FISCAL NOTE TO

ASSEMBLY, No. 833

STATE OF NEW JERSEY

DATED: SEPTEMBER 10, 1997

Assembly Bill No. 833 of 1996 would exempt State-sponsored Foreign Sales Corporations and the dividends distributed by a State-sponsored Foreign Sales Corporation (FSC) to its shareholders from the corporation business tax (CBT). A State-sponsored FSC is defined as a business entity promoted, but not owned or managed, by the State that is qualified as an FSC under the federal Internal Revenue Code. The State-sponsored entity would be allowed to have up to 25 separate, unrelated companies that export products to foreign countries as shareholders that otherwise would have to establish separate foreign sales corporations. Presently, individual corporations subject to the corporation business tax that establish a qualified foreign sales corporation may exclude certain profits on export sales that are made through the FSC and paid to the parent company in the form of dividends.

The Division of Taxation has prepared an estimate of the cost of the bill to the State. It estimates the State might lose as much as $5 million annually of corporation business tax revenue under the bill. The estimate was derived from 1987 data collected by the Internal Revenue Service on Foreign Sales Corporations. The division acknowledges it does not know how much net income from foreign sales is now excluded by CBT taxpayers. It notes, however, the bill would encourage small firms that export goods and services to take advantage of the tax exclusions now used mainly by large corporations.

While acknowledging the absence of solid data, the Office of Legislative Services (OLS) believes that the tax loss estimate made by the Division of Taxation is excessive, at least initially. A State-sponsored FSC would focus on small businesses that may or may not export goods and services now. The $5 million loss posited by the division represents net profits of $55.6 million that are subject to tax from gross sales values many times the net profit figure. Given the various beneficial tax provisions already allowed export sales, firms with consequential exports now are likely already to have an FSC or belong to a state-sponsored FSC in another state.

Certain questions of interpretation and application of the bill further complicate fiscal analysis. The OLS believes the intent of the bill is to disallow firms already participating in an FSC to participate in a New Jersey-sponsored FSC that would be created if the bill is

enacted, although technical changes may be required to clarify this intent. In addition, the OLS notes the bill can be read to increase taxes on current taxpayers and can be read to provide New Jersey organized companies with lower tax rates than similarly situated companies organized elsewhere, which raises federal constitutional issues that have fiscal implications that are difficult to quantify.

This fiscal note has been prepared pursuant to P.L.1980, c.67.