

ASSEMBLY, No. 3124

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED SEPTEMBER 22, 2008

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

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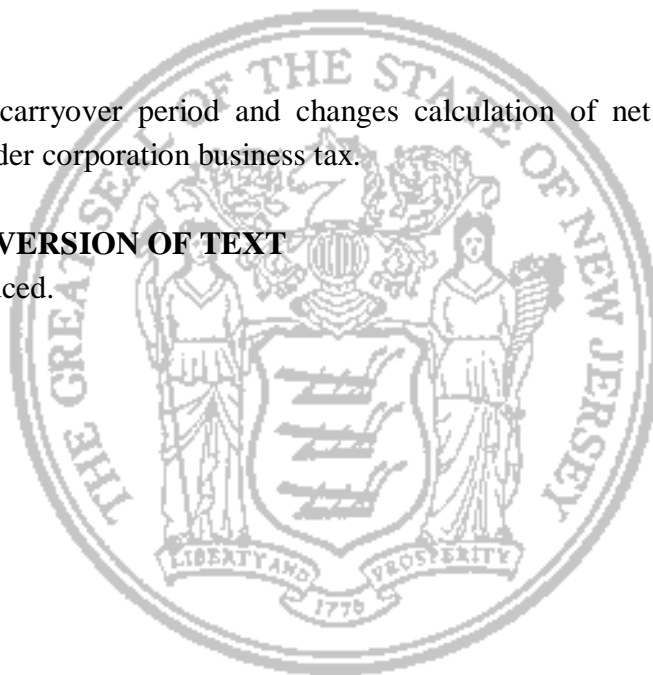
**Assemblyman Chiusano, Assemblywomen Karrow, McHose,
Assemblymen Malone, O'Scanlon, Assemblywoman Addiego and
Assemblyman Rudder**

SYNOPSIS

Increases carryover period and changes calculation of net operating loss deduction under corporation business tax.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/7/2008)

1 AN ACT increasing the carryover period and changing the
2 calculation of the net operating loss deduction under the
3 corporation business tax, amending P.L.1945, c.162.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 day other than the last day of December on the basis of which the
2 taxpayer 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
5 under 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
8 include the gain derived from the employment of capital or labor, or
9 from both combined, as well as profit gained through a sale or
10 conversion of capital assets.

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

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

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

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

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

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

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

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

45 (F) (i) The amount by which depreciation reported to the United
46 States Treasury Department for property placed in service on and
47 after January 1, 1981, but prior to taxpayer fiscal or calendar
48 accounting years beginning on and after the effective date of

1 P.L.1993, c.172, for purposes of computing federal taxable income
2 in accordance with section 168 of the Internal Revenue Code in
3 effect after December 31, 1980, exceeds the amount of depreciation
4 determined in accordance with the Internal Revenue Code
5 provisions in effect prior to January 1, 1981, but only with respect
6 to a taxpayer's accounting period ending after December 31, 1981;
7 provided, however, that where a taxpayer's accounting period
8 begins in 1981 and ends in 1982, no modification shall be required
9 with respect to this paragraph (F) for the report filed for such period
10 with respect to property placed in service during that part of the
11 accounting period which occurs in 1981. The provisions of this
12 subparagraph shall not apply to assets placed in service prior to
13 January 1, 1998 of a gas, gas and electric, and electric public utility
14 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
15 seq.) prior to 1998.

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

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

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

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

1 with a directive from the department to remove, or arrange for the
2 removal 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
6 a 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
9 evidence, as determined by the director, that: (i) a principal purpose
10 of the transaction giving rise to the payment of the interest was not
11 to avoid taxes otherwise due under Title 54 of the Revised Statutes
12 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
13 pursuant to arm's length contracts at an arm's length rate of interest,
14 and (iii)(aa) the related member was subject to a tax on its net
15 income or receipts in this State or another state or possession of the
16 United States or in a foreign nation, (bb) a measure of the tax
17 includes the interest received from the related member, and (cc) the
18 rate of tax applied to the interest received by the related member is
19 equal to or greater than a rate three percentage points less than the
20 rate of tax applied to 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
23 the disallowance of a deduction is unreasonable, or the taxpayer and
24 the director agree in writing to the application or use of an
25 alternative method of apportionment under section 8 of P.L.1945,
26 c.162 (C.54:10A-8); nothing in this subsection shall be construed to
27 limit or negate the director's authority to otherwise enter into
28 agreements and compromises otherwise allowed by law.

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

40 (J) Amounts deducted for federal tax purposes pursuant to
41 section 199 of the federal Internal Revenue Code of 1986, 26
42 U.S.C. s.199, except that this exclusion shall not apply to amounts
43 deducted pursuant to that section that are exclusively based upon
44 domestic production gross receipts of the taxpayer which are
45 derived only from any lease, rental, license, sale, exchange, or other
46 disposition of qualifying production property which the taxpayer
47 demonstrates to the satisfaction of the director was manufactured or
48 produced by the taxpayer in whole or in significant part within the

1 United States but not qualified production property that was grown
2 or extracted by the taxpayer. "Manufactured or produced" as used
3 in this paragraph shall be limited to performance of an operation or
4 series of operations the object of which is to place items of tangible
5 personal property in a form, composition, or character different
6 from that in which they were acquired. The change in form,
7 composition, or character shall be a substantial change, and result in
8 a transformation of property into a different or substantially more
9 usable product.

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

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

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

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

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

33 (ii) Making or placing deposits with foreign persons which are
34 banks or foreign branches of banks (including foreign subsidiaries)
35 or foreign branches of the taxpayers or with other international
36 banking facilities;

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

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

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

45 (5) Entire net income shall exclude 100% of dividends which
46 were included in computing such taxable income for federal income
47 tax purposes, paid to the taxpayer by one or more subsidiaries
48 owned by the taxpayer to the extent of the 80% or more ownership

1 of investment described in subsection (d) of this section and shall
2 exclude 50% of dividends which were included in computing such
3 taxable income for federal income tax purposes, paid to the
4 taxpayer by one or more subsidiaries owned by the taxpayer to the
5 extent of 50% or more ownership of investment, such ownership of
6 investment calculated in the same manner as the 80% or more of
7 ownership of investment is calculated as described in subsection (d)
8 of this section.

9 (6) (A) Net operating loss deduction. There shall be allowed as
10 a deduction for the privilege period the net operating loss carryover
11 to that period.

12 (B) Net operating loss carryover. A net operating loss for any
13 privilege period ending after June 30, 1984 shall be a net operating
14 loss carryover to each of the seven privilege periods following the
15 period of the loss and a net operating loss for any privilege period
16 ending after June 30, 2009 shall be a net operating loss carryover to
17 each of the twenty privilege periods following the period of the
18 loss. The entire amount of the net operating loss for any privilege
19 period (the "loss period") shall be carried to the earliest of the
20 privilege periods to which the loss may be carried. The portion of
21 the loss which shall be carried to each of the other privilege periods
22 shall be the excess, if any, of the amount of the loss over the sum of
23 the entire net income, computed without the exclusion[s] permitted
24 in paragraph[s] (4) [and (5)] of this subsection or the net operating
25 loss deduction provided by subparagraph (A) of this paragraph, for
26 each of the prior privilege periods to which the loss may be carried.

27 (C) Net operating loss. For purposes of this paragraph the term
28 "net operating loss" means the excess of the deductions over the
29 gross income used in computing entire net income without the net
30 operating loss deduction provided for in subparagraph (A) of this
31 paragraph and the exclusion[s] in paragraph[s] (4) [and (5)] of
32 this subsection.

33 (D) Change in ownership. Where there is a change in 50% or
34 more of the ownership of a corporation because of redemption or
35 sale of stock and the corporation changes the trade or business
36 giving rise to the loss, no net operating loss sustained before the
37 changes may be carried over to be deducted from income earned
38 after such changes. In addition where the facts support the premise
39 that the corporation was acquired under any circumstances for the
40 primary purpose of the use of its net operating loss carryover, the
41 director may disallow the carryover.

42 (E) Notwithstanding the provisions of this paragraph (6) of
43 subsection (k) of this section to the contrary, for privilege periods
44 beginning during calendar year 2002 and calendar year 2003, no
45 deduction for any net operating loss carryover shall be allowed and
46 for privilege periods beginning during calendar year 2004 and
47 calendar year 2005, there shall be allowed as a deduction for the
48 privilege period so much of the net operating loss carryover as

1 reduces entire net income otherwise calculated by 50%. If and only
2 to the extent that any net operating loss carryover deduction is
3 disallowed by reason of this subparagraph (E), the date on which
4 the amount of the disallowed net operating loss carryover deduction
5 would otherwise expire shall be extended by a period equal to the
6 period for which application of the net operating loss was
7 disallowed by this subparagraph.

8 Provided, that this subparagraph (E) shall not restrict the
9 surrender or acquisition of corporation business tax benefit
10 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
11 7.42a) and shall not restrict the application of corporation business
12 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
13 (C.54:10A-4.2).

14 (7) The entire net income of gas, electric and gas and electric
15 public utilities that were subject to the provisions of P.L.1940, c.5
16 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
17 substituting the New Jersey depreciation allowance for federal tax
18 depreciation with respect to assets placed in service prior to January
19 1, 1998. For gas, electric, and gas and electric public utilities that
20 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
21 seq.) prior to 1998, the New Jersey depreciation allowance shall be
22 computed as follows: All depreciable assets placed in service prior
23 to January 1, 1998 shall be considered a single asset account. The
24 New Jersey tax basis of this depreciable asset account shall be an
25 amount equal to the carryover adjusted basis for federal income tax
26 purposes on December 31, 1997 of all depreciable assets in service
27 on December 31, 1997, increased by the excess, of the "net carrying
28 value," defined to be adjusted book basis of all assets and liabilities,
29 excluding deferred income taxes, recorded on the public utility's
30 books of account on December 31, 1997, over the carryover
31 adjusted basis for federal income tax purposes on December 31,
32 1997 of all assets and liabilities owned by the gas, electric, or gas
33 and electric public utility as of December 31, 1997. "Books of
34 account" for gas, gas and electric, and electric public utilities means
35 the uniform system of accounts as promulgated by the Federal
36 Energy Regulatory Commission and adopted by the Board of Public
37 Utilities. The following adjustments to entire net income shall be
38 made pursuant to this section:

39 (A) Depreciation for property placed in service prior to January
40 1, 1998 shall be adjusted as follows:

41 (i) Depreciation for federal income tax purposes shall be
42 disallowed in full.

43 (ii) A deduction shall be allowed for the New Jersey
44 depreciation allowance. The New Jersey depreciation allowance
45 shall be computed for the single asset account described above
46 based on the New Jersey tax basis as adjusted above as if all assets
47 in the single asset account were first placed in service on January 1,
48 1998. Depreciation shall be computed using the straight line

1 method over a thirty-year life. A full year's depreciation shall be
2 allowed in the initial tax year. No half-year convention shall apply.
3 The depreciable basis of the single account shall be reduced by the
4 adjusted federal tax basis of assets sold, retired, or otherwise
5 disposed of during any year on which gain or loss is recognized for
6 federal income tax purposes as described in subparagraph (B) of
7 this paragraph.

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

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

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

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

29 (10) Entire net income shall exclude all income of an alien
30 corporation the activities of which are limited in this State to
31 investing or trading in stocks and securities for its own account,
32 investing or trading in commodities for its own account, or any
33 combination of those activities, within the meaning of section 864
34 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
35 effect on December 31, 1998. Notwithstanding the previous
36 sentence, if an alien corporation undertakes one or more infrequent,
37 extraordinary or non-recurring activities, including but not limited
38 to the sale of tangible property, only the income from such
39 infrequent, extraordinary or non-recurring activity shall be subject
40 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
41 seq.), and that amount of income subject to tax shall be determined
42 without regard to the allocation to that specific transaction of any
43 general business expense of the taxpayer and shall be specifically
44 assigned to this State for taxation by this State without regard to
45 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this
46 paragraph, "alien corporation" means a corporation organized under
47 the laws of a jurisdiction other than the United States or its political
48 subdivisions.

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

9 (12)(A) Notwithstanding the provisions of subsection (k) of
10 section 168 of the federal Internal Revenue Code of 1986, 26
11 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
12 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
13 law, for property acquired after September 10, 2001, the
14 depreciation deduction otherwise allowed pursuant to section 167 of
15 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
16 be determined pursuant to the provisions of the federal Internal
17 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
18 December 31, 2001.

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

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

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

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

39 (m) "Financial business corporation" shall mean any corporate
40 enterprise which is (1) in substantial competition with the business
41 of national banks and which (2) employs moneyed capital with the
42 object of making profit by its use as money, through discounting
43 and negotiating promissory notes, drafts, bills of exchange and
44 other evidences of debt; buying and selling exchange; making of or
45 dealing in secured or unsecured loans and discounts; dealing in
46 securities and shares of corporate stock by purchasing and selling
47 such securities and stock without recourse, solely upon the order
48 and for the account of customers; or investing and reinvesting in

1 marketable obligations evidencing indebtedness of any person,
2 copartnership, association or corporation in the form of bonds,
3 notes or debentures commonly known as investment securities; or
4 dealing in or underwriting obligations of the United States, any
5 state or any political subdivision thereof, or of a corporate
6 instrumentality of any of them. This shall include, without
7 limitation of the foregoing, business commonly known as industrial
8 banks, dealers in commercial paper and acceptances, sales finance,
9 personal finance, small loan and mortgage financing businesses, as
10 well as any other enterprise employing moneyed capital coming
11 into competition with the business of national banks; provided that
12 the holding of bonds, notes, or other evidences of indebtedness by
13 individual persons not employed or engaged in the banking or
14 investment business and representing merely personal investments
15 not made in competition with the business of national banks, shall
16 not be deemed financial business. Nor shall "financial business"
17 include national banks, production credit associations organized
18 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
19 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
20 insurance companies duly authorized to transact business in this
21 State, security brokers or dealers or investment companies or
22 bankers not employing moneyed capital coming into competition
23 with the business of national banks, real estate investment trusts, or
24 any of the following entities organized under the laws of this State:
25 credit unions, savings banks, savings and loan and building and
26 loan associations, pawnbrokers, and State banks and trust
27 companies.

28 (n) "International banking facility" shall mean a set of asset and
29 liability accounts segregated on the books and records of a
30 depository institution, United States branch or agency of a foreign
31 bank, or an Edge or Agreement Corporation that includes only
32 international banking facility time deposits and international
33 banking facility extensions of credit as such terms are defined in
34 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
35 board of governors of the Federal Reserve System, 12 CFR Part
36 204, effective December 3, 1981. In the event that the United
37 States enacts a law, or the board of governors of the Federal
38 Reserve System adopts a regulation which amends the present
39 definition of international banking facility or of such facilities' time
40 deposits or extensions of credit, the Commissioner of Banking and
41 Insurance shall forthwith adopt regulations defining such terms in
42 the same manner as such terms are set forth in the laws of the
43 United States or the regulations of the board of governors of the
44 Federal Reserve System. The regulations of the Commissioner of
45 Banking and Insurance shall thereafter provide the applicable
46 definitions.

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

4 (p) "New Jersey S corporation" means a corporation that is an S
5 corporation; which has made a valid election pursuant to section 3
6 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
7 corporation continuously since the effective date of the valid
8 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
9 5.22).

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

12 (r) "Qualified investment partnership" means a partnership
13 under this act that has more than 10 members or partners with no
14 member or partner owning more than a 50% interest in the entity
15 and that derives at least 90% of its gross income from dividends,
16 interest, payments with respect to securities loans, and gains from
17 the sale or other disposition of stocks or securities or foreign
18 currencies or commodities or other similar income (including but
19 not limited to gains from swaps, options, futures or forward
20 contracts) derived with respect to its business of investing or
21 trading in those stocks, securities, currencies or commodities, but
22 "investment partnership" shall not include a "dealer in securities"
23 within the meaning of section 1236 of the federal Internal Revenue
24 Code of 1986, 26 U.S.C. s.1236.

25 (s) "Savings institution" means a state or federally chartered
26 building and loan association, savings and loan association, or
27 savings bank.

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

30 (cf: P.L.2005, c.127, s.1)

31
32 2. This act shall take effect immediately and shall apply to net
33 operating losses accruing for privilege periods ending after June 30,
34 2009.

35
36
37 STATEMENT

38
39 This bill revises the treatment of net operating losses under the
40 corporation business tax to support businesses and promote job
41 creation. Specifically, the bill extends from seven to twenty years
42 the number of tax years in which corporation business taxpayers can
43 deduct from taxable income net operating losses sustained in
44 previous tax years. The extension mirrors carryforward provisions
45 in the federal tax code and in tax codes of many other states,
46 notably of New York, Pennsylvania, Connecticut, and Delaware.
47 Carryforward provisions allow businesses to average their income

1 over a time period that more closely corresponds to their investment
2 horizon.

3 The bill also removes the existing requirement that businesses
4 must lower their operating loss carryforward by the amount they
5 deduct from “entire net income” for dividend payments that
6 businesses receive from their subsidiaries. This change lowers
7 businesses’ tax liabilities.

8 New Jersey’s economy has underperformed in recent years
9 relative to the rest of the nation. The excessive taxation of
10 businesses contributes critically to this malaise. The Tax
11 Foundation’s “2008 State Business Tax Climate Index,” for
12 example, accords New Jersey the second worst state business tax
13 climate and the tenth worst corporate income tax in the nation.
14 Even though the enactment of this legislation does not turn New
15 Jersey into the state with the business-friendliest system of taxation,
16 it does nonetheless make New Jersey more welcoming to businesses
17 and thus encourage them to invest and create employment in the
18 Garden State.