

ASSEMBLY, No. 3521

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED NOVEMBER 22, 2010

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

SYNOPSIS

Excludes proceeds of sales or exchanges of solar renewable energy certificates from taxation under gross income tax and corporation business tax.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT excluding from taxation under the corporation business tax
2 and gross income tax the proceeds derived from the sale or
3 exchange of solar renewable energy certificates, amending
4 P.L.1945, c.162 and supplementing Title 54A of the New Jersey
5 Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 unauthorized discharge upon failure of the discharger to comply
2 with a directive from the department to remove, or arrange for the
3 removal of, the discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (A) Depreciation for property placed in service prior to January
41 1, 1998 shall be adjusted as follows:

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

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

1 1998. Depreciation shall be computed using the straight line
2 method over a thirty-year life. A full year's depreciation shall be
3 allowed in the initial tax year. No half-year convention shall apply.
4 The depreciable basis of the single account shall be reduced by the
5 adjusted federal tax basis of assets sold, retired, or otherwise
6 disposed of during any year on which gain or loss is recognized for
7 federal income tax purposes as described in subparagraph (B) of
8 this paragraph.

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

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

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

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

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

1 the laws of a jurisdiction other than the United States or its political
2 subdivisions.

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

11 (12) (A) Notwithstanding the provisions of subsection (k) of
12 section 168 of the federal Internal Revenue Code of 1986, 26
13 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
14 Revenue Code of 1986, 26U.S.C. s.1400L, or any other federal law,
15 for property acquired after September 10, 2001, the depreciation
16 deduction otherwise allowed pursuant to section 167 of the federal
17 Internal Revenue Code of 1986, 26U.S.C. s.167, shall be
18 determined pursuant to the provisions of the federal Internal
19 Revenue Code of 1986 (26U.S.C. s.1 et seq.) in effect on December
20 31, 2001.

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

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

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

38 (14) Notwithstanding the provisions of subsection (i) of section
39 108 of the federal Internal Revenue Code of 1986 (26U.S.C. s.108),
40 for privilege periods beginning after December 31, 2008 and before
41 January 1, 2011, entire net income shall include the amount of
42 discharge of indebtedness income excluded for federal income tax
43 purposes pursuant to subsection (i) of section 108 of the federal
44 Internal Revenue Code of 1986 (2 U.S.C. s.108), and for privilege
45 periods beginning on or after January 1, 2014 and before January 1,
46 2019, entire net income shall exclude the amount of discharge of
47 indebtedness income included for federal income tax purposes,

1 pursuant to subsection (i) of section 108 of the federal Internal
2 Revenue Code of 1986 (26U.S.C. s.108).

3 (15) Entire net income shall not include

4 (A) the proceeds derived from the sale or exchange of a solar
5 renewable energy certificate as that term is defined pursuant to
6 section 3 of P.L.1999, c.23 (C.48:3-51) and

7 (B) the proceeds derived from the sale or exchange of a solar
8 renewable energy certificate issued in another jurisdiction which is
9 substantially similar to the solar renewable energy certificates
10 defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), as
11 determined by the director in consultation with the President of the
12 Board of Public Utilities.

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

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

1 the following entities organized under the laws of this State: credit
2 unions, savings banks, savings and loan and building and loan
3 associations, pawnbrokers, and State banks and trust companies.

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

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

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

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

34 (r) "Qualified investment partnership" means a partnership
35 under this act that has more than 10 members or partners with no
36 member or partner owning more than a 50% interest in the entity
37 and that derives at least 90% of its gross income from dividends,
38 interest, payments with respect to securities loans, and gains from
39 the sale or other disposition of stocks or securities or foreign
40 currencies or commodities or other similar income (including but
41 not limited to gains from swaps, options, futures or forward
42 contracts) derived with respect to its business of investing or
43 trading in those stocks, securities, currencies or commodities, but
44 "investment partnership" shall not include a "dealer in securities"
45 within the meaning of section 1236 of the federal Internal Revenue
46 Code of 1986, 26U.S.C. s.1236.

1 (s) "Savings institution" means a state or federally chartered
2 building and loan association, savings and loan association, or
3 savings bank.

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

6 (cf: P.L.2009, c.72, s.2)

7

8 2. (New section) Gross income shall not include

9 (1) the proceeds derived from the sale or exchange of a solar
10 renewable energy certificate as that term is defined pursuant to
11 section 3 of P.L.1999, c.23 (C.48:3-51) and

12 (2) the proceeds derived from the sale or exchange of a solar
13 renewable energy certificate issued in another jurisdiction which is
14 substantially similar to the solar renewable energy certificates
15 defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), as
16 determined by the director in consultation with the President of the
17 Board of Public Utilities.

18

19 3. This act shall take effect immediately and shall apply to tax
20 years commencing on or after the date of enactment.

21

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23 STATEMENT

24

25 This bill excludes the proceeds derived from sales or exchanges
26 of solar renewable energy certificates from taxation under the
27 corporation business tax and the gross income tax.

28 New Jersey's solar renewable energy certificate (SREC) program
29 provides qualified solar electricity producing projects with a SREC
30 for each 1,000 kilowatt-hours of electricity produced. The SRECs
31 may be sold to electricity suppliers required to meet New Jersey's
32 Renewable Portfolio Standards.

33 The State-level income tax treatment of SRECs has not been
34 explicitly prescribed. This could lead to uncertainty that may
35 impede the ability of prospective SREC producers to calculate the
36 financial feasibility of SREC producing projects. Moreover, taxing
37 the proceeds of SREC sales may act as a disincentive for the
38 proliferation of SREC-producing projects by mitigating the return
39 on investment.

40 This bill seeks to provide statutory clarity for the tax treatment of
41 SREC sales or exchanges and to remove State-level income taxation
42 as a potential disincentive to the growth of SREC-producing
43 projects. The bill excludes the proceeds derived from the sale or
44 exchange of SRECs from taxation under the gross income tax and
45 the corporation business tax. The exclusions apply to proceeds
46 derived from the sale or exchange of New Jersey SRECs and out-of-
47 State SRECs which are determined to be substantially similar to

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- 1 New Jersey SRECs by the Director of the Division of Taxation in
- 2 consultation with the President of the Board of Public Utilities.
- 3 This bill takes effect immediately and applies to tax years
- 4 beginning on or after the date of enactment.