ASSEMBLY, No. 2501

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JUNE 6, 2002

Sponsored by:
Assemblyman ALBIO SIRES
District 33 (Hudson)
Assemblyman JOSEPH J. ROBERTS, JR.
District 5 (Camden and Gloucester)

SYNOPSIS
Business Tax Reform Act; revises and updates the corporation business tax and establishes filing fees for certain returns.

CURRENT VERSION OF TEXT
As introduced.
AN ACT revising and updating the corporation business tax and
concerning filing fees for certain returns and designated the
Business Tax Reform Act, amending and supplementing P.L.1945,
P.L.1997, c.350, and N.J.S.54A:8-6, and repealing various parts
of the statutory law.

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

1. Section 2 of P.L.1945, c.162 (C.54:10A-2) is amended to read
as follows:
2. Every domestic or foreign corporation which is not hereinafter
exempted shall pay an annual franchise tax for [the year 1946 and]
each year [thereafter], as hereinafter provided, for the privilege of
having or exercising its corporate franchise in this State, or for the
privilege of deriving receipts from sources within this State, or for the
privilege of engaging in contacts within this State, or for the privilege
of doing business, employing or owning capital or property, or
maintaining an office, in this State. And such franchise tax shall be in
lieu of all other State, county or local taxation upon or measured by
intangible personal property used in business by corporations liable to
taxation under this act [but, whenever such corporation holds shares
of stock in a bank as defined in R.S. 54:9-1, and such bank has not
elected to have the taxable value of such shares assessed to it and to
pay the tax levied against such shares as provided in R.S. 54:9-14, or,
having made such election, such bank subsequently revokes it, the
provisions of this section shall not exempt such shares of stock from
the tax imposed by chapter 9 of Title 54 of the Revised Statutes].

A foreign corporation shall not be deemed to be deriving receipts,
engaging in contacts, doing business, employing or owning capital or
property in the State, for the purposes of this act, by reason of (1) the
maintenance of cash balances with banks or trust companies in this
State, or (2) the ownership of shares of stock or securities in this State
if such shares or securities are pledged as collateral security, or
deposited with one or more banks or trust companies or brokers who
are members of a recognized security exchange, in safekeeping or
custody accounts, or (3) the taking of any action by any such bank or
trust company or broker, which is incidental to the rendering of
safekeeping or custodian service to such corporation.

A taxpayer's exercise of its franchise in this State is subject to
taxation in this State if the taxpayer's business activity in this State is
sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

(cf: P.L.1973, c.95, s.1)

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

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

   (a) Corporations subject to a tax assessed upon the basis of gross receipts, other than the alternative minimum assessment determined pursuant to section 7 of P.L. , c. (C. ) (now pending before the Legislature as this bill) [or] , and corporations subject to a tax assessed upon the basis of insurance premiums collected;

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

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

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

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

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

   (g) Nonstock corporations organized under the laws of this State or of any other state of the United States to provide mutual ownership housing under federal law by tenants, provided, however, that the exemption hereunder shall continue only so long as the corporations remain subject to rules and regulations of the Federal Housing Authority and the Commissioner of the Federal Housing Authority holds membership certificates in the corporations and the corporate property is encumbered by a mortgage deed or deed of trust insured under the National Housing Act (48 Stat.1246) as amended by subsequent Acts of Congress. In order to be exempted under this
subsection, corporations shall annually file a report on or before August 15 with the commissioner, in the form required by the commissioner, to claim such exemption, and shall pay a filing fee of $25.00;

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

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

(j) (1) Municipal electric corporations that were in existence as of January 1, 1995 provided that all of their income is from sales, exchanges or deliveries of electricity derived from customers using electricity within their municipal boundaries; and (2) Municipal electric utilities that were in existence as of January 1, 1995 provided that all of their income is from sales, exchanges or deliveries of electricity derived from customers using electricity within their franchise area existing as of January 1, 1995. If a municipal electric corporation derives income from sales, exchanges or deliveries of electricity from customers using the electricity outside its municipal boundaries, such municipal electric corporation shall be subject to the tax imposed by this act on all income. If a municipal electric utility derives income from sales, exchanges or deliveries of electricity from customers using electricity outside its franchise area existing as of January 1, 1995, such municipal electric utility shall be subject to the tax imposed by the act on all income.

(cf: P.L.1998, c.114, s.1)

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

For the purposes of this act, unless the context requires a different meaning:

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

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

(c) "Corporation" shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument and any state or federally chartered building and loan association or savings and loan association.
(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2)(F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from the net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

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

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

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

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

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

(h) "Taxpayer" shall mean any corporation, [limited liability company, foreign limited liability company, limited partnership or foreign limited partnership] affiliated group of corporations electing to file a consolidated return under section 18 of P.L.1945, c.162 (C.54:10A-18), and any partnership, required, or consenting, to report or to pay taxes, interest or penalties under this act. "Taxpayer" shall not include a [limited liability company, foreign limited liability company, limited partnership or foreign limited partnership] partnership that is listed on a United States national stock exchange.

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

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

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

For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report, or, if the taxpayer is classified as a partnership for federal tax purposes, would otherwise be required to report, to the United States Treasury Department for the purpose of computing its federal income tax [provided,] If an affiliated group elects to file a consolidated return under section 18 of P.L.1945, c.162 (C.54:10A-18), the group will be considered a single taxpayer and for the purposes of this act the amount of the taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special
deductions, that the taxpayer is required to report, or, if the taxpayer
is classified as a partnership for federal tax purposes, would otherwise
be required to report, to the United States Treasury Department for
the purpose of computing its consolidated federal income tax.

Provided however, that in the determination of such entire net
income,

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

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

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

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

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

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

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

(F) (i) The amount by which depreciation reported to the United
States Treasury Department for property placed in service on and after
January 1, 1981, but prior to taxpayer fiscal or calendar accounting
years beginning on and after the effective date of P.L.1993, c.172, for
purposes of computing federal taxable income in accordance with
section 168 of the Internal Revenue Code in effect after December 31,
1980, exceeds the amount of depreciation determined in accordance
with the Internal Revenue Code provisions in effect prior to
January 1, 1981, but only with respect to a taxpayer's accounting
period ending after December 31, 1981; provided, however, that
where a taxpayer's accounting period begins in 1981 and ends in 1982,
no modification shall be required with respect to this paragraph (F) for
the report filed for such period with respect to property placed in
service during that part of the accounting period which occurs in 1981.

The provisions of this subparagraph shall not apply to assets placed in
service prior to January 1, 1998 of a gas, gas and electric, and electric
public utility that was subject to the provisions of P.L.1940, c.5
(C.54:30A-49 et seq.) prior to 1998.
(ii) For the periods set forth in subparagraph (F)(i) of this
subsection, any amount, except with respect to qualified mass
commuting vehicles as described in section 168(f)(8)(D)(v) of the
Internal Revenue Code as in effect immediately prior to January 1,
1984, which the taxpayer claimed as a deduction in computing federal
income tax pursuant to a qualified lease agreement under paragraph
(8) of that section.
The director shall promulgate rules and regulations necessary to
carry out the provisions of this section, which rules shall provide,
among others, the manner in which the remaining life of property shall
be reported.
(G) (i) The amount of any civil, civil administrative, or criminal
penalty or fine, including a penalty or fine under an administrative
consent order, assessed and collected for a violation of a State or
federal environmental law, an administrative consent order, or an
environmental ordinance or resolution of a local governmental entity,
and any interest earned on the penalty or fine, and any economic
benefits having accrued to the violator as a result of a violation, which
benefits are assessed and recovered in a civil, civil administrative, or
criminal action, or pursuant to an administrative consent order. The
provisions of this paragraph shall not apply to a penalty or fine
assessed or collected for a violation of a State or federal
environmental law, or local environmental ordinance or resolution, if
the penalty or fine was for a violation that resulted from fire, riot,
sabotage, flood, storm event, natural cause, or other act of God
beyond the reasonable control of the violator, or caused by an act or
omission of a person who was outside the reasonable control of the
violator.
(ii) The amount of treble damages paid to the Department of
Environmental Protection pursuant to subsection a. of section 7 of
P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
department in removing, or arranging for the removal of, an
unauthorized discharge upon failure of the discharger to comply with
a directive from the department to remove, or arrange for the removal
of, the discharge.
(H) The amount of any sales and use tax paid by a utility vendor
pursuant to section 71 of P.L.1997, c.162.
(I) In the case of a real estate investment trust, the amount of any
dividends paid by the real estate investment trust.
(J) Interest paid to a related entity, as defined in section 5 of
P.L. (now pending before the Legislature as this
bill), except that a deduction shall be permitted to the extent that the
interest is directly or indirectly paid to an independent lender and the
taxpayer guarantees the debt on which the interest is required.

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

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

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

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

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

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

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

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

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

(5) Entire net income shall exclude 100% of dividends which were
included in computing such taxable income for federal income tax
purposes, paid to the taxpayer by one or more subsidiaries owned by
the taxpayer to the extent of the 80% or more ownership of investment
described in subsection (d) of this section. With respect to other
dividends, entire net income shall not include 50% of the total included
in computing such taxable income for federal income tax purposes]
(Deleted by amendment, P.L. , c. )(now pending before the
Legislature as this bill).

(6) (A) Net operating loss deduction. There shall be allowed as
a deduction for the [taxable year] privilege period the net operating
loss carryover to that [year] period.
(B) Net operating loss carryover. A net operating loss for any taxable year privilege period ending after June 30, 1984 shall be a net operating loss carryover to each of the seven years privilege periods following the year period of the loss. The entire amount of the net operating loss for any taxable year privilege period (the "loss year period") shall be carried to the earliest of the taxable years privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior taxable years privilege periods to which the loss may be carried.

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

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

(E) Notwithstanding the provisions of this paragraph (6) of subsection (k) of this section to the contrary, if, in a privilege period before the corporation became a member of an affiliated group that has elected to file a consolidated return pursuant to section 18 of P.L.1945, c.162 (C.54:10A-18), the corporation incurred a net operating loss, the deductibility of the loss on that consolidated return shall be limited to only the amount necessary to reduce to zero the entire net income, calculated on a separate return basis, of the corporation that incurred the net operating loss. Except as provided in this subparagraph, the separate return limitation year ("SRLY") rules promulgated pursuant to section 1502 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1502, shall apply.

(F) Notwithstanding the provisions of this paragraph (6) of subsection (k) of this section to the contrary, for privilege periods beginning during calendar year 2002 and calendar year 2003, no deduction for any net operating loss carryover shall be allowed. If and only to the extent that any net operating loss carryover deduction is
disallowed by reason of this subparagraph (F), the date on which the
amount of the disallowed net operating loss carryover deduction
would otherwise expire shall be extended by two years.

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

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

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

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

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

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

(9) Notwithstanding paragraph (1) of this subsection, entire net
income shall not include the income derived by a corporation
organized in a foreign country from the international operation of a
ship or ships, or from the international operation of aircraft, if such
income is exempt from federal taxation pursuant to section 883 of the

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

(11) No deduction shall be allowed for research and experimental
expenditures, to the extent that those research and experimental
expenditures are qualified research expenses or basic research
payments for which an amount of credit is claimed pursuant to section
1 of P.L.1993, c.175 (C.54:10A-5.24) and those research and
experimental expenditures are not used to compute a federal credit
claimed pursuant to section 41 of the federal Internal Revenue Code

(12) There shall be added back to entire net income all special
depreciation claimed as a federal deduction as a result of the
enactment of the federal "Job Creation and Worker Assistance Act of
2002," Pub.L.107-147. For the privilege period in which the final year
of the recovery period of the property affected by the depreciation
rules provided by Pub.L.107-147 ends, or for the privilege period in
which the earlier disposition of that property occurs, the amount
previously added back to entire net income shall be deducted from
entire net income.

(13) If, in a privilege period preceding the filing of the first New
Jersey consolidated return for the affiliated group of which the
corporation is a member:

(A) the corporation realized a gain or loss on a transaction;

(B) the corporation was subject to the tax imposed pursuant to
section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period;

(C) the transaction was treated as a deferred intercompany
transaction for federal income tax purposes; and

(D) the transaction was not deferred for New Jersey income tax
purposes, then

the taxable income of the affiliated group and the adjusted bases of
its members shall be adjusted to remove the impacts of a gain or loss
from that deferred intercompany transaction reported for federal
income tax purposes.

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

(m) "Financial business corporation" shall mean any corporate
enterprise which is (1) in substantial competition with the business of
national banks and which (2) employs moneyed capital with the object
of making profit by its use as money, through discounting and
negotiating promissory notes, drafts, bills of exchange and other
evidences of debt; buying and selling exchange; making of or dealing
in secured or unsecured loans and discounts; dealing in securities and
shares of corporate stock by purchasing and selling such securities and
stock without recourse, solely upon the order and for the account of
customers; or investing and reinvesting in marketable obligations
evidencing indebtedness of any person, copartnership, association or
corporation in the form of bonds, notes or debentures commonly
known as investment securities; or dealing in or underwriting
obligations of the United States, any state or any political subdivision
thereof, or of a corporate instrumentality of any of them. This shall
include, without limitation of the foregoing, business commonly
known as industrial banks, dealers in commercial paper and
acceptances, sales finance, personal finance, small loan and mortgage
financing businesses, as well as any other enterprise employing
moneved capital coming into competition with the business of national
banks; provided that the holding of bonds, notes, or other evidences
of indebtedness by individual persons not employed or engaged in the
banking or investment business and representing merely personal
investments not made in competition with the business of national
banks, shall not be deemed financial business. Nor shall "financial
business" include national banks, production credit associations
organized under the Farm Credit Act of 1933 or the Farm Credit Act
insurance companies duly authorized to transact business in this State,
security brokers or dealers or investment companies or bankers not
employing moneved capital coming into competition with the business
of national banks, real estate investment trusts, or any of the following
ties organized under the laws of this State: credit unions, savings
banks, savings and loan and building and loan associations,
pawnbrokers, and State banks and trust companies.

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

(o) "S corporation" means a corporation included in the definition
of an "S corporation" pursuant to section 1361 of the federal Internal

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

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

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

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

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

(cf: P.L.2001, c.136, s.1)

4. Section 1 of P.L.1997, c.350 (C.54:10A-4.3) is amended to read
as follows:

1. a. Notwithstanding the provisions of paragraph (6) of
subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the
contrary, a taxpayer that has for the fiscal or calendar accounting
period (referred to hereafter as the "tax year"), qualified research
expenses as defined in section 41 of the federal Internal Revenue Code
of 1986, 26 U.S.C. s.41, as in effect on June 30, 1992, paid or
incurred for research conducted in this State, in the fields of advanced
computing, advanced materials, biotechnology, electronic device
technology, environmental technology, or medical device technology,
shall be allowed to carry over a net operating loss for that tax year to
each of the 15 tax years following the year of the loss.

b. As used in this section:

"Advanced computing" means a technology used in the designing
and developing of computing hardware and software, including
innovations in designing the full spectrum of hardware from hand-held
calculators to super computers, and peripheral equipment;

"Advanced materials" means materials with engineered properties
created through the development of specialized processing and
synthesis technology, including ceramics, high value-added metals,
electronic materials, composites, polymers, and biomaterials;

"Biotechnology" means the continually expanding body of
fundamental knowledge about the functioning of biological systems
from the macro level to the molecular and sub-atomic levels, as well
as novel products, services, technologies and sub-technologies
developed as a result of insights gained from research advances which
add to that body of fundamental knowledge;

"Electronic device technology” means a technology involving
microelectronics, semiconductors, electronic equipment, and
instrumentation, radio frequency, microwave, and millimeter
electronics, and optical and optic-electrical devices, or data and digital
communications and imaging devices;

"Environmental technology” means assessment and prevention of
threats or damage to human health or the environment, environmental
cleanup, or the development of alternative energy sources; and

"Medical device technology” means a technology involving any
medical equipment or product (other than a pharmaceutical product)
that has therapeutic value, diagnostic value, or both, and is regulated
by the federal Food and Drug Administration.

c. Notwithstanding the provisions of subsection a. of this section,
for tax years beginning during calendar year 2002 and calendar year
2003, no deduction for any net operating loss carryover shall be
allowed. If and only to the extent that any net operating loss
carryover deduction is disallowed by reason of this subsection, the
date on which the amount of the disallowed net operating loss
carryover deduction would otherwise expire shall be extended by two
years.

(cf: P.L.1997, c.350, s.1)

5. (New section) a. For the purposes of this section:

"Intangible expenses and costs” includes (1) expenses, losses and
costs for, related to, or in connection directly or indirectly with the
direct or indirect acquisition, use, maintenance or management,
ownership, sale, exchange, or any other disposition of intangible
property to the extent such amounts are allowed as deductions or
costs in determining taxable income before operating loss deduction
and special deductions for the taxable year under the federal Internal
Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses related to, or
incurred in connection directly or indirectly with, factoring
transactions or discounting transactions; (3) royalty, patent, technical
and copyright fees; (4) licensing fees; and (5) other similar expenses
and costs.

"Intangible property” means patents, patent applications, trade
tnames, trademarks, service marks, copyrights, mask works, trade
secrets and similar types of intangible assets.

"Interest expenses and costs” means amounts directly or indirectly
allowed as deductions under section 163 of the federal Internal
Revenue Code of 1986, 26 U.S.C. s.163, for purposes of determining
taxable income under the code to the extent such expenses and costs
are directly or indirectly for, related to, or in connection with the
direct or indirect acquisition, maintenance, management, ownership,
sale, exchange or disposition of intangible property.

"Related member" means a person that, with respect to the taxpayer during all or any portion of the privilege period, is a related entity, a component member as defined in subsection (b) of section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1563, or is a person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1563.

"Related entity" means (1) a stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the federal Internal Revenue Code of 1986, 26 U.S.C. §318, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock; (2) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50% per cent of the value of the taxpayer's outstanding stock; or (3) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. §318, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50% percent of the value of the corporation's outstanding stock.

The attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. §318, shall apply for purposes of determining whether the ownership requirements of this definition have been met.

b. For purposes of computing its entire net income under section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related members.

c. (1) The adjustments required in subsection b. of this section shall not apply if the taxpayer establishes by clear and convincing evidence that the adjustments are unreasonable, or the taxpayer and the director agree in writing to the application or use of an alternative method of apportionment under section 8 of P.L.1945, c.162 (C.54:10A-8). Nothing in this subsection shall be construed to limit or negate the director's authority to otherwise enter into agreements and compromises otherwise allowed by law. Provided further, the adjustments required in subsection b. of this section shall not apply to payments between members of an affiliated group that have elected to file a consolidated return pursuant to section 18 of P.L.1945, c.162 (C.54:10A-18).
(2) The adjustments required in subsection b. of this section shall not apply to the portion of interest expenses and costs and intangible expenses and costs that the taxpayer establishes by a preponderance of the evidence meets both of the following: (a) the related member during the same income year directly or indirectly paid, received, accrued or incurred the portion to or from a person that is not a related member, and (b) the transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the taxpayer and the related member did not have as a principal purpose the avoidance of any portion of the tax due under Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes.

d. Nothing in this section shall require a taxpayer to add to its net income more than once any amount of interest expenses and costs that the taxpayer pays, accrues or incurs to a related member described in subsection b. of this section.

e. Nothing in this section shall be construed to limit or negate the director's authority to make adjustments under paragraph (3) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162 (C.54:10A-10).

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

5. The franchise tax to be annually assessed to and paid by each taxpayer shall be the greater of the amount computed pursuant to this section or the alternative minimum assessment computed pursuant to section 7 of P.L.1945, c.162 (C.54:10A-4), section 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162 (C.54:10A-10).

The amount computed pursuant to this section shall be sum of the amount computed under subsection (a) hereof, or in the alternative to the amount computed under subsection (a) hereof, the amount computed under subsection (f) hereof, and the amount computed under subsection (c) hereof:

(a) That portion of its entire net worth as may be allocable to this State as provided in section 6, multiplied by the following rates:

2 mills per dollar on the first $100,000,000.00 of allocated net worth;
4/10 of a mill per dollar on the second $100,000,000.00; 3/10 of a mill per dollar on the third $100,000,000.00; and 2/10 of a mill per dollar on all amounts of allocated net worth in excess of $300,000,000.00; provided, however, that with respect to reports covering accounting or privilege periods set forth below, the rate shall be that percentage...
of the rate set forth in this subsection for the appropriate year:

<table>
<thead>
<tr>
<th>Accounting or Privilege Periods Beginning on or after:</th>
<th>The Percentage of the Rate to be Imposed Shall be:</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 1, 1983</td>
<td>75%</td>
</tr>
<tr>
<td>July 1, 1984</td>
<td>50%</td>
</tr>
<tr>
<td>July 1, 1985</td>
<td>25%</td>
</tr>
<tr>
<td>July 1, 1986</td>
<td>0</td>
</tr>
</tbody>
</table>

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

(c) (1) For a taxpayer that is not a New Jersey S corporation, 1/4% of its entire net income or such portion thereof as may be allocable to this State as provided in section 6 of P.L.1945, c.162 (C.54:10A-6) plus such portion thereof as is specifically assigned to this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided, however, that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1967, the rate shall be 4 1/4%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 5 1/2%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 7 1/2%; and that with respect to reports covering privilege periods or parts thereof ending after December 31, 1979, the rate shall be 9%; provided however, that for a taxpayer that has entire net income of $100,000 or less for a privilege period and is not a limited liability company, foreign limited liability company, limited partnership or foreign limited partnership the rate for that privilege period shall be 7 1/2% and provided further that for a taxpayer that has entire net income of $50,000 or less for a privilege period and is not a partnership the rate for that privilege period shall be 6 1/2%.

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

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

(ii) For a taxpayer that has entire net income in excess of $100,000 for the privilege period, for privilege periods ending on or after July 1, 1998, but on or before June 30, 2001, the rate shall be 2%, for privilege periods ending on or after July 1, 2001, but on or before [June 30, 2002] June 30, 2006, the rate shall be 1.33%, for privilege periods ending on or after [July 1, 2002] July 1, 2006, but on or before [June 30, 2003] June 30, 2007, the rate shall be
for privilege periods ending on or after [July 1, 2003] July 1, 2007
there shall be no rate of tax imposed under this paragraph, and

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

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

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

(d) Provided, however, that the franchise tax to be annually
assessed to and paid by any investment company or real estate
investment trust, which has elected to report as such and has filed its
return in the form and within the time provided in this act and the rules
and regulations promulgated in connection therewith, shall, in the case
of an investment company, be measured by [25%] 60% of its entire
net income and [25%] 60% of its entire net worth, and in the case of
a real estate investment trust, by 4% of its entire net income and 15%
of its entire net worth, at the rates hereinbefore set forth for the
computation of tax on net income and net worth, respectively, but in
no case less than $250, and further provided, however, that the
franchise tax to be annually assessed to and paid by a regulated
investment company which for a period covered by its report satisfies
the requirements of Chapter 1, Subchapter M, Part I, Section 852(a)
of the federal Internal Revenue Code shall be $250.

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

<table>
<thead>
<tr>
<th>Period Beginning</th>
<th>Domestic Minimum Tax</th>
<th>Foreign Minimum Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>$50</td>
<td>$100</td>
</tr>
<tr>
<td>1995</td>
<td>$100</td>
<td>$200</td>
</tr>
<tr>
<td>1996</td>
<td>$150</td>
<td>$200</td>
</tr>
<tr>
<td>1997</td>
<td>$200</td>
<td>$200</td>
</tr>
</tbody>
</table>

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

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

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

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

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

(h) Provided however, that for privilege periods beginning on or after January 1, 2002 the franchise tax annually assessed to and paid by a taxpayer that is a partnership shall be the amount determined pursuant to the provisions of section 12 of P.L. , c. (C. ) (now pending before the Legislature as this bill).

(cf: P.L.2001, c.136, s.2)

7. (New section) a. For the purposes of this section: "Affiliated group" means a group of corporations defined as an
affiliated group by section 1504 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504, or any successor federal law, that files a consolidated federal income tax return for the privilege period pursuant to sections 1501 through 1504 of the federal Internal Revenue Code of 1986, 26 U.S.C. ss.1501-1504 or any successor federal law.

"Cost of goods sold" means the cost of goods sold calculated pursuant to the same method used by the taxpayer for the purpose of computing its federal income tax, multiplied by the allocation factor computed as set forth in section 6 of P.L.1945, c.162 (C.54:10A-6).

"Member of an affiliated group" means a taxpayer that is part of an affiliated group.

"New Jersey gross profits" means New Jersey gross receipts reduced by returns and allowances attributable to New Jersey gross receipts, less the cost of goods sold.

"New Jersey gross receipts" means the receipts of the taxpayer for the privilege period, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for federal tax purposes arising during the privilege period from:

1. sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State,
2. sales of tangible personal property located without the State at the time of the receipt of or appropriation to the orders where shipment is made to points within the State,
3. services performed within the State,
4. rentals from property situated, and royalties from the use of patents or copyrights, within the State,
5. all other business receipts earned within the State.

b. For privilege periods beginning on or after January 1, 2002, the alternative minimum assessment shall be equal to the amount computed under paragraphs (1) or (2) of this subsection pursuant to the election made pursuant to subsection c. of this section:

1. New Jersey gross profits, reduced by $500,000, multiplied by .006; or
2. New Jersey gross receipts, reduced by $1,000,000, multiplied by .003.

c. A taxpayer shall, for the first privilege period for which it is required to compute the alternative minimum assessment pursuant to this section, elect to employ the computation method set forth in paragraph (1) or the computation method set forth in paragraph (2) of subsection b. of this section, which computation method shall be employed by the taxpayer for the computation of the alternative minimum assessment for that privilege period and for the next succeeding four privilege periods, pursuant to regulations and forms as the director may prescribe. The taxpayer may change its election
at any time after the initial five privilege periods; provided however,
that any change in the method of computation of the alternative
minimum assessment which the taxpayer elects shall be employed by
the taxpayer for the privilege period for which the change is effective
and for the next four succeeding privilege periods.

d. (1) Notwithstanding the provisions of subsection b. of this
section, the alternative minimum assessment for a taxpayer for a
privilege period, other than a taxpayer electing to file a consolidated
return for the privilege period pursuant to section 18 of P.L.1945,
c.162 (C.54:10A-18), shall not exceed $5,000,000. For a taxpayer
electing to file a consolidated return for the privilege period pursuant
to section 18 of P.L.1945, c.162 (C.54:10A-18), the alternative
minimum assessment shall not exceed $5,000,000 for each member of
the affiliated group, except as provided in paragraph (2) or (3) of this
subsection.

(2) If four or more taxpayers are members of an affiliated group,
the sum of the alternative minimum assessments of each of the
members of the affiliated group for a privilege period shall not exceed
$15,000,000. If the sum of the alternative minimum assessment for all
members of the affiliated group computed as set forth in subsection b.
after application of the maximum set by paragraph (1) of this
subsection would otherwise exceed $15,000,000, the alternative
minimum assessment for a member of the affiliated group shall equal
the alternative minimum assessment for that member of the affiliated
group computed as set forth in subsection b. after application of the
maximum set by paragraph (1) of this subsection multiplied by a fraction, the numerator of which is $15,000,000 and
the denominator of which is the sum of the alternative minimum
assessments for all members of the affiliated group computed as set
forth in subsection b. after application of the maximum set by
paragraph (1) of this subsection.

(3) For the purpose of calculating the alternative minimum
assessment, the amount of the sum of the alternative minimum
assessments of the members of an affiliated group shall not, when
added to the amounts of the members’ tax computed pursuant to
section 5 of P.L.1945, c.162 (C.54:10A-5), exceed $15,000,000.

e. The alternative minimum assessment computed pursuant to this
section for privilege periods commencing after December 31, 2006
shall be $0.00, except that for taxpayers exempt from corporation net
income taxation pursuant to 15 U.S.C. s.381 et seq. (Pub.L.86-272),
73 Stat. 555, such assessment shall continue to be computed as
otherwise provided herein.

f. (1) If the alternative minimum assessment for a taxpayer
computed pursuant to this section exceeds the tax computed pursuant
to section 5 of P.L.1945, c.165 (C.54:10A-5) for a privilege period,
the taxpayer shall be allowed an amount of credit equal to the amount
by which the alternative minimum assessment computed pursuant to
this section for the privilege period exceeds the tax computed pursuant
to section 5 of P.L.1945, c.165 (C.54:10A-5) for that privilege period.
The amount of credit may be carried forward for application in
subsequent privilege periods subject to the limitations of paragraph (2)
of this subsection.

(2) A taxpayer may apply all or a portion of the credits allowed by
paragraph (1) of this subsection against the tax computed pursuant to
section 5 of P.L. 1945, c. 162 (C.54:10A-5), for a privilege period for
which the tax pursuant to that section exceeds the alternative minimum
assessment computed for the privilege period pursuant to this section;
provided however, that the amount of credit applied shall not reduce
the amount of tax otherwise due to less than the alternative minimum
assessment as computed pursuant to this section for the privilege
period.

8. Section 6 of P.L. 1945, c.162 (C.54:10A-6) is amended to read
as follows:

6. In the case of a taxpayer which maintains a regular place of
business outside this State other than a statutory office, the portion of
its entire net worth to be used as a measure of the tax imposed by
subsection (a) of section [5(a)] 5 of [this act] P.L.1945, c.162
(C.54:10A-5), and the portion of its entire net income to be used as a
measure of the tax imposed by subsection (c) of section [5(a)] 5 of
[this act] P.L.1945, c.162 (C.54:10A-5), shall be determined by
multiplying such entire net worth and entire net income, respectively,
by an allocation factor which is the property fraction, plus twice the
sales fraction plus the payroll fraction and the denominator of which
is four, except as the director may determine pursuant to section 8 of
P.L. 1945, c.162 (C.54:10A-8), that is:

(A) The property fraction is the average value of the taxpayer's real
tangible personal property within the State during the period
covered by its report divided by the average value of all the taxpayer's
real and tangible personal property wherever situated during such
period; provided, however, that for the purpose of determining
average value, the provisions with respect to depreciation as set forth
in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of
P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving
at such value.

(B) The sales fraction is the receipts of the taxpayer, computed on
the cash or accrual basis according to the method of accounting used
in the computation of its net income for federal tax purposes, arising
during such period from

(1) sales of its tangible personal property located within this State
at the time of the receipt of or appropriation to the orders where
shipments are made to points within this State,
(2) sales of tangible personal property located without the State at
the time of the receipt of or appropriation to the orders where
shipment is made to points within the State,
(3) (Deleted by amendment.)
(4) services performed within the State,
(5) rentals from property situated, and royalties from the use of
patents or copyrights, within the State,
(6) all other business receipts [excluding dividends excluded from
entire net income by paragraph (1) of subsection (k) of section 4 of
P.L.1945, c.162 (C.54:10A-4)] earned within the State,
divided by the total amount of the taxpayer's receipts, similarly
computed, arising during such period from all sales of its tangible
personal property, services, rentals, royalties and all other business
receipts, whether within or without the State; provided however, that
if receipts would be assigned to a state, a possession or territory of the
United States or the District of Columbia or to any foreign country
in which the taxpayer is not subject to a tax on or measured by profits
or income then the receipts shall be excluded from the denominator
of the sales fraction.

[For the purposes of this section, receipts shall not include any sum
or sums of money received in payment for gas or electric energy sold
to a public utility subject to taxation pursuant to P.L.1940, c.5
(C.54:30A-49 et seq.) for resale to ratepayers of the public utility.]

(C) The payroll fraction is the total wages, salaries and other
personal service compensation, similarly computed, during such period
of officers and employees within the State divided by the total wages,
salaries and other personal service compensation, similarly computed,
during such period of all the taxpayer's officers and employees within
and without the State.

In the case of a taxpayer which does not maintain a regular place of
business outside this State other than a statutory office, the allocation
factor shall be 100%.

In the case of a banking corporation which maintains a regular place
of business outside this State other than a statutory office, and which
elects to take the exclusion from net worth provided in subsection (d)
of section 4 of P.L.1945, c.162 (C.54:10A-4) or the deduction from
entire net income provided in paragraph (4) of subsection (k) of
section 4 of P.L.1945, c.162 (C.54:10A-4), the allocation factor shall
be computed and applied in accordance with section 6 of P.L.1945,
c.162 (C.54:10A-6); provided, however, that the numerators and the
denominators of the fractions described in (A), (B) or (C) above shall
include all amounts attributable, directly or indirectly, to the
production of the eligible net income of an international banking
facility as defined in paragraph (4) of subsection (k) of section 4 of
P.L.1945, c.162 (C.54:10A-4), whether or not such amounts are
otherwise attributable to this State.

(cf: P.L.1995, c.245, s.1)
9. Section 5 of P.L.1993, c.173 (C.54:10A-6.1) is amended to read as follows:

5. a. "Operational income" subject to allocation to New Jersey means income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations and includes investment income serving an operational function. Income that a taxpayer demonstrates with clear and [cogent] convincing evidence is not operational income is classified as nonoperational income, and the nonoperational income of taxpayers[, other than those that have their principal place from which the trade or business of the taxpayer is directed or managed in this State,] is not subject to allocation but shall be specifically assigned; provided, that 100% of the nonoperational income of a taxpayer that has its principal place from which the trade or business of the taxpayer is directed or managed in this State shall be specifically assigned to this State to the extent permitted under the Constitution and statutes of the United States.

b. Corporate expenses related to nonoperational income are not deductible in determining entire net income. Notwithstanding the provisions of R.S.54:49-6 or any other law to the contrary:

(1) if in prior privilege periods property had been classified as operational property, and later is demonstrated to have been nonoperational property and is subsequently disposed of, all expenses, without limitation, deducted for prior privilege periods related to such nonoperational property shall be added back and recaptured as income in the period of disposition of such property;

(2) if in prior privilege periods income had been classified as serving an operational function, and later is demonstrated not to have been serving an operational function, all expenses, without limitation, deducted in prior privilege periods related to such income not serving an operational function shall be added back and recaptured as income;

and

(3) the denominators of the fractions used to determine the allocation factor pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), for privilege periods for which redeterminations are required pursuant to paragraphs (1) and (2) of this subsection shall be redetermined to exclude the amounts, if any, relating to the nonoperational property or the nonoperational income.

c. The Director of the Division of Taxation shall prescribe such forms for administration and adopt such administrative rules as the director deems necessary for the implementation of this section.

(cf: P.L.1993, c.173, s.5)

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

10. a. Whenever it shall appear to the [commissioner] director...
that any taxpayer fails to maintain its records in accordance with sound
accounting principles or conducts its business or maintains its records
in such manner as either directly or indirectly to distort its true entire
net income or its true entire net worth under this act or the proportion
thereof properly allocable to this State, or whenever any taxpayer
maintains a place of business outside this State, or whenever any
agreement, understanding or arrangement exists between a taxpayer
and any other corporation or any person or firm, for the purpose of
evading tax under this act, or whereby the activity, business, receipts,
expenditures, assets, liabilities, income or net worth of the taxpayer are
improperly or inaccurately reflected, the [commissioner] director is
authorized and empowered, in [his] the director's discretion and in
such manner as [he] the director may determine, to adjust and
redetermine such items, and to adjust items of gross receipts, tangible
or intangible property and payrolls within and without the State and
the allocation of entire net income or entire net worth or to make any
other adjustments in any tax report or tax returns as may be necessary
to make a fair and reasonable determination of the amount of tax
payable under this act.

b. Where [(a)] (1) any taxpayer conducts its activity or business
under any agreement, arrangement or understanding in such manner as
either directly or indirectly to benefit its members or stockholders, or
any of them, or any person or persons directly or indirectly interested
in such activity or business, by entering into any transaction at more
or less than a fair price which, but for such agreement, arrangement or
understanding, might have been paid or received therefor, or [(b)] (2)
any taxpayer, a substantial portion of whose capital stock is owned
either directly or indirectly by or through another corporation, enters
into any transaction with such other corporation on such terms as to
create an improper loss or net income, the [commissioner] director
may include in the entire net income of the taxpayer the fair profits
which, but for such agreement, arrangement or understanding, the
taxpayer might have derived from such transaction. The
[commissioner] director may require any person or corporation to
submit such information under oath or affirmation, or to permit such
examination of its books, papers and documents, as may be necessary
to enable [him] the director to determine the existence, nature or
extent of an agreement, understanding or arrangement to which this
section relates, whether or not such person or corporation is subject
to the tax imposed by this act.

c. The entire net income of a taxpayer exercising its franchise in
this State that is a member of an affiliated group or a controlled group
pursuant to sections 1504 or 1563 of the federal Internal Revenue
Code of 1986, 26 U.S.C. ss.1504 or 1563, shall be determined by
eliminating all payments to, or charges by, other members of the
affiliated or controlled group in excess of fair compensation in all
inter-group transactions of any kind. If the taxpayer cannot demonstrate as a fact by clear and convincing evidence that a report by a taxpayer discloses the true earnings of the taxpayer on its business carried on in this State, the director may, at the director's discretion, require the taxpayer to file a consolidated return of the entire operations of the affiliated group or controlled group, including its own operations and income. The director shall determine the true amount of entire net income earned by the taxpayer in this State. The consolidated entire net income of the taxpayer and of the other members of its affiliated group or controlled group shall be allocated to this State by use of the applicable allocation formula that the director requires pursuant to P.L.1945, c.162 (C.54A:10A-1 et seq.) be used by the taxpayer. The return shall include in the allocation formula the property, payrolls, and sales of all corporations for which the return is made. The director may require a consolidated return under this section without regard to whether the other members of the affiliated or controlled group, other than the taxpayer, are or are not exercising their franchises in this State.

A consolidated return required by this section shall be filed within 60 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

The member of an affiliated group or a controlled group shall incorporate in its return required under this section information needed to determine under this section its taxable entire net income, and shall furnish any additional information the director requires, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. A taxpayer shall furnish any additional information requested within 30 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

(cf: P.L.1958, c.63, s.5)

11. Section 14 of P.L.1945, c.162 (C.54:10A-14) is amended to read as follows:

14. (a) The [commissioner] director may by general rule or by special notice require any taxpayer to submit copies or pertinent extracts of its federal income tax returns, or of any other tax return made to any agency of the federal government, or of this or any other state, or of any statement or registration made pursuant to any state or federal law pertaining to securities or securities exchange regulation.

(b) The [commissioner] director may require all taxpayers to keep such records as [he] the director may prescribe, and [he] the director may require the production of books, papers, documents and other data, to provide or secure information pertinent to the determination of the tax hereunder and the enforcement and collection thereof. The [commissioner] director may, also, by general rule or by special notice
require any taxpayer to make and file information returns, under oath, of facts pertinent to the determination of the tax or liability for tax hereunder, pursuant to such regulations, at such times and in such form and manner and to such extent as [he] the director may prescribe pursuant to law.

(c) Each taxpayer filing a return that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. ss. 1504 or 1563 shall disclose in its return for the privilege period the amount of all inter-member costs or expenses, including but not limited to management fees, rents, and other services, for the privilege period. If the taxpayer acquires products or services from another member of its affiliated group or controlled group, which it re-sells or otherwise uses to generate revenue, the taxpayer shall disclose the amount of revenue generated from those products or services. The director shall promulgate rules and procedures for the manner of disclosure. A failure to file such a disclosure shall be deemed the filing of an incomplete tax return, subject to the penalties of the State Uniform Tax Procedure Law, R.S. 54:48-1 et seq.

12. (New section) a. A partnership that is not a qualified investment partnership shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax. The amount of tax shall be equal to the sum of: all of the share of the entire net income of the partnership for that privilege period of all nonresident noncorporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .0637 plus all of the share of the entire net income of the partnership for that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09.

b. An amount of tax paid by a partnership pursuant to subsection a. of this section shall be credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income as of the date of its receipt by the director, and each amount of tax so credited shall be deemed to have been paid by the respective partner in respect of the privilege period or taxable year of the partner.

c. For the purposes of this section:

"Nonresident noncorporate partner" means, an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S. 54A:1-1 et seq., that is not a resident
taxpayer or a resident estate or trust under that act;

"Nonresident corporate partner" means a partner that is not an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a corporation exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular place of business in this State other than a statutory office; and

"Partner" means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

13. Section 18 of P.L.1945, c.162 (C.54:10A-18) is amended to read as follows:

18. a. The [commissioner] director shall design a form of return and forms for such additional statements or schedules as [he] the director may require to be filed therewith. Such forms shall provide for the setting forth of such facts as the [commissioner] director may deem necessary for the proper enforcement of this act. [He] The director shall cause a supply thereof to be printed and shall furnish appropriate blank forms to each taxpayer upon application or otherwise as he may deem necessary. Failure to receive a form shall not relieve any taxpayer from the obligation to file a return under the provisions of this act. Each such return shall have annexed thereto a certification by the president, vice-president, comptroller, secretary, treasurer, assistant treasurer, accounting officer of the taxpayer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification of the report shall be prima facie evidence that such individual is authorized to sign and certify the report on behalf of the corporation. In the case of a corporation in liquidation or in the hands of a receiver or trustee, certification shall be made by the person responsible for the conduct of the affairs of such corporation.

b. The return of an S corporation shall, in addition to any information set forth pursuant to subsection a. of this section, set forth with respect to each shareholder: the shareholder's name, address and federal taxpayer identification number (social security number or employer identification number); whether the shareholder is a resident of this State; whether the shareholder has filed a consent to jurisdictional requirements pursuant to section 3 or section 4 of P.L.1993, c.173 (C.54:10A-5.22 or C.54:10A-5.23); the allocation factor determined pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10); the amount of any distribution made to the shareholder, including any amount paid on behalf of the shareholder pursuant to subsection c. or d. of section 4 of P.L.1993, c.173 (C.54:10A-5.23); the balance of the accumulated earnings and profits account; the balance of the accumulated
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adjustments account described in section 16 of P.L.1993, c.173
(C.54A:5-14), which account the corporation shall maintain; and such
other information as the director may prescribe by regulation. The S
corporation shall, on or before the day on which such return is
required to be filed, furnish to each person who was a shareholder
during the [accounting or] privilege period a copy of such information
shown on the return as the director may by regulation prescribe.

c. (1) The return of a taxpayer that is a professional corporation
or a similar corporation for profit organized for the purpose of
rendering professional services under the laws of another state, shall
in addition to any information set forth pursuant to subsection a. of
this section, set forth the name, address and federal taxpayer
identification number (social security number or employer
identification number) of each licensed professional of the corporation.

(2) Each professional corporation or similar corporation for profit
organized for the purpose of rendering professional services under the
laws of another state that has more than two licensed professionals
shall at the time such return is required to be filed make a payment of
a filing fee of $150 for each licensed professional of the corporation,
up to a maximum of $250,000.

(3) Each professional corporation required to make a payment
pursuant to paragraph (2) of this subsection shall also make, at the
same time as making its payment pursuant to paragraph (2) of this
subsection, an installment payment of its filing fee for the succeeding
return period in an amount equal to 50% of the amount required to be
paid pursuant to paragraph (2). The amount of the installment
payment shall be credited against the amount of the filing fee due for
the succeeding return period, or, if the amount of the installment
payment exceeds the amount of the filing fee due for the succeeding
return period, successive return periods.

d. (1) An affiliated group of C corporations, as defined in section
1504 of the Internal Revenue Code of 1986, 26 U.S.C. s.1504, may
elect in accordance with the provisions of this subsection to make a
single, consolidated return with respect to the corporate income tax
imposed by section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege
period in lieu of separate returns. The making of a consolidated return
is a privilege and shall be upon the condition that all C corporations,
which at any time during the privilege period have been members of
the affiliated group, consent to be included in such return. The making
of a consolidated return shall be considered as such consent. The
privilege of filing of a consolidated return shall not be permitted if less
than all the members of the affiliated group consent to be included in
such return. Such election may, upon two years notice of the
revoeration to the director, be revoked after five or more privilege
periods for which it has been in effect.

(2) Each corporation included as part of an affiliated group filing
A consolidated return shall be jointly and severally liable for the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) of the affiliated group with respect to the privilege period, except that any corporation which was not a member of the affiliated group for the entire taxable year shall be jointly and severally liable only for the portion of the consolidated tax liability attributable to that portion of the year during which the corporation was a member of the affiliated group, prorated on a daily basis.

(3) Nothing in this subsection shall be construed as requiring the filing of a combined income tax return under the unitary business concept.

(4) The director shall promulgate regulations interpreting the provisions of this section that are consistent, to the maximum extent possible, with applicable federal Treasury regulations.

(cf:  P.L.1993, c.173, s.6)

14. Section 10 of P.L.1947, c.50 (C.54:10A-19.1) is amended to read as follows:

10. (a) (Deleted by amendment, P.L.1992, c.175).
(b) (Deleted by amendment, P.L.1992, c.175).
(c) (Deleted by amendment, P.L.1992, c.175).
(d) The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Uniform Tax [ Uniform] Procedure Law, R.S.54:48-1 et seq., except as otherwise provided.
(e) The filing of a complaint by a taxpayer in the tax court shall suspend the running of the statute of limitations for the contested issue or issues for all subsequent privilege periods.

(cf:  P.L.1992, c.175, s.21)

15. (New section) Notwithstanding any other provision of law, no interest or penalty shall be assessed against any taxpayer for underpayment of installment payments of its estimated tax due and payable after December 31, 2001 and before June 16, 2002, if, and only to the extent, the underpayment of estimated tax is the result of the temporary suspension of the deduction for net operating loss carryovers provided in section 4 of P.L.1945, c.162 (C.54:10A-4) as amended in section 3 of P.L.2002, c. (now pending before the Legislature as this bill) or subsection c. of section 1 of P.L.1997, c.350 (C.54:10A-4.3).

16. (New section) a. Notwithstanding the limitation of the application of subsection (g) of section 5 of P.L.1945, c.162 (C.54:10A-5) made pursuant to section 6 of P.L. , c. (now pending before the Legislature as this bill), that limitation shall not affect any obligation, lien or duty to make installment payments and pay interest
or penalties which have accrued or may accrue by virtue of any duty
to make installment payments pursuant to the provisions of section 5
of P.L.2001, c.136 (C.54:10A-15.8) prior to the limitation of the
application of subsection (g) of section 5 of P.L.1945, c.162
(C.54:10A-5) made pursuant to section 6 of P.L. , c. ; and
provided that all estimated payments which would have been due and
payable prior to the enactment of P.L. , c. shall be due and payable
as if the limitation were not in effect; and provided that this limitation
shall not affect the legal authority of the State to audit records and
assess and collect installment payments which may be due, together
with such interest and penalties as have accrued or would have
accrued thereon and shall not affect any determination of, or affect any
proceeding for, the enforcement thereof.

b. Notwithstanding the provisions of section 5 of P.L.2001, c.136
(C.54:10A-15.8) to the contrary, any amount of tax paid pursuant to
subsection a. of that section for privilege periods beginning on or after
January 1, 2002 shall be credited against the tax paid pursuant to
section 12 of P.L. , c. (C. )(now pending before the
Legislature as this bill).

17. Section 2 of P.L.1993, c.170 (C.54:10A-5.5) is amended to
read as follows:

2. As used in this act:
"Business relocation or expansion or investment" means capital
investment in a new or expanded business facility in this State
"Business facility" means any factory, mill, plant, refinery,
warehouse, building, complex of buildings or structural components
of buildings, and all machinery, equipment and personal property
located within this State, used in connection with the operation of the
business of a corporation that is subject to the tax imposed pursuant
to section 5 of P.L.1945, c.162 (C.54:10A-5), and all facility
preparation and start-up costs of the taxpayer for the business facility
which it capitalizes for federal income tax purposes.
"Compensation" means wages, salaries, commissions or any other
form of remuneration paid to employees for personal services.
"Controlled group" means one or more chains of corporations
connected through stock ownership with a common parent corporation
if stock possessing at least 50% of the voting power of all classes of
stock of each of the corporations is owned directly or indirectly by one
or more of the corporations; and the common parent owns directly
stock possessing at least 50% of the voting power of all classes of
stock of at least one of the other corporations.
"Director" means the Director of the Division of Taxation in the
Department of the Treasury.
"Expanded business facility" means any business facility, other than
a new business facility, resulting from acquisition, construction,
reconstruction, installation or erection of improvements or additions to existing property if such improvements or additions are purchased on or after the operative date of this act, but only to the extent of a taxpayer's qualified investment in such improvements or additions.

"New business facility" means a business facility which:

a. is employed by a taxpayer in the conduct of a business which is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.). Such facility shall not be considered a new business facility in the hands of a taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person;
b. is purchased by a taxpayer and is placed in service or use on or after the operative date of this act;
c. was not purchased by a taxpayer from a related person. The director may waive this requirement if the facility was acquired from a related person for its fair market value and the acquisition was not tax motivated;
d. was not in service or use during the 90 day period immediately prior to transfer of the title to the facility, provided that this restriction for the 90 day period may be waived by the director if the director determines that individuals employed at the facility may be considered as "new employees" as defined in this section.

"New employee" means an individual residing and domiciled in this State, hired by a taxpayer to fill a position or a job in this State which previously did not exist in the taxpayer's business enterprise in this State prior to the date on which the taxpayer's qualified investment is placed in service or use in this State provided that:

a. the individual's duties in connection with the operation of the business facility are on a regular, full-time and permanent basis or regular part-time and permanent basis;
b. the individual is not a related individual as defined in subsection (i) of section 51 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.51, or does not own 10% or more of the business with such ownership interest to be determined under the rules set forth in section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267;
c. the individual is not an individual who worked for the taxpayer during the six month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six month period beginning on the date the taxpayer's qualified investment is placed in service or use in this State; and
d. the individual is not an employee for whom the taxpayer is allowed a credit pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78) or section 12 of P.L.1985, c.227 (C.55:19-13).

As used in this definition: "full-time" means employment for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is applicable to the business and "permanent basis" does not include employment that is
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temporary or seasonal and therefore the compensation paid to
temporary or seasonal employees will not be considered for purposes
of sections 4 and 6 of this act; and "part-time" means customarily
performing such duties at least 20 hours per week for at least six
months during the tax year. In no event shall the number of new
employees directly attributable to the qualified investment for the
purpose of the credit allowed pursuant to this act exceed the total
increase in the taxpayer's average employment in this State for the tax
year over the average employment in this State for the previous tax
year and in no event shall the number of new employees directly
attributable to the qualified investment for the purpose of the credit
allowed pursuant to this act exceed one half of the average
employment in this State for the tax year; and provided, that the
director may require that the net increase in the taxpayer's employment
in this State be determined and certified for the taxpayer's controlled
group.

Provided further, however, that individuals filling jobs saved as a
direct result of the taxpayer's qualified investment in property
purchased for business relocation or expansion on or after the
operative date of this act may be treated as new employees filling new
jobs if the taxpayer certifies the material facts to the director and the
director expressly finds that: but for the new employer purchasing the
assets of a business in bankruptcy under chapter 7 or 11 of the United
States Bankruptcy Code and such new employer making qualified
investment in property purchased for business relocation or expansion,
the assets would have been sold by the United States bankruptcy court
in a liquidation sale and the jobs so saved would have been lost; or but
for the taxpayer's qualified investment in property purchased for
business relocation or expansion in this State, the business facility in
this State would have closed and the employees located at the facility
would have lost their jobs; provided that the director shall not make
this certification unless the director finds that the business is insolvent
as defined in paragraph (32) of 11 U.S.C. s.101 or that the business
facility was destroyed in whole or in significant part by fire, flood or
act of God.

"New job" means a job which did not exist in the business of the
taxpayer in this State prior to the taxpayer's qualified investment being
made, and which is filled by a new employee.

"Partnership" means a syndicate, group, pool, joint venture or other
unincorporated organization through or by means of which any
business, financial operation or venture is carried on, and which is not
a trust or estate, a corporation or a sole proprietorship. The term
"partner" includes a member in such a syndicate, group, pool, joint
venture or organization.

"Property purchased for business relocation or expansion" means
improvements to real property and tangible personal property, but only
if that improvement or personal property was constructed or purchased and placed in service or use by the taxpayer, for use as a component part of a new or expanded business facility located in this State.

a. Property purchased for business relocation or expansion shall include only:

1. improvements to real property placed in service or use on or after the operative date of this act by the taxpayer;
2. tangible personal property placed in service or use by the taxpayer on or after the operative date of this act, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the corporation business tax liability of the taxpayer under P.L.1945, c.162, and which has a remaining recovery period of three or more years at the time the property is placed in service or use in this State; or

3. tangible personal property owned and used by the taxpayer at a business location outside this State which is moved into this State on or after the operative date of this act, for use as a component part of a new or expanded business facility located in this State; provided that the property is depreciable or amortizable personal property for income tax purposes, and has a remaining recovery period of three or more years at the time the property is placed in service or use in this State.

b. Property purchased for business relocation or expansion shall not include:

1. Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;
2. (2) Airplanes;
3. Property which is primarily used outside this State with that use being determined based upon the amount of time the property is actually used both within and without this State;
4. Property which is acquired incident to the purchase of the stock or assets of the seller unless for good cause shown, the director consents to waiving this disqualification; or
5. Property purchased on or after the operative date of this act, unless pursuant to a written contract to purchase executed prior to the operative date of this act, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use; provided that if the contract of purchase specifies a minimum purchase price the amount thereof shall be used to determine the qualified investment in such property under section 5 of this act if the property otherwise qualifies as property purchased for business relocation or expansion.

C. Property shall be deemed to have been purchased prior to a specified date only if:
(1) the physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the purchase prior to the specified date; or

(2) the machinery or equipment was owned by the taxpayer prior to the specified date, or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the specified date.

"Purchase" means any acquisition of property, including an acquisition pursuant to a lease, but only if:

a. the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or subsection (b) of section 707 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

b. the property is not acquired by one member of a controlled group from another member of the same controlled group. The director may waive this requirement if the property was acquired from a related party for its then fair market value; and

c. the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(1) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(2) under subsection (e) of section 1014 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1014.

"Related person" means:

a. a corporation, partnership, association or trust controlled by the taxpayer;

b. an individual, corporation, partnership, association or trust that is in control of the taxpayer;

c. a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

d. a member of the same controlled group as the taxpayer.

As used in the definition of related person and as is applicable to the definitions of purchase and small or mid-size business taxpayer, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; "control," with respect to a trust, means ownership, directly or indirectly, of 50% or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of
section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267, other than paragraph (3) of subsection (c) of that section.

"Small or mid-size business taxpayer" means a taxpayer that has an annual payroll, as calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), of [$2,000,000] $5,000,000 or less and annual gross receipts, as calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), of not more than [$6,000,000] $10,000,000 for the tax year in which property purchased for business relocation or expansion is placed in service or use by the taxpayer; provided that beginning with tax years commencing on and after January 1 next following the operative date of [this act] P.L.2002, c. (now pending before the Legislature as this bill) the director shall prescribe the amount of annual payroll and annual gross receipts which shall apply by increasing each such amount hereinabove by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins. The annual payroll of a taxpayer shall include the employees of its domestic and foreign affiliates, whether employed on a full-time, part-time, temporary, or other basis, during the preceding 12 months. If a taxpayer has not been in existence for 12 months, the payroll of the taxpayer shall be divided by the number of weeks, including fractions of a week, that it has been in business, and the result multiplied by 52. That amount shall then be added to the 12 month payrolls of its domestic and foreign affiliates to determine the annual payroll of the taxpayer for purposes of this definition. The annual gross receipts of a taxpayer shall include the annual gross receipts of its foreign and domestic affiliates. The annual gross receipts of a taxpayer which has been in business for three or more complete tax years means the average of the annual gross receipts of the business for the last three tax years. For purposes of this definition, the gross receipts of the taxpayer includes receipts from sales of tangible personal property and services, interests, rents, royalties, fees, commissions and receipts from any other source, but less returns and allowances, sales of fixed assets, interaffiliated transactions between a business and its domestic and foreign affiliates, and taxes collected for remittance to a third party, as shown on its books for federal income tax purposes. The annual receipts of a taxpayer that has been in business for less than three complete tax years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. "Affiliates"
includes all concerns that are affiliates of each other when either
directly or indirectly one concern controls the other or a third party or
parties controls both. In determining whether concerns are
independently owned and operated and whether or not affiliation
exists, the director shall consider all appropriate factors, including
common ownership, common management and contractual
relationships. "Concern" means any business entity organized for
profit (even if its ownership is in the hands of a nonprofit entity),
having a place of business located in this State, and which makes a
contribution to the economy of this State through payment of taxes,
or the sale or use in this State of tangible personal property, or the
procurement or providing of services in this State, or the hiring of
employees who work in this State. "Concern" includes but is not
limited to any person as defined in R.S.1:1-2.

"Tax year" means the fiscal or calendar accounting year of a
taxpayer.

(cf: P.L.1993, c.170, s.2)

18. Section 3 of P.L.1993, c.170 (C.54:10A-5.6) is amended to
read as follows:

3. a. A taxpayer shall be allowed a credit against the portion of the
tax imposed in section 5 of P.L.1945, c.162 (C.54:10A-5), that is
attributable to and the direct consequence of the taxpayer's qualified
investment in a new or expanded business facility in this State which
results in the creation of at least five new jobs in the case of a small or
mid-size business taxpayer, or at least 50 new jobs in the case of any
other taxpayer, provided that the median compensation of all new jobs
included in the taxpayer's determination of the new jobs factor shall
not be less than $27,000 per year, provided that beginning with tax
years commencing on and after January 1 next following the operative
date of this act the director shall adjust the median annual
compensation which shall apply as provided in subsection e. of this
section. The amount of this credit shall be determined and applied as
hereinafter provided.

b. The amount of the credit allowed shall be determined by
multiplying the amount of the taxpayer's "qualified investment,"
determined under section 5 of this act, in "property purchased for
business relocation or expansion” by the taxpayer's new jobs factor
determined under section 6 of this act. The product of this calculation
shall establish the maximum amount of credit allowed under this act
due to the qualified investment.

c. The amount of credit allowed shall be taken over a five year
period, at the rate of one-fifth of the amount thereof per tax year,
beginning with the tax year in which the taxpayer places the qualified
investment in service or use in this State.

d. For purposes of the credit allowed by this section, property shall
be considered placed in service or use in the earlier of the following
tax years:
(1) The tax year in which, under the taxpayer's depreciation
practice, the period for depreciation with respect to such property
begins; or
(2) The taxable year in which the property is placed in a condition
or state of readiness and availability for a specifically assigned
function.

e. Beginning with tax years commencing on and after January 1
next following the operative date of this act the director shall prescribe
the annual median compensation of all new jobs included in the
taxpayer's determination of new jobs factor by increasing the amount
of median compensation set forth in subsection a. of this section by an
annual inflation adjustment factor, which prescribed amount shall be
rounded to the next lowest multiple of $50. "Annual inflation
adjustment factor" means the factor calculated by dividing the
consumer price index for urban wage earners and clerical workers for
the nation, as prepared by the United States Department of Labor for
September of the calendar year prior to the calendar year in which the
tax year begins, by that index for September of the calendar year two
years prior to the calendar year in which the tax year begins.
(cf: P.L.1993, c.170, s.3)

19. Section 6 of P.L.1993, c.170 (C.54:10A-5.9) is amended to
read as follows:
6. a. The new jobs factor used to determine the amount of credit
allowed under this act shall be based on the number of new jobs
created in this State that are directly attributable to the qualified
investment of the taxpayer.

b. (1) For a taxpayer that is not a small or mid-size business
taxpayer, if 50 new jobs are created and filled during the tax year in
which the qualified investment is placed in service or use in this State,
the applicable new jobs factor shall be 0.005. For each 50 additional
new jobs over the initial 50, up to 1000 total new jobs, the applicable
new jobs factor of 0.005 shall be increased by adding thereto 0.005,
up to a maximum new jobs factor of 0.10.

(b) During each of the remaining four years of the five year credit
period, the taxpayer shall redetermine the new jobs factor for the tax
year on the annual return based on the average number of new
employees employed in new jobs during that tax year (determined on
a monthly basis) created as the direct result of the taxpayer's qualified
investment.

(2) For a taxpayer that is a small or mid-size business taxpayer,
if five new jobs are created and filled during the tax year in which the
qualified investment is placed in service or use in this State, the
applicable new jobs factor shall be \([0.005] \text{ 0.01}\). For each five
additional new jobs over the initial five, up to 100 total new jobs, the
applicable new jobs factor of \([0.005 \times 0.01]\) shall be increased by
adding thereto \([0.005 \times 0.01]\), up to a maximum new jobs factor of
\([0.10 \times 0.20]\).

(b) During each of the remaining four years of the five year credit
period, the taxpayer shall redetermine the new jobs factor for the tax
year on the annual return based on the average number of new
employees employed in new jobs during that tax year (determined on
a monthly basis) created as the direct result of the taxpayer's qualified
investment.

c. An employee's position shall be directly attributable to the
qualified investment if:

(1) the employee's service is performed or the employee's base of
operations is at the new or expanded business facility;
(2) the position did not exist prior to the construction, renovation,
expansion or acquisition of the business facility and the making of the
qualified investment; and
(3) but for the qualified investment, the position would not have
existed.

d. With the annual corporation business tax return filed under
P.L.1945, c.162, for each tax year during the five year credit period
for a qualified investment, the taxpayer shall certify:

(1) the new jobs factor for that tax year for the qualified
investment;
(2) the amount of the credit allowed for that year for the qualified
investment;
(3) that the qualified investment property continued to be used in
the business, or if any of it was disposed of during the year, the date
of disposition, and that such property was not disposed of prior to
expiration of its recovery period, as determined under section 5 of this
act; and
(4) that the new jobs are directly attributable to the qualified
investment, are filled by individuals who meet the definition of new
employee, and the median annual compensation of all new employees
is equal to or greater than the minimum median annual compensation
required by section 3 of this act.

e. With the annual return for the corporation business tax imposed
under P.L.1945, c.162, filed for the tax year in which the qualified
investment is first placed in service or use in this State, the taxpayer
shall estimate and certify the number of new jobs reasonably projected
to be created by it in this State within the period prescribed in
subsection g. of this section, that are, or will be directly attributable to
the qualified investment of the taxpayer.

f. The hours of part-time employees shall be aggregated to
determine the number of equivalent full-time employees for the
purpose of determining the new jobs factor pursuant to subsection b.
of this section but shall not be so aggregated for the purposes of subsection c. of this section.

g. With the annual return for the tax imposed under P.L.1945, c.162, filed for the third tax year in which the qualified investment is in service or use in this State, the taxpayer shall certify the actual number of new jobs created by it in this State, that are directly attributable to the qualified investment of the taxpayer.

(1) If the actual number of jobs created would result in a higher new jobs factor, the credit allowed under this act shall be redetermined and amended returns filed for the first and second tax years that the qualified investment was in service or use in this State.

(2) If the actual number of jobs created would result in a lower new jobs factor, the credit previously allowed under this act shall be redetermined and amended returns filed for the first and second tax years. Any additional taxes due under P.L.1945, c.162, shall be remitted with the amended returns filed with the director, together with any penalty and interest, for failure to pay any such tax when due as provided in the State Uniform Tax [Uniform] Procedure Law, R.S.54:48-1 et seq.

(cf: P.L.1993, c.170, s.6)

20. Section 8 of P.L.1993, c.170 (C.54:10A-5.11) is amended to read as follows:

8. a. (1) Property of a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of a mere change in the form of conducting the business as long as the property is retained in a business of a small or mid-size business taxpayer in this State, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the new or expanded business facility or facilities transferred, and the small or mid-size business taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier tax years.

(2) Property of a taxpayer that is not a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of a mere change in the form of conducting the business as long as the property is retained in a business of a taxpayer in this State, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the new or expanded business facility or facilities transferred, and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier tax years.

b. (1) Property of a small or mid-size business taxpayer shall be treated as disposed of under section 7 of this act by reason of a change in the form of conducting the business if the property is not retained
in a business of a small or mid-size business taxpayer in this State in which the small or mid-size business taxpayer retains a controlling interest.

(2) Property of a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of any transfer or sale to a successor small or mid-size business taxpayer which continues to operate the new or expanded business facility in this State. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this act for each subsequent tax year and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier years.

(3) Property of a business that is not a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of any transfer or sale to a successor taxpayer which continues to operate the new or expanded business facility in this State. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this act for each subsequent tax year and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier years.

(4) Property of a small or mid-size business taxpayer shall be treated as disposed of under section 7 by reason of any transfer or sale to a successor that is not a small or mid-size business taxpayer, whether or not the successor continues to operate the business in this State. Upon such transfer or sale, the successor shall not acquire any amount of credit under this act and the taxpayer-transferor shall redetermine, as required by this act, the amount of credit allowed in earlier years.

(cf: P.L.1993, c.170, s.8)

21. N.J.S.54A:8-6 is amended to read as follows:

54A:8-6. Requirements concerning returns, notices, records and statements. (a) General. The director may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The director may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the director may deem sufficient to show whether or not such person is liable under this act for tax or for collection of tax.

(b) Partnerships. (Every) (1) Each entity classified as a partnership for federal income tax purposes, including but not limited to a partnership [or] a limited liability partnership, or a limited liability company, having a resident [partner] owner of an interest in the entity or having any income derived from New Jersey sources, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information
as the director may by regulations and instructions prescribe. The
director shall prescribe a State return form that, at a minimum,
includes the name and address of each partner, member, or other
owner of an interest in the entity however designated, of the
[partnership] entity for taxable years ending on or after December 31,
1994. Such return shall be filed on or before the fifteenth day of the
fourth month following the close of each taxable year.

(2) (A) Each entity classified as a partnership for federal income
tax purposes, including but not limited to a partnership, a limited
liability partnership, or a limited liability company, that has more than
two owners shall at the prescribed time for making the return required
under this subsection make a payment of a filing fee of $150 for each
owner of an interest in the entity, up to a maximum of $250,000.

(B) Each entity required to make a payment pursuant to
paragraph (A) of this paragraph shall also make, at the same time
as making its payment pursuant to subparagraph (A) of this paragraph,
an installment payment of its filing fee for the succeeding return period
in an amount equal to 50% of the amount required to be paid pursuant
to subparagraph (A). The amount of the installment payment shall be
credited against the amount of the filing fee due for the succeeding
return period, or, if the amount of the installment payment exceeds the
amount of the filing fee due for the succeeding return period,
successive return periods.

(3) Each [partnership or limited liability partnership] entity
required to file a return under this subsection for any taxable year
shall, on or before the day on which the return for the taxable year is
required to be filed, furnish to each person who is a partner or other
owner of an interest in the entity however designated, or who holds an
interest in such [partnership] entity as a nominee for another person
at any time during that taxable year a copy of such information
required to be shown on such return as the director may prescribe.

(4) For the purposes of this subsection, "taxable year" means a year
or period which would be a taxable year of the partnership if it were
subject to tax under this act.

(c) Information at source. The director may prescribe regulations
and instructions requiring returns of information to be made and filed
on or before February 15 of each year as to the payment or crediting
in any calendar year of amounts of $100.00 or more to any taxpayer
under this act. Such returns may be required of any person, including
lessees or mortgagors of real or personal property, fiduciaries,
employers, and all officers and employees of this State, or of any
municipal corporation or political subdivision of this State, having the
control, receipt, custody, disposal or payment of interest, rents,
salaries, wages, premiums, annuities, compensations, remunerations,
emoluments or other fixed or determinable gains, profits or income,
extcept interest coupons payable to bearer. A duplicate of the
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statement as to tax withheld on wages, required to be furnished by an
employer to an employee, shall constitute the return of information
required to be made under this section with respect to such wages.
(d) Notice of qualification as receiver, et cetera. Every receiver,
trustee in bankruptcy, assignee for benefit of creditors, or other like
fiduciary shall give notice of his qualification as such to the director,
as may be required by regulation.
(cf: P.L.1995, c.96, s.14)

22. The following are repealed:
Sections 1 through 16, 18 and 19 of P.L.1973, c.31 (C.54:10D-1
et seq.); and
Sections 1 through 19 and 21 through 24 of P.L.1973, c.170
(C.54:10E-1 through 54:10E-19 and C.54:10E-21 through 54:10E-
24).

23. (New section) a. Notwithstanding the repeal of the "Savings
Institutions Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), and the
seq.), pursuant to section 22 of P.L. , c. (now pending before the
Legislature as this bill), their repeal shall not affect any obligation, lien
or duty to pay taxes, interest or penalties which have accrued or may
accrue by virtue of any taxes imposed pursuant to the provisions of the
laws repealed by section 22 of P.L. , c. , or which may be imposed
with respect to any redetermination, correction, recomputation or
deficiency assessment; and provided that all taxes and returns which
would have been due and payable for the tax period ending prior to the
enactment of P.L. , c. (now pending before the Legislature as this
bill) shall be due and payable as if the laws were in effect; and
provided that these repeals shall not affect the legal authority of the
State to audit records and assess and collect taxes due or which may
be due, together with such interest and penalties as have accrued or
would have accrued thereon under the provisions of the law repealed;
and provided that the repeal by section 22 of P.L. , c. , shall not
affect any determination of, or affect any proceeding for, the
enforcement thereof.

b. In the case of a taxpayer that was taxpayer as defined pursuant
to P.L.1973, c.170 (C.54:10E-1 et seq.), for the fiscal or calendar
accounting period next ending after the effective date of this section,
"basis of the facts shown on the return of the taxpayer for, and the law
applicable to, the preceding fiscal or calendar accounting year” shall,
for the purposes of paragraph (1) of subsection d. of section 5 of
P.L.1981, c.184 (C.54:10A-15.4), for the fiscal or calendar year next
beginning after the effective date of this act, be deemed to be the basis
of the facts shown on the return of the taxpayer for, and the law
applicable to, the preceding fiscal or calendar accounting year pursuant
to P.L.1973, c.170 (C.54:10E-1 et seq.).

c. In the case of a taxpayer that was a taxpayer as defined pursuant
to P.L.1973, c.31 (C.54:10D-1 et seq.), for the fiscal or calendar
accounting period next ending after the effective date of this section,
"basis of the facts shown on the return of the taxpayer for, and the law
applicable to, the preceding fiscal or calendar accounting year" shall,
for the purposes of paragraph (1) of subsection d. of section 5 of
P.L.1981, c.184 (C.54:10A-15.4), for the fiscal or calendar year next
beginning after the effective date of this act, be deemed to be the basis
of the facts shown on the return of the taxpayer for, and the law
applicable to, the preceding fiscal or calendar accounting year pursuant
to P.L.1973, c.31 (C.54:10D-1 et seq.).

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

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

25. (New section) a. (1) For the purposes of determining the
sales fraction pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),
and for the purposes of the definition of New Jersey gross receipts
pursuant to section 7 of P.L. c. (C. ) (now pending before
the Legislature as this bill), the portion of receipts received from an
investment company arising from the sale of management,
administrative or distribution services to that investment company shall
be deemed to arise from services performed within the State equal to
the product of:

(a) the total of the receipts from the sale of those services; and

(b) a fraction, the numerator of which is the sum of the monthly
percentages determined for each month of the investment company's
taxable year for federal income tax purposes which taxable year ends
within the privilege period of the taxpayer (excluding any month
during which the investment company had no outstanding shares) and
the denominator of which is the number of those monthly percentages.

(2) For the purposes of this subsection:
"Monthly percentage" for each month shall be determined by
dividing the number of shares in the investment company that are
owned on the last day of the month by the number of shareholders that
are residents of this State by the total number of shares in the
investment company outstanding on that date;

"Resident" means, in the case of an individual, "resident taxpayer"
pursuant to N.J.S.54A:1-2, in the case of an estate or trust "resident
estate or trust" pursuant to N.J.S.54A:1-2; a business entity is resident
in this State if the location of the actual seat of management or control
is in this State. It shall be presumed that the residence of a
shareholder, with respect to any month, is the shareholder's mailing
address on the records of the investment company as of the last day of
the month;

"Investment company" means a regulated investment company, as
defined in section 851 of the federal Internal Revenue Code of 1986,
26 U.S.C. s.851, and a partnership to which subsection (a) of section
7704 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.7704
applies by virtue of paragraph (3) of that section and that meets the
requirements of subsection (b) of section 851 of the federal Internal
Revenue Code of 1986, 26 U.S.C. s.851. This definition shall be
applied to the taxable year for federal income tax purposes of the
business entity that is asserted to constitute an investment company
that ends within the privilege period of the taxpayer;

"Receipts from an investment company" include amounts received
directly from an investment company as well as amounts received from
the shareholders in that investment company, in their capacity as
shareholders.

"Management services" means the rendering of investment advice
to an investment company, making determinations as to when sales
and purchases of securities are to be made on behalf of an investment
company, or the selling or purchasing of securities constituting assets
of an investment company, and related activities, but only if the
activity is performed pursuant to a contract with the investment
company entered into pursuant to section 15(a) of the federal
Investment Company Act of 1940 (54 Stat. 789), as amended;

"Distribution services" means the services of advertising, servicing
investor accounts including redemptions, marketing shares or selling
shares of an investment company; provided however, that in the case
of advertising, servicing investor accounts including redemptions, or
marketing shares, only if that service is performed by a person who is,
or was in the case of a closed end company, also engaged in the
service of selling those shares. In the case of an open end company,
the service of selling shares shall be performed pursuant to a contract
entered into pursuant to section 15(b) of the federal Investment
Company Act of 1940 (54 Stat. 789), as amended;

"Administration services" includes clerical, accounting,
bookkeeping, data processing, internal auditing, legal and tax services
performed for an investment company but only if the provider of the
service, during the privilege period in which the service is sold, also
sells management or distribution services to the investment company.

b. (1) For the purpose of determining the sales fraction pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), and for the purposes of the definition of New Jersey gross receipts pursuant to section 7 of P.L. , c. (C. ) (now pending before the Legislature as this bill) for a taxpayer that is a registered securities or commodities broker or dealer, the following receipts shall be deemed to arise from services performed within this State:

(a) Receipts constituting brokerage commissions derived from the execution of securities or commodities purchase or sales orders for the accounts of customers shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying the commissions.

(b) Receipts constituting margin interest earned on behalf of brokerage accounts shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying the margin interest.

(c) Gross income, including any accrued interest or dividends, from principal transactions for the purchase or sale of stocks, bonds, foreign exchange and other securities or commodities (including futures and forward contracts, options and other types of securities or commodities derivatives contracts) shall be deemed to arise from services performed within this State to the extent that production credits are awarded to branches, offices or employees of the taxpayer within this State as a result of those principal transactions. For purposes of this subsection, "production credits" means credits granted pursuant to the internal accounting system used by the taxpayer to measure the amount of revenue that should be awarded to a particular branch or office or employee of the taxpayer which is based, at least in part, on the branch's, the office's or the employees' particular activities. Upon request, the taxpayer shall be required to furnish a detailed explanation of such internal accounting system to the director.

(d) Receipts constituting fees earned by the taxpayer for advisory services to a customer in connection with the underwriting of securities for such customer (such customer being the entity which is contemplating issuing or is issuing securities) or fees earned by the taxpayer for managing an underwriting shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying the fees.

(e) Receipts constituting the primary spread or selling concession from underwritten securities shall be deemed to arise from services performed within this State to the extent that production credits are awarded to branches, offices or employees of the taxpayer within the
State as a result of the sale of the underwritten securities. For the
purposes of this subsection, "primary spread" means the difference
between the price paid by the taxpayer to the issuer for the securities
being marketed and the price received from the subsequent sale of the
underwritten securities at the initial public offering price, less any
selling concession and any fees paid to the taxpayer for advisory
services or any manager's fees, if the fees are not paid by the customer
to the taxpayer separately; "public offering price" means the price
agreed upon by the taxpayer and the issuer at which the securities are
to be offered to the public; and "selling concession" means the amount
paid to the taxpayer for participating in the underwriting of a security
if the taxpayer is not the lead underwriter.

(f) Receipts constituting interest earned by the taxpayer on loans
and advances made by the taxpayer to a corporation affiliated with the
taxpayer but with which the taxpayer is not permitted or required to
file a combined report pursuant to the "Corporation Business Tax Act
(1945)" shall be deemed to arise from services performed at the
principal place of business of the affiliated corporation.

(g) Receipts constituting account maintenance fees shall be deemed
to arise from services performed at the mailing address in the records
of the taxpayer of the customer who is responsible for paying the
account maintenance fees.

(h) Receipts constituting fees for management or advisory services,
including fees for advisory services in relation to a merger or
acquisition activities but excluding fees paid for services described in
subsection a. of this section, shall be deemed to arise from services
performed at the mailing address in the records of the taxpayer of the
customer who is responsible for paying the fees.

(2) For purposes of this subsection:
"Securities" has the meaning provided by paragraph (2) of
subsection (c) of section 475 of the federal Internal Revenue Code of
1986, 26 U.S.C. s.475;
"Commodities" has the meaning provided by paragraph (2) of
subsection (e) of section 475 of the federal Internal Revenue Code of
1986, 26 U.S.C. s.475; and
"Registered securities or commodities broker or dealer" means a
broker or dealer registered as such by the federal Securities and
Exchange Commission or the federal Commodities Futures Trading
Commission.

(3) If a taxpayer receives any of the receipts enumerated in
paragraph (1) of this subsection as a result of a securities
correspondent relationship that the taxpayer has with another
registered securities or commodities broker or dealer and the taxpayer
acted in this relationship as the clearing firm, those receipts shall be
deemed to arise from services performed within this State to the extent
set forth in paragraph (1) of this subsection. The amount of those
receipts shall exclude the amount the taxpayer is required to pay to the
correspondent firm for the correspondent relationship. If the taxpayer
receives any of the receipts enumerated in paragraph (1) of this
subsection as a result of a securities correspondent relationship the
taxpayer has with another registered securities or commodities broker
or dealer and the taxpayer acted in this relationship as the introducing
firm, those receipts shall be deemed to arise from services performed
within this State to the extent set forth in paragraph (1) of this
subsection.

(4) If, for purposes of paragraph (1) of this subsection, the
taxpayer is unable from its records to determine the mailing address of
the customer, the receipts enumerated in subsection (1) shall be
deemed to arise from services performed at the branch or office of the
taxpayer that generates the transaction for the customer that generated
the receipts.

26. (New section) Notwithstanding any provision of subsection (k)
of section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal
Revenue Code, including but not limited to 26 U.S.C. s.381 or any
successor or equivalent provision, that permits a corporation to use
the net operating losses of another for federal income tax purposes
following certain transactions, including but not limited to those
qualifying as reorganizations under the provisions of subparagraphs
(A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of section
368 of the federal Internal Revenue Code, 26 U.S.C. s.368, a net
operating loss for a privilege period ending after June 30, 1984, may
be carried over and allowed as a deduction only by the corporation
that sustained the loss; provided however, that in the case of a merger
of two or more corporations pursuant to statute of this State or any
other jurisdiction, including a merger that has the effect of changing
the jurisdiction of incorporation, the net operating loss may be carried
over by the corporation that sustained the loss and that is also the
surviving corporation following the merger. No net operating loss
shall be allowed as a deduction by a corporation resulting from a
consolidation pursuant to statute of this State or of any other
jurisdiction.

27. This act shall take effect immediately and apply to privilege
periods and taxable years beginning on or after January 1, 2002,
provided however that section 26 shall apply to privilege periods
ending after June 30, 1984.

STATEMENT

This bill, designated the Business Tax Reform Act, revises and
updates the corporation business tax to close a number of loopholes
and limit certain tax benefits. In doing so the bill makes some fundamental reforms to the New Jersey business tax structure.

The New Jersey system of taxes on business income is broken. Twenty years ago, the corporation business tax raised $838 million – about 15 percent of the State’s total tax revenue. Just five years ago, this proportion had dropped to 8 percent and by State Fiscal Year 2001, it stood at 6.6 percent.

This is largely the result of proliferating loopholes that have permitted many profitable companies to avoid paying virtually any business tax. In 1999, the last tax year for which statistics are available, nearly 77 percent of all companies paid only the statutory minimum tax of $200. Of the 50 companies with the largest payrolls in New Jersey, 30 paid only the $200 minimum. That is less tax than would be paid by a single parent who had one child and who earned $25,000 a year. Ten of these 50 companies, some of which are headquartered here, had an aggregate payroll of $3.5 billion, told their shareholders they had $13.3 billion in profits, $2 billion of which profits would have been attributed to New Jersey profits, and subject to our corporation business tax, based on how they apportion their income among various states. That $2 billion in New Jersey profits would have generated $177 million in corporation business tax revenues. But not one of those 10 companies paid more than the $200 minimum in corporate business tax in 2000. That is not fair and that is not equitable.

Tax loopholes allow multi-state corporations to transfer their profits to related out-of-State and offshore companies. Many of these companies use these loopholes to reduce their net income to little or nothing, thus avoiding the New Jersey taxation.

The corporation business tax does not reach some out-of-state companies that do business here. Instead, these companies are able to take advantage of the state’s lucrative market, extensive infrastructure, and geographic prominence, while paying no corporate taxes to New Jersey. If some companies exploit loopholes and avoid paying their fair share then the corporate citizens who pay their fair share are put at a competitive economic disadvantage with companies that evade or exploit the system. This bill provides a level playing field for all businesses, large and small, that invest in New Jersey, employ our citizens and do business here.

This bill corrects these core problems with the tax structure in three ways.

First, it closes numerous loopholes that allow profitable companies to reduce their net New Jersey income on paper and avoid their true tax liability and avoid paying their fair share.

Second, it provides an alternative minimum assessment to accurately measure a company’s economic presence in New Jersey.

The bill allows companies to assess their tax liability with a formula
that uses either reported gross receipts or gross profits as a
determining factor. Companies will then pay this alternative
assessment, instead of the current corporation business tax, if it is
larger than the corporation business tax liability.

Third, the bill establishes a revenue stream that captures
enforcement and processing costs that New Jersey incurs from
processing the vast network of limited liability companies and
partnerships.

At the same time, the bill takes affirmative steps to protect small
businesses. The bill reduces by more than 13 percent the rate at which
small businesses are taxed under the corporation business tax, resulting
in a tax decrease for approximately 20,000 small businesses. Further,
the bill includes provisions designed to encourage job creation by
doubling the new jobs factor and expanding the eligibility for midsized
businesses through an expanded New Jobs Investment Tax Credit
program.