

ASSEMBLY, No. 1676

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

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SYNOPSIS

Provides single sales fraction for corporation business tax income allocation formula and establishes airline-specific sales fraction.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

(Sponsorship Updated As Of: 1/7/2011)

1 AN ACT modifying the allocation of the entire net income of
2 corporation business taxpayers, amending and supplementing
3 P.L.1945, c.162.
4

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

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

10 6. The portion of **[its]** a taxpayer's entire net worth to be used
11 as a measure of the tax imposed by subsection (a) of section 5 of
12 P.L.1945, c.162 (C.54:10A-5), and the portion of its entire net
13 income to be used as a measure of the tax imposed by subsection (c)
14 of section 5 of P.L.1945, c.162 (C.54:10A-5), shall be determined
15 by multiplying such entire net worth and entire net income,
16 respectively, by an allocation factor which, for privilege periods
17 ending before July 1, 2010, is the property fraction, plus twice the
18 sales fraction plus the payroll fraction and the denominator of
19 which is four, and which, for privilege periods ending on or after
20 July 1, 2010, is the sum of the portions of the property fraction, the
21 sales fraction, and the payroll fraction determined in accordance
22 with the following schedule:

23 for privilege periods ending on or after July 1, 2010 but before
24 July 1, 2011, 15% of the property fraction plus 70% of the
25 sales fraction plus 15% of the payroll fraction,

26 for privilege periods ending on or after July 1, 2011 but before
27 July 1, 2012, 5% of the property fraction plus 90% of the
28 sales fraction plus 5% of the payroll fraction, and

29 for privilege periods ending on or after July 1, 2012, 100% of the
30 sales fraction;

31 except as the director may determine pursuant to section 8 of
32 P.L.1945, c.162 (C.54:10A-8), that is:

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (1) sales of its tangible personal property located within this
2 State at the time of the receipt of or appropriation to the orders
3 where shipments are made to points within this State,

4 (2) sales of tangible personal property located without the State
5 at the time of the receipt of or appropriation to the orders where
6 shipment is made to points within the State,

7 (3) (Deleted by amendment.)

8 (4) services performed within the State,

9 (5) rentals from property situated, and royalties from the use of
10 patents or copyrights, within the State,

11 (6) all other business receipts (excluding dividends excluded
12 from entire net income by paragraph (1) of subsection (k) of section
13 4 of P.L.1945, c.162 (C.54:10A-4)) earned within the State,

14 divided by the total amount of the taxpayer's receipts, similarly
15 computed, arising during such period from all sales of its tangible
16 personal property, services, rentals, royalties and all other business
17 receipts, whether within or without the State.

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

24 In the case of a banking corporation which maintains a regular
25 place of business outside this State other than a statutory office, and
26 which elects to take the exclusion from net worth provided in
27 subsection (d) of section 4 of P.L.1945, c.162 (C.54:10A-4) or the
28 deduction from entire net income provided in paragraph (4) of
29 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), the
30 allocation factor shall be computed and applied in accordance with
31 section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that
32 the numerators and the denominators of the fractions described in
33 (A), (B) or (C) above shall include all amounts attributable, directly
34 or indirectly, to the production of the eligible net income of an
35 international banking facility as defined in paragraph (4) of
36 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4),
37 whether or not such amounts are otherwise attributable to this State.
38 (cf: P.L.2008, c.120, s.2)

39
40 2. (New Section) Notwithstanding the provisions of section 6
41 of P.L.1945, c.162 (C.54:10A-6), the sales fraction for the
42 transportation revenues of a taxpayer that is an airline shall be
43 determined as the ratio of revenue miles in this State divided by
44 total revenue miles; provided however, that if a taxpayer that is an
45 airline is engaged in the transportation of passengers, the
46 transportation of freight, or the rental of aircraft, the ratio under this
47 section shall be determined by means of an average of a passenger

1 revenue mile fraction, freight revenue mile fraction, and rental
2 revenue mile fraction weighted to reflect the person's relative gross
3 receipts from passenger transportation, freight transportation, and
4 rentals.

5

6 3. This act shall take effect immediately; provided however,
7 that section 2 shall apply to privilege periods ending on or after July
8 1, 2010.

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STATEMENT

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13 This bill modifies the corporation business tax formula used to
14 determine the portion of the income of a corporation subject to tax
15 by the State of New Jersey from a three-factor formula to a single
16 sales factor formula, and establishes a specialized sales fraction for
17 airlines.

18 Each state that imposes a corporate income tax determines the
19 portion of the total income of a corporation subject to state tax by
20 using formulas that measure specific activities of the corporation
21 assigned to that state. The portion of the income of the corporation
22 subject to tax by a state is determined by the proportion of some
23 activity in the state to the total of such activity of the corporation.

24 The New Jersey corporation business tax employs a three-
25 fraction formula that apportions a share of a corporation's income
26 to this State based on a weighted average of the following fractions:
27 (1) a corporation's property in this State over the corporation's total
28 property; (2) a corporation's sales in this State over the
29 corporation's total sales; and (3) the corporation's payroll in this
30 State over the corporation's total payroll. Currently, the sales
31 fraction accounts for 50% of the apportionment and the property
32 and payroll fractions each account for 25% of the apportionment.

33 This bill replaces the three-factor formula with a single sales
34 factor formula. The change is phased-in over three years, beginning
35 with privilege periods ending after July 1, 2010. For that year, the
36 sales fraction will account for 70% of the apportionment and the
37 property and payroll fractions each will account for 15% of the
38 apportionment. For privilege periods ending after July 1, 2011, the
39 sales fraction will increase to 90% and the weights of property and
40 payroll will each account for 5% of the apportionment. For
41 privilege periods ending after July 1, 2012, the sales fraction will
42 account for 100% of the apportionment.

43 In addition, certain industries have specialized formulas adopted
44 by regulation which more appropriately measure taxpayers' relative
45 activity in New Jersey than the standard formula. Currently, the
46 sales fraction for airlines is determined based on the ratio of
47 departures from New Jersey to total departures, weighted as to cost
48 and value of aircraft by type where weighting would give a fairer,

1 more reasonable business allocation factor.

2 This bill codifies a modified sales fraction formula for airlines.

3 Under its provisions, the current sales fraction based on the ratio of

4 departures is replaced by a sales fraction determined as the ratio of

5 an airline's revenue miles in this State divided by an airline's total

6 revenue miles.