

ASSEMBLY, No. 3395

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED OCTOBER 18, 2004

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman JON M. BRAMNICK

District 21 (Essex, Morris, Somerset and Union)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Co-Sponsored by:

Assemblymen Chivukula, Wisniewski, Manzo, Assemblywoman McHose,

Assemblymen Merkt, Pennacchio, Corodemus, DeCroce, Burzichelli,

Baroni, Chatzidakis, Bateman, Biondi, Mayer and Vas

SYNOPSIS

Allows a corporation business taxpayer recognizing income, gain or loss pursuant to a plan of complete liquidation to deduct its net operating loss carryovers notwithstanding the limitations on such deductions during the 2002-2005 tax years.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 5/3/2005)

1 AN ACT concerning the net operating loss deduction under the
2 corporation business tax, amending P.L.1945, c.162.

3

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

6

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

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

11 (a) "Commissioner" or "director" shall mean the Director of the
12 Division of Taxation of the State Department of the Treasury.

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

16 (c) "Corporation" shall mean any corporation, joint-stock company
17 or association and any business conducted by a trustee or trustees
18 wherein interest or ownership is evidenced by a certificate of interest
19 or ownership or similar written instrument, any other entity classified
20 as a corporation for federal income tax purposes, and any state or
21 federally chartered building and loan association or savings and loan
22 association.

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

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 not by way of sole examples) for the purpose of supplying deemed
2 paid foreign tax credits or for the purpose of status as a controlled
3 foreign corporation. In calculating the net worth of a taxpayer entitled
4 to reduction for investment in subsidiaries, the amount of liabilities of
5 the taxpayer shall be reduced by such proportion of the liabilities as
6 corresponds to the ratio which the excluded portion of the subsidiary
7 values bears to the total assets of the taxpayer.

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

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

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

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

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

40 (h) "Taxpayer" shall mean any corporation, and any partnership
41 required, or consenting, to report or to pay taxes, interest or penalties
42 under this act. "Taxpayer" shall not include a partnership that is listed
43 on a United States national stock exchange.

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

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

4 (k) "Entire net income" shall mean total net income from all
5 sources, whether within or without the United States, and shall include
6 the gain derived from the employment of capital or labor, or from both
7 combined, as well as profit gained through a sale or conversion of
8 capital assets.

9 For the purpose of this act, the amount of a taxpayer's entire net
10 income shall be deemed prima facie to be equal in amount to the
11 taxable income, before net operating loss deduction and special
12 deductions, which the taxpayer is required to report, or, if the taxpayer
13 is classified as a partnership for federal tax purposes, would otherwise
14 be required to report, to the United States Treasury Department for
15 the purpose of computing its federal income tax, provided however,
16 that in the determination of such entire net income,

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

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

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

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

32 (C) Taxes paid or accrued to the United States, a possession or
33 territory of the United States, a state, a political subdivision thereof,
34 or the District of Columbia, or to any foreign country, state, province,
35 territory or subdivision thereof, on or measured by profits or income,
36 or business presence or business activity, or the tax imposed by this
37 act, 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 (I) Interest paid, accrued or incurred for the privilege period to a
6 related member, as defined in section 5 of P.L.2002, c.40
7 (C.54:10A-4.4), except that a deduction shall be permitted to the
8 extent that the taxpayer establishes by clear and convincing evidence,
9 as determined by the director, that: (i) a principal purpose of the
10 transaction giving rise to the payment of the interest was not to avoid
11 taxes otherwise due under Title 54 of the Revised Statutes or Title
12 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to
13 arm's length contracts at an arm's length rate of interest, and (iii)(aa)
14 the related member was subject to a tax on its net income or receipts
15 in this State or another state or possession of the United States or in
16 a foreign nation, (bb) a measure of the tax includes the interest
17 received from the related member, and (cc) the rate of tax applied to
18 the interest received by the related member is equal to or greater than
19 a rate three percentage points less than the rate of tax applied to
20 taxable interest by this State.

21 A deduction shall also be permitted if the taxpayer establishes by
22 clear and convincing evidence, as determined by the director, that the
23 disallowance of a deduction is unreasonable, or the taxpayer and the
24 director agree in writing to the application or use of an alternative
25 method of apportionment under section 8 of P.L.1945, c.162
26 (C.54:10A-8); nothing in this subsection shall be construed to limit or
27 negate the director's authority to otherwise enter into agreements and
28 compromises otherwise allowed by law.

29 A deduction shall also be permitted to the extent that the taxpayer
30 establishes by a preponderance of the evidence, as determined by the
31 director, that the interest is directly or indirectly paid, accrued or
32 incurred to (i) a related member in a foreign nation which has in force
33 a comprehensive income tax treaty with the United States, provided
34 however that the taxpayer shall disclose on its return for the privilege
35 period the name of the related member, the amount of the interest, the
36 relevant foreign nation, and such other information as the director may
37 prescribe or (ii) to an independent lender and the taxpayer guarantees
38 the debt on which the interest is required.

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

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

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

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

7 (i) Making, arranging for, placing or carrying loans to foreign
8 persons, provided, however, that in the case of a foreign person which
9 is an individual, or which is a foreign branch of a domestic corporation
10 (other than a bank), or which is a foreign corporation or foreign
11 partnership which is controlled by one or more domestic corporations
12 (other than banks), domestic partnerships or resident individuals, all
13 the proceeds of the loan are for use outside of the United States;

14 (ii) Making or placing deposits with foreign persons which are
15 banks or foreign branches of banks (including foreign subsidiaries) or
16 foreign branches of the taxpayers or with other international banking
17 facilities;

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

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

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

25 (5) Entire net income shall exclude 100% of dividends which were
26 included in computing such taxable income for federal income tax
27 purposes, paid to the taxpayer by one or more subsidiaries owned by
28 the taxpayer to the extent of the 80% or more ownership of investment
29 described in subsection (d) of this section and shall exclude 50% of
30 dividends which were included in computing such taxable income for
31 federal income tax purposes, paid to the taxpayer by one or more
32 subsidiaries owned by the taxpayer to the extent of 50% or more
33 ownership of investment, such ownership of investment calculated in
34 the same manner as the 80% or more of ownership of investment is
35 calculated as described in subsection (d) of this section.

36 (6) (A) Net operating loss deduction. There shall be allowed as a
37 deduction for the privilege period the net operating loss carryover to
38 that period.

39 (B) Net operating loss carryover. A net operating loss for any
40 privilege period ending after June 30, 1984 shall be a net operating
41 loss carryover to each of the seven privilege periods following the
42 period of the loss. The entire amount of the net operating loss for any
43 privilege period (the "loss period") shall be carried to the earliest of
44 the privilege periods to which the loss may be carried. The portion of
45 the loss which shall be carried to each of the other privilege periods
46 shall be the excess, if any, of the amount of the loss over the sum of

1 the entire net income, computed without the exclusions permitted in
2 paragraphs (4) and (5) of this subsection or the net operating loss
3 deduction provided by subparagraph (A) of this paragraph, for each of
4 the prior privilege periods to which the loss may be carried.

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

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

19 (E) Notwithstanding the provisions of this paragraph (6) of
20 subsection (k) of this section to the contrary, for privilege periods
21 beginning during calendar year 2002 and calendar year 2003, no
22 deduction for any net operating loss carryover shall be allowed and for
23 privilege periods beginning during calendar year 2004 and calendar
24 year 2005, there shall be allowed as a deduction for the privilege
25 period so much of the net operating loss carryover as reduces entire
26 net income otherwise calculated by 50%, except as provided by this
27 subparagraph (E). If and only to the extent that any net operating loss
28 carryover deduction is disallowed by reason of this subparagraph (E),
29 the date on which the amount of the disallowed net operating loss
30 carryover deduction would otherwise expire shall be extended by a
31 period equal to the period for which application of the net operating
32 loss was disallowed by this subparagraph.

33 Provided, that this subparagraph (E) shall not restrict the surrender
34 or acquisition of corporation business tax benefit certificates pursuant
35 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict
36 the application of corporation business tax benefit certificates pursuant
37 to section 2 of P.L.1997, c.334 (C.54:10A-4.2). Provided further, that
38 this subparagraph (E) shall not disallow or reduce the deduction of any
39 net operating loss carryover for any privilege period in which the
40 taxpayer recognizes income, gain or loss from the sale or exchange of
41 its property pursuant to a plan of complete liquidation or from the
42 distribution to shareholders of its property pursuant to a plan of
43 complete liquidation.

44 (7) The entire net income of gas, electric and gas and electric public
45 utilities that were subject to the provisions of P.L.1940, c.5
46 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting

1 the New Jersey depreciation allowance for federal tax depreciation
2 with respect to assets placed in service prior to January 1, 1998. For
3 gas, electric, and gas and electric public utilities that were subject to
4 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,
5 the New Jersey depreciation allowance shall be computed as follows:
6 All depreciable assets placed in service prior to January 1, 1998 shall
7 be considered a single asset account. The New Jersey tax basis of this
8 depreciable asset account shall be an amount equal to the carryover
9 adjusted basis for federal income tax purposes on December 31, 1997
10 of all depreciable assets in service on December 31, 1997, increased
11 by the excess, of the "net carrying value," defined to be adjusted book
12 basis of all assets and liabilities, excluding deferred income taxes,
13 recorded on the public utility's books of account on December 31,
14 1997, over the carryover adjusted basis for federal income tax
15 purposes on December 31, 1997 of all assets and liabilities owned by
16 the gas, electric, or gas and electric public utility as of December 31,
17 1997. "Books of account" for gas, gas and electric, and electric public
18 utilities means the uniform system of accounts as promulgated by the
19 Federal Energy Regulatory Commission and adopted by the Board of
20 Public Utilities. The following adjustments to entire net income shall
21 be made pursuant to this section:

22 (A) Depreciation for property placed in service prior to January 1,
23 1998 shall be adjusted as follows:

24 (i) Depreciation for federal income tax purposes shall be disallowed
25 in full.

26 (ii) A deduction shall be allowed for the New Jersey depreciation
27 allowance. The New Jersey depreciation allowance shall be computed
28 for the single asset account described above based on the New Jersey
29 tax basis as adjusted above as if all assets in the single asset account
30 were first placed in service on January 1, 1998. Depreciation shall be
31 computed using the straight line method over a thirty-year life. A full
32 year's depreciation shall be allowed in the initial tax year. No half-year
33 convention shall apply. The depreciable basis of the single account
34 shall be reduced by the adjusted federal tax basis of assets sold,
35 retired, or otherwise disposed of during any year on which gain or loss
36 is recognized for federal income tax purposes as described in
37 subparagraph (B) of this paragraph.

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

41 (C) The Director of the Division of Taxation shall promulgate
42 regulations describing the methodology for allocating the single asset
43 account in the event that a portion of the utility's operations are
44 separated, spun-off, transferred to a separate company or otherwise
45 desegregated.

46 (8) In the case of taxpayers that are gas, electric, gas and electric,

1 or telecommunication public utilities as defined pursuant to subsection
2 (q) of this section, the director shall have authority to promulgate rules
3 and issue guidance correcting distortions and adjusting timing
4 differences resulting from the adoption of P.L.1997, c.162
5 (C.54:10A-5.25 et al.).

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

12 (10) Entire net income shall exclude all income of an alien
13 corporation the activities of which are limited in this State to investing
14 or trading in stocks and securities for its own account, investing or
15 trading in commodities for its own account, or any combination of
16 those activities, within the meaning of section 864 of the federal
17 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on
18 December 31, 1998. Notwithstanding the previous sentence, if an alien
19 corporation undertakes one or more infrequent, extraordinary or
20 non-recurring activities, including but not limited to the sale of
21 tangible property, only the income from such infrequent, extraordinary
22 or non-recurring activity shall be subject to the tax imposed pursuant
23 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income
24 subject to tax shall be determined without regard to the allocation to
25 that specific transaction of any general business expense of the
26 taxpayer and shall be specifically assigned to this State for taxation by
27 this State without regard to section 6 of P.L.1945, c.162
28 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"
29 means a corporation organized under the laws of a jurisdiction other
30 than the United States or its political subdivisions.

31 (11) No deduction shall be allowed for research and experimental
32 expenditures, to the extent that those research and experimental
33 expenditures are qualified research expenses or basic research
34 payments for which an amount of credit is claimed pursuant to section
35 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and
36 experimental expenditures are also used to compute a federal credit
37 claimed pursuant to section 41 of the federal Internal Revenue Code
38 of 1986, 26 U.S.C. s.41.

39 (12) (A) Notwithstanding the provisions of subsection (k) of
40 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.
41 s.168, subsection (b) of section 1400L of the federal Internal Revenue
42 Code of 1986, 26 U.S.C. s.1400L, or any other federal law, for
43 property acquired after September 10, 2001, the depreciation
44 deduction otherwise allowed pursuant to section 167 of the federal
45 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined
46 pursuant to the provisions of the federal Internal Revenue Code of

1 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001.

2 (B) The director shall prescribe the rules and regulations necessary
3 to carry out the provisions of this paragraph, including, among others,
4 those for determining the adjusted basis of the acquired property for
5 the purposes of the Corporation Business Tax Act (1945), P.L.1945,
6 c.162.

7 (13) (A) Notwithstanding the provisions of section 179 of the
8 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for property
9 placed in service on or after January 1, 2004, the costs that a taxpayer
10 may otherwise elect to treat as an expense which is not chargeable to
11 a capital account shall be determined pursuant to the provisions of the
12 federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect
13 on December 31, 2002.

14 (B) The director shall prescribe the rules and regulations necessary
15 to carry out the provisions of this paragraph, including, among others,
16 those for determining the adjusted basis of the acquired property for
17 the purposes of the Corporation Business Tax Act (1945), P.L.1945,
18 c.162.

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

22 (m) "Financial business corporation" shall mean any corporate
23 enterprise which is (1) in substantial competition with the business of
24 national banks and which (2) employs moneyed capital with the object
25 of making profit by its use as money, through discounting and
26 negotiating promissory notes, drafts, bills of exchange and other
27 evidences of debt; buying and selling exchange; making of or dealing
28 in secured or unsecured loans and discounts; dealing in securities and
29 shares of corporate stock by purchasing and selling such securities and
30 stock without recourse, solely upon the order and for the account of
31 customers; or investing and reinvesting in marketable obligations
32 evidencing indebtedness of any person, copartnership, association or
33 corporation in the form of bonds, notes or debentures commonly
34 known as investment securities; or dealing in or underwriting
35 obligations of the United States, any state or any political subdivision
36 thereof, or of a corporate instrumentality of any of them. This shall
37 include, without limitation of the foregoing, business commonly
38 known as industrial banks, dealers in commercial paper and
39 acceptances, sales finance, personal finance, small loan and mortgage
40 financing businesses, as well as any other enterprise employing
41 moneyed capital coming into competition with the business of national
42 banks; provided that the holding of bonds, notes, or other evidences
43 of indebtedness by individual persons not employed or engaged in the
44 banking or investment business and representing merely personal
45 investments not made in competition with the business of national
46 banks, shall not be deemed financial business. Nor shall "financial

1 business" include national banks, production credit associations
2 organized under the Farm Credit Act of 1933 or the Farm Credit Act
3 of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
4 insurance companies duly authorized to transact business in this State,
5 security brokers or dealers or investment companies or bankers not
6 employing moneyed capital coming into competition with the business
7 of national banks, real estate investment trusts, or any of the following
8 entities organized under the laws of this State: credit unions, savings
9 banks, savings and loan and building and loan associations,
10 pawnbrokers, and State banks and trust companies.

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

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

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

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

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

1 securities, currencies or commodities, but "investment partnership"
2 shall not include a "dealer in securities" within the meaning of section
3 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

4 (s) "Savings institution" means a state or federally chartered
5 building and loan association, savings and loan association, or savings
6 bank.

7 (t) "Partnership" means an entity classified as a partnership for
8 federal income tax purposes.

9 (cf: P.L.2004, c.65, s.24)

10

11 2. (New section) Notwithstanding the provisions of R.S.54:49-14,
12 if any, to the contrary, a taxpayer may at any time within the later of
13 the period provided pursuant to R.S.54:49-14 or two years after the
14 enactment of P.L. , c. (now pending before the Legislature as this
15 bill) file with the Director of the Division of Taxation a claim under
16 oath for a refund, in such form as the director may prescribe, of
17 overpayment based on the provisions of section 1 of P.L. , c. .

18

19 3. This act shall take effect immediately and apply retroactively to
20 privilege periods beginning during calendar years 2002 through 2005.

21

22

23

STATEMENT

24

25 This bill allows an exception to the 2002-2005 period during which
26 corporation business taxpayers are subject to limitations in their
27 application of net operating losses.

28 "Net operating loss" is a tax accounting concept; if a taxpayer has
29 more business expense than business income in a tax year, the taxpayer
30 has a net operating loss for that year. The net operating loss can be
31 deducted from taxable income in later years to reduce tax liability in
32 those later years.

33 The Business Tax Reform Act, P.L.2002, c.40, provided for a
34 suspension of the application of net operating losses for privilege
35 periods beginning in calendar years 2002 and 2003. P.L.2004, c.47,
36 further limited the corporation business tax application of net
37 operating losses to 50% of taxable income for privilege periods
38 beginning in calendar years 2004 and 2005.

39 Although those acts extended the usual seven year carryforward of
40 a net operating loss for additional years to compensate for the
41 suspensions, the extensions do not assist the owners of a business that
42 goes out of business and liquidates its assets during the suspension
43 period. A liquidating business could forfeit the entire value of its net
44 operating losses.

45 This bill allows a corporation business taxpayer recognizing income,
46 gain or loss from the sale or exchange of its property pursuant to a

- 1 plan of complete liquidation or from the distribution to shareholders
- 2 of its property pursuant to a plan of complete liquidation to deduct its
- 3 net operating loss carryovers notwithstanding the limitations on such
- 4 deductions during the 2002-2005 tax years.