

**ASSEMBLY, No. 1654**

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**STATE OF NEW JERSEY**

**213th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

**Sponsored by:**

**Assemblyman GARY R. CHIUSANO**

**District 24 (Sussex, Hunterdon and Morris)**

**Assemblywoman ALISON LITTELL MCHOSE**

**District 24 (Sussex, Hunterdon and Morris)**

**Co-Sponsored by:**

**Assemblymen Rooney, Wolfe, Russo, Merkt, DeCroce, Malone, Doherty  
and Bramnick**

**SYNOPSIS**

Eliminates the alternative minimum assessment under the corporation business tax.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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2

1 AN ACT eliminating the alternative minimum assessment under the  
2 corporation business tax, amending P.L.1945, c.162, and  
3 repealing various parts of P.L.2002, c.40.  
4

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

8 1 Section 3 of P.L.1945, c.162 (C.54:10A-3) is amended to read  
9 as follows:

10 3. The following corporations shall be exempt from the tax  
11 imposed by this act:

12 (a) Corporations subject to a tax assessed upon the basis of gross  
13 receipts **[**, other than the alternative minimum assessment  
14 determined pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a)**]**  
15 or **[**, and corporations subject to a tax assessed upon the basis of**]**  
16 insurance premiums collected;

17 (b) Corporations which operate regular route autobus service  
18 within this State under operating authority conferred pursuant to  
19 R.S.48:4-3, provided, however, that such corporations shall not be  
20 exempt from the tax on net income imposed by section 5(c) of  
21 P.L.1945, c.162 (C.54:10A-5);

22 (c) Railroad, canal corporations, production credit associations  
23 organized under the Farm Credit Act of 1933, or agricultural  
24 cooperative associations incorporated or domesticated under or  
25 subject to chapter 13 of Title 4 of the Revised Statutes and exempt  
26 under Subtitle A, Chapter 1F, Part IV, Section 521 of the federal  
27 Internal Revenue Code (26 U.S.C.s.521);

28 (d) Cemetery corporations not conducted for pecuniary profit or  
29 any private shareholder or individual;

30 (e) Nonprofit corporations, associations or organizations  
31 established, organized or chartered, without capital stock, under the  
32 provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A  
33 of the New Jersey Statutes or under a special charter or under any  
34 similar general or special law of this or any other state, and not  
35 conducted for pecuniary profit of any private shareholders or  
36 individual;

37 (f) Sewerage and water corporations subject to a tax under the  
38 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) or any statute or  
39 law imposing a similar tax or taxes;

40 (g) Nonstock corporations organized under the laws of this State  
41 or of any other state of the United States to provide mutual  
42 ownership housing under federal law by tenants, provided,  
43 however, that the exemption hereunder shall continue only so long  
44 as the corporations remain subject to rules and regulations of the

**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 Federal Housing Authority and the Commissioner of the Federal  
2 Housing Authority holds membership certificates in the  
3 corporations and the corporate property is encumbered by a  
4 mortgage deed or deed of trust insured under the National Housing  
5 Act (48 Stat.1246) as amended by subsequent Acts of Congress. In  
6 order to be exempted under this subsection, corporations shall  
7 annually file a report on or before August 15 with the  
8 commissioner, in the form required by the commissioner, to claim  
9 such exemption, and shall pay a filing fee of \$25.00;

10 (h) Corporations not for profit organized under any law of this  
11 State where the primary purpose thereof is to provide for its  
12 shareholders or members housing in a retirement community as the  
13 same is defined under the provisions of the "Retirement Community  
14 Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.);

15 (i) Corporations which are licensed as insurance companies  
16 under the laws of another state, including corporations which are  
17 surplus lines insurers declared eligible by the Commissioner of  
18 Banking and Insurance pursuant to section 11 of P.L.1960, c.32  
19 (C.17:22-6.45) to insure risks within this State; and

20 (j) (1) Municipal electric corporations that were in existence as  
21 of January 1, 1995 provided that all of their income is from sales,  
22 exchanges or deliveries of electricity derived from customers using  
23 electricity within their municipal boundaries; and (2) Municipal  
24 electric utilities that were in existence as of January 1, 1995  
25 provided that all of their income is from sales, exchanges or  
26 deliveries of electricity derived from customers using electricity  
27 within their franchise area existing as of January 1, 1995. If a  
28 municipal electric corporation derives income from sales,  
29 exchanges or deliveries of electricity from customers using the  
30 electricity outside its municipal boundaries, such municipal electric  
31 corporation shall be subject to the tax imposed by this act on all  
32 income. If a municipal electric utility derives income from sales,  
33 exchanges or deliveries of electricity from customers using  
34 electricity outside its franchise area existing as of January 1, 1995,  
35 such municipal electric utility shall be subject to the tax imposed by  
36 the act on all income.

37 (cf: P.L.2002, c.40, s.2)

38

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

41 5. The franchise tax to be annually assessed to and paid by each  
42 taxpayer shall be the [greater of the amount computed pursuant to  
43 this section or the alternative minimum assessment computed  
44 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided  
45 however, that in the case of a taxpayer that is a New Jersey S  
46 corporation, an investment company, a professional corporation  
47 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a  
48 similar corporation for profit organized for the purpose of rendering

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1 professional services under the laws of another state, or a person  
2 operating on a cooperative basis under Part I of Subchapter T of the  
3 federal Internal Revenue Code of 1986, 26 U.S.C.s.1381 et seq.,  
4 there shall be no alternative minimum assessment computed  
5 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

6 The amount computed pursuant to this section shall be the sum  
7 of the amount computed under subsection (a) hereof, or in the  
8 alternative to the amount computed under subsection (a) hereof, the  
9 amount computed under subsection (f) hereof, and the amount  
10 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  
15 mill per dollar on the third \$100,000,000.00; and 2/10 of a mill per  
16 dollar on all amounts of allocated net worth in excess of  
17 \$300,000,000.00; provided, however, that with respect to reports  
18 covering accounting or privilege periods set forth below, the rate  
19 shall be that percentage of the rate set forth in this subsection for  
20 the appropriate year:

21 Accounting or Privilege	22 The Percentage of the Rate
23 Periods Beginning on or	23 to be Imposed Shall be:
23 after:	
24 April 1, 1983	75%
25 July 1, 1984	50%
26 July 1, 1985	25%
27 July 1, 1986	0

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

29 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3  
30 1/4% of its entire net income or such portion thereof as may be  
31 allocable to this State as provided in section 6 of P.L.1945, c.162  
32 (C.54:10A-6) plus such portion thereof as is specifically assigned to  
33 this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-  
34 6.1); provided, however, that with respect to reports covering  
35 accounting or privilege periods or parts thereof ending after  
36 December 31, 1967, the rate shall be 4 1/4%; and that with respect  
37 to reports covering accounting or privilege periods or parts thereof  
38 ending after December 31, 1971, the rate shall be 5 1/2%; and that  
39 with respect to reports covering accounting or privilege periods or  
40 parts thereof ending after December 31, 1974, the rate shall be 7  
41 1/2%; and that with respect to reports covering privilege periods or  
42 parts thereof ending after December 31, 1979, the rate shall be 9%;  
43 provided however, that for a taxpayer that has entire net income of  
44 \$100,000 or less for a privilege period and is not a partnership the  
45 rate for that privilege period shall be 7 1/2% and provided further  
46 that for a taxpayer that has entire net income of \$50,000 or less for  
47 a privilege period and is not a partnership the rate for that privilege  
48 period shall be 6 1/2%.

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

2 (i) for privilege periods ending on or before June 30, 1998 the  
3 rate determined by subtracting the maximum tax bracket rate  
4 provided under N.J.S.54A:2-1 for the privilege period from the tax  
5 rate that would otherwise be applicable to the taxpayer's entire net  
6 income for the privilege period if the taxpayer were not an S  
7 corporation provided under paragraph (1) of this subsection for the  
8 privilege period; and

9 (ii) For a taxpayer that has entire net income in excess of  
10 \$100,000 for the privilege period, for privilege periods ending on or  
11 after July 1, 1998, but on or before June 30, 2001, the rate shall be  
12 2%,

13 for privilege periods ending on or after July 1, 2001, but on or  
14 before June 30, 2006, the rate shall be 1.33%,

15 for privilege periods ending on or after July 1, 2006, but on or  
16 before June 30, 2007, the rate shall be 0.67%, and

17 for privilege periods ending on or after July 1, 2007 there shall  
18 be no rate of tax imposed under this paragraph, and

19 (iii) For a taxpayer that has entire net income of \$100,000 or less  
20 for privilege periods ending on or after July 1, 1998, but on or  
21 before June 30, 2001 the rate for that privilege period shall be 0.5%,  
22 and for privilege periods ending on or after July 1, 2001 there shall  
23 be no rate of tax imposed under this paragraph.

24 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or  
25 (iii) of this paragraph shall be multiplied by its entire net income  
26 that is not subject to federal income taxation or such portion thereof  
27 as may be allocable to this State pursuant to sections 6 through 10  
28 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such  
29 portion thereof as is specifically assigned to this State as provided  
30 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

31 (3) For a taxpayer that is a New Jersey S corporation, in addition  
32 to the amount, if any, determined under paragraph (2) of this  
33 subsection, the tax rate that would otherwise be applicable to the  
34 taxpayer's entire net income for the privilege period if the taxpayer  
35 were not an S corporation provided under paragraph (1) of this  
36 subsection for the privilege period multiplied by its entire net  
37 income that is subject to federal income taxation or such portion  
38 thereof as may be allocable to this State pursuant to sections 6  
39 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

40 (d) Provided, however, that the franchise tax to be annually  
41 assessed to and paid by any investment company or real estate  
42 investment trust, which has elected to report as such and has filed  
43 its return in the form and within the time provided in this act and  
44 the rules and regulations promulgated in connection therewith,  
45 shall, in the case of an investment company, be measured by 40% of  
46 its entire net income and 40% of its entire net worth, and in the case  
47 of a real estate investment trust, by 4% of its entire net income and  
48 15% of its entire net worth, at the rates hereinbefore set forth for the

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1 computation of tax on net income and net worth, respectively, but in  
2 no case less than \$250, and further provided, however, that the  
3 franchise tax to be annually assessed to and paid by a regulated  
4 investment company which for a period covered by its report  
5 satisfies the requirements of Chapter 1, Subchapter M, Part I,  
6 Section 852(a) of the federal Internal Revenue Code shall be \$250.

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

15	Period Beginning	Domestic	Foreign
16	In Calendar Year	Corporation	Corporation
17		Minimum Tax	Minimum Tax
18	1994	\$ 50	\$100
19	1995	\$100	\$200
20	1996	\$150	\$200
21	1997	\$200	\$200
22	1998	\$200	\$200
23	1999	\$200	\$200
24	2000	\$200	\$200
25	2001	\$210	\$210

26 and for calendar year 2002 and thereafter the minimum tax for all  
27 taxpayers shall be \$500; provided however, that for a taxpayer that  
28 is a member of an affiliated group or a controlled group pursuant to  
29 section 1504 or 1563 of the federal Internal Revenue Code of 1986,  
30 26 U.S.C.s.1504 or 1563, and whose group has total payroll of  
31 \$5,000,000 or more for the privilege period, the minimum tax shall  
32 be \$2,000 for the privilege period; and provided further that the  
33 director shall adjust the minimum tax amounts for privilege periods  
34 beginning in each fifth year following calendar year 2002 and each  
35 fifth year thereafter by multiplying the minimum tax for periods  
36 beginning in 2002 by an amount equal to one plus 75% of the  
37 increase, if any, in the annual average total producer price index for  
38 finished goods published by the federal Department of Labor,  
39 Bureau of Labor Statistics, for the year preceding the determination  
40 year over such index for calendar year 2001, which adjusted  
41 minimum tax amount shall be rounded to the next highest multiple  
42 of \$10.

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

1 (g) Provided however, that for privilege periods beginning on or  
2 after January 1, 2001 but before January 1, 2002 the franchise tax  
3 annually assessed to and paid by a taxpayer:

4 (1) that is a limited liability company or foreign limited liability  
5 company classified as a partnership for federal income tax purposes  
6 shall be the amount determined pursuant to the provisions of section  
7 3 of P.L.2001, c.136 (C.54:10A-15.6); or

8 (2) that is a limited partnership or foreign limited partnership  
9 classified as a partnership for federal income tax purposes shall be  
10 the amount determined pursuant to the provisions of section 4 of  
11 P.L.2001, c.136 (C.54:10A-15.7).

12 (h) Provided however, that for privilege periods beginning on or  
13 after January 1, 2002 the franchise tax annually assessed to and paid  
14 by a taxpayer that is a partnership shall be the amount determined  
15 pursuant to the provisions of section 12 of P.L.2002, c.40  
16 (C.54:10A-15.11).

17 (i) Notwithstanding the provisions of subsection c. of this section  
18 to the contrary, and notwithstanding the provisions of subsection  
19 (B) of section 6 of P.L.1945, c.162 (C.54:10A-6) to the contrary,  
20 the amount by which the exclusion of receipts from the denominator  
21 of the sales fraction pursuant to subsection (B) of section 6 of  
22 P.L.1945, c.162 (C.54:10A-6) increases the liability of all of the  
23 members of an affiliated group or a controlled group pursuant to  
24 section 1504 or 1563 of the federal Internal Revenue Code of 1986,  
25 26 U.S.C.s.1504 or 1563, over that liability calculated without  
26 application of the exclusion for a privilege period shall not exceed  
27 \$5,000,000. If the exclusion of receipts from the denominator of  
28 the sales fraction pursuant to subsection (B) would otherwise  
29 increase the liability of all of the members of an affiliated group or  
30 a controlled group by more than \$5,000,000 for a privilege period,  
31 then the amount of liability in excess of \$5,000,000 due to the  
32 exclusion of receipts from the denominator shall be abated, and the  
33 abated liability shall be allocated among the members of the  
34 affiliated group or the controlled group in proportion to each  
35 member's increase in liability due to the exclusion of such receipts;  
36 provided however, that the director may allow a single corporation  
37 within the affiliated group or controlled group to act as the key  
38 corporation for the abatement, in such manner as the director may  
39 prescribe.

40 (cf: P.L.2002, c.40, s.6)

41  
42 3. The following are repealed:

43 Section 7 of P.L.2002, c.40 (C.54:10A-5a);

44 Section 29 of P.L.2002, c.40 (C.54:10A-5b);

45 Section 31 of P.L.2002, c.40 (C.54:10A-41); and

46 Section 32 of P.L.2002, c.40 (C.52:9H-38).

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48 4. This act shall take effect immediately and apply to privilege

1 periods beginning on or after January 1, 2002.

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STATEMENT

5

6 This bill eliminates the alternative minimum assessment under  
7 the corporation business tax.

8 As a substitute for income tax reform, P.L.2002, c.40 imposed an  
9 alternative minimum assessment (AMA) that is not based on  
10 corporate income but that instead uses either allocated gross  
11 receipts or allocated gross profits as a determining factor.  
12 Corporations are required to compute the AMA and pay the greater  
13 of the CBT or the AMA.

14 Under this regime, taxpayers that have no taxable income for the  
15 year and would have anticipated paying the minimum tax  
16 (previously anticipated to be \$210 in 2002, but raised to at least  
17 \$500 by P.L.2002, c.40) are now required to compute the AMA  
18 and, without regard to profitability of their operation or ability to  
19 pay, may be subject to AMA of up to \$5,000,000.

20 This bill repeals the alternative minimum assessment and  
21 associated provisions of law. The bill repeals authority for a  
22 Corporation Business Tax Study Commission, which was created  
23 largely to monitor the effects of the AMA and eliminate its  
24 imposition if necessary, and the bill repeals the authority for the  
25 creation of the Corporation Business Tax Excess Revenue Fund,  
26 which was created as a repository for the excessive tax collection  
27 anticipated under the AMA.