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ASSEMBLY, No. 1491

STATE OF NEW JERSEY

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By Assemblymen GREGG, CARROLL, Holzapfel,  
Assemblywoman Allen, Assemblyman LeFevre,  
Assemblywomen Crecco, J. Smith, Assemblymen Augustine,  
Arnone, T. Smith, Assemblywoman Wright, Assemblyman  
Cohen, Assemblywoman Farragher, Assemblyman Malone,  
Assemblywoman Vandervalk, Assemblymen Bodine, Geist,  
Bucco, Assemblywoman Murphy, Assemblymen Bateman,  
Asselta, Gibson, Blee, DeSopo, Moran, Suliga, Steele,  
Impeveduto and Romano

1 AN ACT concerning employer trip reduction programs, amending and  
2 supplementing various sections of the statutory law and repealing  
3 P.L.1992, c.32.

4

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

7

8 1. (New section) As authorized by Section 182(d)(1) of the Clean  
9 Air Act as amended by Pub.L.104-70, the Commissioner of  
10 Environmental Protection shall submit a revision of the State  
11 Implementation Plan submitted to the Environmental Protection  
12 Agency pursuant to the Clean Air Act removing provisions of the  
13 State Implementation Plan requiring employers to reduce work-related  
14 vehicle trips and miles traveled by employees.

15

16 2. (New section) In order to certify to the Director of the Division  
17 of Taxation eligibility for the tax benefits provided under P.L.1993, c.  
18 150 (C.27:26A-15) and P.L.1993, c.108 (C.54A:6-23), the  
19 Commissioner of Transportation shall adopt regulations, pursuant to  
20 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
21 seq.), establishing the procedure by which an employer may register  
22 with the Department of Transportation as a participant in an employer  
23 trip reduction program and the criteria to be met by an employer trip  
24 reduction program using alternative means of commuting to receive

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 certification for providing commuter transportation benefits.

2 As used in this section:

3 "Alternative means of commuting" means travel between a person's  
4 place of residence and place of employment or termini near those  
5 places, other than in a motor vehicle occupied by one person.  
6 Alternative means of commuting include, but are not limited to, public  
7 transportation, car pools, van pools, bus pools, ferries, bicycling,  
8 telecommuting and walking, which may be used in conjunction with  
9 such strategies as flextime, staggered work hours, compressed work  
10 weeks and like measures.

11 "Commuter transportation benefit" means the cost to employers of  
12 providing benefits to an employee for utilizing an alternative means of  
13 commuting and the cost of providing services and facilities which  
14 would encourage or facilitate use by employees of alternative means  
15 of commuting. The benefit shall include the costs of parking by  
16 employees at park-and-ride lots.

17

18 3. Section 1 of P.L.1993, c.150 (C.27:26A-15) is amended to read  
19 as follows:

20 1. a. An [affected] employer that is a taxpayer subject to the  
21 provisions of the Corporation Business Tax Act (1945), P.L.1945,  
22 c.162 (C.54:10A-1 et seq.), the "Financial Business Tax Law (1946),"  
23 P.L.1946, c.174 (C.54:10B-1 et seq.), "The Savings Institution Tax  
24 Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine  
25 insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed  
26 on fire insurance companies pursuant to R.S.54:17-4 et al., the tax  
27 imposed on insurers generally, pursuant to P.L.1945, c.132  
28 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities  
29 gross receipts tax and public utility excise tax imposed pursuant to  
30 P.L.1940, c.4, and P.L.1940, c.5 (C.54:30A-16 et seq. and  
31 C.54:30A-49 et seq.), or that is a taxpayer in respect of a distributive  
32 share of partnership income under the "New Jersey Gross Income Tax  
33 Act," N.J.S.54A:1-1 et seq., which provides commuter transportation  
34 benefits as defined in section [3 of P.L.1992, c.32 (C.27:26A-3)] 2 of  
35 P.L. 19 , c. (C. )(now before the Legislature as this bill) shall be  
36 allowed a credit against that tax equal to 5% of the cost of commuter  
37 transportation benefits for the relevant accounting or privilege period,  
38 as appropriate, subject to the limitations of subsection b. of this  
39 section. For accounting or privilege periods beginning on or after  
40 January 1, 1995, but ending not later than December 31, 2004, the  
41 credit allowed under this section shall be 10% of the cost of commuter  
42 transportation benefits for the relevant accounting or privilege period,  
43 as appropriate, subject to the limitations of subsection b. of this  
44 section. In the case of a taxpayer receiving partnership income, an  
45 offset against that income subject to the limitations in paragraph (5) of  
46 subsection b. of this section shall be considered the credit.

1     b. (1) The credit granted a taxpayer for an accounting or privilege  
2 period shall not exceed the per employee limit multiplied by the  
3 number of employees participating in alternative means of commuting  
4 at the work location. The per employee limit shall be \$36 for the  
5 accounting or privilege periods beginning on and after January 1, 1994  
6 but before January 1, 1995, and \$72 for those periods thereafter. For  
7 those periods beginning on or after January 1, 1995, the Director of  
8 the Division of Taxation, in the Department of the Treasury, shall  
9 adjust the limit, rounded down to the nearest dollar, in proportion to  
10 the change in the average consumer price index for all urban  
11 consumers in the New York and Northeastern New Jersey and the  
12 Philadelphia areas, as reported by the United States Department of  
13 Labor, from calendar year 1994 to the calendar year ending  
14 immediately before the appropriate period.

15     (2) The taxpayer may only claim a credit for providing commuter  
16 transportation benefits based upon a direct expenditure made after the  
17 taxpayer has registered with and the taxpayer's employer trip  
18 reduction program been certified by the [department]Department of  
19 Transportation as prescribed in [subsection c. of section 5 of  
20 P.L.1992, c.32 (C.27:26A-5)]; provided that a taxpayer shall continue  
21 to be eligible for the credit as long as the taxpayer remains in  
22 substantial compliance with subsections d., e., f. and h. of section 5 of  
23 P.L.1992, c.32 (C.27:26A-5); and provided further that the  
24 commissioner may allow additional time for the taxpayer to comply  
25 with subsections d., e., f. and h. of section 5 of P.L.1992, c.32  
26 (C.27:26A-5) before a credit amount is disallowed for an affected  
27 employer; however, a credit amount shall be disallowed if the taxpayer  
28 fails to comply with section 5 of P.L.1992, c.32 (C.27:26A-5) within  
29 three years from the due date of the tax return reflecting a liability  
30 against which a credit was claimed] section 2 of P.L. 19 , c.  
31 (C. )(now before the Legislature as this bill).

32     (3) The amount of the credit allowed under this section for an  
33 accounting or privilege period shall not exceed 50% of the tax liability  
34 which would be otherwise due for any one of the taxes enumerated in  
35 subsection a. of this section after first applying the credits, if any,  
36 allowed under any other law and shall not reduce the amount of tax  
37 liability to less than the statutory minimum provided in subsection (e)  
38 of section 5 of P.L.1945, c.162 (C.54:10A-5), section 3 of P.L.1946,  
39 c.174 (C.54:10B-3) or section 3 of P.L.1973, c.31 (C.54:10D-3), as  
40 may be applicable.

41     (4) A taxpayer having liability for more than one of the taxes  
42 enumerated in subsection a. of this section for an accounting or  
43 privilege period shall allocate the credit amount available for that  
44 period to the liabilities for that period in the proportion that each  
45 liability bears to the total of the liabilities for that period, and each  
46 apportioned amount of credit shall be applied to only one amount of

1 liability.

2 (5) A partnership shall not be allowed a credit under this section  
3 directly. A partnership shall be entitled to reduce total partnership  
4 income distributed to the partners and subject to tax under subsection  
5 k. of N.J.S.54A:5-1 by the lesser of 71.5 percent of the amount of  
6 commuter transportation benefits provided pursuant to law or \$515 for  
7 each employee receiving such benefits. For accounting and privilege  
8 periods beginning on or after January 1, 1995, but ending no later than  
9 December 31, 2004, the reduction to partnership income allowed  
10 under this section shall be the lesser of 143 percent of the cost of  
11 commuter transportation benefits provided or \$1,030 for each  
12 employee receiving such benefits for the relevant accounting or  
13 privilege period, as appropriate, subject to the limitations of subsection  
14 b. of this section.

15 c. Each employee who receives money towards commuter  
16 transportation benefits from the employee's employer as an advance,  
17 a reimbursement, or both, shall furnish suitable proof to the employer,  
18 in the form of receipts, ticket stubs or the like, that the employee  
19 utilized monies provided by the employer for an alternative means of  
20 commuting, as defined pursuant to section [3 of P.L.1992, c.32  
21 (C.27:26A-3)]2 of P.L.19 , c. (C. )(now before the Legislature as  
22 this bill).

23 d. For the purposes of verifying eligibility for the credit, the  
24 [commissioner] Commissioner of Transportation shall certify to the  
25 Director of the Division of Taxation a list of those employers which  
26 have registered with the department[, or have an approved compliance  
27 plan or an approved amended compliance plan]and have [an approved]  
28 a certified employer trip reduction program. The list shall be provided  
29 to the Director of the Division of Taxation within 90 days of  
30 registration [and within 210 days of each submission of a compliance  
31 plan or each amended compliance plan].

32 e. The taxpayer shall file with the department a schedule of the  
33 expenditures for which the taxpayer has claimed a credit pursuant to  
34 this section on any tax return filed with the Director of the Division of  
35 Taxation, in such form and pursuant to such rules as shall be  
36 prescribed by the commissioner in consultation with the Director of  
37 the Division of Taxation. [The department shall provide the Director  
38 of the Division of Taxation with the schedule and such other  
39 information as is required pursuant to subsection j. of section 5 of  
40 P.L.1992, c.32 (C.27:26A-5).]

41 (cf: P.L.1993,c.150, s.1)

42

43 4. Section 1 of P.L.1993, c. 108 (C. 54A:6-23) is amended to read  
44 as follows:

45 1. a. For the purposes of the "New Jersey Gross Income Tax Act,"  
46 N.J.S.54A:1-1 et seq., "gross income" shall not include employer

1 provided commuter transportation benefits as defined pursuant to  
2 section [3 of P.L.1992, c.32 (C.27:26A-3)] 2 of P.L. 19 , c.  
3 (C. )(now before the Legislature as this bill) , up to and including the  
4 limit per taxable year per employee pursuant to subsection b. of this  
5 section. Should an employee receive commuter transportation benefits  
6 in excess of those limits in a taxable year, only the amount in excess  
7 of those limits shall be included in gross income. If an employee  
8 receives money towards commuter transportation benefits from the  
9 employee's employer, as an advance, a reimbursement, or both, the  
10 employee shall furnish suitable proof to the employer in the form of  
11 receipts, ticket stubs or the like that the employee used the employer  
12 provided money for alternative means of commuting as defined  
13 pursuant to section [3 of P.L.1992, c.32 (C.27:26A-3)] 2 of P.L.19 ,  
14 c. (C. )(now before the Legislature as this bill).

15 b. The limit per taxable year per employee shall be \$720 for the  
16 taxable years beginning on and after January 1, 1993 but before  
17 January 1, 1994. For taxable years thereafter, the director shall adjust  
18 the limit, rounded down to the nearest \$5, in proportion to the change  
19 in the average consumer price index for all urban consumers in the  
20 New York and Northeastern New Jersey and the Philadelphia areas,  
21 as reported by the United States Department of Labor, from calendar  
22 year 1993 to the calendar year ending immediately before the taxable  
23 year.

24 c. The exclusion provided by subsection a. of this section shall not  
25 apply to any commuter transportation benefit unless such benefit is  
26 provided in addition to and not in lieu of any compensation otherwise  
27 payable to the employee.

28 (cf: P.L.1993, c.108, s.1)

29

30 5. N.J.S.54A:7-2 is amended to read as follows:

31 54A:7-2. Information statement for employee or recipient of  
32 other payments. Every employer or payor of a pension or annuity  
33 required to deduct and withhold tax under this act from the wages of  
34 an employee or from the payment of a pension or annuity, or an  
35 employer who would have been required so to deduct and withhold tax  
36 if an employee had claimed no more than one withholding exemption,  
37 shall furnish to each such employee, or pension or annuity recipient or  
38 the estate thereof, in respect of the wages or pension or annuity  
39 payments paid by such employer or payor to such employee or pension  
40 or annuity recipient during the calendar year on or before February 15  
41 of the succeeding year, or, if his employment or pension or annuity is  
42 terminated before the close of such calendar year, within 30 days from  
43 the date on which the last payment of the wages or pension or annuity  
44 is made, a written statement as prescribed by the director showing the  
45 amount of wages or pension or annuity payments paid by the employer  
46 or payor to the employee or pension or annuity recipient, the cost of

1 commuter transportation benefits, as defined pursuant to section [3 of  
2 P.L.1992, c.32 (C.27:26A-3)]2 of P.L. 19 , c. (C. )(now before  
3 the Legislature as this bill), excludable by the employee pursuant to  
4 section 1 of P.L.1993, c.108 (C.54A:6-23), and the cost of such  
5 benefits not so excludable, provided by the employer to the employee,  
6 the amount deducted and withheld as tax, the amount deducted and  
7 withheld as worker contributions for unemployment and disability  
8 insurance as provided under the New Jersey Unemployment  
9 Compensation Law, and such other information as the director shall  
10 prescribe.

11 (cf: P.L.1993, c.108, s.2)

12

13 6. Sections 1 through 13 (inclusive) and section 15 of P.L.1992, c.  
14 32 (C.27:26A-1 through 13 and 27:26A-14) are repealed.

15

16 7. This act shall take effect immediately.

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#### STATEMENT

20

21 The 1990 amendments to the federal Clean Air Act required states,  
22 such as New Jersey, in severe non-attainment areas for ozone to  
23 include programs requiring employers to implement programs to  
24 reduce work-related vehicle trips and miles traveled by employees in  
25 their State Implementation Plans (SIPs). The Clean Air Act was  
26 recently amended, Pub.L104-70, to make such programs an optional  
27 part of a State's SIP. The Clean Air Act now authorizes a State to  
28 remove such programs from its SIP, if the State notifies the  
29 Environmental Protection Agency that the State has undertaken, or  
30 will undertake, one or more alternative methods to achieve emission  
31 reductions equivalent to those to be achieved by the employer trip  
32 reduction program.

33 This bill directs the Commissioner of Environmental Protection to  
34 so notify the EPA and to remove the mandated employer trip reduction  
35 program from New Jersey's SIP. The bill repeals current State law  
36 mandating employers to undertake employer trip reduction programs,  
37 but maintains the tax benefits established for such participation as an  
38 incentive for employers to continue to encourage alternative means of  
39 commuting by providing commuter transportation benefits. In order  
40 that the Commissioner of Transportation may certify to the Director  
41 of the Division of Taxation eligibility for the tax benefits, the bill  
42 directs the commissioner to adopt regulations establishing the  
43 procedure to register with the Department of Transportation and the  
44 criteria to be met for an employer trip reduction program employing  
45 alternative means of commuting to receive certification for providing  
46 commuter transportation benefits.

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4 Repeals mandatory employer trip reduction programs; authorizes tax  
5 benefits for voluntary programs.