

ASSEMBLY, No. 206

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywomen WEINBERG and GILL

1 AN ACT providing a credit against the corporation business tax for
2 taxpayers supporting child care facilities for employees, amending
3 and supplementing 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. (New section) A taxpayer shall be allowed a credit against the
9 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
10 in an amount equal to

11 a. 50% of the net costs expended by the taxpayer during the fiscal
12 or calendar accounting year (referred to hereafter as the "tax year") for
13 the operation and maintenance by the taxpayer of a nonprofit child
14 care center for children of the taxpayer's employees plus 50% of the
15 amount of depreciation reported to the United States Treasury
16 Department for capital expenditures for the construction or renovation
17 of such a child care center for the tax year; provided that:

18 (1) the child care center has been issued a valid license pursuant to
19 law;

20 (2) children of the taxpayer's employees utilize the center on a
21 regular basis;

22 (3) at least 50% of the employees whose children utilize the child
23 care center are not stockholders who own more than 10% in value of
24 the stock of the employer;

25 (4) The child care program benefits a group of employees who
26 qualify under a classification set up by the employer which is not
27 discriminatory in favor of highly compensated individuals, officers,
28 shareholders, owners or their dependents; and

29 (5) at least 80% of the children utilizing the child care center are
30 children of the taxpayer's employees; or

31 b. 50% of the contributions made by the taxpayer during the tax
32 year to a nonprofit child care center not operated by the taxpayer;

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

Matter underlined thus is new matter.

1 provided that:

2 (1) the child care center has been issued a valid license pursuant to
3 law;

4 (2) at least 50% of the employees whose children utilize the child
5 care center are not stockholders who own more than 10% in value of
6 the stock of the employer; and

7 (3) the child care program benefits a group of employees who
8 qualify under a classification set up by the employer which is not
9 discriminatory in favor of highly compensated individuals, officers,
10 shareholders, owners of their dependents; or

11 c. 50% of the contributions made by the taxpayer during the tax
12 year to be used in New Jersey toward the purchase by the taxpayer's
13 employees of child care for the employees' children from a nonprofit
14 licensed child care provider other than that provided for in subsections
15 a. and b. of this section; provided that the child care program benefits
16 a group of employees who qualify under a classification set up by the
17 employer which is not discriminatory in favor of highly compensated
18 individuals, officers, shareholders, owners or their dependents.

19 As used in this section "highly compensated individuals" means
20 those individuals who, in the aggregate, receive the top 25% of all
21 employee compensation paid by the taxpayer.

22 The amount of the credit applied under this section against the tax
23 imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall
24 not reduce the tax liability to an amount less than the statutory
25 minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

26

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

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

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

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

36 (c) "Corporation" shall mean any corporation, joint-stock company
37 or association and any business conducted by a trustee or trustees
38 wherein interest or ownership is evidenced by a certificate of interest
39 or ownership or similar written instrument.

40 (d) "Net worth" shall mean the aggregate of the values disclosed
41 by the books of the corporation for (1) issued and outstanding capital
42 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
43 profits, and (4) surplus reserves which can reasonably be expected to
44 accrue to holders or owners of equitable shares, not including
45 reasonable valuation reserves, such as reserves for depreciation or
46 obsolescence or depletion. Notwithstanding the foregoing, net worth

1 shall not include any deduction for the amount of the excess
2 depreciation described in paragraph (2)(F) of subsection (k) of this
3 section. The foregoing aggregate of values shall be reduced by 50%
4 of the amount disclosed by the books of the corporation for investment
5 in the capital stock of one or more subsidiaries, which investment is
6 defined as ownership (1) of at least 80% of the total combined voting
7 power of all classes of stock of the subsidiary entitled to vote and (2)
8 of at least 80% of the total number of shares of all other classes of
9 stock except nonvoting stock which is limited and preferred as to
10 dividends. In the case of investment in an entity organized under the
11 laws of a foreign country, the foregoing requisite degree of ownership
12 shall effect a like reduction of such investment from net worth of the
13 taxpayer, if the foreign entity is considered a corporation for any
14 purpose under the United States federal income tax laws, such as (but
15 not by way of sole examples) for the purpose of supplying deemed
16 paid foreign tax credits or for the purpose of status as a controlled
17 foreign corporation. In calculating the net worth of a taxpayer
18 entitled to reduction for investment in subsidiaries, the amount of
19 liabilities of the taxpayer shall be reduced by such proportion of the
20 liabilities as corresponds to the ratio which the excluded portion of the
21 subsidiary values bears to the total assets of the taxpayer.

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

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

36 (e) "Indebtedness owing directly or indirectly" shall include,
37 without limitation thereto, all indebtedness owing to any stockholder
38 or shareholder and to members of his immediate family where a
39 stockholder and members of his immediate family together or in the
40 aggregate own 10% or more of the aggregate outstanding shares of
41 the taxpayer's capital stock of all classes.

42 (f) "Investment company" shall mean any corporation whose
43 business during the period covered by its report consisted, to the
44 extent of at least 90% thereof of holding, investing and reinvesting in
45 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
46 other securities for its own account, but this shall not include any

1 corporation which: (1) is a merchant or a dealer of stocks, bonds and
2 other securities, regularly engaged in buying the same and selling the
3 same to customers; or (2) had less than 90% of its average gross
4 assets in New Jersey, at cost, invested in stocks, bonds, debentures,
5 mortgages, notes, patents, patent rights or other securities or
6 consisting of cash on deposit during the period covered by its report;
7 or (3) is a banking corporation or a financial business corporation as
8 defined in the Corporation Business Tax Act.

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

13 (h) "Taxpayer" shall mean any corporation required to report or to
14 pay taxes, interest or penalties under this act.

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

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

21 (k) "Entire net income" shall mean total net income from all
22 sources, whether within or without the United States, and shall include
23 the gain derived from the employment of capital or labor, or from both
24 combined, as well as profit gained through a sale or conversion of
25 capital assets. For the purpose of this act, the amount of a taxpayer's
26 entire net income shall be deemed prima facie to be equal in amount to
27 the taxable income, before net operating loss deduction and special
28 deductions, which the taxpayer is required to report to the United
29 States Treasury Department for the purpose of computing its federal
30 income tax; provided, however, that in the determination of such entire
31 net income,

32 (1) Entire net income shall exclude for the periods set forth in
33 paragraph (2)(F)(i) of this subsection, any amount, except with respect
34 to qualified mass commuting vehicles as described in section
35 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
36 prior to January 1, 1984, which is included in a taxpayer's federal
37 taxable income solely as a result of an election made pursuant to the
38 provisions of paragraph (8) of that section.

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

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

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

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

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

9 (E) 90% of interest on indebtedness owing directly or indirectly to
10 holders of 10% or more of the aggregate outstanding shares of the
11 taxpayer's capital stock of all classes; except that such interest may, in
12 any event, be deducted:

13 (i) Up to an amount not exceeding \$1,000.00;

14 (ii) In full to the extent that it relates to bonds or other evidences
15 of indebtedness issued, with stock, pursuant to a bona fide plan of
16 reorganization, to persons, who, prior to such reorganization, were
17 bona fide creditors of the corporation or its predecessors, but were not
18 stockholders or shareholders thereof;

19 (iii) In full to the extent that it relates to debt of a financial
20 business corporation owed to an affiliate corporation; provided that
21 such interest rate does not exceed 2% over prime rate; the prime rate
22 to be determined by the Commissioner of Banking;

23 (iv) In full to the extent that it relates to financing of motor vehicle
24 inventory held for sale to customers; provided said indebtedness is
25 owed to a taxpayer customarily and routinely providing this type of
26 financing;

27 (v) In full to the extent it relates to debt of a banking corporation
28 to a bank holding company, of which the banking corporation is a
29 subsidiary, or to a debt of a banking corporation to another banking
30 corporation with respect to federal funds transactions governed by
31 section 23A of the Federal Reserve Act (12 U.S.C. §371c.) when both
32 banking corporations are subsidiaries of the same bank holding
33 company, as defined in 12 U.S.C. §1841.

34 (F) (i) The amount by which depreciation reported to the United
35 States Treasury Department for property placed in service on and after
36 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
37 years beginning on and after the effective date of P.L.1993, c.172, for
38 purposes of computing federal taxable income in accordance with
39 section 168 of the Internal Revenue Code in effect after December 31,
40 1980, exceeds the amount of depreciation determined in accordance
41 with the Internal Revenue Code provisions in effect prior to January
42 1, 1981, but only with respect to a taxpayer's accounting period ending
43 after December 31, 1981; provided, however, that where a taxpayer's
44 accounting period begins in 1981 and ends in 1982, no modification
45 shall be required with respect to this paragraph (F) for the report filed
46 for such period with respect to property placed in service during that

1 part of the accounting period which occurs in 1981.

2 (ii) For the periods set forth in subparagraph (F)(i) of this
3 subsection, any amount, except with respect to qualified mass
4 commuting vehicles as described in section 168(f)(8)(D)(v) of the
5 Internal Revenue Code as in effect immediately prior to January 1,
6 1984, which the taxpayer claimed as a deduction in computing federal
7 income tax pursuant to a qualified lease agreement under paragraph
8 (8) of that section.

9 The director shall promulgate rules and regulations necessary to
10 carry out the provisions of this section, which rules shall provide,
11 among others, the manner in which the remaining life of property shall
12 be reported.

13 (G) [(1)](i) The amount of any civil, civil administrative, or criminal
14 penalty or fine, including a penalty or fine under an administrative
15 consent order, assessed and collected for a violation of a State or
16 federal environmental law, an administrative consent order, or an
17 environmental ordinance or resolution of a local governmental entity,
18 and any interest earned on the penalty or fine, and any economic
19 benefits having accrued to the violator as a result of a violation, which
20 benefits are assessed and recovered in a civil, civil administrative, or
21 criminal action, or pursuant to an administrative consent order. The
22 provisions of this paragraph shall not apply to a penalty or fine
23 assessed or collected for a violation of a State or federal
24 environmental law, or local environmental ordinance or resolution, if
25 the penalty or fine was for a violation that resulted from fire, riot,
26 sabotage, flood, storm event, natural cause, or other act of God
27 beyond the reasonable control of the violator, or caused by an act or
28 omission of a person who was outside the reasonable control of the
29 violator.

30 [(2)](ii) The amount of treble damages paid to the Department of
31 Environmental Protection and Energy pursuant to subsection a. of
32 section 7 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by
33 the department in removing, or arranging for the removal of, an
34 unauthorized discharge upon failure of the discharger to comply with
35 a directive from the department to remove, or arrange for the removal
36 of, the discharge.

37 (H) The amount of child care net costs, contributions and
38 depreciation taken as a deduction in determining federal taxable
39 income and used as the basis for claiming a credit pursuant to section
40 1 of P.L....., c..... (C.....)(now pending before the Legislature as this
41 bill).

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

46 (4) There shall be allowed as a deduction from entire net income

1 of a banking corporation, to the extent not deductible in determining
2 federal taxable income, the eligible net income of an international
3 banking facility determined as follows:

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

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

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

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

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

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

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

28 (5) Entire net income shall exclude 100% of dividends which were
29 included in computing such taxable income for federal income tax
30 purposes, paid to the taxpayer by one or more subsidiaries owned by
31 the taxpayer to the extent of the 80% or more ownership of investment
32 described in subsection (d) of this section. With respect to other
33 dividends, entire net income shall not include 50% of the total included
34 in computing such taxable income for federal income tax purposes.

35 (6) (A) Net operating loss deduction. There shall be allowed as
36 a deduction for the taxable year the net operating loss carryover to
37 that year.

38 (B) Net operating loss carryover. A net operating loss for any
39 taxable year ending after June 30, 1984 shall be a net operating loss
40 carryover to each of the seven years following the year of the loss. The
41 entire amount of the net operating loss for any taxable year (the "loss
42 year") shall be carried to the earliest of the taxable years to which the
43 loss may be carried. The portion of the loss which shall be carried to
44 each of the other taxable years shall be the excess, if any, of the
45 amount of the loss over the sum of the entire net income, computed
46 without the exclusions permitted in paragraphs (4) and (5) of this

1 subsection or the net operating loss deduction provided by
2 subparagraph (A) of this paragraph, for each of the prior taxable years
3 to which the loss may be carried.

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

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

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

21 (m) "Financial business corporation" shall mean any corporate
22 enterprise which is (1) in substantial competition with the business of
23 national banks and which (2) employs moneyed capital with the object
24 of making profit by its use as money, through discounting and
25 negotiating promissory notes, drafts, bills of exchange and other
26 evidences of debt; buying and selling exchange; making of or dealing
27 in secured or unsecured loans and discounts; dealing in securities and
28 shares of corporate stock by purchasing and selling such securities and
29 stock without recourse, solely upon the order and for the account of
30 customers; or investing and reinvesting in marketable obligations
31 evidencing indebtedness of any person, copartnership, association or
32 corporation in the form of bonds, notes or debentures commonly
33 known as investment securities; or dealing in or underwriting
34 obligations of the United States, any state or any political subdivision
35 thereof, or of a corporate instrumentality of any of them. This shall
36 include, without limitation of the foregoing, business commonly
37 known as industrial banks, dealers in commercial paper and
38 acceptances, sales finance, personal finance, small loan and mortgage
39 financing businesses, as well as any other enterprise employing
40 moneyed capital coming into competition with the business of national
41 banks; provided that the holding of bonds, notes, or other evidences
42 of indebtedness by individual persons not employed or engaged in the
43 banking or investment business and representing merely personal
44 investments not made in competition with the business of national
45 banks, shall not be deemed financial business. Nor shall "financial
46 business" include national banks, production credit associations

1 organized under the Farm Credit Act of 1933 or the Farm Credit Act
2 of 1971, Pub.L. 92-181 (12 U.S.C. § 2091 et seq.), stock and mutual
3 insurance companies duly authorized to transact business in this State,
4 security brokers or dealers or investment companies or bankers not
5 employing moneyed capital coming into competition with the business
6 of national banks, real estate investment trusts, or any of the following
7 entities organized under the laws of this State: credit unions, savings
8 banks, savings and loan and building and loan associations,
9 pawnbrokers, and State banks and trust companies.

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

27 (o) "S corporation" means a corporation included in the definition
28 of an "S corporation" pursuant to section 1361 of the federal Internal
29 Revenue Code of 1986, 26 U.S.C. §1361.

30 (p) "New Jersey S corporation" means a corporation that is an S
31 corporation; which has made a valid election pursuant to section 3 of
32 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
33 corporation continuously since the effective date of the valid election
34 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).
35 (cf: P.L.1993, c.173, s.1)

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37 3. This act shall take effect immediately and shall apply to fiscal or
38 calendar accounting years beginning on and after January 1 next
39 following enactment.

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41
42 STATEMENT

43
44 This bill provides a tax credit against the "Corporation Business
45 Tax Act (1945)" for a taxpayer which has operated or maintained a
46 licensed child care center for its employees' children, or has paid part

1 or all of the cost of outside child care services for its employees'
2 children. The credit shall be equal to 50% of the contributions made
3 by the taxpayer for employee child care and in the case of capital
4 expenditures the tax credit is limited to 50% of the annual
5 depreciation. However, to qualify for the tax credit the child care
6 benefit cannot be discriminatory in favor of stockholders, officers or
7 highly compensated individuals or be operated for profit.

8 The bill reflects the need for additional child care centers and the
9 alleviation of the financial burden of child care on working parents. It
10 assists both small and minority businesses as well as larger businesses.

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15 Provides credit against corporation business tax for taxpayers
16 supporting child care facilities for employees.

WITHDRAWN