, to determine the portion of the
26 partner's entire net income allocated to this State if the relationship
27 between the partner and limited partnership or foreign limited
28 partnership is unitary, or (2) based upon separately using the allocation
29 fractions of the limited partnership or foreign limited partnership to
30 determine the allocation factor to be applied to the partner's
31 distributive share of the partnership income, using the allocation
32 fractions of the partner to determine the allocation factor to be applied
33 to the partner's entire net income excluding the partner's distributive
34 share of the income of the limited partnership or foreign limited
35 partnership, and then combining those two allocated amounts of net
36 income to determine the portion of the partner's entire net income
37 allocated to this State if the relationship between the partner and the
38 limited partnership or foreign limited partnership is not unitary.

39 b. A limited partnership or foreign limited partnership that is not
40 a qualified investment partnership and that has not obtained and
41 retained the written consent of one or more of its partners that are not
42 corporations exempt from tax pursuant to section 3 of P.L.1945, c.162
43 (C.54:10A-3), or individuals, trusts or estates subject to the "New
44 Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, on or
45 before the 15th day of the fourth month succeeding the close of each
46 privilege period, remit a payment of tax equal to the nonconsenting

1 partners' share of the entire net income of the limited partnership or
2 foreign limited partnership for that privilege period, multiplied by an
3 allocation factor determined, pursuant to section 6 of P.L.1945, c.162
4 (C.54:10A-6), based on the allocation fractions of the limited
5 partnership or foreign limited partnership for that privilege period,
6 and multiplied by the maximum rate set forth at paragraph (1) of
7 subsection (c) of section 5 of P.L.1945, c. 162 (C.54:10A-5) for that
8 privilege period. The limited partnership or foreign limited partnership
9 shall have the right, but not the obligation, to recover from the
10 nonconsenting partners such payments made by the partnership.

11 c. An amount of tax paid by a limited partnership or foreign limited
12 partnership pursuant to subsection b. of this section attributable to a
13 nonconsenting partner shall be credited to the partner as of the date of
14 its receipt by the director.

15
16 5. (New section) a. Notwithstanding the provisions of subsection
17 (f) of section 15 of P.L.1945, c.162 (C.54:10A-15) to the contrary, a
18 taxpayer that is a limited liability company or a foreign limited liability
19 company subject to the provisions of subsection b. of section 3 of
20 P.L. , c. (C.)(now pending before the Legislature as this bill)
21 or that is a limited partnership or foreign limited partnership subject to
22 the provisions of subsection b. of section 4 of P.L. , c. (C.)
23 (now pending before the Legislature as this bill) shall, in addition to
24 the tax payable pursuant to subsection b. of section 3 or subsection b.
25 of section 4 of P.L. , c. (C.), make an installment payment of
26 its tax for the privilege period on or before the 15th day of the fourth
27 month of the privilege period equal to the tax payable pursuant to
28 subsection b. of section 3 or subsection b. of section 4 of P.L. , c.
29 (C.). Any amount of tax paid pursuant to this subsection shall be
30 credited against the tax paid pursuant to subsection b. of section 3 or
31 subsection b. of section 4 of P.L. , c. (C.).

32 b. Notwithstanding the provisions of section 5 of P.L.1981, c.184
33 (C.54:10A-15.4) to the contrary, the amount of underpayment of an
34 installment payment pursuant to subsection a. of this section shall, for
35 the purposes of subsection e. of section 5 of P.L.1981, c.184, be the
36 excess of 100% of the tax liability determined pursuant to subsection
37 b. of section 3 or subsection b. of section 4 of P.L. , c. (C.)
38 at the rates and other facts in effect for the privilege period but on the
39 basis of the entire net income for the prior privilege period over the
40 amount paid pursuant to subsection a. of this section; provided
41 however, that if the taxpayer did not have a prior privilege period
42 consisting of a 12 month period, the amount of underpayment of an
43 installment payment shall be the excess of 90% of the tax liability
44 determined pursuant to subsection b. of section 3 or subsection b. of
45 section 4 of P.L. , c. (C.) for the current privilege period over
46 the amount paid pursuant to subsection a. of this section.

1 6. (New section) a. Notwithstanding the provisions of subsection
2 of b. of section 3 of P.L. , c. (C.)(now pending before the
3 Legislature as this bill) and the provisions of subsection b. of section
4 4 of P.L. , c. (C.)(now pending before the Legislature as this
5 bill), the liability of a taxpayer that is a limited liability company or a
6 foreign limited liability company subject to the provisions of
7 subsection b. of section 3 of P.L. , c. (C.) or that is a limited
8 partnership or foreign limited partnership subject to the provisions of
9 subsection b. of section 4 of P.L. , c. (C.) shall, for privilege
10 periods beginning in calendar year 2001, be 45% of the amount
11 otherwise due.

12 b. Notwithstanding the provisions of subsection of a. of section 5
13 of P.L. , c. (C.)(now pending before the Legislature as this
14 bill), no estimated payment shall be due from a taxpayer that is a
15 limited liability company or a foreign limited liability company subject
16 to the provisions of subsection b. of section 3 of P.L. , c. (C.)
17 or that is a limited partnership or foreign limited partnership subject to
18 the provisions of subsection b. of section 4 of P.L. , c. (C.)
19 for privilege periods beginning in calendar year 2001.

20

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

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

33

34 8. This act shall take effect immediately and apply to privilege
35 periods beginning on or after January 1, 2001.

36

37

38

STATEMENT

39

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

42 This bill provides a mechanism, similar to the consent and deemed
43 payment provisions put in place for the owners of Subchapter S
44 corporations by P.L.1993, c.173, that assures the fair taxation of the
45 owners of limited liability companies and limited partnerships. Under
46 this bill, a limited liability company, foreign limited liability company,
47 limited partnership or foreign limited partnership that is classified as
48 a partnership for federal tax purposes may obtain the consent of each

1 of its owners that are not individuals, trusts or estates subject to the
2 "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq. (for
3 example, each owner that is itself a corporation) that this State has the
4 right and jurisdiction to tax the owner's income derived from the
5 activities of the limited liability company or limited partnership in New
6 Jersey.

7 A business that does not have the consent of all of its owners must
8 pay a corporation business tax liability, on behalf of its nonconsenting
9 owners, on each of the nonconsenting owner's shares of the business'
10 New Jersey income.

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

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

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

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

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