

ASSEMBLY, No. 8

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 6, 1997

By Assemblywoman MURPHY, Assemblymen BAGGER,  
DeCroce, Gregg and Garrett

1 AN ACT exempting certain sales by municipal electric utilities from  
2 sales tax and exempting municipal electric utilities and rural electric  
3 cooperatives from corporation business tax, amending P.L.1945,  
4 c.162 and P.L.1997, c.162.

5

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

8

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

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

13 (a) Corporations subject to a tax assessed upon the basis of gross  
14 receipts, or insurance premiums collected;

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

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

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

29 (e) Nonprofit corporations, associations or organizations  
30 established, organized or chartered, without capital stock, under the  
31 provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of  
32 the New Jersey Statutes or under a special charter or under any similar  
33 general or special law of this or any other State, and not conducted for

**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 pecuniary profit of any private shareholders or individual;

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

5 (g) Nonstock corporations organized under the laws of this State  
6 or of any other state of the United States to provide mutual ownership  
7 housing under federal law by tenants, provided, however, that the  
8 exemption hereunder shall continue only so long as the corporations  
9 remain subject to rules and regulations of the Federal Housing  
10 Authority and the Commissioner of the Federal Housing Authority  
11 holds membership certificates in the corporations and the corporate  
12 property is encumbered by a mortgage deed or deed of trust insured  
13 under the National Housing Act (48 Stat.1246) as amended by  
14 subsequent Acts of Congress. In order to be exempted under this  
15 subsection, corporations shall annually file a report on or before  
16 August 15 with the commissioner, in the form required by the  
17 commissioner, to claim such exemption, and shall pay a filing fee of  
18 \$25.00;

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

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

29 (j) Municipal electric corporations or utilities, and rural, electric  
30 cooperatives which are exclusively owned and controlled by the  
31 consumers they serve, that are in existence as of January 1, 1995 [and  
32 were exempt from tax under the provisions of P.L.1940, c.5  
33 (C.54:30A-49 et seq.)].

34  
35 2. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read  
36 as follows:

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

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

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

44 (c) "Corporation" shall mean any corporation, joint-stock company  
45 or association and any business conducted by a trustee or trustees  
46 wherein interest or ownership is evidenced by a certificate of interest

1 or ownership or similar written instrument.

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

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

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

44 (e) "Indebtedness owing directly or indirectly" shall include,  
45 without limitation thereto, all indebtedness owing to any stockholder  
46 or shareholder and to members of his immediate family where a

1 stockholder and members of his immediate family together or in the  
2 aggregate own 10% or more of the aggregate outstanding shares of  
3 the taxpayer's capital stock of all classes.

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

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

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

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

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

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

40 (1) Entire net income shall exclude for the periods set forth in  
41 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
42 to qualified mass commuting vehicles as described in section  
43 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
44 prior to January 1, 1984, which is included in a taxpayer's federal  
45 taxable income solely as a result of an election made pursuant to the  
46 provisions of paragraph (8) of that section.

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

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

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

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

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

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

18 (F) (i) The amount by which depreciation reported to the United  
19 States Treasury Department for property placed in service on and after  
20 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
21 years beginning on and after the effective date of P.L.1993, c.172, for  
22 purposes of computing federal taxable income in accordance with  
23 section 168 of the Internal Revenue Code in effect after December 31,  
24 1980, exceeds the amount of depreciation determined in accordance  
25 with the Internal Revenue Code provisions in effect prior to January  
26 1, 1981, but only with respect to a taxpayer's accounting period ending  
27 after December 31, 1981; provided, however, that where a taxpayer's  
28 accounting period begins in 1981 and ends in 1982, no modification  
29 shall be required with respect to this paragraph (F) for the report filed  
30 for such period with respect to property placed in service during that  
31 part of the accounting period which occurs in 1981. The provisions  
32 of this subparagraph shall not apply to assets placed in service prior to  
33 January 1, 1998 of a gas, gas and electric, and electric public utility  
34 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
35 seq.) prior to 1998.

36 (ii) For the periods set forth in subparagraph (F)(i) of this  
37 subsection, any amount, except with respect to qualified mass  
38 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
39 Internal Revenue Code as in effect immediately prior to January 1,  
40 1984, which the taxpayer claimed as a deduction in computing federal  
41 income tax pursuant to a qualified lease agreement under paragraph  
42 (8) of that section.

43 The director shall promulgate rules and regulations necessary to  
44 carry out the provisions of this section, which rules shall provide,  
45 among others, the manner in which the remaining life of property shall  
46 be reported.

1 (G) (i) The amount of any civil, civil administrative, or criminal  
2 penalty or fine, including a penalty or fine under an administrative  
3 consent order, assessed and collected for a violation of a State or  
4 federal environmental law, an administrative consent order, or an  
5 environmental ordinance or resolution of a local governmental entity,  
6 and any interest earned on the penalty or fine, and any economic  
7 benefits having accrued to the violator as a result of a violation, which  
8 benefits are assessed and recovered in a civil, civil administrative, or  
9 criminal action, or pursuant to an administrative consent order. The  
10 provisions of this paragraph shall not apply to a penalty or fine  
11 assessed or collected for a violation of a State or federal  
12 environmental law, or local environmental ordinance or resolution, if  
13 the penalty or fine was for a violation that resulted from fire, riot,  
14 sabotage, flood, storm event, natural cause, or other act of God  
15 beyond the reasonable control of the violator, or caused by an act or  
16 omission of a person who was outside the reasonable control of the  
17 violator.

18 (ii) The amount of treble damages paid to the Department of  
19 Environmental Protection pursuant to subsection a. of section 7 of  
20 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
21 department in removing, or arranging for the removal of, an  
22 unauthorized discharge upon failure of the discharger to comply with  
23 a directive from the department to remove, or arrange for the removal  
24 of, the discharge.

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

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

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

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

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

41 (i) Making, arranging for, placing or carrying loans to foreign  
42 persons, provided, however, that in the case of a foreign person which  
43 is an individual, or which is a foreign branch of a domestic corporation  
44 (other than a bank), or which is a foreign corporation or foreign  
45 partnership which is controlled by one or more domestic corporations  
46 (other than banks), domestic partnerships or resident individuals, all

1 the proceeds of the loan are for use outside of the United States;

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

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

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

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

13 (5) Entire net income shall exclude 100% of dividends which were  
14 included in computing such taxable income for federal income tax  
15 purposes, paid to the taxpayer by one or more subsidiaries owned by  
16 the taxpayer to the extent of the 80% or more ownership of investment  
17 described in subsection (d) of this section. With respect to other  
18 dividends, entire net income shall not include 50% of the total included  
19 in computing such taxable income for federal income tax purposes.

20 (6) (A) Net operating loss deduction. There shall be allowed as a  
21 deduction for the taxable year the net operating loss carryover to that  
22 year.

23 (B) Net operating loss carryover. A net operating loss for any  
24 taxable year ending after June 30, 1984 shall be a net operating loss  
25 carryover to each of the seven years following the year of the loss. The  
26 entire amount of the net operating loss for any taxable year (the "loss  
27 year") shall be carried to the earliest of the taxable years to which the  
28 loss may be carried. The portion of the loss which shall be carried to  
29 each of the other taxable years shall be the excess, if any, of the  
30 amount of the loss over the sum of the entire net income, computed  
31 without the exclusions permitted in paragraphs (4) and (5) of this  
32 subsection or the net operating loss deduction provided by  
33 subparagraph (A) of this paragraph, for each of the prior taxable years  
34 to which the loss may be carried.

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

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

1 use of its net operating loss carryover, the director may disallow the  
2 carryover.

3 (7) The entire net income of gas, electric and gas and electric  
4 public utilities [and municipal electric corporations] that were subject  
5 to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to  
6 1998, shall be adjusted by substituting the New Jersey depreciation  
7 allowance for federal tax depreciation with respect to assets placed in  
8 service prior to January 1, 1998. For gas, electric, and gas and electric  
9 public utilities [, and municipal electric corporations] that were subject  
10 to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to  
11 1998, the New Jersey depreciation allowance shall be computed as  
12 follows: All depreciable assets placed in service prior to January 1,  
13 1998 shall be considered a single asset account. The New Jersey tax  
14 basis of this depreciable asset account shall be an amount equal to the  
15 carryover adjusted basis for federal income tax purposes on December  
16 31, 1997 of all depreciable assets in service on December 31, 1997,  
17 increased by the excess, of the "net carrying value," defined to be  
18 adjusted book basis of all assets and liabilities, excluding deferred  
19 income taxes, recorded on the public utility's books of account on  
20 December 31, 1997, over the carryover adjusted basis for federal  
21 income tax purposes on December 31, 1997 of all assets and liabilities  
22 owned by the gas, electric, or gas and electric public utility [or  
23 municipal electric corporation] as of December 31, 1997. "Books of  
24 account" for gas, gas and electric, and electric public utilities [and  
25 municipal electric corporations] means the uniform system of accounts  
26 as promulgated by the Federal Energy Regulatory Commission and  
27 adopted by the Board of Public Utilities. The following adjustments  
28 to entire net income shall be made pursuant to this section:

29 (A) Depreciation for property placed in service prior to January 1,  
30 1998 shall be adjusted as follows:

31 (i) Depreciation for federal income tax purposes shall be  
32 disallowed in full.

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

45 (B) Gains and losses on sales, retirements and other dispositions  
46 of assets placed in service prior to January 1, 1998 shall be recognized

1 and reported on the same basis as for federal income tax purposes.

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

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

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

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

1 of national banks, real estate investment trusts, or any of the following  
2 entities organized under the laws of this State: credit unions, savings  
3 banks, savings and loan and building and loan associations,  
4 pawnbrokers, and State banks and trust companies.

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

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

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

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

33 (cf: P.L.1997, c.162, s.1)

34

35 3. Section 3 of P.L.1997, c.162 (C.54:10A-5.25) is amended to  
36 read as follows:

37 3. a. Gas, electric, gas and electric and telecommunications [and  
38 municipal electric corporations] public utilities that were subject to a  
39 public utility tax either pursuant to P.L.1940, c.5 (C.54:30A-17 et  
40 seq.) or P.L.1940, c.4 (C.54:30A-49 et seq.) as of December 31, 1996,  
41 shall be required to file and remit installment payments of estimated  
42 corporation business tax pursuant to the provisions of subsection (f)  
43 of section 15 of P.L.1945, c.162 (C.54:10A-15) during the calendar  
44 year in which those taxpayers first become subject to the corporation  
45 business tax, provided however, that the provisions of subsection d. of  
46 section 5 of P.L.1981, c.184 (C.54:10A-15.4) shall not apply to those

1 taxpayers during that year.

2 b. A telecommunications public utility that makes an advance  
3 payment of its applicable gross receipts and franchise tax to the State  
4 in the final year of the existence of such tax and treated such advance  
5 payment as an asset on its books and records for that year shall be  
6 entitled to a credit against its corporation business tax liability equal  
7 to the amount of such advance payment. Any unused portion of the  
8 credit may be carried forward in full to future privilege periods,  
9 provided however, that in any one privilege period the total amount of  
10 such credit which the taxpayer may utilize to pay its corporation  
11 business tax liability shall not exceed \$5,000,000. Any gas, electric,  
12 or gas and electric public utility taxpayer that has made any advance  
13 credit payment pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), shall  
14 not be eligible for a credit for such amount or any part thereof to  
15 offset any liability under P.L.1945, c.162. Under no circumstances  
16 may any portion of an unused \$5,000,000 per year credit be subject to  
17 refund.

18 c. All amounts remitted under P.L.1945, c.162 by any gas, electric,  
19 gas and electric or telecommunication public utility [or municipal  
20 electric corporation] shall be separately accounted for by the State  
21 Treasurer.

22 d. A public utility [, including a municipal electric corporation]  
23 with gas, electric or telecommunications operations or any of them  
24 shall file with the Board of Public Utilities amendments to its existing  
25 tariffs, contracts or schedules of service designating the appropriate  
26 apportionment of its corporation business tax liability in these tariffs,  
27 contracts or schedules so that rates will not be increased for any class  
28 of ratepayer as a result of the transition to this tax. The board may  
29 permit gas, electric, gas and electric or telecommunications public  
30 utilities [or municipal electric corporations] to establish new tariffs,  
31 contracts or schedules, or to amend existing tariffs, contracts or  
32 schedules, as necessary to comply with the provisions of this act.

33 e. A qualified taxpayer may claim a corporation business tax credit  
34 in accordance with the provisions of section 53 of P.L.1997, c.162  
35 (C.54:30A-117) and for local energy utility franchise taxes paid and  
36 subject to the limitations of subparagraph (C) of paragraph (2) of  
37 subsection (k) of section 4 of P.L.1945, c.162 (C. 54:10A-4).

38 f. [A municipal electric corporation or utility that is required to file  
39 a corporation business tax return that is not required to file a federal  
40 corporation tax return shall file with the director a pro-forma federal  
41 corporation tax return at the same time it files its corporation business  
42 tax return. The director may promulgate rules and regulations and  
43 issue guidance with respect to all issues related to the pro-forma  
44 federal corporation tax return.] Deleted by amendment, P.L. , c.  
45 (now pending before the Legislature as this bill).  
46 (cf: P.L.1997, c.162, s.3)

1 4. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended to  
2 read as follows:

3 26. a. Receipts from the sale, exchange, delivery or use of  
4 electricity are exempt from the tax imposed under the Sales and Use  
5 Tax Act if the electricity:

6 (1) Is sold by a municipal electric utility in existence as of  
7 December 31, 1995 [and exempt from the provisions of P.L.1940, c.5  
8 (C.54:30A-49 et seq.)], within its municipal boundaries except if the  
9 customer is located within a franchise area served by an electric public  
10 utility other than the municipal electric utility;

11 (2) Was generated by a facility located on the user's property or  
12 property purchased or leased from the user by the person owning the  
13 co-generator and such property is contiguous to the user's property,  
14 and the electricity was consumed by the one on-site end user on the  
15 user's property, and was not transported to the user over wires that  
16 cross a property line or public thoroughfare unless the property line or  
17 public thoroughfare merely bifurcated the user's or co-generator  
18 owner's otherwise contiguous property or the electricity was  
19 consumed by an affiliated user on the same site, or by a non-affiliated  
20 user on the same site with an electric distribution system which is  
21 integrated and interconnected with the user on or before March 10,  
22 1997; the director may promulgate rules and regulations and issue  
23 guidance with respect to all issues related to affiliated users; or

24 (3) Is sold for resale.

25 b. Receipts from the purchase or use of the following are exempt  
26 from the tax imposed under the Sales and Use Tax Act:

27 (1) Natural gas or utility service that is used to generate electricity  
28 that is sold for resale or to an end user other than the end user upon  
29 whose property is located a co-generation facility or self-generation  
30 unit that generated the electricity or upon the property purchased or  
31 leased from the end user by the person owning the co-generation  
32 facility or self-generation unit if such property is contiguous to the  
33 user's property and is the property upon which is located a  
34 co-generation facility or self-generation unit that generated the  
35 electricity; and

36 (2) Natural gas and utility service that is used for co-generation at  
37 any site at which a co-generation facility was in operation on or before  
38 March 10, 1997, or for which an application for an operating permit  
39 or a construction permit and a certificate of operation in order to  
40 comply with air quality standards under P.L.1954, c.212 (C.26:2C-1  
41 et seq.) has been filed with the Department of Environmental  
42 Protection on or before March 10, 1997, to produce electricity for use  
43 on that site.

44 (cf: P.L.1997, c.162, s.26)

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46 5. This act shall take effect January 1, 1998 and if enacted after

1 that date shall be retroactive to that date.

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STATEMENT

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6 This bill exempts all municipal electric utilities and rural electrical  
7 cooperatives from the corporation business tax when other public  
8 utilities become subject to that tax beginning in 1998. These municipal  
9 and regional electric enterprises are effectively operated as units of  
10 local governments. They are operated as non-profit entities that  
11 should not be subject to the accounting, filing and net income tax  
12 payment obligations of profit-making enterprises.

13 The bill also exempts all municipal electric utilities from assessing  
14 sales tax on sales of electricity within their municipal borders except  
15 if the customer is located within a franchise area served by an electric  
16 public utility other than the municipal electric utility.

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21 Exempts certain sales by municipal electric utilities from sales tax and  
22 municipal electric utilities and rural electric cooperatives from  
23 corporation business tax.