

# ASSEMBLY, No. 1947

## STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblyman JON M. BRAMNICK**

**District 21 (Morris, Somerset and Union)**

**Assemblyman ERIK PETERSON**

**District 23 (Hunterdon, Somerset and Warren)**

**Co-Sponsored by:**

**Assemblyman Wirths**

**SYNOPSIS**

Eliminates minimum corporation business tax on New Jersey S corporations.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 2/26/2019)**

1 AN ACT eliminating the minimum corporation business tax on New  
 2 Jersey S corporations, amending P.L.1945, c.162.

3  
 4 **BE IT ENACTED** by the Senate and General Assembly of the State  
 5 of New Jersey:

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

9 5. The franchise tax to be annually assessed to and paid by  
 10 each taxpayer shall be the greater of the amount computed pursuant  
 11 to this section or the alternative minimum assessment computed  
 12 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided  
 13 however, that in the case of a taxpayer that is a New Jersey S  
 14 corporation, an investment company, a professional corporation  
 15 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a  
 16 similar corporation for profit organized for the purpose of rendering  
 17 professional services under the laws of another state, or a person  
 18 operating on a cooperative basis under Part I of Subchapter T of the  
 19 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,  
 20 there shall be no alternative minimum assessment computed  
 21 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

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

27 (a) That portion of its entire net worth as may be allocable to  
 28 this State as provided in section 6, multiplied by the following  
 29 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated  
 30 net worth; 4/10 of a mill per dollar on the second \$100,000,000.00;  
 31 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a  
 32 mill per dollar on all amounts of allocated net worth in excess of  
 33 \$300,000,000.00; provided, however, that with respect to reports  
 34 covering accounting or privilege periods set forth below, the rate  
 35 shall be that percentage of the rate set forth in this subsection for  
 36 the appropriate year:

37

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
38 April 1, 1983	75%
39 July 1, 1984	50%
40 July 1, 1985	25%
41 July 1, 1986	0

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

**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 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3  
2 1/4% of its entire net income or such portion thereof as may be  
3 allocable to this State as provided in section 6 of P.L.1945,  
4 c.162 (C.54:10A-6) plus such portion thereof as is specifically  
5 assigned to this State as provided in section 5 of P.L.1993,  
6 c.173 (C.54:10A-6.1); provided, however, that with respect to  
7 reports covering accounting or privilege periods or parts thereof  
8 ending after December 31, 1967, the rate shall be 4 1/4%; and that  
9 with respect to reports covering accounting or privilege periods or  
10 parts thereof ending after December 31, 1971, the rate shall be 5  
11 1/2%; and that with respect to reports covering accounting or  
12 privilege periods or parts thereof ending after December 31, 1974,  
13 the rate shall be 7 1/2%; and that with respect to reports covering  
14 privilege periods or parts thereof ending after December 31, 1979,  
15 the rate shall be 9%; provided however, that for a taxpayer that has  
16 entire net income of \$100,000 or less for a privilege period and is  
17 not a partnership the rate for that privilege period shall be 7 1/2%  
18 and provided further that for a taxpayer that has entire net income  
19 of \$50,000 or less for a privilege period and is not a partnership the  
20 rate for that privilege period shall be 6 1/2%.

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

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

29 (ii) For a taxpayer that has entire net income in excess of  
30 \$100,000 for the privilege period, for privilege periods ending on or  
31 after July 1, 1998, but on or before June 30, 2001, the rate shall be  
32 2%, for privilege periods ending on or after July 1, 2001, but on or  
33 before June 30, 2006, the rate shall be 1.33%, for privilege periods  
34 ending on or after July 1, 2006, but on or before June 30, 2007, the  
35 rate shall be 0.67%, and for privilege periods ending on or after July  
36 1, 2007 there shall be no rate of tax imposed under this paragraph;  
37 and

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

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

1 portion thereof as is specifically assigned to this State as provided  
 2 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

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

12 (d) Provided, however, that the franchise tax to be annually  
 13 assessed to and paid by any investment company or real estate  
 14 investment trust, which has elected to report as such and has filed  
 15 its return in the form and within the time provided in this act and  
 16 the rules and regulations promulgated in connection therewith,  
 17 shall, in the case of an investment company, be measured by 40% of  
 18 its entire net income and 40% of its entire net worth, and in the case  
 19 of a real estate investment trust, by 4% of its entire net income and  
 20 15% of its entire net worth, at the rates hereinbefore set forth for the  
 21 computation of tax on net income and net worth, respectively, but in  
 22 no case less than \$250, and further provided, however, that the  
 23 franchise tax to be annually assessed to and paid by a regulated  
 24 investment company which for a period covered by its report  
 25 satisfies the requirements of Chapter 1, Subchapter M, Part I,  
 26 Section 852(a) of the federal Internal Revenue Code shall be \$250.

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

35

36 Period Beginning	Domestic	Foreign
37 In Calendar Year	Corporation	Corporation
	Minimum Tax	Minimum Tax
39 1994	\$ 50	\$100
40 1995	\$100	\$200
41 1996	\$150	\$200
42 1997	\$200	\$200
43 1998	\$200	\$200
44 1999	\$200	\$200
45 2000	\$200	\$200
46 2001	\$210	\$210

47 and for calendar years 2002 through 2005 the minimum tax for all  
 48 taxpayers shall be \$500, and for calendar year 2006 and thereafter

1 the minimum tax shall be based on the New Jersey gross receipts, as  
 2 defined for the purposes of this section pursuant to section 7 of  
 3 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the  
 4 following schedule:

	New Jersey Gross Receipts:	Minimum Tax:
6	Less than \$100,000	\$500
7	\$100,000 or more but	
8	less than \$250,000	\$750
9	\$250,000 or more but	
10	less than \$500,000	\$1,000
11	\$500,000 or more but	
12	less than \$1,000,000	\$1,500
13	\$1,000,000 or more	\$2,000

14  
 15  
 16 provided however, that for a taxpayer that is a member of an  
 17 affiliated group or a controlled group pursuant to section 1504 or  
 18 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
 19 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or  
 20 more for the privilege period, the minimum tax shall be \$2,000 for  
 21 the privilege period.

22 Provided however, for privilege periods beginning on or after  
 23 January 1, 2010 a taxpayer that is a New Jersey S corporation shall  
 24 not be assessed a minimum tax pursuant to this subsection.

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

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

34 (1) that is a limited liability company or foreign limited liability  
 35 company classified as a partnership for federal income tax purposes  
 36 shall be the amount determined pursuant to the provisions of section  
 37 3 of P.L.2001, c.136 (C.54:10A-15.6); or

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

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

47 (i) (Deleted by amendment, P.L.2008, c.120)  
 48 (cf: P.L.2008, c.120, s.1)

1       2. This act shall take effect immediately.

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3

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STATEMENT

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6       This bill eliminates the minimum corporation business tax on  
7 New Jersey S corporations.

8       At present, a New Jersey S corporation is subject to the  
9 following minimum corporation business tax according to the  
10 amount of its New Jersey gross receipts.

11       New Jersey Gross Receipts:	Minimum Tax:
12       Less than \$100,000	\$500
13       \$100,000 or more but less than \$250,000	\$750
14       \$250,000 or more but less than \$500,000	\$1,000
15       \$500,000 or more but less than \$1,000,000	\$1,500
16       \$1,000,000 or more	\$2,000

17       The purpose of this bill is to lessen the burden of double taxation  
18 upon S corporation shareholders.

19       The bill will apply to privilege periods beginning on or after  
20 January 1, 2010.