

[Second Reprint]
ASSEMBLY, No. 2825

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1997

By Assemblymen BAGGER, DiGAETANO, Kramer, Bucco,
Assemblywoman Wright, Assemblyman Augustine,
Assemblywomen Murphy, Heck and Assemblyman DeCroce

1 AN ACT revising the taxation of gas and electric public utilities and
2 certain telecommunications companies, and sales of electricity,
3 natural gas and energy transportation service, in order to preserve
4 certain revenues under transitions to more competitive markets in
5 energy and telecommunications, revising and repealing various
6 sections of statutory law.

7

8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10

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

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

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

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

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

29 (d) Cemetery corporations not conducted for pecuniary profit or

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly APR committee amendments adopted June 12, 1997.

² Assembly AAP committee amendments adopted June 19, 1997.

1 any private shareholder or individual;

2 (e) Nonprofit corporations, associations or organizations
3 established, organized or chartered, without capital stock, under the
4 provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of
5 the New Jersey Statutes or under a special charter or under any similar
6 general or special law of this or any other State, and not conducted for
7 pecuniary profit of any private shareholders or individual;

8 (f) [Corporations] Sewerage and water
9 ¹[corporation]corporations¹ subject to a tax under the provisions of
10 [P.L.1940, c.4 (C.54:30A-16 et seq.),] P.L.1940, c.5 (C.54:30A-49
11 et seq.) [, or P.L.1991, c.184 (C.54:30A-18.6 et al.)] or any statute or
12 law imposing a similar tax or taxes;

13 (g) Nonstock corporations organized under the laws of this State or
14 of any other state of the United States to provide mutual ownership
15 housing under federal law by tenants, provided, however, that the
16 exemption hereunder shall continue only so long as the corporations
17 remain subject to rules and regulations of the Federal Housing
18 Authority and the Commissioner of the Federal Housing Authority
19 holds membership certificates in the corporations and the corporate
20 property is encumbered by a mortgage deed or deed of trust insured
21 under the National Housing Act (48 Stat.1246) as amended by
22 subsequent Acts of Congress. In order to be exempted under this
23 subsection, corporations shall annually file a report on or before
24 August 15 with the commissioner, in the form required by the
25 commissioner, to claim such exemption, and shall pay a filing fee of
26 \$25.00;

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

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

38 (j) Municipal electric corporations¹ or utilities¹ that are in existence
39 as of January 1, 1995¹ [and were exempt from tax under the
40 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.), but only if the
41 corporation shall not expand by acquisition or creation of a facility or
42 facilities beyond the municipal boundaries or by the acquisition or
43 creation of a facility or facilities outside the geographical service area
44 fixed as of December 31, 1995]^{1 2} and were exempt from tax under the
45 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)² .

46 (cf: P.L.1993, c.338, s.1)

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

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

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

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

10 (c) "Corporation" shall mean any corporation, joint-stock company
11 or association and any business conducted by a trustee or trustees
12 wherein interest or ownership is evidenced by a certificate of interest
13 or ownership or similar written instrument. ¹[The term corporation
14 shall also mean and include any municipal electric utility or
15 corporation.]¹

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

44 In the case of banking corporations which have international
45 banking facilities as defined in subsection (n), the foregoing aggregate
46 of values shall also be reduced by retained earnings of the international

1 banking facility. Retained earnings means the earnings accumulated
2 over the life of such facility and shall not include the distributive share
3 of dividends paid and federal income taxes paid or payable during the
4 tax year.

5 If in the opinion of the commissioner, the corporation's books do
6 not disclose fair valuations the commissioner may make a reasonable
7 determination of the net worth which, in his opinion, would reflect the
8 fair value of the assets, exclusive of subsidiary investments as defined
9 aforesaid, carried on the books of the corporation, in accordance with
10 sound accounting principles, and such determination shall be used as
11 net worth for the purpose of this act.

12 (e) "Indebtedness owing directly or indirectly" shall include,
13 without limitation thereto, all indebtedness owing to any stockholder
14 or shareholder and to members of his immediate family where a
15 stockholder and members of his immediate family together or in the
16 aggregate own 10% or more of the aggregate outstanding shares of
17 the taxpayer's capital stock of all classes.

18 (f) "Investment company" shall mean any corporation whose
19 business during the period covered by its report consisted, to the
20 extent of at least 90% thereof of holding, investing and reinvesting in
21 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
22 other securities for its own account, but this shall not include any
23 corporation which: (1) is a merchant or a dealer of stocks, bonds and
24 other securities, regularly engaged in buying the same and selling the
25 same to customers; or (2) had less than 90% of its average gross
26 assets in New Jersey, at cost, invested in stocks, bonds, debentures,
27 mortgages, notes, patents, patent rights or other securities or
28 consisting of cash on deposit during the period covered by its report;
29 or (3) is a banking corporation or a financial business corporation as
30 defined in the Corporation Business Tax Act.

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

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

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

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

43 (k) "Entire net income" shall mean total net income from all
44 sources, whether within or without the United States, and shall include
45 the gain derived from the employment of capital or labor, or from both
46 combined, as well as profit gained through a sale or conversion of

1 capital assets. For the purpose of this act, the amount of a taxpayer's
2 entire net income shall be deemed prima facie to be equal in amount to
3 the taxable income, before net operating loss deduction and special
4 deductions, which the taxpayer is required to report to the United
5 States Treasury Department for the purpose of computing its federal
6 income tax; provided, however, that in the determination of such entire
7 net income,

8 (1) Entire net income shall exclude for the periods set forth in
9 paragraph (2)(F)(i) of this subsection, any amount, except with respect
10 to qualified mass commuting vehicles as described in section
11 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
12 prior to January 1, 1984, which is included in a taxpayer's federal
13 taxable income solely as a result of an election made pursuant to the
14 provisions of paragraph (8) of that section.

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

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

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

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

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

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

32 (F) (i) The amount by which depreciation reported to the United
33 States Treasury Department for property placed in service on and after
34 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
35 years beginning on and after the effective date of P.L.1993, c.172, for
36 purposes of computing federal taxable income in accordance with
37 section 168 of the Internal Revenue Code in effect after December 31,
38 1980, exceeds the amount of depreciation determined in accordance
39 with the Internal Revenue Code provisions in effect prior to January
40 1, 1981, but only with respect to a taxpayer's accounting period ending
41 after December 31, 1981; provided, however, that where a taxpayer's
42 accounting period begins in 1981 and ends in 1982, no modification
43 shall be required with respect to this paragraph (F) for the report filed
44 for such period with respect to property placed in service during that
45 part of the accounting period which occurs in 1981. The provisions
46 of this subparagraph shall not apply to assets placed in service prior to

1 January 1, 1998 of a gas, gas and electric, and electric public utility
2 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
3 seq.) prior to 1998.

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

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

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

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

39 (H) The amount of any sales and use tax paid by a utility vendor
40 pursuant to section 71 of P.L. , c. (C.)(now pending
41 before the Legislature as this 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 a
36 deduction for the taxable year the net operating loss carryover to that
37 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 (7) The entire net income of gas, electric and gas and electric
19 public utilities ¹[and municipal electric corporations]^{1 2} and municipal
20 electric corporations² that were subject to the provisions of P.L.1940,
21 c.5 (54:30A-49 et seq.) prior to 1998, shall be adjusted by
22 substituting the New Jersey depreciation allowance for federal tax
23 depreciation with respect to assets placed in service prior to January
24 1, 1998. For gas, electric, and gas and electric public utilities, ¹[and
25 municipal electric corporations]^{1 2}and municipal electric corporations²
26 that were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
27 seq.) prior to 1998, the New Jersey depreciation allowance shall be
28 computed as follows: All depreciable assets placed in service prior to
29 January 1, 1998 shall be considered a single asset account. The New
30 Jersey tax basis of this depreciable asset account shall be an amount
31 equal to the carryover adjusted basis for federal income tax purposes
32 on December 31, 1997 of all depreciable assets in service on
33 December 31, 1997, increased by the excess, of the "net carrying
34 value," defined to be adjusted book basis of all assets and liabilities,
35 excluding deferred income taxes, recorded on the public utility's books
36 of account on December 31, 1997, over the carryover adjusted basis
37 for federal income tax purposes on December 31, 1997 of all assets
38 and liabilities owned by the gas, electric, or gas and electric public
39 utility ¹[or municipal electric corporation]^{1 2}or municipal electric
40 corporation² as of December 31, 1997. "Books of account" for gas,
41 gas and electric, and electric public utilities and ¹[municipal electric
42 corporations]^{1 2}municipal electric corporations² means the uniform
43 system of accounts as promulgated by the Federal Energy Regulatory
44 Commission and adopted by the Board of Public Utilities. The
45 following adjustments to entire net income shall be made pursuant to
46 this section:

1 (A) Depreciation for property placed in service prior to January 1,
2 1998 shall be adjusted as follows:

3 (i) Depreciation for federal income tax purposes shall be
4 disallowed in full.

5 (ii) A deduction shall be allowed for the New Jersey depreciation
6 allowance. The New Jersey depreciation allowance shall be computed
7 for the single asset account described above based on New Jersey tax
8 basis as adjusted above as if all assets in the single asset account were
9 first placed in service on January 1, 1998. Depreciation shall be
10 computed using the straight line method over a thirty year life. A full
11 year's depreciation shall be allowed in the initial tax year. No half-
12 year convention shall apply. The depreciable basis of the single
13 account shall be reduced by the adjusted federal tax basis of assets
14 sold, retired, or otherwise disposed of during any year on which gain
15 or loss is recognized for federal income tax purposes as described in
16 subparagraph (B) of this paragraph.

17 (B) Gains and losses on sales, retirements and other dispositions
18 of assets placed in service prior to January 1, 1998 shall be recognized
19 and reported on the same basis as for federal income tax purposes.

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

25 (8) In the case of taxpayers that are gas, electric, gas and electric,
26 or telecommunication public utilities as defined pursuant to subsection
27 (q) of this section, the director shall have authority to promulgate rules
28 and issue guidance correcting distortions and adjusting timing
29 differences resulting from the adoption of P.L. , c. (C.)(now
30 pending before the Legislature as this bill).

31 (1) "Real estate investment trust" shall mean any corporation, trust
32 or association qualifying and electing to be taxed as a real estate
33 investment trust under federal law.

34 (m) "Financial business corporation" shall mean any corporate
35 enterprise which is (1) in substantial competition with the business of
36 national banks and which (2) employs moneyed capital with the object
37 of making profit by its use as money, through discounting and
38 negotiating promissory notes, drafts, bills of exchange and other
39 evidences of debt; buying and selling exchange; making of or dealing
40 in secured or unsecured loans and discounts; dealing in securities and
41 shares of corporate stock by purchasing and selling such securities and
42 stock without recourse, solely upon the order and for the account of
43 customers; or investing and reinvesting in marketable obligations
44 evidencing indebtedness of any person, copartnership, association or
45 corporation in the form of bonds, notes or debentures commonly
46 known as investment securities; or dealing in or underwriting

1 obligations of the United States, any state or any political subdivision
2 thereof, or of a corporate instrumentality of any of them. This shall
3 include, without limitation of the foregoing, business commonly
4 known as industrial banks, dealers in commercial paper and
5 acceptances, sales finance, personal finance, small loan and mortgage
6 financing businesses, as well as any other enterprise employing
7 moneyed capital coming into competition with the business of national
8 banks; provided that the holding of bonds, notes, or other evidences
9 of indebtedness by individual persons not employed or engaged in the
10 banking or investment business and representing merely personal
11 investments not made in competition with the business of national
12 banks, shall not be deemed financial business. Nor shall "financial
13 business" include national banks, production credit associations
14 organized under the Farm Credit Act of 1933 or the Farm Credit Act
15 of 1971, Pub.L. 92-181 (12 U.S.C. 2091 et seq.), stock and mutual
16 insurance companies duly authorized to transact business in this State,
17 security brokers or dealers or investment companies or bankers not
18 employing moneyed capital coming into competition with the business
19 of national banks, real estate investment trusts, or any of the following
20 entities organized under the laws of this State: credit unions, savings
21 banks, savings and loan and building and loan associations,
22 pawnbrokers, and State banks and trust companies.

23 (n) "International banking facility" shall mean a set of asset and
24 liability accounts segregated on the books and records of a depository
25 institution, United States branch or agency of a foreign bank, or an
26 Edge or Agreement Corporation that includes only international
27 banking facility time deposits and international banking facility
28 extensions of credit as such terms are defined in section 204.8(a)(2)
29 and section 204.8(a)(3) of Regulation D of the board of governors of
30 the Federal Reserve System, 12 CFR Part 204, effective December 3,
31 1981. In the event that the United States enacts a law, or the board
32 of governors of the Federal Reserve System adopts a regulation which
33 amends the present definition of international banking facility or of
34 such facilities' time deposits or extensions of credit, the Commissioner
35 of Banking and Insurance shall forthwith adopt regulations defining
36 such terms in the same manner as such terms are set forth in the laws
37 of the United States or the regulations of the board of governors of the
38 Federal Reserve System. The regulations of the Commissioner of
39 Banking and Insurance shall thereafter provide the applicable
40 definitions.

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

44 (p) "New Jersey S corporation" means a corporation that is an S
45 corporation; which has made a valid election pursuant to section 3 of
46 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S

1 corporation continuously since the effective date of the valid election
2 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

3 (q) "Public Utility" means "public utility" as defined in R.S.48:2-
4 13.

5 (cf: P.L.1995, c.418, s.1)

6

7 3. (New section) a. Gas, electric, gas and electric and
8 telecommunications ¹[and municipal electric corporations] and ²
9 municipal electric corporations² public utilities that were subject to a
10 public utility tax either pursuant to P.L.1940, c.5 (C.54:30A-17 et
11 seq.) or P.L.1940, c.4 (C.54:30A-49 et seq.) as of December 31, 1996,
12 shall be required to file and remit installment payments of estimated
13 corporation business tax pursuant to the provisions of subsection (f)
14 of section 15 of P.L.1945, c.162 (C.54:10A-15) during the calendar
15 year in which those taxpayers first become subject to the corporation
16 business tax, provided however, that the provisions of subsection d. of
17 section 5 of P.L.1981, c.184 (C.54:10A-15.4) shall not apply to those
18 taxpayers during that year.

19 b. A telecommunications public utility that makes an advance
20 payment of its applicable gross receipts and franchise tax to the State
21 in the final year of the existence of such tax ¹and treated such advance
22 payment as an asset on its books and records for that year¹ shall be
23 entitled to a credit against its corporation business tax liability equal
24 to the amount of such advance payment. Any unused portion of the
25 credit may be carried forward in full to future privilege periods,
26 provided however, that in any one privilege period the total amount of
27 such credit which the taxpayer may utilize to pay its corporation
28 business tax liability shall not exceed \$5,000,000. Any gas, electric,
29 or gas and electric public utility taxpayer that has made any advance
30 credit payment pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), shall
31 not be eligible for a credit for such amount or any part thereof to
32 offset any liability under P.L.1945, c.162. Under no circumstances
33 may any portion of an unused \$5,000,000 per year credit be subject to
34 refund.

35 c. All amounts remitted under P.L.1945, c.162 by any gas, electric,
36 gas and electric or telecommunication public utility ¹[or municipal
37 electric corporation]¹ ²or municipal electric corporation² shall be
38 separately accounted for by the State Treasurer.

39 d. A public utility ¹[, including a municipal electric corporation]¹
40 ², including a municipal electric corporation² with gas, electric or
41 telecommunications operations or any of them shall file with the Board
42 of Public Utilities amendments to its existing tariffs, contracts or
43 schedules of service designating the appropriate apportionment of its
44 corporation business tax liability in these tariffs, contracts or schedules
45 so that rates will not be increased for any class of ratepayer as a result
46 of the transition to this tax. The board may permit gas, electric, gas

1 and electric or telecommunications public utilities ¹[or municipal
2 electric corporations]^{1 2}or municipal electric corporations² to establish
3 new tariffs, contracts or schedules, or to amend existing tariffs,
4 contracts or schedules, as necessary to comply with the provisions of
5 this act.

6 e. A qualified taxpayer may claim a corporation business tax credit
7 in accordance with the provisions of section 53 of P.L. , c. (C.)
8 (now pending before the Legislature as this bill) ²and for local energy
9 utility franchise taxes paid and subject to the limitations of
10 subparagraph (C) of paragraph (2) of subsection (k) of section 4 of
11 P.L.1945, c.162 (C. 54:10A-4)² .

12 ²f. A municipal electric corporation or utility that is required to file
13 a corporation business tax return that is not required to file a federal
14 corporation tax return shall file with the director a pro-forma federal
15 corporation tax return at the same time it files its corporation business
16 tax return. The director may promulgate rules and regulations and
17 issue guidance with respect to all issues related to the pro-forma
18 federal corporation tax return.²

19
20 4. (New section) If, in the first full privilege period commencing
21 after the assessment under the Transitional Energy Facility Assessment
22 Act, established in sections 36 through 49 of P.L. , c. (C.) (now
23 pending before the Legislature as this bill), has terminated, or in any
24 subsequent privilege period thereafter, a taxpayer that was formerly
25 subject to the Transitional Energy Facility Assessment Act ²¹[or
26 telephone companies that were subject to the provisions of P.L.1940,
27 c.4 (C.54:30A-16 et seq.) as of April 1, 1997¹]² and whose liability
28 under the Corporation Business Tax Act (1945), P.L.1945, c.162
29 (C.54:10A-1 et seq.), for such privilege period after the assessment
30 under the Transitional Energy Facility Assessment Act has terminated,
31 is less than the taxpayer's liability for the first full privilege period as
32 a taxpayer under P.L.1945, c.162, then that taxpayer or corporate or
33 noncorporate legal successor or assignee whether through any
34 reorganization, sale, bankruptcy, consolidation, merger, or other
35 transaction or occurrence of any kind without limitation, shall pay as
36 its liability under P.L.1945, c.162 for any of those privilege periods
37 after the assessment under the Transitional Energy Facility Assessment
38 Act has terminated an amount equal to the higher of:

39 a. The amount of its corporation business tax liability for that
40 privilege period as would otherwise be computed under P.L.1945,
41 c.162; or

42 b. The amount of corporation business tax it would be liable to pay
43 for such privilege period if its gas ²[,] or² electric ²[or
44 telecommunications]² operations were accounted for on a separate
45 basis, pursuant to regulations as may be promulgated by the director.

1 5. The title of P.L.1940, c.5 is amended to read as follows:

2 **AN ACT** for the taxation of the gross receipts of [street railway,
3 traction,] sewerage[,] and water corporations, [and of the units of
4 electricity and natural gas sold in the business of gas and electric
5 light, heat and power corporations] using or occupying the public
6 streets, highways, roads or other public places, for the exemption
7 from taxation of the franchises, stock and certain property of such
8 corporations, and for the taxation of certain of the property of such
9 corporations not so exempted from taxation.

10 (cf: P.L.1991, c.184, s.7)

11

12 6. Section 1 of P.L.1940, c.5 (C.54:30A-49) is amended to read as
13 follows:

14 1. The purpose of this act is to provide a complete scheme and
15 method for the taxation of [street railway, traction,] sewerage and
16 water [, gas and electric light, heat and power] corporations using or
17 occupying the public streets, highways, roads or other public places,
18 to exempt from taxation other than imposed by this act the franchises,
19 stock, and certain property of such corporations and for the taxation
20 of the property of such corporations not so exempted from taxation;
21 and the reimbursement to the State of certain costs and expenses
22 incurred in the imposition [and apportionment] of such taxes; [the
23 apportionment of certain of such taxes among municipalities upon the
24 fixed standards hereinafter set forth; and to supersede sections
25 54:31-1 to 54:32-7 of the Revised Statutes, inclusive, and chapter 8
26 of the laws of 1938 for the year 1940 and thereafter].

27 (cf: P.L.1963, c.42, s.1)

28

29 7. Section 2 of P.L.1940, c.5 (C.54:30A-50) is amended as
30 follows:

31 2. Definitions. As used in this act--unless the context otherwise
32 requires:

33 (a) "Taxpayer" means any corporation subject to taxation under the
34 provisions of this act. [A person or business entity owning or
35 operating a cogeneration facility as defined in subsection (j) of this
36 section shall not be deemed a corporation subject to taxation under
37 this act unless it shall be a public utility as specifically enumerated in
38 sections 1 and 6 of P.L.1940, c.5 (C.54:30A-49 and C.54:30A-54).]

39 (b) "Real estate" means lands and buildings of taxpayers, but it
40 does not include [railways, tracks, ties, lines, wires, cables, poles,]
41 pipes, conduits, bridges, viaducts, dams and reservoirs (except that the
42 lands upon which dams and reservoirs are situated are real estate),
43 machinery, apparatus and equipment, notwithstanding any attachment
44 thereof to lands or buildings.

45 (c) "Gross receipts" means all receipts from the taxpayer's
46 business over, in, through or from the whole of its lines or mains but

1 does not include any sum or sums of money received by the taxpayer
 2 in payment for [gas or electrical energy or] water sold and furnished
 3 to another public utility which is also subject to the payment of a tax
 4 based upon its gross receipts, ¹[nor any sum or sums of money
 5 received by the taxpayer from a cogenerator in payment for
 6 cogenerated electrical energy resold by the taxpayer to the producing
 7 cogenerator where produced, nor any sum or sums of money received
 8 by the taxpayer from a cogenerator in payment for natural gas sold by
 9 the taxpayer to the cogenerator and separately metered for use in a
 10 cogeneration facility, nor in the case of a street railway or traction
 11 corporation, the receipts from the operation of autobuses or vehicles
 12 of the character described in R.S.48:15-41 through R.S.48:15-56,
 13 inclusive,] or to a gas, electric or gas and electric public utility subject
 14 to the payment of taxes pursuant to P.L. , c. (C.)(now pending
 15 before the Legislature as this bill), nor any sum or sums of money
 16 received by the taxpayer in payment for water sold or furnished that
 17 is used to generate electricity that is sold for resale or to an end user
 18 other than the one on-site end user upon whose property is located a
 19 co-generation facility or self-generation unit that generated the
 20 electricity or upon the property purchased or leased from the one on-
 21 site end user by the person owning the co-generation facility or self-
 22 generation unit if such property is contiguous to the user's property
 23 and is the property upon which is located a co-generation facility or
 24 self-generation unit that generated the electricity.¹ nor in the case of
 25 a sewerage corporation, an amount equal to any sum or sums of
 26 money payable by such sewerage corporation to any board,
 27 commission, department, branch, agency or authority of the State or
 28 of any county or municipality, for the treatment, purification or
 29 disposal of sewage or other wastes, nor in the case of a water
 30 purveyor, the amount which represents the water tax imposed by
 31 section 11 of P.L.1983, c.443 (C.58:12A-21) and which is included in
 32 the tariff altered pursuant to section 6 of P.L.1983, c.443
 33 (C.58:12A-17).

34 (d) ["Scheduled property" means only those classes or types of
 35 property of a taxpayer set forth in section 10 of this act and which are
 36 to be used in computing the apportionment value as herein defined.]
 37 ¹(¹ Deleted by amendment, P.L. , c. .)

38 (e) ["Unit value" means the value set forth in section 10 of this act
 39 to be uniformly applied to each of the several classes or types of
 40 scheduled property in computing the apportionment value.] Deleted by
 41 amendment, P.L. , c. .)

42 (f) ["Apportionment value" or "apportionment valuation" means
 43 the result obtained by multiplying the quantities of each class or type
 44 of scheduled property of a taxpayer by the applicable unit value, and
 45 the addition of such results.] ¹(¹ Deleted by amendment, P.L. , c.
 46 .)

1 (g) "Public street, highway, road or other public place" includes
2 any street, highway, road or other public place which is open and used
3 by the public, even though the same has not been formally accepted as
4 a public street, highway, road, or other public place. However, for
5 purposes of computing the tax in connection with lines or mains
6 installed prior to February 19, 1991, "public street, highway, road or
7 other public place" shall not mean or include non-restricted roadways,
8 such as extended residential, commercial or recreational facility
9 driveways, or dead end streets, cul-de-sacs or alleys which are
10 connected to public roadways and are for access to or the use of
11 supermarkets, shopping malls, planned communities and the
12 connecting roads within or around the above facilities whether these
13 roadways shall be located on public or private property, unless such
14 shall have been determined a "public street, highway, road or other
15 public place" for the purposes of P.L.1940, c.5 (C.54:30A-49 et seq.)
16 prior to February 19, 1991.

17 (h) "Service connections" means the [wires or] pipes connecting
18 the building or place where the service or commodity supplied by the
19 taxpayer is used or delivered, or is made available for use or delivery,
20 with a supply line or supply main in the street, highway, road, or other
21 public place, or with such supply line or supply main on private
22 property.

23 (i) "State Tax Commissioner" or "director" means the Director of
24 the Division of Taxation in the Department of the Treasury.

25 (j) ["Cogenerator" means a person or business entity which owns
26 or operates a cogeneration facility in the State of New Jersey, which
27 facility is a plant, installation or other structure whose primary purpose
28 is the sequential production of electricity and steam or other forms of
29 useful energy which are used for industrial, commercial, heating or
30 cooling purposes; and which is designated by the Federal Energy
31 Regulatory Commission, or its successor, as a "qualifying facility"
32 pursuant to the provisions of the "Public Utility Regulatory Policies
33 Act of 1978," Pub.L.95-617.] (Deleted by amendment, P.L. , c.
34 ___.)

35 (k) ["Corresponding therms of gas" or "corresponding
36 kilowatthours of electricity" means all therms of gas or kilowatthours
37 of electricity from the taxpayer's business over, on, in, through or from
38 the whole of its lines or mains, excluding therefrom, however, (1) any
39 therms of gas or kilowatthours of electricity as may have been sold and
40 furnished to another public utility which is also subject to either the
41 payment of a tax based upon gross receipts or the payment of a
42 unit-based tax applied to therms of gas or kilowatthours of electricity;
43 (2) any kilowatthours of cogenerated electrical energy resold by the
44 taxpayer to a producing cogenerator where produced; and (3) any
45 therms of natural gas sold by the taxpayer to a cogenerator and
46 separately metered for use in a cogeneration facility.] (Deleted by

1 amendment, P.L. , c. .)

2 (l) ["Class" means any segment, grouping or other division of an
3 electric company's or gas company's customers which is established for
4 the purpose of charging rates for electric or gas service. For the
5 purposes of this act, any such class shall be designated to be in the
6 residential class category or non-residential class category.] (Deleted
7 by amendment, P.L. , c. .)

8 (m) [With respect to electric companies, (1) "residential class
9 category" means any class established by an electric company which
10 generally includes customers taking electric service under rate
11 schedules that are primarily residential in nature; and (2)
12 "non-residential class category" means any class established by an
13 electric company which generally includes customers taking electric
14 service under rate schedules that are primarily non-residential in
15 nature.] (Deleted by amendment, P.L. , c. .)

16 (n) [With respect to gas companies, (1) "residential class
17 category" means any class established by a gas company which
18 generally includes customers taking natural gas service under rate
19 schedules that are primarily residential in nature; and (2)
20 "non-residential class category" means any class established by a gas
21 company which generally includes customers taking gas service under
22 rate schedules that are primarily non-residential in nature.] (Deleted
23 by amendment, P.L. , c. .)

24 (cf: P.L.1991, c.184, s.8)

25

26 8. Section 3 of P.L.1940, c.5 (C.54:30A-51) is amended to read as
27 follows:

28 3. [Street railway, traction, sewerage,] Sewerage and water [, gas
29 and electric light, heat and power] corporations using or occupying
30 public streets, highways, roads or other public places, and their
31 property and franchises, shall be subject to taxation only as in this act
32 provided. Any such corporation shall not be subject to any other
33 taxes upon its property, franchises, stock or gross receipts, and the
34 shares of stock of any such corporation shall not be taxed in the hands
35 of shareholders.

36 (cf: P.L.1961, c.93, s.4)

37

38 9. Section 4 of P.L.1940, c.5 (C.54:30A-52) is amended to read as
39 follows:

40 4. All the real estate as herein defined, [and the electric and gas
41 appliances to be used for the consumption of gas or electricity and
42 held for resale and not for the purpose of production, transmission or
43 distribution of gas or electric energy, and byproducts of gas
44 manufacture held for resale and not for the purpose of production,
45 transmission or distribution of gas or electric energy,] owned or held
46 by any taxpayer shall be assessed and taxed at local rates in the manner

1 provided by law for the taxation of similar property owned by other
2 corporations or individuals, and all proceedings for appeal, review and
3 collection available to municipalities and other corporations or
4 individuals with respect to similar property shall be applicable.

5 (cf: P.L.1940, c.5, s.4)

6

7 10. Section 6 of P.L.1940, c.5 (C.54:30A-54) is amended to read
8 as follows:

9 6. Every [street railway, traction,] sewerage [,] and water
10 corporation using or occupying the public streets, highways, roads, or
11 other public places in this State shall, annually, pay excise taxes for the
12 privilege of exercising its franchises and using the public streets,
13 highways, roads or other public places in this State, as follows:

14 (a) A tax computed at the rate of 5% of such proportion of the
15 gross receipts of such taxpayer for the preceding calendar year as the
16 length of the lines or mains in this State, located along, in or over any
17 public street, highway, road or other public place, exclusive of service
18 connections, bears to the whole length of its lines or mains, exclusive
19 of service connections. In case the gross receipts of any such taxpayer
20 for any calendar year shall not exceed \$50,000.00 the tax on such
21 taxpayer for such calendar year shall be computed at the rate of 2%
22 instead of at the rate of 5%.

23 (b) A tax at the rate of 7 % upon the gross receipts of such
24 taxpayer for the preceding calendar year from its business over, on, in,
25 through or from its lines or mains in the State of New Jersey.

26 (c) In addition to the excise taxes imposed in subsections (a) and
27 (b) hereof, every [street railway, traction,] sewerage and water
28 corporation which is subject to the taxes imposed thereunder shall also
29 pay to the State excise taxes for the franchise to operate and conduct
30 business within the State and to use the public streets, highways, roads
31 or other public places in the State as follows:

32 (1) A tax computed at the rate of 0.625% of such proportion of the
33 gross receipts of such taxpayer for the preceding calendar year as the
34 length of the lines or mains in this State, located along, in or over any
35 public street, highway, road or other public place, exclusive of service
36 connections, bears to the whole length of its lines or mains, exclusive
37 of service connections. In case the gross receipts of any such taxpayer
38 for any calendar year shall not exceed \$50,000.00 the tax on such
39 taxpayer for such calendar year shall be computed at the rate of 0.25%
40 instead of at the rate of 0.625%.

41 (2) A tax at the rate of 0.9375% upon the gross receipts of such
42 taxpayer for the preceding calendar year from its business over, on, in,

1 through or from its lines or mains in the State of New Jersey.
2 (cf: P.L.1991, c.184, s.9)

3
4 11. Section 8 of P.L.1963, c.42 (C.54:30A-54.1) is amended to
5 read as follows:

6 8. The director shall annually, on or before April 1, 1964, and April
7 1 in each year thereafter, compute the excise taxes payable to the
8 State as provided in subsection (c) of section 6 hereof. [In making
9 such computation the director shall allow as a credit against the excise
10 taxes payable to the State as provided in subsection (c)(2) of section
11 6 hereof, the amount of taxes paid in the previous calendar year by
12 any such taxpayers pursuant to L.1961, c.91, as amended and
13 supplemented.] Within 5 days after making such computation, the
14 director shall certify such taxes and the taxes provided for in section
15 2 of this act as a partial payment to the respective taxpayers who shall
16 make payment thereof to the director on or before May 1 next
17 succeeding.

18 (cf: P.L.1971, c.108, s.1)

19
20 12. Section 2 of P.L.1971, c.108 (C.54:30A-54.1a) is amended to
21 read as follows:

22 2. a. For [street railway, traction,] sewerage and water
23 corporations, on or before May 1, 1971, except as hereinafter
24 provided, and on or before May 1 of each year thereafter, [and for gas
25 and electric light, heat and power corporations, on or before May 1
26 each year from 1972 through 1991 and on or before April 1, 1992,]
27 every person, copartnership, association or corporation subject to the
28 excise tax imposed by section 6 of P.L.1940, c.5 (C.54:30A-54) shall
29 pay to the director an amount equal to 1/2 of the tax payable under
30 section 6 of P.L.1940, c.5 (C.54:30A-54) upon its gross receipts
31 determined thereunder for the preceding calendar year. Each such
32 payment shall be in addition to the tax payable under section 6 of
33 P.L.1940, c.5 (C.54:30A-54) and shall be considered as a partial
34 payment of the tax which will become due under said section[.] upon
35 the following May 1 [or April 1, as may be applicable]. The additional
36 taxes due on or before May 1, 1971 shall be payable in two equal
37 installments. With respect to the additional taxes herein, the first
38 installment shall be payable on May 1, 1971 and the second installment
39 thereof shall be payable on or before June 15, 1971.

40 In the calculation of the tax due in accordance with section 6 of
41 P.L.1940, c.5 (C.54:30A-54) in the year 1972 and each applicable year
42 thereafter, every person, copartnership, association or corporation
43 subject to tax hereunder shall be entitled to a credit in the amount of
44 the tax paid hereunder as a partial payment in the preceding calendar
45 year and shall be entitled to the return, or credit against taxes due and
46 payable in the next year, of any amount so paid which shall be found

1 to be in excess of the total amount payable in accordance with section
2 6 of P.L.1940, c.5 (C.54:30A-54).

3 b. [For gas and electric light, heat and power corporations, on or
4 before April 1, 1993, and on or before April 1 of each year thereafter,
5 such corporations subject to the tax imposed pursuant to section 10 of
6 P.L.1991, c.184 (C.54:30A-54.6), shall pay to the director an amount
7 equal to 1/2 of the tax payable pursuant to subsection b. of section 10
8 of P.L.1991, c.184 (C.54:30A-54.6), for the preceding calendar year.
9 Each such payment shall be in addition to the tax payable pursuant to
10 section 10 of P.L.1991, c.184 (C.54:30A-54.6), and shall be
11 considered as a partial payment of the tax which will become due
12 pursuant to that section. In calculation of the tax due in accordance
13 with section 10 of P.L.1991, c.184 (C.54:30A-54.6) for the year 1992
14 and for each year thereafter every such corporation subject to this
15 subsection shall be entitled to a credit in the amount of the tax paid
16 hereunder as a partial payment in the preceding calendar year and shall
17 be entitled to the return, or credit against taxes due and payable in the
18 next year, of any amount so paid which shall be found to be in excess
19 of the total amount of tax payable pursuant to subsection b. of section
20 10 of P.L.1991, c.184 (C.54:30A-54.6).] Deleted by amendment,
21 P.L. _____, c. _____.
22 (cf: P.L.1991, c.184, s.13)

23

24 13. Section 14 of P.L.1991, c.184 (C.54:30A-54.4) is amended to
25 read as follows:

26 14. a. For [street railway, traction,] sewerage and water
27 corporations, on or before April 1, 1979 and on or before June 1 in
28 each year thereafter, [and for gas and electric light, heat and power
29 corporations, on or before June 1 each year from 1980 through 1991
30 and on or before April 1, 1992,] the director shall compute an advance
31 payment equal in amount to 55% of the increase in taxes due under
32 subsections (a) and (b) of section 6 of P.L.1940, c.5 (C.54:30A-54)
33 during the preceding calendar year over the taxes due under such
34 subsections in the calendar year immediately preceding that year. The
35 advance payment shall not be considered for the purpose of
36 determining the amount of the increase. Each such payment shall be in
37 addition to the taxes payable under section 6 of P.L.1940, c.5
38 (C.54:30A-54) and section 2 of P.L.1971, c.108 (C.54:30A-54.1a) and
39 shall be considered as a partial payment of the tax to become due and
40 payable in the following year.

41 b. Every taxpayer subject to tax under section 6 of P.L.1940, c.5
42 (C.54:30A-54) shall be required to remit to the State for the use of the
43 State as an advance payment, an amount equal to the amount as
44 computed in subsection a. of this section payable in two installments
45 as follows: 60% on May 1, 1979 and 40% on August 1, 1979.

46 c. In the year 1980 and in each year thereafter an advance payment

1 pursuant to subsection a. of this section shall be paid by each taxpayer
2 subject to subsection a. of this section in the manner provided for by
3 law for payment of the taxes due under section 6 of P.L.1940, c.5
4 (C.54:30A-54).

5 d. [(1) Each gas and electric light, heat and power corporation, on
6 or before April 1, 1993, shall pay to the director an advance payment
7 as shall be computed by the director equal to 55% of the increase in
8 taxes due from a taxpayer pursuant to subsection a. of section 10 of
9 P.L.1991, c.184 (C.54:30A-54.6) for 1992 over the taxes due from the
10 taxpayer pursuant to subsections (a) and (b) of section 6 of P.L.1940,
11 c.5 (C.54:30A-54) for 1991.

12 (2) Each gas and electric light, heat and power corporation, on or
13 before April 1, 1994, and on or before April 1 in each year thereafter,
14 shall pay to the director an advance payment as shall be computed by
15 the director equal to 55% of the increase in taxes due from a taxpayer
16 pursuant to subsection a. of section 10 of P.L.1991, c.184
17 (C.54:30A-54.6) during the preceding calendar year over the taxes due
18 from the taxpayer under such subsection a. of section 10 of P.L.1991,
19 c.184 in the calendar year immediately preceding that year.

20 (3) In calculating the amount of tax increase for the purposes of
21 paragraphs (1) and (2) of this subsection, advance payments made
22 pursuant to this section shall not be considered. Each advance
23 payment made pursuant to this subsection shall be in addition to the
24 taxes payable pursuant to section 10 of P.L.1991, c.184 (C.
25 54:30A-54.6) and section 2 of P.L.1971, c. 108 (C.54:30A-54.1a) and
26 shall be considered as a partial payment of the tax to become due and
27 payable in the following year.] (Deleted by amendment, P.L. , c. .)
28 (cf: P.L.1991, 184, s.14)

29

30 14. Section 7 of P.L.1940, c.5 (C.54:30A-55) is amended to read
31 as follows:

32 7. (A) Every taxpayer shall on or before the first day of
33 September, 1941 and on or before the first day of September in each
34 year thereafter return to the Director of the Division of Taxation a
35 statement in such form, manner, and detail as the Director of the
36 Division of Taxation shall require, showing, as of the first day of July
37 of such year:

38 (1) [The scheduled property of the taxpayer located in, on or over
39 any public street, highway, road or other public place in each
40 municipality in this State and the scheduled property not so located in
41 each municipality in this State]Deleted by amendment, P.L. , c. .);

42 (2) The length of the taxpayer's lines and mains along, in, on or
43 over any public street, highway, road or other public place in this
44 State, exclusive of service connections [(but not including in the case
45 of a street railway or traction company the length of the lines operated
46 by autobuses or vehicles of the character described in R.S.48:15-41 et

1 seq.]); and

2 (3) The whole length of the taxpayer's lines and mains, exclusive
3 of service connections [(but not including in the case of a street
4 railway or traction company the length of the lines operated by
5 autobuses or vehicles of the character described in R.S.48:15-41 et
6 seq.)].

7 (4) [Every taxpayer operating both gas and electric facilities shall
8 supply the information required by this subsection (A) in such manner
9 as the Director of the Division of Taxation shall require so that its gas
10 and electric scheduled property and length of gas and electric lines
11 shall be shown separately.] Deleted by amendment, P.L. .c. .)

12 (B) Every taxpayer shall on or before February 1, [1941] 1998, and
13 on or before February 1 in each year thereafter return to the Director
14 of the Division of Taxation a statement showing:

15 (1) The gross receipts for the preceding calendar year from the
16 business over, on, in, through or from the taxpayer's lines and mains
17 in this State, stated separately for each class of business; and

18 (2) The gross receipts for the preceding calendar year from the
19 business over, on, in, through or from the whole of the taxpayer's lines
20 and mains. [In addition, as to gas and electric light, heat and power
21 corporation taxpayers, commencing with the statement to be returned
22 on or before February 1, 1992, a statement of the corresponding
23 therms of gas and the corresponding kilowatthours of electricity sold
24 in this State in the preceding year itemized separately for classes in the
25 residential class category and the nonresidential class categories.]

26 (3) [Every taxpayer operating both gas and electric facilities shall
27 supply the information required by this subsection (B) in such manner
28 as the Director of the Division of Taxation shall require, separating its
29 gross receipts and sales of units from gas operations from its gross
30 receipts and sales of units from electric operations.] (Deleted by
31 amendment, P.L. .c. .)

32 (C) The statements herein provided for shall be subscribed and
33 sworn to by the president, a vice-president or chief officer of the
34 corporation making such return; any taxpayer or refusing or neglecting
35 to make the statements herein provided for shall forfeit and pay to the
36 State of New Jersey the sum of one hundred dollars (\$100) per day for
37 each day of such refusal or neglect, to be recovered in an action at law
38 in the name of the State and which, when recovered, shall be paid into
39 the State Treasury. It shall be the duty of the Director of the Division
40 of Taxation to certify any such default to the Attorney General of the
41 State who, thereupon, shall prosecute an action at law for such
42 penalty.

43 (D) The Director of the Division of Taxation shall audit and verify
44 the statements filed by taxpayers and whenever and in such respects as
45 he shall deem necessary or advisable. The Director of the Division of
46 Taxation may require any taxpayer to supply additional data and

1 information in such form and detail as he shall request, whenever he
2 may deem it necessary or helpful, for the proper performance of his
3 duties under this act.

4 (cf: P.L.1991, c.184, s.17)

5

6 15. Section 14 of P.L.1940, c.5 (C.54:30A-62) is amended to read
7 as follows:

8 14. Within five days after making the computation [and
9 apportionment] of the excise taxes under subsections (a) and (b) of
10 section 6 of P.L.1940, c.5 (C.54:30A-54) [and under subsection a. of
11 section 10 of P.L.1991, c.184 (C.54:30A-54.6),] the Director of the
12 Division of Taxation shall certify to the State Treasurer the amount of
13 such taxes [apportioned to each municipality]. At the same time, the
14 director shall issue directly to each taxpayer statements of taxes due,
15 and payments with respect thereto shall be remitted by each taxpayer
16 to the director in the following manner: 35% thereof within 15 days
17 after the date of certification of the [apportionment] computation by
18 the director, 35% thereof on or before August 15 and 30% thereof on
19 or before November 15, [except that for gas and electric light, heat
20 and power corporations for the calendar years 1992, 1993 and 1994,
21 payment of all taxes due shall be remitted to the director on or before
22 April 1, and for calendar year 1995 and each calendar year thereafter
23 taxes shall be remitted in the following manner: a payment of the
24 estimated tax liability on or before April 1 of the current year and a
25 payment of the remaining tax liability, if any, on or before April 1 of
26 the next following year. If for any reason the making and delivering
27 of a certificate of apportionment shall be delayed until after December
28 1 in any year then in that case all of the taxes for such year affected by
29 such certificate of apportionment shall become due and payable 30
30 days after the date of such certification of apportionment; and
31 provided, that in case of an appeal from any apportionment valuation
32 or apportionment or any review thereof in any court, the portion of
33 any such tax not paid prior to the commencement of any such appeal
34 or proceedings for review, shall not become payable until 30 days after
35 final determination of such appeal or review and the certification or
36 recertification of the apportionment required.] The administration,
37 collection and enforcement of the taxes payable by each taxpayer
38 under subsections (a) and (b) of section 6 of P.L.1940, c.5
39 (C.54:30A-54) [or under section 10 of P.L.1991, c.184
40 (C.54:30A-54.6)] and any advance payment or payment of estimated
41 tax liability required with regard to those taxes shall be subject to the
42 provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et
43 seq., to the extent that the provisions of that law are not inconsistent
44 with the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) [or
45 P.L.1991, c.184 (C.54:30A-18.6 et al.)].

46 The director may, by regulation, require that any payment of tax

1 made, on or before the date established pursuant to this section for the
2 payment, shall be by electronic funds transfer to such depositories as
3 the State Treasurer shall designate pursuant to section 1 of P.L.1956,
4 c.174 (C.52:18-16.1). A payment by electronic funds transfer shall be
5 deemed to be made on the date the payment is received by the
6 designated depository. The form and content of the electronic funds
7 transfer message, the circumstances under which an electronic funds
8 transfer shall serve as a substitute for the filing of another form of
9 return, the means by which taxpayers will be provided with
10 acknowledgments of payments, and the classes of taxpayers subject to
11 the electronic funds transfer requirement shall be as prescribed by the
12 director.

13 For the purposes of this section "electronic funds transfer" means
14 any transfer of funds, other than a transaction originated by check,
15 draft, or similar paper instrument, that is initiated through an
16 electronic terminal, telephone, or computer or magnetic tape for the
17 purpose of ordering, instructing or authorizing a financial institution
18 to debit or credit an account.

19 (cf: P.L.1991, c.184, s.15)

20

21 16. Section 15 of P.L.1940, c.5 (C.54:30A-63) is amended to read
22 as follows:

23 15. When any corporation subject to taxation under this act shall
24 acquire the rights, property and franchises of using and occupying
25 public streets, highways, roads or other public places in this State[,
26 other than the right and franchise to operate autobuses or vehicles of
27 the character described in Title 48, chapter 15, section 41 to the end
28 of the chapter, of the Revised Statutes (Revised Statutes, section
29 48:15-41 et seq.),] of persons, copartnerships, associations or
30 corporations then subject to an excise tax based upon its gross
31 receipts, and shall retain such rights, property and franchises at the end
32 of the calendar year in which such acquisition occurs, then and in such
33 case on or before February 1 of the succeeding year, such acquiring
34 corporation shall return to the State Tax Commissioner in the manner
35 and form required by this act and in addition to the statements of
36 gross receipts[, scheduled property] and length of lines to be filed
37 under this act, a statement showing the gross receipts from the
38 business over, on, in, through or from the lines or mains of the
39 persons, copartnerships, associations or corporations whose rights,
40 property and franchises were acquired as aforesaid, from January 1 of
41 the year in which such property was acquired to the date of such
42 acquisition, together with a statement showing the [scheduled
43 property and] length of lines or mains as of July 1 of the year in which
44 such acquisition took place, as hereinbefore required, unless such
45 information has previously been supplied and filed with the State Tax
46 Commissioner. The total of the gross receipts as shown in both of

1 said statements to the State Tax Commissioner, or as otherwise
2 ascertained by him, shall be used in ascertaining[,] and fixing [and
3 apportioning] the excise tax imposed by section 6(a) of this act upon
4 such acquiring corporation, and if said rights, property and franchises
5 were acquired from a corporation subject to taxation under this act,
6 then the total of the gross receipts as shown in both of said statements
7 to the State Tax Commissioner, or as otherwise ascertained by him,
8 shall be used in ascertaining[,] and fixing [and apportioning] the
9 excise tax imposed by section 6(b) of this act upon such acquiring
10 corporation.

11 The total of the gross receipts as shown in both of said statements
12 to the State Tax Commissioner, or as otherwise ascertained by him,
13 shall be used in ascertaining and fixing the excise tax imposed by
14 section 6(c) of this act upon such acquiring corporation.

15 (cf: P.L.1963, c.42, s.9)

16

17 17. Section 2 of P.L.1966, c.30 (C.54:32B-2) shall be amended to
18 read:

19 2. Unless the context in which they occur requires otherwise, the
20 following terms when used in this act shall mean:

21 (a) Person. Person includes an individual, partnership, society,
22 association, joint stock company, corporation, public corporation or
23 public authority, estate, receiver, trustee, assignee, referee, and any
24 other person acting in a fiduciary or representative capacity, whether
25 appointed by a court or otherwise, and any combination of the
26 foregoing.

27 (b) Purchase at retail. A purchase by any person at a retail sale.

28 (c) Purchaser. A person who purchases property or who receives
29 services.

30 (d) Receipt. The amount of the sales price of any property and the
31 charge for any service taxable under this act, valued in money, whether
32 received in money or otherwise, including any amount for which credit
33 is allowed by the vendor to the purchaser, without any deduction for
34 expenses or early payment discounts, but excluding any credit for
35 property of the same kind that is not tangible personal property
36 purchased for lease accepted in part payment and intended for resale,
37 excluding the cost of transportation where such cost is separately
38 stated in the written contract, if any, and on the bill rendered to the
39 purchaser, and excluding the amount of the sales price for which food
40 stamps have been properly tendered in full or part payment pursuant
41 to the federal Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C.
42 §2011 et seq.).

43 (e) Retail sale. (1) A sale of tangible personal property to any
44 person for any purpose, other than (A) for resale either as such or as
45 converted into or as a component part of a product produced for sale
46 by the purchaser ¹, including the conversion of natural gas into another

1 ²intermediate or end² product, other than electricity or thermal
2 energy, produced for sale by the purchaser¹, or (B) for use by that
3 person in performing the services subject to tax under subsection (b)
4 of section 3 where the property so sold becomes a physical component
5 part of the property upon which the services are performed or where
6 the property so sold is later actually transferred to the purchaser of the
7 service in conjunction with the performance of the service subject to
8 tax.

9 (2) For the purposes of this act, the term retail sales includes:

10 Sales of tangible personal property to all contractors,
11 subcontractors or repairmen of materials and supplies for use by them
12 in erecting structures for others, or building on, or otherwise
13 improving, altering, or repairing real property of others.

14 (3) For the purposes of this act, the term retail sale includes the
15 purchase of tangible personal property for lease.

16 (4) The term retail sales does not include:

17 (A) Professional, insurance, or personal service transactions which
18 involve the transfer of tangible personal property as an inconsequential
19 element, for which no separate charges are made.

20 (B) The transfer of tangible personal property to a corporation,
21 solely in consideration for the issuance of its stock, pursuant to a
22 merger or consolidation effected under the laws of New Jersey or any
23 other jurisdiction.

24 (C) The distribution of property by a corporation to its stockholders
25 as a liquidating dividend.

26 (D) The distribution of property by a partnership to its partners in
27 whole or partial liquidation.

28 (E) The transfer of property to a corporation upon its organization
29 in consideration for the issuance of its stock.

30 (F) The contribution of property to a partnership in consideration
31 for a partnership interest therein.

32 (G) The sale of tangible personal property where the purpose of the
33 vendee is to hold the thing transferred as security for the performance
34 of an obligation of the vendor.

35 (f) Sale, selling or purchase. Any transfer of title or possession or
36 both, exchange or barter, rental, lease or license to use or consume,
37 conditional or otherwise, in any manner or by any means whatsoever
38 for a consideration, or any agreement therefor, including the rendering
39 of any service, taxable under this act, for a consideration or any
40 agreement therefor.

41 (g) Tangible personal property. Corporeal personal property of any
42 nature including energy.

43 (h) Use. The exercise of any right or power over tangible personal
44 property by the purchaser thereof and includes, but is not limited to,
45 the receiving, storage or any keeping or retention for any length of
46 time, withdrawal from storage, any installation, any affixation to real

1 or personal property, or any consumption of such property. Use also
2 includes the exercise of any right or power over intrastate or interstate
3 telecommunications. Use also includes the exercise of any right or
4 power over utility service.

5 (i) Vendor. (1) The term "vendor" includes:

6 (A) A person making sales of tangible personal property or
7 services, the receipts from which are taxed by this act;

8 (B) A person maintaining a place of business in the State and
9 making sales, whether at such place of business or elsewhere, to
10 persons within the State of tangible personal property or services, the
11 use of which is taxed by this act;

12 (C) A person who solicits business either by employees,
13 independent contractors, agents or other representatives or by
14 distribution of catalogs or other advertising matter and by reason
15 thereof makes sales to persons within the State of tangible personal
16 property or services, the use of which is taxed by this act;

17 (D) Any other person making sales to persons within the State of
18 tangible personal property or services, the use of which is taxed by this
19 act, who may be authorized by the director to collect the tax imposed
20 by this act;

21 (E) The State of New Jersey, any of its agencies, instrumentalities,
22 public authorities, public corporations (including a public corporation
23 created pursuant to agreement or compact with another state) or
24 political subdivisions when such entity sells services or property of a
25 kind ordinarily sold by private persons; [and]

26 (F) A person who purchases tangible personal property for lease,
27 whether in this State or elsewhere. For the purposes of Title 54 of the
28 Revised Statutes, the presence of leased tangible personal property in
29 this State is deemed to be a place of business in this State; and

30 (G) A person who ²[, in the regular course of business,]² sells,
31 stores, delivers or transports energy to users or customers in this State
32 whether by mains, lines or pipes located within this State or by any
33 other means of delivery.

34 (2) In addition, when in the opinion of the director it is necessary
35 for the efficient administration of this act to treat any salesman,
36 representative, peddler or canvasser as the agent of the vendor,
37 distributor, supervisor or employer under whom he operates or from
38 whom he obtains tangible personal property sold by him or for whom
39 he solicits business, the director may, in his discretion, treat such agent
40 as the vendor jointly responsible with his principal, distributor,
41 supervisor or employer for the collection and payment over of the tax.

42 (j) Hotel. A building or portion of it which is regularly used and
43 kept open as such for the lodging of guests. The term "hotel" includes
44 an apartment hotel, a motel, boarding house or club, whether or not
45 meals are served.

46 (k) Occupancy. The use or possession or the right to the use or

- 1 possession, of any room in a hotel.
- 2 (l) Occupant. A person who, for a consideration, uses, possesses,
3 or has the right to use or possess, any room in a hotel under any lease,
4 concession, permit, right of access, license to use or other agreement,
5 or otherwise.
- 6 (m) Permanent resident. Any occupant of any room or rooms in a
7 hotel for at least 90 consecutive days shall be considered a permanent
8 resident with regard to the period of such occupancy.
- 9 (n) Room. Any room or rooms of any kind in any part or portion
10 of a hotel, which is available for or let out for any purpose other than
11 a place of assembly.
- 12 (o) Admission charge. The amount paid for admission, including
13 any service charge and any charge for entertainment or amusement or
14 for the use of facilities therefor.
- 15 (p) Amusement charge. Any admission charge, dues or charge of
16 roof garden, cabaret or other similar place.
- 17 (q) Charge of a roof garden, cabaret or other similar place. Any
18 charge made for admission, refreshment, service, or merchandise at a
19 roof garden, cabaret or other similar place.
- 20 (r) Dramatic or musical arts admission charge. Any admission
21 charge paid for admission to a theater, opera house, concert hall or
22 other hall or place of assembly for a live, dramatic, choreographic or
23 musical performance.
- 24 (s) Lessor. Any person who is the owner, licensee, or lessee of any
25 premises or tangible personal property which he leases, subleases, or
26 grants a license to use to other persons.
- 27 (t) Place of amusement. Any place where any facilities for
28 entertainment, amusement, or sports are provided.
- 29 (u) Casual sale. Casual sale means an isolated or occasional sale of
30 an item of tangible personal property by a person who is not regularly
31 engaged in the business of making sales at retail where such property
32 was obtained by the person making the sale, through purchase or
33 otherwise, for his own use in this State.
- 34 (v) Motor vehicle. Motor vehicle shall include all vehicles propelled
35 otherwise than by muscular power (excepting such vehicles as run only
36 upon rails or tracks), trailers, semitrailers, housetrailers, or any other
37 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
38 designed for operation on the public highways.
- 39 (w) "Persons required to collect tax" or "persons required to collect
40 any tax imposed by this act" shall include: every vendor of tangible
41 personal property or services; every recipient of amusement charges;
42 every operator of a hotel; every lessor; and every vendor of
43 telecommunications. Said terms shall also include any officer or
44 employee of a corporation or of a dissolved corporation who as such
45 officer or employee is under a duty to act for such corporation in
46 complying with any requirement of this act and any member of a

1 partnership. Provided, however, the vendor of tangible personal
2 property to all contractors, subcontractors or repairmen, consisting of
3 materials and supplies for use by them in erecting structures for others,
4 or building on, or otherwise improving, altering or repairing real
5 property of others, shall not be deemed a person required to collect
6 tax, and the tax imposed by any section of this act shall be paid
7 directly to the director by such contractors, subcontractors or
8 repairmen.

9 (x) "Customer" shall include: every purchaser of tangible personal
10 property or services; every patron paying or liable for the payment of
11 any amusement charge; and every occupant of a room or rooms in a
12 hotel.

13 (y) "Property and services the use of which is subject to tax" shall
14 include: (1) all property sold to a person within the State, whether or
15 not the sale is made within the State, the use of which property is
16 subject to tax under section 6 or will become subject to tax when such
17 property is received by or comes into the possession or control of such
18 person within the State; (2) all services rendered to a person within the
19 State, whether or not such services are performed within the State,
20 upon tangible personal property the use of which is subject to tax
21 under section 6 or will become subject to tax when such property is
22 received by or comes into possession or control of such person within
23 the State; (3) intrastate or interstate telecommunications charged to a
24 service address in this State; [and] (4) (Deleted by amendment,
25 P.L.1995, c.184); (5) energy sold, exchanged or delivered in this State
26 for use in this State; and (6) utility service sold, exchanged or
27 delivered in this State for use in this State.

28 (z) Director. Director means the Director of the Division of
29 Taxation of the State Department of the Treasury, or any officer,
30 employee or agency of the Division of Taxation in the Department of
31 the Treasury duly authorized by the director (directly, or indirectly by
32 one or more redelegations of authority) to perform the functions
33 mentioned or described in this act.

34 (aa) "Lease" means the possession or control of tangible personal
35 property by an agreement, not transferring sole title, as may be
36 evidenced by a contract, contracts, or by implication from other
37 circumstances including course of dealing or usage of trade or course
38 of performance, for a period of more than 28 days.

39 (bb) "The amount of the sales price" of tangible personal property
40 purchased for lease means, at the election of the lessor, either (1) the
41 amount of the lessor's purchase price or (2) the amount of the total of
42 the lease payments attributable to the lease of such property. Tangible
43 personal property purchased for lease is subject to the provisions of
44 subsection (a) of section 3 of P.L.1966, c.30 (C.54:32B-3).

45 (cc) "Telecommunications" means the act or privilege of originating
46 or receiving messages or information through the use of any kind of

1 one-way or two-way communication; including but not limited to
2 voice, video, facsimile, teletypewriter, computer, cellular mobile or
3 portable telephone, specialized mobile or portable pager or paging
4 service, or any other type of communication; using electronic or
5 electromagnetic methods, and all services and equipment provided in
6 connection therewith or by means thereof. "Telecommunications" shall
7 not include:

8 (1) one-way radio or television broadcasting transmissions
9 available universally to the general public without a fee;

10 (2) purchases of telecommunications by a telecommunications
11 provider for use as a component part of telecommunications provided
12 to an ultimate retail consumer who (A) originates or terminates the
13 taxable end-to-end communications or (B) pays charges exempt from
14 taxation pursuant to paragraph (5) of this subsection;

15 (3) services provided by a person, or by that person's wholly owned
16 subsidiary, not engaged in the business of rendering or offering
17 telecommunications services to the public, for private and exclusive
18 use within its organization, provided however, that
19 "telecommunications" shall include the sale of telecommunications
20 services attributable to the excess unused telecommunications capacity
21 of that person to another;

22 (4) charges in the nature of subscription fees paid by subscribers for
23 cable television service; and

24 (5) charges subject to the local calling rate paid by inserting coins
25 into a coin operated telecommunications device available to the public.

26 (dd) "Interstate telecommunication" means any telecommunication
27 that originates or terminates inside this State, including international
28 telecommunication.

29 (ee) "Intrastate telecommunication" means any telecommunication
30 that originates and terminates within this State.

31 (ff) "Natural gas" means any gaseous fuel distributed through a
32 pipeline system.

33 (gg) "Energy" means natural gas or electricity.

34 (hh) "Utility service" means the transportation or transmission of
35 natural gas or electricity by means of mains, wires, lines or pipes, to
36 users or customers.

37 (ii) "Self-generation unit" means a facility located on the user's
38 property, ²or on property purchased or leased from the user by the
39 person owning the self-generation unit and such property is contiguous
40 to the user's property, ² which generates electricity to be used only by
41 that user on ²[that]the user's² property and is not transported to the
42 user over wires that cross a property line or public thoroughfare
43 ²unless the property line or public throughfare merely bifurcates the
44 user's or self-generation unit owner's otherwise contiguous property².

45 (jj) "Co-generation facility" means a facility the primary purpose of
46 which is the sequential production of electricity and steam or other

1 forms of useful energy which are used for industrial or commercial
2 heating or cooling purposes and which is designated by the Federal
3 Energy Regulatory Commission, or its successor, as a "qualifying
4 facility" pursuant to the provisions of the "Public Utility Regulatory
5 Policies Act of 1978," Pub.L. 95-617.

6 (kk) "Non-utility" means a company engaged in the sale, exchange
7 or transfer of natural gas that was not subject to the provisions
8 P.L.1940, c.5 (C.54:30A-49 et seq.) prior to December 31, 1997.
9 (cf: P.L.1995, c.184, s.1)

10

11 18. Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended to read
12 as follows:

13 3. There is imposed and there shall be paid a tax of 6% upon:

14 (a) The receipts from every retail sale of tangible personal property,
15 except as otherwise provided in this act. If the lessor of tangible
16 personal property purchased for lease elects to pay tax on the amount
17 of the sales price as provided in paragraph (2) of subsection (bb) of
18 section 2 of P.L.1966, c.30 (C.54:32B-2), any and each subsequent
19 lease or rental is a retail sale, and a subsequent sale of such property
20 is a retail sale.

21 (b) The receipts from every sale, except for resale, of the following
22 services:

23 (1) Producing, fabricating, processing, printing or imprinting
24 tangible personal property, performed for a person who directly or
25 indirectly furnishes the tangible personal property, not purchased by
26 him for resale, upon which such services are performed.

27 (2) Installing tangible personal property, or maintaining, servicing,
28 repairing tangible personal property not held for sale in the regular
29 course of business, whether or not the services are performed directly
30 or by means of coin-operated equipment or by any other means, and
31 whether or not any tangible personal property is transferred in
32 conjunction therewith, except (i) such services rendered by an
33 individual who is engaged directly by a private homeowner or lessee
34 in or about his residence and who is not in a regular trade or business
35 offering his services to the public, (ii) such services rendered with
36 respect to personal property exempt from taxation hereunder pursuant
37 to section 13 of P.L.1980, c.105 (C.54:32B-8.1), (iii) (Deleted by
38 amendment, P.L.1990, c.40), (iv) any receipts from laundering, dry
39 cleaning, tailoring, weaving, pressing, shoe repairing and shoeshining
40 and (v) services rendered in installing property which, when installed,
41 will constitute an addition or capital improvement to real property,
42 property or land.

43 (3) Storing all tangible personal property not held for sale in the
44 regular course of business and the rental of safe deposit boxes or
45 similar space.

46 (4) Maintaining, servicing or repairing real property, other than a

1 residential heating system unit serving not more than three families
2 living independently of each other and doing their cooking on the
3 premises, whether the services are performed in or outside of a
4 building, as distinguished from adding to or improving such real
5 property by a capital improvement, but excluding services rendered by
6 an individual who is not in a regular trade or business offering his
7 services to the public, and excluding garbage removal and sewer
8 services performed on a regular contractual basis for a term not less
9 than 30 days.

10 (5) Advertising services, except advertising services for use directly
11 and primarily for publication in newspapers and magazines and except
12 for direct-mail advertising processing services in connection with
13 distribution to out-of-State recipients.

14 (6) (Deleted by amendment, P.L.1995, c.184).

15 (7) Utility service provided to persons in this State, any right or
16 power over which is exercised in this State.

17 Wages, salaries and other compensation paid by an employer to an
18 employee for performing as an employee the services described in this
19 subsection are not receipts subject to the taxes imposed under this
20 subsection (b).

21 Services otherwise taxable under paragraph (1) or (2) of this
22 subsection (b) are not subject to the taxes imposed under this
23 subsection, where the tangible personal property upon which the
24 services were performed is delivered to the purchaser outside this
25 State for use outside this State.

26 (c) Receipts from the sale of food and drink in or by restaurants,
27 taverns, vending machines or other establishments in this State, or by
28 caterers, including in the amount of such receipts any cover, minimum,
29 entertainment or other charge made to patrons or customers:

30 (1) In all instances where the sale is for consumption on the
31 premises where sold;

32 (2) In those instances where the vendor or any person whose
33 services are arranged for by the vendor, after the delivery of the food
34 or drink by or on behalf of the vendor for consumption off the
35 premises of the vendor, serves or assists in serving, cooks, heats or
36 provides other services with respect to the food or drink, except for
37 meals especially prepared for and delivered to homebound elderly, age
38 60 or older, and to disabled persons, or meals prepared and served at
39 a group-sitting at a location outside of the home to otherwise
40 homebound elderly persons, age 60 or older, and otherwise
41 homebound disabled persons, as all or part of any food service project
42 funded in whole or in part by government or as part of a private,
43 nonprofit food service project available to all such elderly or disabled
44 persons residing within an area of service designated by the private
45 nonprofit organization;

46 (3) In those instances where the sale is for consumption off the

1 premises of the vendor, and consists of a meal, or food prepared and
2 ready to be eaten, of a kind obtainable in restaurants as the main
3 course of a meal, including a sandwich, except where food other than
4 sandwiches is sold in an unheated state and is of a type commonly sold
5 in the same form and condition in food stores other than those which
6 are principally engaged in selling prepared foods; and

7 (4) Sales of food and beverages sold through coin-operated vending
8 machines, at the wholesale price of such sale, which shall be defined
9 as 70% of the retail vending machine selling price, except sales of
10 milk, which shall not be taxed. Nothing herein contained shall affect
11 other sales through coin-operated vending machines taxable pursuant
12 to subsection (a) above or the exemption thereto provided by section
13 21 of P.L.1980, c.105 (C.54:32B-8.9).

14 The tax imposed by this subsection (c) shall not apply to food or
15 drink which is sold to an airline for consumption while in flight.

16 (d) The rent for every occupancy of a room or rooms in a hotel in
17 this State, except that the tax shall not be imposed upon (1) a
18 permanent resident, or (2) where the rent is not more than at the rate
19 of \$2.00 per day.

20 (e) (1) Any admission charge, where such admission charge is in
21 excess of \$0.75 to or for the use of any place of amusement in the
22 State, including charges for admission to race tracks, baseball,
23 football, basketball or exhibitions, dramatic or musical arts
24 performances, motion picture theaters, except charges for admission
25 to boxing, wrestling, kick boxing or combative sports exhibitions,
26 events, performances or contests which charges are taxed under any
27 other law of this State or under section 20 of P.L.1985, c.83
28 (C.5:2A-20), and, except charges to a patron for admission to, or use
29 of, facilities for sporting activities in which such patron is to be a
30 participant, such as bowling alleys and swimming pools. For any
31 person having the permanent use or possession of a box or seat or
32 lease or a license, other than a season ticket, for the use of a box or
33 seat at a place of amusement, the tax shall be upon the amount for
34 which a similar box or seat is sold for each performance or exhibition
35 at which the box or seat is used or reserved by the holder, licensee or
36 lessee, and shall be paid by the holder, licensee or lessee.

37 (2) The amount paid as charge of a roof garden, cabaret or other
38 similar place in this State, to the extent that a tax upon such charges
39 has not been paid pursuant to subsection (c) hereof.

40 (f) The receipts from every sale, except for resale, of intrastate or
41 interstate telecommunications charged to an address in this State,
42 regardless of where the services are billed or paid.

43 (cf: P.L.1995, c.184, s.2)

1 19. Section 6 of P.L.1966, c.30 (C.54:32B-6) is amended to read
2 as follows:

3 6. Unless property or services have already been or will be subject
4 to the sales tax under this act, there is hereby imposed on and there
5 shall be paid by every person a use tax for the use within this State of
6 6%, except as otherwise exempted under this act, (A) of any tangible
7 personal property purchased at retail, including energy, provided
8 however, that electricity consumed by the generating facility that
9 produced it shall not be subject to tax. (B) of any tangible personal
10 property manufactured, processed or assembled by the user, if items
11 of the same kind of tangible personal property are offered for sale by
12 him in the regular course of business, or if items of the same kind of
13 tangible personal property are not offered for sale by him in the regular
14 course of business and are used as such or incorporated into a
15 structure, building or real property, (C) of any tangible personal
16 property, however acquired, where not acquired for purposes of
17 resale, upon which any taxable services described in paragraphs (1)
18 and (2) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3)
19 have been performed, (D) of interstate or intrastate
20 telecommunications described in subsection (f) of section 3 of
21 P.L.1966, c.30, [and] (E) (Deleted by amendment, P.L.1995, c.184),
22 and (F) of utility service provided to persons in this State for use in
23 this State, provided however, that utility service used by the facility
24 that provides the service shall not be subject to tax. For purposes of
25 clause (A) of this section, the tax shall be at the applicable rate, as set
26 forth hereinabove, of the consideration given or contracted to be given
27 for such property or for the use of such property, but excluding any
28 credit for property of the same kind accepted in part payment and
29 intended for resale, plus the cost of transportation, except where such
30 cost is separately stated in the written contract, if any, and on the bill
31 rendered to the purchaser, provided however, that there shall be no
32 exclusion for the cost of the utility service. For the purposes of clause
33 (B) of this section, the tax shall be at the applicable rate, as set forth
34 hereinabove, of the price at which items of the same kind of tangible
35 personal property are offered for sale by the user, or if items of the
36 same kind of tangible personal property are not offered for sale by the
37 user in the regular course of business and are used as such or
38 incorporated into a structure, building or real property the tax shall be
39 at the applicable rate, as set forth hereinabove, of the consideration
40 given or contracted to be given for the tangible personal property
41 manufactured, processed or assembled by the user into the tangible
42 personal property the use of which is subject to use tax pursuant to
43 this section, and the mere storage, keeping, retention or withdrawal
44 from storage of tangible personal property by the person who
45 manufactured, processed or assembled such property shall not be
46 deemed a taxable use by him. For purposes of clause (C) of this

1 section, the tax shall be at the applicable rate, as set forth hereinabove,
2 of the consideration given or contracted to be given for the service,
3 including the consideration for any tangible personal property
4 transferred in conjunction with the performance of the service, plus the
5 cost of transportation, except where such cost is separately stated in
6 the written contract, if any, and on the bill rendered to the purchaser.
7 For the purposes of clause (D) of this section, the tax shall be at the
8 applicable rate on the charge made by the telecommunications service
9 provider. For purposes of clause (F) of this section, the tax shall be
10 at the applicable rate on the charge made by the utility service
11 provider.

12 (cf: P.L.1995, c.184, s.3)

13

14 20. Section 17 of P.L.1966, c.30 (C.54:32B-7) is amended to read
15 as follows:

16 17. (a) The retail sales tax imposed under subsection (a) of section
17 3 and the compensating use tax imposed under section 6, when
18 computed in respect to tangible personal property wherever
19 manufactured, processed or assembled and used by such manufacturer,
20 processor or assembler in the regular course of business within this
21 State, shall be based on the price at which items of the same kind of
22 tangible personal property are offered for sale by him.

23 (b) Tangible personal property, which has been purchased by a
24 resident of the State of New Jersey outside of this State for use
25 outside of this State and subsequently becomes subject to the
26 compensating use tax imposed under this act, shall be taxed on the
27 basis of the purchase price of such property, provided, however:

28 (1) That where a taxpayer affirmatively shows that the property
29 was used outside such State by him for more than six months prior to
30 its use within this State, such property shall be taxed on the basis of
31 current market value of the property at the time of its first use within
32 this State. The value of such property, for compensating use tax
33 purposes, may not exceed its cost.

34 (2) That the compensating use tax on such tangible personal
35 property brought into this State (other than for complete consumption
36 or for incorporation into real property located in this State) and used
37 in the performance of a contract or subcontract within this State by a
38 purchaser or user for a period of less than six months may be based,
39 at the option of the taxpayer, on the fair rental value of such property
40 for the period of use within this State.

41 (c) Leased tangible personal property which has been purchased
42 outside this State for lease outside of this State and subsequently
43 becomes subject to the compensating use tax imposed under this act
44 shall be taxed on the basis of the purchase price of such property,
45 provided however, that the compensating use tax on such property
46 brought into and used within this State may be based, at the option of

1 the lessor, on the total of the lease payments attributable to the lease
2 of that property attributable to the period of the lease remaining after
3 first use in this State.

4 (d) Unless tangible personal property purchased for lease has
5 already been subject to the sales tax imposed under subsection (a) of
6 section 3 or the compensating use tax imposed under section 6, the use
7 tax computed with respect to such property, in the discretion of the
8 director, may be assessed against the lessee or sub-lessee and shall be
9 based on the total of the periodic payments required under the lease.
10 The fact that the lessee has accepted in good faith the certificate of the
11 lessor, in the form prescribed by the director, and the fact that the tax
12 imposed on property purchased for lease in this act has been paid may
13 be considered by the director, but shall not be deemed conclusive if
14 good faith issuance or acceptance of such certificate is in question.

15 (e) The purchase of energy shall be subject to the compensating use
16 tax imposed under section 6 on the basis of the purchase price of the
17 energy, including any charges for utility service.

18 (cf: P.L.1989, c.123, s.3)

19

20 21. Section 19 of P.L.1980, c.105 (C.54:32B-8.7) is amended to
21 read as follows:

22 19. Receipts from the following are exempt from the tax imposed
23 under the Sales and Use Tax Act: sales of gas other than natural gas,
24 water, steam, or fuel [or electricity] delivered to consumers through
25 mains, lines, pipe, or in containers or bulk.

26 (cf: P.L.1990, c.40, s.6)

27

28 22. Section 23 of P.L.1980, c.105 (C.54:32B-8.11) is amended to
29 read as follows:

30 23. Receipts from charges for the transportation of persons or
31 property, except of energy, are exempt from the tax imposed under
32 the Sales and Use Tax Act.

33 (cf: P.L.1980, c.105, s.23)

34

35 23. Section 25 of P.L.1980, c.105 (C.54:32B-8.13) is amended to
36 read as follows:

37 25. Receipts from the following are exempt from the tax imposed
38 under the Sales and Use Tax Act:

39 a. Sales of machinery, apparatus or equipment for use or
40 consumption directly and primarily in the production of tangible
41 personal property by manufacturing, processing, assembling or
42 refining;

43 b. Sales of machinery, apparatus or equipment for use or
44 consumption directly and primarily in the production, generation,
45 transmission or distribution of gas, electricity, refrigeration, steam or
46 water for sale or in the operation of sewerage systems;

1 c. Sales of telephones, telephone lines, cables, central office
2 equipment or station apparatus, or other machinery, equipment or
3 apparatus, or comparable telegraph equipment to a service provider
4 subject to the jurisdiction of the Board of Public Utilities or the
5 Federal Communications Commission, for use directly and primarily
6 in receiving at destination or initiating, transmitting and switching
7 telephone, telegraph or interactive telecommunications service for sale
8 to the general public;

9 d. Sales of machinery, apparatus, equipment, building materials, or
10 structures or portions thereof, used directly and primarily for
11 cogeneration in a cogeneration facility. As used in this subsection,
12 "cogeneration facility" means a facility the primary purpose of which
13 is the sequential production of electricity and steam or other forms of
14 useful energy which are used for industrial or commercial heating or
15 cooling purposes and which is designated by the Federal Energy
16 Regulatory Commission, or its successor, as a "qualifying facility"
17 pursuant to the provisions of the "Public Utility Regulatory Policies
18 Act of 1978," Pub.L.95-617. The Director of the Office of Energy in
19 the Department of Environmental Protection, in consultation with the
20 Director of the Division of Taxation, shall adopt, pursuant to the
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
22 seq.), rules and regulations establishing technical specifications for
23 eligibility for the exemption provided in this subsection;

24 e. Sales of machinery, apparatus or equipment, including
25 transponders, earth stations, microwave dishes, transmitters and
26 receivers which have a useful life exceeding one year, other than that
27 used in the construction or operation of towers, to a commercial
28 broadcaster operating under a broadcasting license issued by the
29 Federal Communications Commission or to a provider of
30 cable/satellite television program services who may or may not operate
31 under a broadcasting license issued by the Federal Communications
32 Commission for use or consumption directly and primarily in the
33 production or transmission of radio or television information
34 transmitted, delivered or archived through any medium or method.

35 The exemptions granted under this section shall not be construed to
36 apply to sales, otherwise taxable, of machinery, equipment or
37 apparatus whose use is incidental to the activities described in
38 subsections a., b., c., d. and e. of this section.

39 The exemptions granted in this section shall not apply to energy,
40 motor vehicles, or to parts with a useful life of one year or less or
41 tools or supplies used in connection with the machinery, equipment or
42 apparatus described in this section.

43 (cf: P.L.1996, c.26, s.18)

44
45 24. Section 26 of P.L.1980, c.105 (C.54:32B-8.14) is amended to
46 read as follows:

1 26. Receipts from sales of tangible personal property, except
2 energy, purchased for use or consumption directly and exclusively in
3 research and development in the experimental or laboratory sense are
4 exempt from the tax imposed under the Sales and Use Tax Act. Such
5 research and development shall not be deemed to include the ordinary
6 testing or inspection of materials or products for quality control,
7 efficiency surveys, management studies, consumer surveys,
8 advertising, promotions or research in connection with literary,
9 historical or similar projects.

10 (cf: P.L.1980, c.105, s.26)

11

12 25. Section 28 of P.L.1980, c.105 (C.54:32B-8.16) is amended to
13 read as follows:

14 28. Receipts from sales of tangible personal property except
15 automobiles, [and] except property incorporated in a building or
16 structure, and except energy, for use and consumption directly and
17 exclusively in the production for sale of tangible personal property on
18 farms, including stock, dairy, poultry, fruit, fur-bearing animals, and
19 truck farms, ranches, nurseries, greenhouses or other similar
20 structures used primarily for the raising of agricultural or horticultural
21 commodities, and orchards are exempt from the tax imposed under the
22 Sales and Use Tax Act.

23 (cf: P.L.1980, c.105, s.28)

24

25 26. (New section) a. Receipts from the sale, exchange, delivery
26 or use of electricity are exempt from the tax imposed under the Sales
27 and Use Tax Act if the electricity:

28 (1) Is sold by a municipal electric utility in existence as of
29 December 31, 1995 ¹[and exempt from the provisions of P.L.1940, c.5
30 (C.54:30A-49 et seq.), provided however, that if the utility expands
31 service beyond] ²and exempt from the provisions of P.L.1940, c.5
32 (C.54:30A-49 et seq.), ² within¹ its municipal boundaries ¹[or expands
33 its facility base beyond the geographic service area fixed as of
34 December 31, 1995; all receipts from sales made by the utility shall be
35 subject to the tax imposed under the Sales and Use Tax Act] ²[but
36 only if the municipal electric utility is the sole provider of the utility
37 service for that sale of electricity within its municipal boundary¹
38 except if the customer is located within a franchise area served by an
39 electric public utility other than the municipal electric utility² ;

40 (2) Was generated by a facility located on the user's property ¹or
41 property purchased or leased from the user by the person owning the
42 co-generator and such property is contiguous to the user's property¹,
43 and ¹the electricity¹ was consumed by the ²one on-site end² user on
44 ¹[such]the user's¹ property, and was not transported to the user over
45 wires that cross a property line or public thoroughfare ¹unless the
46 property line or public thoroughfare merely bifurcated the user's or co-

1 generator owner's otherwise contiguous property¹ ²or the electricity
2 was consumed by an affiliated user on the same site, or by a non-
3 affiliated user on the same site with an electric distribution system
4 which is integrated and interconnected with the user on or before
5 March 10, 1997; the director may promulgate rules and regulations
6 and issue guidance with respect to all issues related to affiliated users²;
7 or

8 (3) Is sold for resale ¹[in the regular course of business]¹.

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

11 (1) Natural gas or utility service that is used to ¹[produce]
12 generate¹ electricity that is sold ¹for resale¹ or to an end user other
13 than the ¹[producer] ²[one on-site]² end user upon whose property is
14 located a co-generation facility or self-generation unit that generated
15 the electricity or upon the property purchased or leased from the ²[one
16 on-site]² end user by the person owning the co-generation facility or
17 self-generation unit if such property is contiguous to the user's
18 property and is the property upon which is located a co-generation
19 facility or self-generation unit that generated the electricity¹; and

20 (2) Natural gas and utility service that is used for co-generation
21 ²[or self-generation]² at any site at which a co-generation facility ²[or
22 self-generation unit]² was in operation on or before March 10, 1997,
23 or for which an application for an operating permit ¹or a construction
24 permit and a certificate of operation¹ in order to comply with air
25 quality standards under P.L.1954, c.212 (C.26:2C-1 et seq.) has been
26 filed with the Department of Environmental Protection on or before
27 March 10, 1997, to produce electricity for use on that site.

28

29 27. Section 9 of P.L.1966, c.30 (C.54:32B-9) is amended to read
30 as follows:

31 9. (a) Except as to motor vehicles sold by any of the following, any
32 sale, service or amusement charge by or to any of the following or any
33 use or occupancy by any of the following shall not be subject to the
34 sales and use taxes imposed under this act:

35 (1) The State of New Jersey, or any of its agencies,
36 instrumentalities, public authorities, public corporations (including a
37 public corporation created pursuant to agreement or compact with
38 another State) or political subdivisions where it is the purchaser, user
39 or consumer, or where it is a vendor of services or property of a kind
40 not ordinarily sold by private persons;

41 (2) The United States of America, and any of its agencies and
42 instrumentalities, insofar as it is immune from taxation where it is the
43 purchaser, user or consumer, or where it sells services or property of
44 a kind not ordinarily sold by private persons;

45 (3) The United Nations or any international organization of which
46 the United States of America is a member where it is the purchaser,

1 user or consumer, or where it sells services or property of a kind not
2 ordinarily sold by private persons.

3 (b) Except as otherwise provided in this section any sale or
4 amusement charge by or to any of the following or any use or
5 occupancy by any of the following, where such sale, charge, use or
6 occupancy is directly related to the purposes for which the following
7 have been organized, shall not be subject to the sales and use taxes
8 imposed under this act:

9 (1) Any corporation, association, trust, or community chest, fund
10 or foundation, organized and operated exclusively for religious,
11 charitable, scientific, testing for public safety, literary or educational
12 purposes, or for the prevention of cruelty to children or animals, or
13 as a volunteer fire company, rescue, ambulance, first aid or emergency
14 company or squad, and an association of parents and teachers of an
15 elementary or secondary public or private school exempt under the
16 provisions of section 9, no part of the net earnings of which inures to
17 the benefit of any private shareholder or individual, no substantial part
18 of the activities of which is carrying on propaganda, or otherwise
19 attempting to influence legislation, and which does not participate in,
20 or intervene in (including the publishing or distributing of statements),
21 any political campaign on behalf of any candidate for public office.

22 (c) (1) Nothing in this section shall exempt the sale of a motor
23 vehicle by an organization described in subsection (b)(1) of this
24 section or retail sales of tangible personal property by any shop or
25 store operated by such organization from the taxes imposed hereunder,
26 unless the purchaser is an organization exempt under this section.

27 (2) Nothing in this section shall exempt the sale or use of energy
28 or utility service to or by an organization described in subsection
29 (a)(1) or (b)(1) of this section.

30 (d) Any organization enumerated in subsection (b)(1) hereof shall
31 not be entitled to the exemption herein granted unless it has complied
32 with such requirements for obtaining a tax immunity authorization as
33 may be provided in this act.

34 (e) Where any organization described in subsection (b)(1) hereof
35 carries on its activities in furtherance of the purposes for which it was
36 organized, in premises in which, as part of said activities, it operates
37 a hotel, occupancy of rooms in the premises and rents therefrom
38 received by such corporation or association shall not be subject to tax
39 hereunder.

40 (f)(1) Except as provided in paragraph (2) of this subsection, any
41 admissions all of the proceeds of which inure exclusively to the benefit
42 of the following organizations shall not be subject to any of the taxes
43 imposed under subsection (e) of section 3:

44 (A) an organization described in subsection (a)(1) or (b) of this
45 section;

46 (B) a society or organization conducted for the sole purpose of

1 maintaining symphony orchestras or operas and receiving substantial
2 support from voluntary contributions;

3 (C) national guard organizations, posts or organizations of war
4 veterans, or auxiliary units or societies of any such posts or
5 organizations, if such posts, organizations, units or societies are
6 organized in this State, and if no part of their net earnings inures to
7 the benefit of any private stockholder or individual; or

8 (D) a police or fire department of a political subdivision of the
9 State, or a volunteer fire company, ambulance, first aid, or emergency
10 company or squad, or exclusively to a retirement, pension or disability
11 fund for the sole benefit of members of a police or fire department or
12 to a fund for the heirs of such members.

13 (2) The exemption provided under paragraph (1) of this subsection
14 shall not apply in the case of admissions to:

15 (A) Any athletic game or exhibition unless the proceeds shall inure
16 exclusively to the benefit of elementary or secondary schools or unless
17 in the case of an athletic game between two elementary or secondary
18 schools, the entire gross proceeds from such game shall inure to the
19 benefit of one or more organizations described in subsection (b)(1) of
20 this section;

21 (B) Carnivals, rodeos, or circuses in which any professional
22 performer or operator participates for compensation;

23 (3) Admission charges for admission to the following places or
24 events shall not be subject to any of the taxes imposed under
25 subsection (e) of section 3:

26 (A) Any admission to agricultural fairs if no part of the net earnings
27 thereof inures to the benefit of any stockholders or members of the
28 association conducting the same; provided the proceeds therefrom
29 are used exclusively for the improvement, maintenance and operation
30 of such agricultural fairs.

31 (B) Any admission to a home or garden which is temporarily open
32 to the general public as a part of a program conducted by a society or
33 organization to permit the inspection of historical homes and gardens;
34 provided no part of the net earnings thereof inures to the benefit of
35 any private stockholder or individual.

36 (C) Any admissions to historic sites, houses and shrines, and
37 museums conducted in connection therewith, maintained and operated
38 by a society or organization devoted to the preservation and
39 maintenance of such historic sites, houses, shrines and museums;
40 provided no part of the net earnings thereof inures to the benefit of
41 any private stockholder or individual.

42 (cf: P.L.1967, c.25, s.3)

43

44 28. Section 11 of P.L.1966, c.30 (C.54:32B-11) is amended to read
45 as follows:

46 11. Exemptions from use tax. The following uses of property shall

1 not be subject to the compensating use tax imposed under this act:

2 (1) In respect to the use of property used by the purchaser in this
3 State prior to July 1, 1966.

4 (2) In respect to the use of property purchased by the user while a
5 nonresident of this State, except in the case of tangible personal
6 property which the user, in the performance of a contract, incorporates
7 into real property located in the State or except in the case of tangible
8 personal property purchased for lease. A person while engaged in any
9 manner in carrying on in this State any employment, trade, business or
10 profession, not entirely in interstate or foreign commerce, shall not be
11 deemed a nonresident with respect to the use in this State of property
12 in such employment, trade, business or profession.

13 (3) In respect to the use of property or services upon the sale of
14 which the purchaser would be expressly exempt from the taxes
15 imposed under subsection (a) or (b) of section 3.

16 (4) In respect to the use of property which is converted into or
17 becomes a component part of a product produced for sale or for
18 market sampling by the purchaser.

19 (5) In respect to the use of paper in the application of newspapers
20 and periodicals.

21 (6) In respect to the use of property or services to the extent that
22 a retail sales or use tax was legally due and paid thereon, without any
23 right to a refund or credit thereof, to any other State or jurisdiction
24 within any other state but only when it is shown that such other State
25 or jurisdiction allows a corresponding exemption with respect to the
26 sale or use of tangible personal property or services upon which such
27 a sales tax or compensating use tax was paid to this State. To the
28 extent that the tax imposed by this act is at a higher rate than the rate
29 of tax in the first taxing jurisdiction, this exemption shall be
30 inapplicable and the tax imposed by section 6 of this act shall apply to
31 the extent of the difference in such rates.

32 (7) In respect to the use of natural gas by an eligible person, other
33 than a co-generation facility, as defined in section 34 of P.L. c.
34 (C.) (now pending before the Legislature as this bill), up to the base
35 level of volume as defined in section 34 of P.L. , c. , but only as
36 long as the eligible person remains at the same physical site that was
37 occupied on December 31, 1995.

38 (cf: P.L.1989, c.123, s.5)

39

40 29. Section 12 of P.L.1966, c.30 (C.54:32B-12) is amended to read
41 as follows:

42 12. (a) Every person required to collect the tax shall collect the
43 tax from the customer when collecting the price, service charge,
44 amusement charge or rent to which it applies. If the customer is given
45 any sales slip, invoice, receipt or other statement or memorandum of
46 the price, service charge, amusement charge or rent paid or payable,

1 the tax shall be stated, charged and shown separately on the first of
2 such documents given to him. The tax shall be paid to the person
3 required to collect it as trustee for and on account of the State.

4 (b) For the purpose of the proper administration of this act and to
5 prevent evasion of the tax hereby imposed, it shall be presumed that
6 all receipts for property or services of any type mentioned in
7 subsections (a), (b) and (c) of section 3, all rents for occupancy of the
8 type mentioned in subsection (d) of said section, and all amusement
9 charges of any type mentioned in subsection (e) of said section, are
10 subject to tax until the contrary is established, and the burden of
11 proving that any such receipt, amusement charge or rent is not taxable
12 hereunder shall be upon the person required to collect tax or the
13 customer. Unless a vendor shall have taken from the purchaser a
14 certificate, signed by the purchaser and bearing his name and address
15 and the number of his registration certificate, to the effect that the
16 property or service was purchased for resale or the purchaser prior to
17 taking delivery, furnishes to the vendor any affidavit, statement or
18 additional evidence, documentary or otherwise, which the director
19 may require demonstrating that the purchaser is an exempt
20 organization described in section 9(b)(1), the sale shall be deemed a
21 taxable sale at retail. Provided however, the director may, in his
22 discretion, authorize a purchaser, who acquires tangible personal
23 property or services under circumstances which make it impossible at
24 the time of acquisition to determine the manner in which the tangible
25 personal property or services will be used, to pay the tax directly to
26 the director and waive the collection of the tax by the vendor.
27 Provided, further, the director shall authorize any contractor,
28 subcontractor or repairman who acquires tangible personal property
29 consisting of materials and supplies for use by him in erecting
30 structures for others, or building on, or otherwise improving, altering,
31 or repairing real property of others, to pay the tax directly to the
32 director and waive the collection of the tax by the vendor. Provided
33 further, the director shall authorize any eligible person, as defined in
34 section 34 of P.L. c. , (C.)(now pending before the Legislature
35 as this bill), who purchases natural gas from a non-utility on and after
36 January 1, 1998¹ through December 31, 2002¹, to pay the tax on the
37 commodity directly to the director and waive the collection of the tax
38 by the vendor. No such authority shall be granted or exercised except
39 upon application to the director, and the issuance by the director of
40 a direct payment permit. If a direct payment permit is granted, its use
41 shall be subject to conditions specified by the director, and the
42 payment of tax on all acquisitions pursuant to the permit shall be made
43 directly to the director by the permit holder.

44 (c) The director may provide by regulation that the tax upon
45 receipts from sales on the installment plan may be paid on the amount
46 of each installment and upon the date when such installment is due.

1 He may also provide by regulation for the exclusion from taxable
2 receipts, amusement charges or rents of amounts representing sales
3 where the contract of sale has been canceled, the property returned or
4 the receipt, charge or rent has been ascertained to be uncollectible or,
5 in the case the tax has been paid upon such receipt, charge or rent, for
6 refund or credit of the tax so paid.

7 (cf: P.L.1968, c.106, s.2)

8

9 30. Section 14 of P.L.1966, c.30 (C.54:32B-14) is amended to
10 read as follows:

11 14. (a) Every person required to collect any tax imposed by this act
12 shall be personally liable for the tax imposed, collected or required to
13 be collected under this act. Any such person shall have the same right
14 in respect to collecting the tax from his customer or in respect to
15 non-payment of the tax by the customer as if the tax were a part of
16 the purchase price of the property or service, amusement charge or
17 rent, as the case may be, and payable at the same time; provided,
18 however, that the director shall be joined as a party in any action or
19 proceeding brought to collect the tax.

20 (b) Where any customer has failed to pay a tax imposed by this act
21 to the person required to collect the same, then in addition to all other
22 rights, obligations and remedies provided, such tax shall be payable by
23 the customer directly to the director and it shall be the duty of the
24 customer to file a return with the director and to pay the tax to him
25 within 20 days of the date the tax was required to be paid.

26 (c) The director may, whenever he deems it necessary for the proper
27 enforcement of this act, provide by regulation that customers shall file
28 returns and pay directly to the director any tax herein imposed, at such
29 times as returns are required to be filed and payment over made by
30 persons required to collect the tax.

31 (d) No person required to collect any tax imposed by this act shall
32 advertise or hold out to any person or to the public in general, in any
33 manner, directly or indirectly, that the tax is not considered as an
34 element in the price, amusement charge or rent payable by customer,
35 or that he will pay the tax, that the tax will not be separately charged
36 and stated to the customer or that the tax will be refunded to the
37 customer. Upon written application duly made and proof duly
38 presented to the satisfaction of the director showing that in his
39 particular business it would be impractical for the vendor to separately
40 charge the tax to the customer, the director may waive the application
41 of the requirement herein as to such vendor.

42 (e) All vendors of energy or utility service shall include the tax
43 imposed by the "Sales and Use Tax Act" within the purchase price of
44 the tangible personal property or service¹ [, unless otherwise provided
45 in this act]¹.

46 (cf: P.L.1966, c.53, s.7)

1 31. Section 20 of P.L.1983, c.303 (C.52:27H-79) is amended to
2 read as follows:

3 20. Retail sales of personal property (except motor vehicles and
4 energy) and sales of services (except telecommunications and utility
5 services) to a qualified business for the exclusive use or consumption
6 of such business within an enterprise zone are exempt from the taxes
7 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
8 (C.54:32B-1 et seq.).
9 (cf: P.L.1990, c.40, s.9)

10

11 32. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to
12 read as follows:

13 21. Receipts of retail sales, except retail sales of motor vehicles, of
14 alcoholic beverages as defined in the "Alcoholic Beverage Tax Law,"
15 R.S.54:41-1 et seq., of cigarettes as defined in the "Cigarette Tax
16 Act," P.L.1948, c.65 (C.54:40A-1 et seq.) [and] and of manufacturing
17 machinery, equipment or apparatus, and of energy, made by a certified
18 vendor from a place of business owned or leased and regularly
19 operated by the vendor for the purpose of making retail sales, and
20 located in a designated enterprise zone established pursuant to the
21 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303
22 (C.52:27H-60 et al.), are exempt to the extent of 50% of the tax
23 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
24 (C.54:32B-1 et seq.).

25 Any vendor, which is a qualified business having a place of business
26 located in a designated enterprise zone, may apply to the Director of
27 the Division of Taxation in the Department of the Treasury for
28 certification pursuant to this section. The director shall certify a
29 vendor if he shall find that the vendor owns or leases and regularly
30 operates a place of business located in the designated enterprise zone
31 for the purpose of making retail sales, that items are regularly
32 exhibited and offered for retail sale at that location, and that the place
33 of business is not utilized primarily for the purpose of catalogue or
34 mail order sales. The certification under this section shall remain in
35 effect during the time the business retains its status as a qualified
36 business meeting the eligibility criteria of section 27 of P.L.1983,
37 c.303 (C.52:27H-86). However, the director may at any time revoke
38 a certification granted pursuant to this section if he shall determine
39 that the vendor no longer complies with the provisions of this section.

40 Notwithstanding the provisions of this act to the contrary, except as
41 may otherwise be provided by section 7 of P.L.1983, c.303
42 (C.52:27H-66), the authority may, in its discretion, determine whether
43 or not the provisions of this section shall apply to any enterprise zone
44 designated after the effective date of P.L.1985, c.142 (C.52:27H-66
45 et al.); provided, however, that the authority may make such a
46 determination only where the authority finds that the award of an

1 exemption of 50 percent of the tax imposed under the "Sales and Use
2 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) will not have any
3 adverse economic impact upon any other urban enterprise zone.

4 Notwithstanding any other provisions of law to the contrary, except
5 as provided in subsection b. of section 6 of P.L.1996, c.124 (C.13:1E-
6 116.6), after first depositing 10 percent of the gross amount of all
7 revenues received from the taxation of retail sales made by certified
8 vendors from business locations in designated enterprise zones to
9 which this exemption shall apply into the account created in the name
10 of the authority in the enterprise zone assistance fund pursuant to
11 section 29 of P.L.1983, c.303 (C.52:27H-88), the remaining 90
12 percent shall be deposited immediately upon collection by the
13 Department of the Treasury, as follows:

14 a. In the first five year period during which the State shall have
15 collected reduced rate revenues within an enterprise zone, all such
16 revenues shall be deposited in the enterprise zone assistance fund
17 created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

18 b. In the second five year period during which the State shall have
19 collected reduced rate revenues within an enterprise zone, 66 2/3% of
20 all those revenues shall be deposited in the enterprise zone assistance
21 fund, and 33 1/3% shall be deposited in the General Fund;

22 c. In the third five year period during which the State shall have
23 collected reduced rate revenues within an enterprise zone, 33 1/3% of
24 all those revenues shall be deposited in the enterprise zone assistance
25 fund, and 66 2/3% shall be deposited in the General Fund;

26 d. In the final five year period during which the State shall have
27 collected reduced rate revenues within an enterprise zone, but not to
28 exceed the life of the enterprise zone, all those revenues shall be
29 deposited in the General Fund.

30 Commencing on the effective date of P.L.1993, c.144, all revenues
31 in any enterprise zone to which the provisions of this section have
32 been extended prior to the enactment of P.L.1993, c.144 shall be
33 deposited into the enterprise zone assistance fund until there shall have
34 been deposited all revenues into that fund for a total of five full years,
35 as set forth in subsection a. of this section. The State Treasurer then
36 shall proceed to deposit funds into the enterprise zone assistance fund
37 according to the schedule set forth in subsections b. through d. of this
38 section, beginning at the point where the enterprise zone was located
39 on that schedule on the effective date of P.L.1993, c.144. No
40 enterprise zone shall receive the deposit benefit granted by any one
41 subsection of this section for more than five cumulative years.

42 The revenues required to be deposited in the enterprise zone
43 assistance fund under this section shall be used for the purposes of that
44 fund and for the uses prescribed in section 29 of P.L.1983, c.303
45 (C.52:27H-88), subject to annual appropriations being made for those
46 purposes and uses.

1 (cf: P.L.1996, c.124, s.8)

2

3 33. (New section) ¹a.¹ Receipts from the sale or use of energy and
4 utility service to or by a ¹utility¹ corporation or person that was
5 subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.), as of
6 April 1, 1997, or currently or formerly subject to taxation pursuant to
7 P.L.1940, c.5 (C.54:30A-49 et seq.), for their own use and
8 consumption ²[¹, except for the sale of electricity to a gas, electric or
9 gas and electric public utility corporation currently or formerly subject
10 to taxation pursuant to P.L.1940, c.5 for their own use and
11 consumption in operations other than their gas and electric generation
12 operations¹]², are exempt from the tax imposed under the "Sales and
13 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

14 ¹b. Receipts from the sale or use of energy and utility service made
15 pursuant to a contract described in section 59 of P.L. , c. (C.)(now
16 pending before the Legislature as this bill) shall be exempt from the tax
17 imposed under the "Sales and Use Tax Act".¹

18

19 34. (New section) a. As used in this act, "eligible person" means
20 any person other than a co-generation facility as defined in this act
21 whose last purchase and delivery of natural gas on or before December
22 31, 1995 was from ¹[an eligible supplier]a non-utility¹ ²or a
23 cogeneration facility which ceased operation in 1996 and subsequently
24 began to purchase non-utility natural gas,² and who satisfactorily
25 documents such purchase to the director. ¹[As used in this act,
26 "eligible supplier" means an eligible person's contracted supplier as of
27 December 31, 1995 that was not a utility. If, at any time subsequent
28 to December 31, 1995 an eligible person other than a co-generation
29 facility purchases natural gas from a supplier other than its eligible
30 supplier, that person shall no longer be an "eligible person" for
31 purposes of this act;]¹

32 b. An eligible person ²[other than a co-generation facility]² shall
33 determine and certify to the director, and satisfactorily document to
34 the director, a base level of volume as of December 31, 1995 ²or
35 December 31, 1996 in the case of a co-generation facility which ceased
36 operation in 1996 and subsequently began to purchase non-utility
37 natural gas² , which shall be equal to the average annual volume of
38 natural gas units purchased by the eligible person from any non-utility
39 and delivered, but such computation shall not include any purchases
40 delivered prior to January 1, 1992, provided however, that the base
41 level of volume of an eligible person other than a co-generation facility
42 shall be reduced on an annual basis beginning in 1999 by multiplying
43 the base level of volume as of December 31, 1995 by the following
44 reduction ratios: 0.8 in 1999, 0.6 in 2000, 0.4 in 2001 and 0.2 in
45 2002. In 2003 and thereafter there shall be no exemption for
46 purchases of natural gas by an eligible person other than a co-

1 generation facility.

2 c. For purchases of natural gas from ¹[its eligible supplier] a non-
3 utility¹ on and after January 1, 1998 ¹through December 31, 2002¹, an
4 eligible person shall issue a direct payment certificate to ¹[its eligible
5 supplier]the non-utility¹ and shall pay any sales or use tax due
6 pursuant to the method prescribed by this section. Unless specifically
7 exempt from the tax imposed under the Sales and Use Tax Act
8 pursuant to subsection b. of section 26 of P.L. , c. (C.)
9 (now pending before the Legislature as this bill), utility service is
10 subject to the tax imposed pursuant to section 3 of P.L.1966, c.30
11 (C.54:32B-3).

12 d. On an annual basis, each eligible person, other than a co-
13 generation facility, shall be required to file with the director:

14 (1) An energy volume report, which shall contain a certification as
15 to the gross annual volume of gas (in units) purchased and delivered
16 in the previous 12 month period from ¹[its eligible supplier,] ¹any
17 ¹[other]¹ non-utility and ¹[utilities]utility¹, the purchase price per unit,
18 and any additional information that the director deems necessary to
19 effectuate the provisions herein; and

20 (2) An energy use tax return, wherein any tax due on natural gas
21 purchased from ¹[its eligible supplier] a utility or non-utility¹ shall be
22 reported and remitted as follows:

23 (a) If the certified gross annual volume (in units) was purchased
24 solely from ¹[its eligible supplier] a non-utility¹, and does not exceed
25 the base level of volume, no sales and use¹ tax shall be due on
26 purchases of natural gas in that calendar year;

27 (b) If the certified gross annual volume (in units) was purchased
28 solely from ¹[its eligible supplier] a non-utility¹, and exceeds the base
29 level of volume, the sales and use¹ tax shall be remitted on the
30 purchases of natural gas that exceed the base level of volume, based
31 on the purchase price of the gas; and

32 (c) ¹[If in any given year, any part of the certified gross annual
33 volume (in units) was not purchased solely from its eligible supplier,
34 an exemption for purchases of natural gas from its eligible supplier
35 shall only be allowed up to the volume purchased from its eligible
36 supplier that does not exceed the base level of volume, and shall only
37 apply to purchases from its eligible supplier made prior to any
38 purchase from any other non-utility or a utility.]If the certified gross
39 annual volume in units was purchased from both a utility and non-
40 utility vendor or solely from a utility vendor, the director shall refund
41 to the eligible person all sales taxes paid on purchases not in excess of
42 the base level of volume. The eligible person shall remit to the
43 director all unpaid sales taxes on the purchases of natural gas that
44 exceed the base level of volume, based on the purchase price.¹

45

46 35. (New section) a. A corporation that was subject to tax

1 pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
2 prior to January 1, 1998 shall be entitled to claim a credit against
3 remittances of sales and use tax after July 1, 1998 and after August 1
4 in each year thereafter pursuant to the provisions of section 53 of
5 P.L. , c. (C.) (now pending before the Legislature as this bill).

6 b. Any gas, electric, or telecommunications public utility taxpayer
7 that has made any advance credit payment pursuant to P.L.1940, c.4
8 (C.54:30A-16 et seq.) or P.L.1940, c.5 (C. 54:30A-49 et seq.) shall
9 not be eligible for a credit for such amount or any part thereof to
10 offset any liability under the "Sales and Use Tax Act," P.L.1966, c.30
11 (C.54:32B-1 et seq.).

12

13 36. (New section) a. Sections 36 through 49 of this act shall be
14 known and may be cited as the "Transitional Energy Facility
15 Assessment Act."

16 b. The purpose of the Transitional Energy Facility Assessment Act
17 is to provide a complete framework and method for the assessment of
18 a transitional energy facility assessment on gas and electric light, heat
19 and power corporations ¹[, municipal or otherwise,]^{1 2}, municipal or
20 otherwise.² that were subject to tax pursuant to the provisions of
21 P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998, or the
22 corporate or non-corporate legal successor or assignee whether
23 through any reorganization, sale, bankruptcy, consolidation, merger or
24 other transaction or occurrence of any kind without limitation, ¹[those
25 municipal electric operations not previously subject to P.L.1940, c.5
26 (C.54:30A-49 et seq.) which expand beyond their municipal
27 boundaries subsequent to December 31, 1995, and those municipal
28 electric operations not previously subject to P.L.1940, c.5
29 (C.54:30A-49 et seq.) which expand their facility base subsequent to
30 December 31, 1995, beyond its geographical service area fixed as of
31 December 31, 1995] ²[other than] and on ² municipal electric
32 corporations or utilities that were in existence as of January 1, 1995¹
33 ² but only those corporations' or utilities' sales of electricity that are
34 not exempt from sales tax under paragraph (1) of subsection a. of
35 section 26 of P.L. , c. (C.)(now pending before the
36 Legislature as this bill)².

37

38 37. (New section) As used in this act, unless the context requires
39 otherwise:

40 "Base year" means, for the purpose of determining the assessments
41 to be made under this act, calendar year 1996 for those gas and
42 electric light, heat and power corporations ¹[, municipal or
43 otherwise,]¹ that were subject to tax pursuant to P.L.1940, c.5
44 (C.54:30A-49 et seq.) prior to January 1, 1998, and for those remitters
45 identified subsequent to 1998 the first year of subjectivity to this act
46 shall be the base year;

1 "Base year liability" means each remitter's unit energy tax liability
2 in the base year pursuant to the provisions of P.L.1940, c.5
3 (C.54:30A-49 et seq.) adjusted to reflect the remitter's total unit
4 energy tax rates in effect on January 1, 1997 ²and local energy utility
5 franchise taxes paid² ;

6 "Base year transitional energy facility assessment" means an amount
7 equal to the base year liability less:

8 a. The pro forma corporation business tax that would have been
9 booked by the remitter in the base year if the changes in the remitter's
10 rates implemented pursuant to section 67 of P.L. , c. , (C.)(now
11 pending before the Legislature as this bill) had been in effect in that
12 year. This amount shall reflect adjustments to the determination of the
13 corporation business tax, if any, filed in accordance with section 67 of
14 P.L. , c. , (C.);

15 b. The pro forma sales and use tax that would have been collected
16 by the remitter in the base year if the changes in the remitter's rates
17 implemented pursuant to section 67 of P.L. , c. , (C.) had
18 been in effect in that year. The amount shall reflect adjustments to the
19 sales and use tax, if any, filed in accordance with section 67 of P.L. ,
20 c. , (C.); and

21 c. The amount of tax derived pursuant to the customer-specific tax
22 ¹[classification] classifications¹ described in section 59 of P.L. ,
23 c. , (C.);

24 "Board" means the Board of Public Utilities of the State of New
25 Jersey;

26 "First year" means the year immediately following the initial year;

27 "Initial year" means the year immediately following the base year;

28 "Remitter" means any corporation subject to assessment under this
29 act; and

30 "Sales and use tax" means the sales and use tax liability computed
31 on sales and use of energy and utility service as defined in section 2 of
32 P.L.1966, c.30 (C.54:32B-2).

33

34 38. (New section) Each remitter's transitional energy facility
35 assessment shall be established pursuant to section 67 of P.L. , c. ,
36 (C.) (now pending before the Legislature as this bill). Under no
37 circumstances shall an assessment be made under this act for any year
38 commencing after December 31, 2002.

39

40 39. (New section) Every gas and electric light, heat and power
41 corporation ¹[, municipal or otherwise,]¹ subject to tax pursuant to the
42 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1,
43 1998, or the corporate or non-corporate legal successor or assignee
44 whether through any reorganization, sale, bankruptcy, consolidation,
45 merger or other occurrence of any kind without limitation, and every
46 corporation otherwise assessable set forth hereinbelow, shall annually

1 pay the transitional energy facility assessment set forth in section 67
2 of P.L. , c. , (C.)(now pending before the Legislature as this
3 bill).

4
5 40. (New section) a. On or before February 1, 1999, and on or
6 before February 1 of each year thereafter until the year after the final
7 year in which there is imposed a transitional energy facility assessment,
8 every remitter shall return to the Director of the Division of Taxation
9 in the Department of the Treasury a statement in such form, manner
10 and detail as the director shall require showing:

11 a. The terms of natural gas and kilowatthours of electricity sold
12 or transported for sale to ultimate consumers in New Jersey during the
13 prior calendar year; and

14 b. The transitional energy facility assessment unit rate surcharges
15 (exclusive of the provision for corporation business taxes included
16 therein) as calculated pursuant to section 67 of P.L. , c. , (C.)
17 (now pending before the Legislature as this bill) applicable to the prior
18 calendar year.

19
20 41. (New section) a. Every remitter shall on or before October 15,
21 1998, and on or before October 15, in each year thereafter ¹for years
22 in which the transitional energy facility assessment is imposed¹, return
23 to the Director of the Division of Taxation in the Department of the
24 Treasury and the Board of Public Utilities a statement in such form,
25 manner and detail as the director shall require showing the following:

26 (1) Sales and use tax collected and use tax liability through
27 September 30 of the current calendar year;

28 (2) Estimated sales tax collections and use tax liability for the
29 period from October 1 through December 31 of the current calendar
30 year;

31 (3) Estimated corporation business tax, ¹[exclusive of negative
32 deferred taxes] including negative and positive deferred corporation
33 business taxes shown separately¹, for the current privilege period
34 based upon actual taxable income from January 1 through September
35 30 and estimated taxable income from October 1 through December
36 31; and

37 (4) Actual transitional energy facility assessment liability from
38 January 1 through September 30 and estimated liability from October
39 1 through December 31 for the current calendar year.

40 b. On or before November 15, 1998, and on or before November
41 15 of each year thereafter ¹for years in which the transitional energy
42 facility assessment is imposed¹, the State Treasurer shall, with the
43 cooperation the Board of Public Utilities, calculate the percentage
44 reduction in the initial TEFA unit rate surcharges based upon the
45 formula set forth in section 67 of P.L. , c. , (C.)(now pending
46 before the Legislature as this bill) and the board shall report the

1 amount of such reduction to the remitters subject to the transitional
2 energy facility assessment.

3 c. Every remitter shall on or before February 1, 1998 file with the
4 director a statement showing:

5 (1) The total public utility tax advance payments paid in the initial
6 year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and

7 (2) The remitter's base year liability and each of the amounts
8 described in subsections (a), (b) and (c) in the definition of "base year
9 transitional energy facility assessment" in section 37 of P.L. , c. ,
10 (C.)(now pending before the Legislature as this bill).

11 d. For any remitter owning or holding both gas and electric
12 facilities and conducting both gas and electric business in this State
13 each of the amounts reported on the return required to be filed
14 pursuant to subsection c. shall be allocated by the director between
15 those operations in the proportion that the sum of the unit-based taxes
16 bore to the whole of the unit-based taxes in the base year or such
17 other allocation methodology as the director shall prescribe¹.

18 e. The statements required pursuant to this section shall be
19 subscribed and sworn to by the president, a vice-president or chief
20 officer of the corporation preparing each statement. Any remitter
21 refusing or neglecting to make the statements herein provided for shall
22 forfeit and pay to the State of New Jersey the sum of \$100 per day for
23 each day of such refusal or neglect, to be recovered in an action at law
24 in the name of the State and which, when recovered, shall be paid into
25 the State Treasury. It shall be the duty of the director to certify any
26 such default to the Attorney General of the State who, thereupon, shall
27 prosecute an action at law for each penalty.

28 f. The Director of the Division of Taxation shall audit and verify
29 the statements filed by remitters whenever and in such respects the
30 director shall deem necessary or advisable. The director may require
31 any remitter to supply additional data and information in such form,
32 manner, and detail as the director shall request, whenever the director
33 may deem it necessary or helpful, for the proper performance of the
34 director's duties under this act.

35 g. The director may, by regulation, additionally require that all
36 filings required for the calculation and certification of assessment to
37 be paid by remitters established pursuant to this act shall be made in
38 an electronic form. The form and content of the electronic filing
39 message, the circumstances under which the electronic filing message
40 shall serve as a substitute for the filing of another return and the means
41 by which remitters shall be determined to be subject to this electronic
42 filing requirement shall be prescribed by the director.

43 For the purpose of this act "electronic filing" or "electronic filings"
44 means any message that is initiated through an electronic terminal,
45 telecommunication device, or computer for the purpose of fulfilling the
46 reporting responsibilities set forth hereinabove.

1
2 42. (New section) a. On or before April 1, 1999, and on or
3 before April 1 of each year thereafter until the year after the final year
4 in which the transitional energy facility assessment is imposed, the
5 Director of the Division of Taxation shall send to each remitter a
6 statement showing the transitional energy facility assessment liability
7 for the prior calendar year, estimated payment received for the prior
8 calendar year and any overpayment or underpayment of the tax
9 liability for that calendar year.

10 b. Remitters shall make a payment of the underpayment as
11 determined in subsection a. of this section, if any, to the director on or
12 before May 15 of the current year.

13 c. Remitters shall treat any overpayment as determined in
14 subsection a. of this section, if any, as an estimated payment as set
15 forth in subsection d. of section 43 of P.L. , c. , (C.)(now
16 pending before the Legislature as this bill).

17
18 43. (New section) a. (1) The liability for the transitional energy
19 facility assessment made against any remitter in the first year of
20 assessment shall be an amount equal to TEFA unit rate surcharges
21 (excluding the provision for corporation business taxes included
22 therein) determined in section 67 of P.L. , c. , (C.)(now
23 pending before the Legislature as this bill) multiplied by the associated
24 therms of natural gas and kilowatthours of electricity sold or
25 transported for sale to ultimate consumers in New Jersey in the first
26 year plus any advances paid in the initial year pursuant to P.L.1940,
27 c.5 (C.54:30A-49 et seq.) by that remitter.

28 (2) The liability for the transitional energy facility assessment
29 made against any remitter for each year subsequent to the first year
30 shall be an amount equal to the TEFA unit rate surcharges (excluding
31 the provision for corporation business taxes included therein)
32 calculated in section 67 of P.L. , c. , (C.) for that year
33 multiplied by the associated therms of natural gas and kilowatthours
34 of electricity sold or transported for sale to ultimate consumers in New
35 Jersey in that year.

36 b. A credit against the liability determined pursuant to paragraph
37 (1) of subsection a. of this section shall be taken in the first year by the
38 remitter in the amount of all advances paid in the initial year pursuant
39 to P.L.1940, c.5 (C.54:30A-49 et seq.).

40 c. (1) Each remitter shall make an estimated payment on May 15
41 of the first assessment year in the amount of the base year transitional
42 energy facility assessment.

43 (2) Subsequent to the first year, each remitter shall make an
44 estimated payment on May 15 of each assessment year in which the
45 transitional energy facility assessment is in effect, in an amount equal
46 to the transitional energy facility assessment liability described in

1 subsection a. of this section for the immediately preceding assessment
2 year, excluding advances paid in the initial year pursuant to P.L.1940,
3 c.5 (C.54:30A-49 et seq.), reduced by the reduction percentage for the
4 current assessment year determined pursuant to paragraphs (2), (3)
5 and (4) of subsection d. of section 67 of P.L. , c. , (C.) less
6 credits described in subsection d. of this section, if any.

7 d. Any excess of the estimated payment made pursuant to
8 paragraphs (1) or (2) of subsection c. of this section over the liability
9 determined pursuant to subsection a. of this section shall be treated as
10 a credit against the estimated payment for the subsequent assessment
11 year and reduce the amount of the estimated payment required to be
12 made for that subsequent year. Any excess of the estimated payment
13 made pursuant to paragraph (2) of subsection c. of this section over
14 the liability for the final year of the transitional energy facility
15 assessment shall be utilized as a nonrefundable credit with an unlimited
16 carryforward against that remitter's corporation business tax liability
17 in the subsequent privilege period year. Such credit shall be applied
18 in full to each estimated corporation business tax payment beginning
19 in the subsequent privilege period until fully utilized.

20
21 44. (New section) All payments shall be made in full on an annual
22 basis to the State on or before May 15, 1998, and on or before May 15
23 of each year thereafter as long as this assessment shall remain in effect.

24
25 45. (New section) a. Within 30 days after making the computation
26 of the assessments under this act, the Director of the Division of
27 Taxation shall certify the amount of such assessments. Within 5 days
28 after making the computation of the assessments, the director shall
29 issue directly to each remitter statements of amounts due, and
30 payments with respect thereto shall be made by each taxpayer to the
31 director in the following manner: all assessments due shall be remitted
32 to the director on or before May 15, for calendar year 1998, and for
33 each calendar year thereafter. If for any reason the making and
34 delivering of a certificate of assessments shall be delayed until after
35 April 15 in any year, then all of the assessments for such year affected
36 by such certificate of assessment shall become due and payable 30 days
37 after the date of such certification of assessment. The administration,
38 collection and enforcement of the assessments payable by each remitter
39 under this act shall be subject to the provisions of the State Tax
40 Uniform Procedure Law, R.S.54:48-1 et seq., to the extent that the
41 provisions of that law are not inconsistent with the provisions of this
42 act.

43 b. The director may, by regulation, require that any payment of
44 assessment made on or before the date established therefore pursuant
45 to this act shall be by electronic funds transfer to such depositories as
46 the State Treasurer shall designate pursuant to section 1 of P.L.1956,

1 c.174 (C.52:18-16.1). A payment by electronic funds transfer shall be
 2 deemed to be made on the date the payment is received by the
 3 designated depository. The manner, form, and content of the
 4 electronic funds transfer message, the circumstances under which an
 5 electronic funds transfer shall serve as a substitute for the filing of
 6 another form of return, the means by which taxpayers will be provided
 7 with acknowledgments of payments, and the classes of taxpayers
 8 subject to the electronic funds transfer requirement shall be as
 9 prescribed by the director.

10 c. For the purposes of this section "electronic funds transfer"
 11 means any transfer of funds, other than a transaction originated by
 12 check, draft, or similar paper instrument, that is initiated through an
 13 electronic terminal, telecommunication device, or computer for the
 14 purpose of ordering, instructing or authorizing a financial institution
 15 to debit or credit an account.

16
 17 46. (New section) ¹[If a] ²a. ²No¹ municipal ¹electric¹ corporation
 18 ¹or utility. ²[whether or¹]² not previously subject to assessment under
 19 P.L.1940, c.5 (C.54:30A-49 et seq.)¹,¹ shall [expand its service
 20 beyond its municipal boundaries or shall expand its facility base
 21 beyond its geographical service area fixed as of December 31, 1995,
 22 that municipal corporation shall]¹ be deemed a remitter for the
 23 purposes of enforcing the provisions of this act.

24 ²Notwithstanding the provisions of subsection a. of this section,
 25 sections 36 through 45, sections 47 through 49 and section 67 of
 26 P.L. , c. (C.)(now pending before the Legislature as this bill)
 27 to the contrary, a municipal electric utility that collects sales tax for
 28 electricity sales that are not exempt from sales tax pursuant to the
 29 provisions of paragraph (1) of subsection a. of section 26 of P.L. ,
 30 c. (C.)(now pending before the Legislature as this bill), shall
 31 also collect on each such nonexempt sale during any year in which the
 32 transitional energy facility assessment is imposed, an additional
 33 assessment, in place of the transitional energy facility assessment
 34 otherwise determined pursuant to those sections, equal to the "TEFA
 35 unit rate surcharge" that would have been applicable to that sale if the
 36 sale had been made by the electric public utility, other than a municipal
 37 electric utility, within whose franchise area the customer is located.²

38
 39 47. (New section) A ¹[municipal]¹ corporation ²or utility²
 40 determined to be a remitter pursuant to ¹[section 46 of]¹ this act shall
 41 be subject to the transitional energy facility assessment. The amount
 42 of the transitional energy facility assessment liability and estimated
 43 payment shall be determined in accordance with ¹this act and ¹
 44 regulations as shall be promulgated by the Director of the Division of
 45 Taxation in the Department of the Treasury.

1 48. (New section) The Director of the Division of Taxation in
2 making the assessment imposed by this act on any remitter for any year
3 shall deduct from or add to the assessment for the year any deduction
4 or addition to the extent and in the manner which may heretofore have
5 been or may hereafter be ordered or decreed by any judgment of the
6 Tax court or any court by reason of any error or omission in
7 connection with the assessment of the remitter in any prior year.

8
9 49. (New section) The Director of the Division of Taxation in the
10 Department of the Treasury shall promulgate such rules and
11 regulations applicable to remitters subject to this act as may be
12 necessary to effectuate the purposes and provisions of this act.

13
14 50. (New section) a. Sections 50 through 58 of this act shall be
15 known and may be cited as the "Uniform Transitional Utility
16 Assessment Act."

17 b. The purpose of the Uniform Transitional Utility Assessment Act
18 is to provide a complete framework and method for the making of a
19 uniform transitional utility assessment on telephone companies that
20 were subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.)
21 as of April 1, 1997, and gas and electric light, heat and power
22 corporations that were subject to the provisions of P.L.1940, c.5
23 (C.54:30A-49 et seq.) ¹[, municipal or otherwise,] ¹ ², municipal or
24 otherwise.² prior to January 1, 1998 or their corporate or non-
25 corporate legal successor or assignee whether through any
26 reorganization, sale, bankruptcy, consolidation, merger or other
27 transaction or occurrence of any kind without limitation.

28
29 51. (New section) As used in this act, unless the context requires
30 otherwise:

31 "Annual assessment" means the assessment made against each
32 remitter in any year;

33 "Base year" means calendar year 1996;

34 "Remitter" means any corporation subject to assessment under this
35 act; and

36 "Sales and use tax" means the sales and use tax liability computed
37 on sales and use of energy and utility service as defined in section 2 of
38 P.L.1966, c.30 (C.54:32B-2).

39
40 52. (New section) a. Every gas and electric light, heat and power
41 corporation¹[, municipal or otherwise,] ¹ ², municipal or otherwise.²
42 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
43 seq.) prior to January 1, 1998 and every telephone company that was
44 subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) as of
45 April 1, 1997 shall annually pay an annual assessment annually
46 determined by the Director of the Division of Taxation as provided in

1 this section.

2 b. (1) For energy remitters, the uniform transitional utility
3 assessment in the first year of assessment shall be equal to the
4 remitters unit energy tax liability paid in the base year pursuant to the
5 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) adjusted to reflect
6 the remitters unit energy tax rates in effect on January 1, 1997 less

7 (a) The sales and use tax remitted pursuant to P.L.1966, c.30
8 (C.54:32B-1 et seq.) as of June 20 in the first year;

9 (b) The amount of estimated corporation business tax remitted
10 pursuant to section 15 of P.L.1945, c.162 (C.54:10A-15) as of June
11 20 in the first year;

12 (c) the payment of base year transitional energy facility assessment
13 as defined in section 37 of P.L. , c. , (C.)(now pending before
14 the Legislature as this bill) made on May 15 of that year; and

15 (d) the tax remitted pursuant to customer specific tax
16 classifications described in section 59 of this act.

17 Each remitter shall allocate a portion of the uniform transitional
18 utility assessment to its liability for first year sales and use tax
19 remittance and first year corporation business tax liability and notify
20 the director of such allocation.

21 (2) For telecommunications remitters, the uniform transitional
22 utility assessment in the first year of assessment shall be equal to the
23 remitter's liability paid in the base year pursuant to the provisions of
24 P.L.1940, c.4 (C.54:30A-16 et seq.) less the amount of estimated
25 corporation business tax remitted pursuant to section 15 of P.L.1945,
26 c.162 (C.54:10A-15) as of June 20 in the first year.

27 c. (1) For energy remitters, the uniform transitional utility
28 assessment in each year after the first year of assessment shall be equal
29 to 50% of the total of the remitter's estimate of sales and use tax
30 remittance for that year and corporation business tax liability for that
31 year.

32 (2) For telecommunications remitters, the uniform transitional
33 utility assessment in each year after the first year of assessment shall
34 be equal to 50% of the remitter's estimate of its corporation business
35 tax liability for that year.

36 (3) The estimates described in paragraphs (1) and (2) of this
37 subsection, as applicable, shall be certified by the State Treasurer. The
38 State Treasurer may, based upon each remitter's immediate prior year's
39 sales tax remittances, immediate prior year's estimated corporation
40 business tax liability and/or payments, current year sales tax
41 remittances and current year estimated corporation business tax
42 payments, as well as the economic conditions of the State,
43 consideration of the State's revenues and expenditures and anticipated
44 revenues and expenditures for the fiscal year and any other factor or
45 factors which the State Treasurer deems relevant, reject the estimation
46 and not certify the same. The remitter shall within five business days

1 of the rejection recalculate the estimate and provide the recalculated
2 estimate to the State Treasurer or provide the State Treasurer with
3 sufficient justification of its original estimate. If the State Treasurer
4 fails to certify the original, recalculated or other agreed estimate
5 within five business days after the previous five business day period set
6 forth herein, the dispute shall be resolved pursuant to a procedure to
7 be established by regulations as shall be promulgated by the director.
8 Prior to such resolution, the remitter shall pay as its uniform
9 transitional utility assessment for that year an amount determined by
10 the State Treasurer which (a) for energy remitters shall not exceed the
11 greater of (i) 50% of the sum of the remitter's sales and use tax
12 remittances for the preceding year and the tax shown on the remitter's
13 corporation business tax return, or tentative return filed with an
14 application for extension of time to file, for the preceding year, or (ii)
15 50% of the net of the remitter's base year liability less the base year
16 transitional energy facility assessment both as defined in section 37 of
17 P.L. , c. (C.)(now pending before the Legislature as this
18 bill), and (b) for telecommunications remitters shall not exceed the
19 greater of (i) 50% of the tax shown on the remitter's corporation
20 business tax return, or tentative return filed with an application for
21 extension of time to file, for the preceding year, or (ii) 50% of the
22 remitter's base year gross receipts and franchise tax liability pursuant
23 to P.L.1940, c.4 (C.54:30A-16 et seq.).

24 d. Nothing in this section shall be construed to relieve an energy
25 remitter of the requirement to collect and pay its current year
26 transitional energy facility assessment.

27

28 53. (New section) Any amount paid by a remitter pursuant to this
29 act shall be available as a nonrefundable credit. Credits established
30 pursuant to payments made under the "Uniform Transitional Utility
31 Assessment Act" shall be granted only on the basis of the remitters
32 estimation as certified by the State Treasurer pursuant to section 52 of
33 this act, only against the tax in which the estimation is made, and shall
34 not be claimed until after July 1 for the first year of assessment and
35 after August 1st of each subsequent calendar year in which the uniform
36 transitional utility assessment is paid. If, in any calendar year, the
37 credits available against payments in any tax exceed the total amount
38 due in that tax, the remitter may elect to have the excess credits for
39 that year applied to the amounts due in that tax in subsequent years or,
40 if applicable, as a credit to the transitional energy facility assessment
41 payments to be made in the next year. Such credit shall be applied in
42 full to each estimated tax payment beginning in the subsequent year
43 until fully utilized. These credits may not be applied against any other
44 liability except as set forth hereinabove.

45

46 54. (New section) a. Every remitter that was subject to the

1 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1,
2 1998 shall on or before June 20, 1998, return to the Director of the
3 Division of Taxation a statement showing, as shall apply,:

4 (1) The sales and use tax remitted pursuant to P.L.1966, c.30
5 (C.54:32B-1 et seq.) as of June 20, 1998.

6 (2) The amount of estimated corporation business tax remitted
7 pursuant to section 15 of P.L.1945, c.162 (C.54:10A-15) as of June
8 20, 1998.

9 (3) The percentage of the uniform transitional utility assessment the
10 director shall allocate to the sales and use tax and to the corporation
11 business tax.

12 b. Every remitter that was subject to the provisions of P.L.1940,
13 c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 shall on April 20,
14 1999, and on or before April 20 of each year thereafter, return to the
15 director a statement showing, as shall apply:

16 (1) The estimated sales and use tax to be remitted for that year and
17 the assumptions upon which that estimate is based; and

18 (2) The estimated corporation business tax liability for that year
19 and the assumptions upon which that estimate is based.

20 c. (1) Every remitter that was subject to the provisions of
21 P.L.1940, c.4 (C.54:30A-16 et seq.) on April 1, 1997 shall on or
22 before June 20, 1998 return to the director a statement showing the
23 amount of estimated corporation business tax remitted pursuant to
24 section 15 of P.L.1945, c.162 (C.54:10A-15) as of June 20, 1998.

25 (2) Every remitter that was subject to the provisions of P.L.1940,
26 c.4 (C.54:30A-16 et seq.) on April 1, 1997 shall on or before April 20,
27 1999 and on or before April 20 of each year thereafter return to the
28 director a statement showing the estimated corporation business tax
29 liability for that year and the assumptions upon which that estimate is
30 based.

31 d. The statements herein provided for shall be subscribed and
32 sworn to by the president, a vice-president or chief officer of the
33 corporation making such return. Any remitter refusing or neglecting
34 to make the statements herein provided for shall forfeit and pay to the
35 State of New Jersey the sum of \$100 per day for each day of such
36 refusal or neglect, to be recovered in an action at law in the name of
37 the State and which, when recovered, shall be paid into the State
38 Treasury. It shall be the duty of the director to certify any such
39 default to the Attorney General of the State who, thereupon, shall
40 prosecute an action at law for such penalty.

41 e. The director shall audit and verify the statements filed by
42 remitters whenever and in such respects as the director shall deem
43 necessary or advisable. The director may require any remitter to
44 supply additional data and information in such form and detail as the
45 director shall request, whenever the director may deem it necessary or
46 helpful, for the proper performance of the director's duties under this

1 act.

2 f. The director may, by regulation, additionally require that all
3 filings required for the calculation and certification of assessments to
4 be paid by remitters established pursuant to this act shall be made in
5 an electronic form. The form and content of the electronic filing
6 message, the circumstances under which an electronic filing shall serve
7 as a substitute for the filing of another return, and the means by which
8 remitters shall be determined to be subject to this electronic filing
9 requirement shall be prescribed by the director.

10 For the purpose of this act “electronic filing” or “electronic filings”
11 means any message that is initiated through an electronic terminal,
12 telecommunication device, or computer for the purpose of fulfilling the
13 reporting responsibilities set forth hereinabove.

14

15 55. (New section) The Director of the Division of Taxation shall
16 annually on or before June 23, 1998, and on or before May 10 of each
17 year thereafter, calculate and certify to each remitter of the assessment
18 the uniform transitional utility assessment to be paid by each remitter.
19 All payments shall be made in full on an annual basis to the State on
20 June 25, 1998 and on May 15 of each year thereafter as long as this
21 tax shall remain in effect.

22

23 56. (New section) a. Upon making the computation of the
24 assessments under this act, the Director of the Division of Taxation
25 shall certify the amount of such assessments. If for any reason the
26 making and delivering of a certificate of assessments shall be delayed
27 until after May 15, 1999 and after May 15 in any year thereafter, then
28 all of the assessments for such year affected by such certificate of
29 assessment shall become due and payable 10 days after the date of
30 such certification of assessment. The administration collection and
31 enforcement of the assessments payable by each remitter under this act
32 shall be subject to the provisions of the State Tax Uniform Procedure
33 Law, R.S.54:48-1 et seq., to the extent that the provisions of that law
34 are not inconsistent with the provisions of this act.

35 b. The director may, by regulation, require that any payment of
36 assessment made on or before the date established therefore pursuant
37 to this act shall be by electronic funds transfer to such depositories as
38 the State Treasurer shall designate pursuant to section 1 of P.L.1956,
39 c.174 (C.52:18-16.1). A payment by electronic funds transfer shall be
40 deemed to be made on the date the payment is received by the
41 designated depository. The manner, form, and content of the
42 electronic funds transfer message, the circumstances under which an
43 electronic funds transfer shall serve as a substitute for the filing of
44 another form of return, the means by which taxpayers will be provided
45 with acknowledgments of payments, and the classes of taxpayers
46 subject to the electronic funds transfer requirement shall be as

1 prescribed by the director.

2 c. For the purposes of this section "electronic funds transfer"
3 means any transfer of funds, other than a transaction originated by
4 check, draft, or similar paper instrument, that is initiated through an
5 electronic terminal, telecommunication device, or computer for the
6 purpose of ordering, instructing or authorizing a financial institution
7 to debit or credit an account.

8

9 57. (New section) The Director of the Division of Taxation in
10 making the assessment imposed by this act on any remitter for any year
11 shall deduct from or add to the assessment for that year any deduction
12 or addition to the extent and in the manner which may heretofore have
13 been or may hereafter be ordered or decreed by any judgment of the
14 Tax court or any court by reason of any error or omission in
15 connection with the assessment such remitter in any prior year.

16

17 58. (New section) The Director of the Division of Taxation in the
18 Department of the Treasury shall promulgate such rules and
19 regulations applicable to remitters subject to this act as may be
20 necessary to effectuate the purposes and provisions of this act.

21

22 59. (New section) a. Nothing in P.L. , c. (C.) (now
23 pending before the Legislature as this bill) shall be construed to alter
24 any terms or conditions of any contract for the duration of the
25 contract, for the retail sale of electricity ¹or natural gas¹ to an end user
26 that establishes a customer-specific tax classification and that was
27 approved by separate written order of the Board of Public Utilities
28 prior to January 1, 1998, notwithstanding any changes in the laws
29 under which those contracts were established.

30 b. Amounts billed by a utility pursuant to subsection a. of this
31 section shall be remitted to the Division of Taxation in the Department
32 of the Treasury on or before April 1, 1998 and on or before April 1 of
33 each year thereafter.

34 ¹c. On and after January 1, 1998, no off-tariff rate agreement or
35 alternate regulation plan pursuant to P.L.1995, c.180 (C.48:2-21.24
36 et seq.) ²or pursuant to any other order of the board² shall allow for
37 any reduction or exemption from any tax or surcharge imposed
38 pursuant to P.L. , c. (C.)(now pending before the Legislature as
39 this bill) and not otherwise allowed by the provisions of P.L. , c.
40 (C.)(now pending before the Legislature as this bill).¹

41

42 60. R.S.54:4-1 is amended to read as follows:

43 54:4-1. All property real and personal within the jurisdiction of this
44 State not expressly exempted from taxation or expressly excluded
45 from the operation of this chapter shall be subject to taxation annually
46 under this chapter. Such property shall be valued and assessed at the

1 taxable value prescribed by law. Land in agricultural or horticultural
2 use which is being taxed under the "Farmland Assessment Act of
3 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), shall be valued and
4 assessed as provided by that act. An executory contract for the sale
5 of land, under which the vendee is entitled to or does take possession
6 thereof, shall be deemed, for the purpose of this act, a mortgage of
7 said land for the unpaid balance of purchase price. Personal property
8 taxable under this chapter shall include, however, only the machinery,
9 apparatus or equipment of a petroleum refinery that is directly used to
10 manufacture petroleum products from crude oil in any of the series of
11 petroleum refining processes commencing with the introduction of
12 crude oil and ending with refined petroleum products, but shall
13 exclude items of machinery, apparatus or equipment which are located
14 on the grounds of a petroleum refinery but which are not directly used
15 to refine crude oil into petroleum products and the tangible goods and
16 chattels, exclusive of inventories, used in business of local exchange
17 telephone, telegraph and messenger systems, companies, corporations
18 or associations that were subject to tax as of April 1, 1997 under
19 P.L.1940, c.4 (C.54:30A-16 et seq.) as amended, and shall not include
20 any intangible personal property whatsoever whether or not such
21 personalty is evidenced by a tangible or intangible chose in action
22 except as otherwise provided by R.S.54:4-20 . As used in this
23 section, "local exchange telephone company" means a
24 telecommunications carrier providing dial tone and access to
25 [substantially all] 51% of a local telephone exchange. Property
26 omitted from any assessment may be assessed by the county board of
27 taxation, or otherwise, within such time and in such manner as shall be
28 provided by law. Real property taxable under this chapter means all
29 land and improvements thereon and includes personal property affixed
30 to the real property or an appurtenance thereto, unless:

31 a. (1) The personal property so affixed can be removed or severed
32 without material injury to the real property;

33 (2) The personal property so affixed can be removed or severed
34 without material injury to the personal property itself; and

35 (3) The personal property so affixed is not ordinarily intended to
36 be affixed permanently to real property; or

37 b. The personal property so affixed is machinery, apparatus, or
38 equipment used or held for use in business and is neither a structure
39 nor machinery, apparatus or equipment the primary purpose of which
40 is to enable a structure to support, shelter, contain, enclose or house
41 persons or property. For purposes of this subsection, real property
42 shall include pipe racks, and piping and electrical wiring up to the
43 point of connections with the machinery, apparatus, or equipment of
44 a production process as defined in this section.

45 Real property, as defined herein, shall not be construed to affect
46 any transaction or security interest provided for under the provisions

1 of chapter 9 of Title 12A of the New Jersey Statutes (N.J.S.12A:9-101
2 et seq.). The provisions of this section shall not be construed to repeal
3 or in any way alter any exemption from, or any exception to, real
4 property taxation or any definition of personal property otherwise
5 provided by statutory law.

6 The Director of the Division of Taxation in the Department of the
7 Treasury may adopt rules and regulations pursuant to the provisions
8 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
9 et seq.) as may be deemed necessary to implement and administer the
10 provisions of this act.

11 (cf: P.L.1992, c.24, s.3)

12

13 61. R.S.48:3-7.8 is amended to read as follows:

14 48:3-7.8. a. Every public utility shall at all times keep within this
15 State all records, books, accounts, documents and other writings
16 relating to contracts entered into, transactions had, services rendered,
17 business done and property within this State, and shall at no time
18 remove any of such records, books, accounts, documents or writings
19 from this State without the consent in writing of the board first had
20 and obtained.

21 b. The board may by order in writing grant consent and
22 permission under such regulations and conditions as it may see fit to
23 impose for the keeping of any such records, books, accounts,
24 documents and other writings outside of the State in such cases as the
25 board may determine that such consent or permission so granted may
26 be of financial advantage to the customers of the public utility within
27 this State. Such consent or permission so granted may be revoked by
28 the board at any time without notice. A public utility granted such
29 consent or permission shall on the notice in writing of the board
30 produce such records, books, accounts, documents and other writings
31 at such time and place within this State as the board may designate.

32 c. A natural gas or electric vendor shall maintain an office within
33 the State and shall keep such records pertaining to the sale as the
34 board determines by order in writing to be necessary to protect the
35 interest of consumers in the State.

36 d. A public utility as defined in R.S.48:2-13 shall not enter into
37 a contract with a natural gas or electric vendor unless it first certifies
38 to the board that the vendor is in compliance with subsection c. of this
39 section and with R.S.48:3-7.9.

40 e. For the purpose of this section and R.S.48:3-7.9, "vendor"
41 means and includes an individual, firm, joint venture, partnership,
42 corporation, association, state, county, municipality, public agency or
43 authority, cooperation association, or joint stock association, or any
44 trustee, receiver, assignee, or personal representative thereof that is
45 not a public utility as defined in R.S.48:2-13, but sells natural gas or
46 electric power not for resale to a customer within this State.

1 (cf: R.S.48:3-7.8)

2

3 62. R.S.48:3-7.9 is amended to read as follows:

4 48:3-7.9. Every public utility and every natural gas vendor and
5 electric vendor subject to subsection c. of R.S.48:3-7.8, shall [within
6 fourteen days after March twelfth, one thousand nine hundred and
7 thirty-five,] file with the board a designation in writing of an agent,
8 resident of this State who shall have custody of such records, books,
9 accounts, documents and other writings, and upon whom process for
10 the production of the same may be served. Such designation shall set
11 out the name of such agent, his place of residence within this State and
12 his place of business. [Every] A public utility or vendor filing such
13 designation may at any time revoke such designation, provided, that
14 simultaneously with the revocation of such designation, a substituted
15 designation be filed by it with board.

16 (cf: R.S.48:3-7.9)

17

18 63. (New section) The Board of Public Utilities may adopt,
19 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
20 (C.52:14B-1 et seq.), such rules as it deems necessary to implement
21 the provisions of this act.

22

23 64. (New section) On or before January 1, 2002, the State
24 Treasurer shall review and evaluate the administration and revenue
25 impact of the imposition of the sales and use tax on energy and utility
26 services pursuant to this act and shall advise the Legislature
27 accordingly.

28

29 65. (New section) The Board of Public Utilities shall have
30 authority and shall pass along the tax and related savings realized
31 under P.L. , c. , (C.)(now pending before the Legislature as
32 this bill) to consumers when making rate calculations.

33

34 66. (New section) a. For State budgetary purposes, the State
35 Treasurer shall direct that all tax monies collected pursuant to
36 contracts executed pursuant to tariff rate schedules and associated
37 gross receipts and franchise unit tax classes approved by separate
38 written orders of the Board of Public Utilities prior to the effective
39 date of this act shall be deposited in the State General Fund.

40 b. For State budgetary purposes, the collection of billings from
41 customers of a utility for natural gas, electricity and utility service
42 provided on and after January 1, 1998 and before the issuance by the
43 Board of Public Utilities of a written order approving, upon either an
44 interim or final basis, the rate filing of that utility required pursuant to
45 section 67 of P.L. , c. , (C.)(now pending before the
46 Legislature as this bill), except for sales exempt as of December 31,

1 1997 from gross receipts and franchise taxes imposed pursuant to
2 P.L.1940, c.5 (C.54:30A-49 et seq.) and sales to which section 59 of
3 this act shall apply, shall be deemed to include the collection of the full
4 amount of sales and use tax that otherwise would have been due and
5 owing for the billing as if the sales and use tax was imposed pursuant
6 to P.L.1966, c.30 (C.54:32B-1 et seq.) and P.L. , c. (C.)(now
7 pending before the Legislature as this bill) at the time that the natural
8 gas, electricity or utility service was actually provided.

9

10 67. (New section) a. As used in this section:

11 "Base rates" means the rates, including minimum bills, charged for
12 utility commodities or service subject to the board's jurisdiction, other
13 than the rates charged under a utility's levelized energy adjustment
14 clause, hereinafter "LEAC," or levelized gas adjustment clause,
15 hereinafter "LGAC," or equivalent rate provision;

16 "Base year" means the calendar year 1996;

17 "Board" means the Board of Public Utilities;

18 "Sales and use tax" means the sales and use tax liability computed
19 on sales and use of energy and utility service as defined in section 2 of
20 P.L.1966, c.30 (C.54:32B-2);

21 "Utility" means a public utility subject to regulation by the board
22 pursuant to Title 48 of the Revised Statutes; and

23 "Utility service" means the supply, transmission, distribution or
24 transportation of electricity, natural gas or telecommunications
25 services or any combination of such commodities, processes or
26 services.

27 b. No later than 60 days after the date this act is enacted, each
28 electric, gas and telecommunications utility subject to the provisions
29 of this act shall file with the board, and shall simultaneously provide
30 copies to the Director of the Division of the Ratepayer Advocate,
31 revised tariffs and such other supporting schedules, narrative and
32 documentation required by this act, as set forth in this section, to
33 reflect in the utility's rates the changes in tax liability effected pursuant
34 to this act. No later than 90 days after the date of the utility's filing,
35 and after determining that the filing and the rate changes provided for
36 therein are in compliance with the provisions of this act, the board
37 shall approve the utility's filing and associated rates for billing to the
38 utility's customers, effective for utility service rendered on and after
39 January 1, 1998. If the board determines that the utility's filing and
40 the associated rate changes provided for therein are not in compliance
41 with the provisions of this act, the board shall require the utility to
42 amend or otherwise modify its filing to render it in compliance. The
43 board may also permit the rates provided for in the utility's filing to be
44 implemented on an interim basis pending the board's final
45 determination in the event the board, in its discretion, determines that
46 due to the filing's complexity, or for other valid reasons, including but

1 not limited to the enactment of this act after June 30, 1997, additional
2 time is needed for the board to complete its review of the filing. If the
3 rates approved by the board upon its final determination are less than
4 the rates implemented on an interim basis, the difference shall be
5 refunded to the utility's customers with interest computed in
6 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
7 implemented pursuant to this act shall not constitute a fixing of rates
8 pursuant to R.S.48:2-21 and shall not be subject to the hearing
9 requirements set forth in that section.

10 c. As of the effective date of the rate changes implemented
11 pursuant to this act, and except for rates applicable to sales that were
12 'or are currently' exempt from the unit-based energy taxes formerly
13 imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates
14 applicable to sales to which section 59 of P.L. , c. , (C.)(now
15 pending before the Legislature as this bill) applies, the board shall
16 remove from the base rates of each electric public utility and gas
17 public utility the unit tax rates included therein for the recovery of
18 those unit-based energy taxes, and include therein provision for the
19 recovery of corporation business tax imposed pursuant to P.L.1945,
20 c.162 (C.54:10A-1 et seq.), and additionally shall authorize the
21 collection of the sales and use tax imposed pursuant to P.L.1966, c.30
22 (C.54:32B-1 et seq.), as follows:

23 (1) The base rates of each gas and electric utility shall be reduced
24 by the amount of the unit-based energy taxes per kilowatthour or per
25 therm included therein.

26 (2) The provision for corporation business tax initially included
27 in the base rates of each gas and electric utility shall be based on the
28 utility's after-tax net income earned in the base year as booked, unless
29 the board determines, in its discretion, that such income as booked is
30 unusually high or low or otherwise unrepresentative of the utility's
31 prospective net income, in which case the utility's base year net income
32 shall be adjusted as determined by the board.

33 To permit the board to make this determination, in addition to
34 including in its filing schedules showing its net income earned in the
35 base year as booked, the utility shall include adjustments to such
36 booked income to eliminate the effect of revenues, expenses and
37 extraordinary or other charges that are non-recurring, atypical, or
38 both, including, but not limited to an adjustment to eliminate the effect
39 of unusually hot or cold weather, and that would otherwise make the
40 utility's base year net income unusually high or low or otherwise
41 unrepresentative of the utility's prospective net income. If the
42 adjustment is being made to eliminate the effect of unusually hot or
43 cold weather, associated revenue and expense adjustments shall also
44 be made. Subject to the board's approval, such adjusted income shall
45 be the basis for the calculation of the initial provision for corporation
46 business tax to be included in the utility's base rates.

1 The utility shall also include a calculation of its rate of return on
 2 common equity achieved in the base year, both as booked and as
 3 adjusted in accordance with the foregoing. The calculation shall be
 4 made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1,
 5 and shall separately show the effect of reflecting adjustments to the
 6 calculation, if any, that may have been employed historically in
 7 establishing the utility's rate of return on common equity allowed for
 8 ratemaking purposes. The utility's filing shall also include copies of its
 9 audited financial statements for the base year and associated quarterly
 10 and other reports filed with the Securities and Exchange Commission.

11 To reflect the provision for corporation business tax in base rates,
 12 the demand charges, or charges per kilowatt, decatherm or million
 13 cubic feet; the energy charges, or charges per kilowatthour or per
 14 therm; and the customer charges, or charges other than demand and
 15 energy charges, set forth in each base rate schedule, and the floor price
 16 employed in parity rate schedules, included in the utility's tariff filed
 17 with and approved by the board shall be increased by amounts
 18 determined by multiplying such charges by the adjustment factor, "A
 19 e, g" derived below:

20

$$21 \quad A_{e, g} = \left(\frac{(I_{e, g}) \times [Rs/(1-Re)]}{Br_{e, g}} \right)$$

22

23

24 where:

25

26 "A e, g" means the adjustment factor
 27 applicable to electric base rates
 28 (e), gas base rates (g), or both,
 29 other than rates applicable to
 30 sales that were exempt from unit-
 31 based energy taxes formerly
 32 imposed pursuant to P.L.1940,
 33 c.5 (C.54:30A-49 et seq.) or to
 34 which section 59 of P.L. , c. ,
 35 (C.) (now pending before
 36 the Legislature as this bill)
 37 applies;

1	"I e, g"	means the utility's base year
2		after-tax net income from electric
3		or gas sales, or both, and
4		transportation service subject to
5		the board's jurisdiction and other
6		operating revenue if such
7		revenue is reflected in the utility's
8		cost of service for ratemaking
9		purposes, adjusted as approved
10		by the board;
11	"Br e, g"	means the utility's base year
12		revenue from base rates
13		applicable to electric or gas sales,
14		or both, and transportation
15		service subject to the board's
16		jurisdiction, but excluding sales
17		that were exempt from unit-
18		based energy taxes formerly
19		imposed pursuant to P.L.1940,
20		c.5 (C.54:30A-49 et seq.) or to
21		which section 59 of P.L. , c. ,
22		(C.) applies;
23		
24	"Rs"	means the corporation business
25		tax rate, expressed as a decimal;
26		
27	"Rf"	means the applicable federal
28		corporation income tax rate
29		expressed as a decimal; and
30		
31	"Re"	equals $R_s + R_f(1-R_s)$.
32		

33 The utility shall account for the changes in tax liability provided
 34 for by this act effective January 1, 1998. Such accounting shall
 35 include the recording on the utility's income statement and balance
 36 sheet of deferred corporation business tax defined, for book
 37 accounting purposes, as differences in corporation business tax
 38 expense arising from timing differences in the recognition of revenue
 39 and expenses for book and tax purposes.

40 (3) When billed to the utility's customers, the adjusted base rate
 41 charges determined pursuant to paragraphs (1), (2), and (4) of this
 42 subsection, and the charges determined pursuant to the utility's
 43 levelized energy adjustment clause, levelized gas adjustment clause, or
 44 both, as determined both upon the effective date of the rate changes
 45 authorized by this act and as revised prospectively in accordance with
 46 the utility's tariff filed with and approved by the board, and the
 47 transitional energy facility assessment unit rate surcharges, hereinafter,
 48 "TEFA unit rate surcharges," determined in accordance with
 49 subsection d. of this section, shall be increased by an amount
 50 determined by multiplying such charges by the sales and use tax rate
 51 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the

1 utility's rates for service included in its tariff, for informational
2 purposes the tariff shall include such rates after application of the sales
3 and use tax authorized by this section.

4 (4) The utility's filing with the board to implement the rate
5 changes provided for by this act shall include an analysis, description,
6 and quantification of the effect of the changes in rates and tax
7 payments implemented pursuant to this act on the utility's requirement
8 for cash working capital, and if such requirement is less than the cash
9 working capital allowed for the collection and payment of unit-based
10 energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-
11 49 et seq.) in determining the utility's base rates in effect prior to the
12 rate changes implemented pursuant to this act, and to the extent the
13 working capital reduction is not offset by a reduction in net deferred
14 taxes as provided for below, such base rates shall be reduced by the
15 reduction in the utility's revenue requirement associated with the
16 remaining reduction in the working capital requirement not so offset,
17 if any. The reduction in working capital shall be determined by using
18 the same methodology employed in establishing the working capital
19 allowance related to unit-based energy taxes reflected in the utility's
20 base rates in effect prior to the rate changes implemented pursuant to
21 this act. The reduction in the utility's revenue requirement associated
22 with the reduced working capital requirement shall be calculated using
23 the utility's last overall rate of return allowed by the board, including
24 provision for federal income taxes and the corporation business tax
25 implemented pursuant to this act payable on the equity portion of the
26 return, and shall be implemented on the effective date of the rate
27 changes provided for, and in the manner set forth in paragraph (2) of
28 this subsection.

29 If the utility's requirement for cash working capital is increased as
30 a result of the changes in rates and tax payments implemented pursuant
31 to this act, the utility may accrue carrying costs, calculated at its last
32 overall rate of return allowed by the board and applied on a simple
33 annual interest basis without compounding, on the increased working
34 capital requirement and request recovery of such carrying costs in a
35 rate proceeding before the board.

36 The working capital-related base rate changes and carrying cost
37 accruals shall be subject to the board's approval, and shall not be
38 included in the determination of the TEFA unit tax surcharges
39 provided for in subsection d. of this section.

40 The utility's filing with the board to implement the rate changes
41 provided for by this act shall also include an analysis, description and
42 quantification of net deferred taxes. For the purposes of this section,
43 "net deferred taxes" means deferred corporation business taxes, net of
44 federal deferred income taxes, associated with the tax and rate changes
45 implemented pursuant to this act, including deferred corporation
46 business tax recorded in accordance with section 4 of P.L.1945, c.162

1 (C.54:10A-4), projected for the calendar year in which this act takes
2 effect and for each year of the tax life of the asset giving rise to the
3 deferred corporation business taxes pursuant to section 4 of P.L.1945,
4 c.162 (C.54:10A-4).

5 If the change in such net deferred taxes projected for the calendar
6 year in which the rate changes implemented pursuant to this act takes
7 effect is negative and if the utility's requirement for working capital is
8 reduced as a result of the changes in rates and tax payments
9 implemented pursuant to this act, the working capital-related rate
10 reduction that otherwise would have been implemented pursuant to
11 this subsection shall be treated as set forth in subparagraph (a) or (b)
12 of this paragraph. For the purposes of this act, a change in net
13 deferred taxes is considered negative when it reduces an existing
14 deferred tax liability or creates a deferred tax asset on the utility's
15 balance sheet. An appropriate rate adjustment for the working capital
16 impacts of this act, reflecting all relevant facts and circumstances at
17 the time of the adjustment, shall be made in the year when the earlier
18 of the following events occur:

19 (a) The year in which the reduction in carrying costs assumed for
20 the rate reduction for working capital that would have been made but
21 for this paragraph is no longer required to offset, on a present value
22 basis, the annual carrying costs calculated on the accumulated balance
23 of negative net deferred taxes projected to be recorded by the utility,
24 its successors and assigns, over the tax life of the single asset account
25 giving rise to such net deferred taxes pursuant to section 4 of
26 P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph
27 (a):

28 (i) Carrying costs and present values are to be computed using
29 the weighted average after-tax rate of return approved by the board in
30 the utility's last base rate proceeding.

31 (ii) The accumulated balance of such negative net deferred taxes
32 shall include net deferred taxes associated with all assets and liabilities
33 originally placed in service by the utility and held by the utility or a
34 company affiliated with the utility regardless of whether or not such
35 assets continue to be subject to regulation by the New Jersey Board of
36 Public Utilities.

37 (b) The year in which both an appropriate working capital
38 adjustment and the accumulated balance of negative deferred taxes, as
39 described in (ii) of subparagraph (a) of this paragraph (4), are reflected
40 in the utility's rate base in a rate proceeding before the board. It is the
41 intent of this section to fully compensate utilities on a present value
42 basis, for the carrying costs associated with negative net deferred taxes
43 arising as a result of this act, and to remit to ratepayers any credit due
44 them as a result of any overcompensation as may have occurred due
45 to the treatment of working capital and deferred taxes as set forth
46 herein or in subparagraph (a) of this paragraph (4). At the time the

1 above rate base adjustment is made, an analysis shall be made to
2 determine if such carrying costs have been or will be fully recovered
3 pursuant to the intent of this provision and any additional credit or
4 charge to ratepayers to adjust for ratepayer overpayments or
5 underpayments, if any shall be addressed.

6 If the change in net deferred taxes is positive, the increase shall be
7 added to, or increase, the reduction in the utility's requirement for
8 working capital if the requirement is reduced as a result of the rate and
9 tax payment changes implemented pursuant to this act, or subtracted
10 from the working capital requirement if it is increased, and the
11 resultant net working capital requirement shall be reflected in rates or
12 accrue carrying costs in the same manner as prescribed for changes in
13 the utility's requirement for working capital above.

14 The deferred tax-related rate changes or carrying cost accruals
15 shall be subject to the board's approval and shall not be included in the
16 determination of the TEFA unit rate surcharges provided for in
17 subsection d. of this section.

18 d. (1) Electric and gas utilities shall file, for the board's review
19 and approval, initial TEFA unit rate surcharges determined by
20 deducting from each unit-based energy tax unit tax rate effective
21 January 1, 1997 the following: (a) An amount per kilowatthour or
22 per therm determined by multiplying the total revenue received in the
23 base year from sales to which that unit tax rate would have been
24 applicable by the factor $R_u/(1 + R_u)$, where R_u is the sales and use tax
25 rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as
26 a decimal, and dividing the result by the kilowatthours or therms billed
27 in that unit tax rate class in the base year; and (b) An amount per
28 kilowatthour or per therm determined by dividing the revenue that
29 would have been received in the base year from the inclusion, in the
30 manner prescribed in paragraph (2) of subsection c. of this section, of
31 the corporation business tax in the rates applicable to sales billed in
32 that unit tax rate class by the kilowatthours or therms billed in that
33 rate class. In each case, the determination shall reflect the effect of
34 adjustments that affect the level of sales and revenue, if any, as
35 provided in subsection c. of this section. Of the resultant rate per
36 kilowatthour or per therm, the portion for recovery of the utility's
37 transitional energy facilities assessment liability shall be determined by
38 multiplying such rate by the factor $(1 - R_s)$, where R_s is the
39 corporation business tax rate expressed as a decimal. The TEFA unit
40 rate surcharges shall constitute non-bypassable wires and/or mains
41 charges of the utility, and shall be applied to all sales within the
42 customer classes to which they apply, regardless of whether such
43 customers are purchasing bundled or unbundled services from the
44 utility, but shall not be applied to sales that were 1or are currently¹
45 exempt from unit-based energy taxes formerly imposed pursuant to
46 P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L. ,

1 c. , (C.) (now pending before the Legislature as this bill) applies.

2 If, following the effective date of this act, a customer taking
3 bundled service from the utility shall elect to obtain its requirements
4 from another supplier and take transportation or wheeling service from
5 the utility, the TEFA unit rate surcharge applicable to the bundled
6 service shall continue to apply to the transportation or wheeling
7 service. The TEFA components of the unit rate surcharges determined
8 pursuant to this subsection (the components of the surcharges
9 remaining after deducting the provision for corporation business tax
10 included therein) shall be used to determine the transitional energy
11 facility assessment liability pursuant to sections 36 through 49 of
12 P.L. , c. (C.)(now pending before the Legislature as this bill).

13 (2) Unless reduced pursuant to¹ [paragraph]paragraphs¹ (3)¹ and
14 (4)¹ of this subsection, the initial TEFA unit rate surcharges are to be
15 reduced annually on January 1, 1999 through January 1, 2003 by the
16 following percentages:

17	January 1, 1999	20%
18	January 1, 2000	40%
19	January 1, 2001	60%
20	January 1, 2002	80%
21	January 1, 2003	100%

22
23 (3) For each year beginning with calendar year 1998 and ending
24 with calendar year 2002, the TEFA surcharge adjustment shall be
25 determined as the difference between:

26 (a) The sum of the estimated, or actual when known, (i) TEFA
27 liabilities, as defined in section 43 of P.L. , c. , (C.)(now
28 pending before the Legislature as this bill), and sales and use taxes
29 collected and corporation business taxes ¹[, for]booked for¹ the year
30 1998 by the gas and electric utilities and other entities subject to the
31 TEFA provisions of this act (the year 1998 liability), and (ii) the TEFA
32 liabilities of those utilities and entities in all years following the year
33 1998 through the year in which a determination is being made pursuant
34 to this subsection (the determination year); and

35 (b) The sum of (i) the total of each remitter's base year liability,
36 as defined in section 37 of P.L. , c. , (C.)(now pending before
37 the Legislature as this bill), and (ii) the cumulative TEFA obligation,
38 defined as the sum through the determination year of the amounts
39 calculated by multiplying ¹, for the applicable year,¹ the percentage in
40 the second column of the following table ¹[for the applicable year]¹:

	Determination Year	% of Year 1998 TEFA
	-----	-----
3	1999	80%
4	2000	60%
5	2001	40%
6	2002	20%

7
8 by the Year 1998 TEFA,
9 where the Year 1998 TEFA is calculated as the total of each remitter's
10 base year liability less the sales and use taxes collected and the
11 corporation business taxes booked for the privilege period ending in
12 calendar year 1998 by the gas and electric utilities and other entities
13 subject to the TEFA provisions of this act. For purposes of this
14 subsection, the amounts assumed for the determination year, including
15 the year 1998 liability when first determined for the purposes of this
16 subsection, shall be estimates based on nine months of actual data
17 through and including the month of September, and three months of
18 data forecast for the months of October through December.

19 (4) If the TEFA surcharge adjustment determined for the
20 determination year is positive (that is, if the amount determined
21 pursuant to subparagraph (a) of paragraph (3) of this subsection is
22 greater than the amount determined pursuant to subparagraph (b) of
23 paragraph (3) of this subsection), no reduction shall be made in the
24 reduction in the TEFA unit rate surcharges provided for in paragraph
25 (2) of this subsection for the year following the determination year.
26 If the TEFA surcharge adjustment is negative, the reduction in the
27 TEFA unit rate surcharges that otherwise would have been
28 implemented on January 1 of the year following the determination year
29 pursuant to paragraph (2) of this subsection shall be reduced by an
30 amount (by percentage points) equal to the percentage the TEFA
31 surcharge adjustment is of the total of the base year transitional energy
32 facility assessment of all remitters, as defined in section 37 of P.L. ,
33 c. , (C.), provided however, that such reduction in the reduction
34 in the TEFA unit rate surcharges shall not exceed the percentage
35 shown in paragraph (2) of this subsection for that year; and provided
36 further that in the first two years, that such reduction shall not exceed
37 10 percentage points for each year.

38 e. The utility's filing with the board to implement the rate changes
39 provided for by this act shall include proof of revenue schedules that
40 show for each rate schedule included in the utility's tariff, aggregated
41 by unit-based energy tax unit tax classes, the number of customers
42 billed under the rate schedule, the billing determinants of such
43 customers (i.e. the kilowatts of billing demand and kilowatthours of

1 electric energy consumed, and the million cubic feet/decatherm subject
2 to gas capacity-related charges and decatherm of gas consumed) and
3 the associated revenue, both as booked in the base year and on a pro
4 forma basis reflecting the rate changes implemented pursuant to this
5 act. The proof of revenue shall additionally show the amount of unit-
6 based energy taxes included in the base year revenue as booked, the
7 unit-based energy taxes that would have been collected at the unit-
8 based energy tax unit tax rates effective January 1, 1997, if different,
9 as well as the corporation business tax, sales and use tax and
10 transitional energy facility assessment revenue that would have been
11 collected or received on a pro forma basis if the rates implemented
12 pursuant to this act had been in effect in the base year.

13 f. The board may, in its discretion, permit the rate changes
14 provided for this act to be implemented as part of a pending base rate
15 case or other proceeding in which the utility's rates are to be changed,
16 provided that the effective date of the changes is not delayed beyond
17 the date on which the changes would have been implemented under
18 subsection c. of this section. The board may also, pursuant to its
19 powers provided by law, permit or require further modifications in the
20 implementation of this section to address unforeseen consequences
21 arising out of the implementation of this act.

22 g. Customers of the utility who are exempt from the sales and use
23 tax imposed on sales of gas and/or electricity or as a result of rate
24 changes occurring prior to the effective date of this act or for other
25 valid reasons are due a refund of sales or use tax inadvertently
26 imposed on such customers as a result of implementing the rate
27 changes provided for by this act shall file with the State Treasurer to
28 obtain such refunds. The State Treasurer shall promptly notify the
29 utility of customers granted refunds under this provision in order to
30 prevent additional collections of the sales and use tax from such
31 customers.

32 h. Public utilities providing telecommunications service regulated
33 by the board shall file for the board's review and approval revised
34 tariffs that eliminate from the rates applicable to such service the
35 excise tax liability included therein pursuant to P.L.1940, c.4
36 (C.54:30A-16 et seq.), and shall include therein the corporation
37 business tax calculated using ¹[the same methodology as set forth in
38 paragraph (2) of subsection c. of this section for gas and electric
39 utilities.]the methodology used in calculating the adjustment factor set
40 forth in paragraph (2) of subsection c. of this section. Subsection d.
41 of this section shall not apply to telecommunication utilities, and
42 telecommunication utilities subject to a plan of regulation other than
43 rate base/rate of return shall additionally not be required to file the rate
44 of return information required by paragraph (2) of subsection c. Such
45 utilities shall, however, include a narrative and/or other documentation
46 as required by the board to support the reasonableness of the after-tax

1 income, which may be adjusted to eliminate the effect of non-recurring
 2 or other atypical events, on which the corporate business tax inclusion
 3 in rates is based.¹ Telecommunications utilities shall comply with all
 4 other applicable provisions of this section.

5 i. (1) The board shall not adjust the rates of a public utility, as
 6 provided in subsections c. and d. of this section, for a purchase by a
 7 cogenerator of natural gas and the transportation of that gas, that is
 8 exempt from sales and use tax pursuant to paragraph (2) of subsection
 9 b. of section 26 of P.L. , c. , (C.)(now pending before the
 10 Legislature as this bill). The board shall not allocate, in any future rate
 11 case, any sales and use tax, corporation business tax, or transitional
 12 energy facility assessment to rates for this purpose.

13 (2) The board shall adjust the rates, as provided in subsection c.
 14 of this section, for a purchase by a cogenerator of any quantity of
 15 natural gas and the transportation of that gas that is not exempt from
 16 sales and use tax pursuant to paragraph (2) of subsection b. of section
 17 26 of P.L. , c. , (C.).

18 (3) For the purposes of this section, "cogenerator" means a
 19 person or business entity that owns or operates a cogeneration facility
 20 in the State of New Jersey, which facility is a plant, installation or
 21 other structure whose primary purpose is the sequential production of
 22 electricity and steam or other forms of useful energy which are used
 23 for industrial, commercial, heating or cooling purposes, and which is
 24 designated by the Federal Energy Regulatory Commission, or its
 25 successor, as a "qualifying facility" pursuant to the provisions of the
 26 "Public Utility Regulatory Policies Act of 1978," Pub.L. 95-617.

27
 28 68. (New section) Notwithstanding the use of the term
 29 assessment, the transitional energy facility assessment tax is a State tax
 30 within the meaning of section 164 of federal Internal Revenue Code of
 31 1986, 26 U.S.C. §164, pursuant to which a deduction is allowed in
 32 arriving at federal taxable income for the taxable year within which it
 33 is paid or accrued and such amount shall be added back to entire net
 34 income pursuant to subparagraph (c) of paragraph (2) of subsection
 35 (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).

36
 37 69. (New section) a. No municipal, regional, or county
 38 governmental agency may impose any fees, taxes, levies or
 39 assessments in the nature of a local franchise, right of way, or gross
 40 receipts fee, tax, levy or assessment against energy ¹companies subject
 41 to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to
 42 January 1, 1998¹ or telecommunication companies ¹[subject to a public
 43 utility tax immediately prior to January 1, 1998]¹. Nothing in this
 44 section shall be construed as a bar to ¹reasonable¹ fees for ¹actual¹
 45 services made by any municipal, regional or county governmental
 46 agency. ²Nothing in this section shall be construed to affect the

1 franchising process or the assessment of franchise fees with respect to
2 the provision of cable television service in accordance with the
3 provisions of P.L.1972, c.186 (C.48:5A-1 et seq.).²

4 b. Nothing in this section shall be construed to limit municipal
5 taxation of real or personal property pursuant to R.S.54:4-1 of local
6 exchange telephone, telegraph and messenger systems, companies,
7 corporations or associations that were subject to tax under P.L.1940,
8 c.4 (C.54:30A-16 et seq.) as of April 1, 1997.

9
10 70. (New section) ²a.² Nothing in this act shall be construed to
11 limit municipal taxation of real estate pursuant to R.S.54:4-1 of
12 current or former remitters of the transitional energy facility
13 assessment, or of a corporate or non-corporate legal successor or
14 assignee of a current or former remitter of the transitional energy
15 facility assessment whether through any reorganization, sale,
16 bankruptcy, consolidation, merger or other transaction or occurrence
17 of any kind without limitation. As used in this section, "real estate"
18 means lands and buildings, but shall not include items of the type as set
19 forth in the list of scheduled property for gas systems and electric
20 light, heat and power systems in section 10 of P.L.1940, c.5
21 (C.54:30A-58) prior to January 1, 1998. As provided in that list,
22 railways, tracks, ties, lines, wires, cables, poles, pipes, conduits,
23 bridges, viaducts, dams and reservoirs (except that the lands upon
24 which dams and reservoirs are situated shall be included as real
25 estate), machinery, apparatus or equipment, notwithstanding any
26 attachment thereof to lands or buildings owned by current or former
27 remitters of the transitional energy facility assessment, or of a
28 corporate or non-corporate legal successor or assignee of a current or
29 former remitter of the transitional energy facility assessment whether
30 through any reorganization, sale, bankruptcy, consolidation, merger or
31 other transaction or occurrence of any kind without limitation, are not
32 real estate.

33 ²b. No municipality, regional or county governmental agency shall
34 directly or indirectly tax as real property, or include within the
35 assessment of real property, the public utility owned electrical
36 interconnect, water lines or gas lines, or any value thereof, which
37 were set forth in the list of scheduled property for gas systems and
38 electric light, heat and power systems in section 10 of P.L.1940, c.5
39 (C.54:30A-58), prior to enactment of this act whether or not on the
40 real estate of current or former remitters of the transitional energy
41 facility assessment.²

42
43 71. (New section) Notwithstanding any other provision of law
44 to the contrary, for the period from January 1, 1998 through the date
45 the utility rate changes provided for in this act are implemented as set
46 forth in section 67 of P.L. , c. , (C.)(now pending before the

1 Legislature as this bill), the sales and use tax imposed pursuant to
2 P.L.1966, c.30 (C.54:32B-1 et seq.) as amended and supplemented by
3 P.L. , c. (C.)(now pending before the Legislature as this bill),
4 upon sales and use of energy and utility service that were subject to
5 regulated rates that included unit-based energy taxes imposed pursuant
6 to P.L.1940, c.5 (C.54:30A-49 et seq.) during that period, shall be
7 imposed upon the utility vendors of energy and utility service in this
8 State and shall not be imposed upon the purchasers thereof. The
9 amount of tax due under this section shall be payable by a utility
10 vendor to satisfy the utility vendor's tax liability on those sales and use
11 of energy and utility service under this section.

12
13 ¹72. (New section) Every telephone company that was subject to
14 the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) as of April
15 1,1997, that makes an advance payment of its applicable gross receipts
16 and franchise tax to the State in the final year of the existence of such
17 tax and treated such advance payment as an expense on its books and
18 records for that year, or its corporate or non-corporate legal successor
19 or assignee whether through any reorganization, sale, bankruptcy,
20 consolidation, merger or other occurrence of any kind without
21 limitation, shall on May 15, 1998, pay a telecommunication
22 assessment. The telecommunication assessment shall be equal to the
23 amount of the advances paid in 1997 pursuant to P.L.1940, c.4
24 (C.54:30A-16 et seq.) by that remitter. A credit against the liability
25 for the telecommunication assessment set forth in this section shall be
26 taken by the remitter in the amount of the advances it paid in 1997
27 pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.).¹

28
29 ¹73. (New section) The repeal of and amendments to various
30 provisions of law pursuant to P.L. , c. (C.)(now pending before
31 the Legislature as this bill), prospectively eliminating the imposition of
32 unit-based energy taxes on gas, electric and gas and electric public
33 utilities pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and
34 amendatory and supplementary acts thereto shall not affect the
35 obligation of each such public utility taxpayer, on or before April 1,
36 1998, to file a final tax form with the director pursuant to subsection
37 c. of section 10 of P.L.1991, c.184 (C.54:30A-54.6). Any remaining
38 tax liability due by the taxpayer on the final tax form shall be submitted
39 with the final tax form. However, any overpayment shown on the final
40 tax form shall be taken as a credit against the uniform transitional
41 utility assessment to be paid June 25, 1998 pursuant to sections 50
42 through 58 of P.L. c. , (C.)(now pending before the Legislature
43 as this bill).¹

44
45 ¹74. The State Treasurer and the Board of Public Utilities shall
46 cooperate to develop a ²[format and method of including upon]

1 statement to be included on² energy users' billings from their vendors
 2 ²[a statement as to the] that a² portion of the charges in the billing
 3 ²[that are paid to the State to reduce or offset municipal property
 4 taxes]are dedicated to property tax relief² .¹

5
 6 ¹75. Host community benefit agreements between a municipality
 7 and an electric generating facility within the municipality shall be of
 8 full force and effect under law and shall be binding upon the parties to
 9 the agreement. ¹

10
 11 ¹76. The Board of Public Utilities shall conduct a review of all
 12 telecommunications taxes, including an analysis of alternative taxes,
 13 and evaluate their potential for providing property tax relief and their
 14 impact under the on-going transition to a more competitive and
 15 technologically diverse market and submit its findings and
 16 recommendations in a written report to the Governor and the
 17 Legislature on or before December 31, 1997. ¹

18
 19 ¹[72.] 77.¹ The following are repealed:
 20 Section 2 of P.L.1983, c.95 (C.48:2-29.37);
 21 P.L.1940, c.4 (C.54:30A-16 through 54:30A-29);
 22 Sections 6 and 8 of P.L.1963, c.41 (C.54:30A-18.1 and 54:30A-
 23 18.2);
 24 Section 2 of P.L.1971, c.109 (C.54:30A-18.1a);
 25 Sections 1 and 2 of P.L.1979, c.35 (C.54:30A-18.4 and 54:30A-
 26 18.5);
 27 Sections 2, 10, 11, 12 and 24 of P.L.1991, c.184 (C.54:30A-18.6,
 28 54:30A-54.6, 54:30A-54.7, 54:30A-54.8 and 54:30A-18.7);
 29 Section 2 of P.L.1980, c.10 (C.54:30A-24.1);
 30 Section 5 of P.L.1989, c.2 (C.54:30A-24.2);
 31 Sections 25 and 27 of P.L.1991, c.184 (C.54:30A-24.3 and
 32 54:30A-24.4);
 33 P.L.1961, c.91 (C.54:30A-51.1 through 54:30A-51.5);
 34 Section 5 of P.L.1940, c.5 (C.54:30A-53);
 35 Sections 8 through 13 of P.L.1940, c.5 (C.54:30A-56 through
 36 54:30A-61);
 37 Section 4 of P.L.1980, c.11 (C.54:30A-61.1);
 38 Sections 19, 26 and 28 of P.L.1991, c.184 (C.54:30A-61.2
 39 through 54:30A-61.4);
 40 Sections 16, 17, 19 and 20 of P.L.1940, c.5 (C.54:30A-64
 41 through 54:30A-67); and
 42 Section 30 of P.L.1991, c.184 (C.54:30A-68).

43
 44 ¹[73] 78.¹ This act shall take effect January 1, 1998, except that
 45 this section and sections 49, 58, 63 and 67 shall take effect
 46 immediately.

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2

3 Revises taxation of gas, electric and telecommunications public

4 utilities and sales of electricity, natural gas and energy transportation

5 service under transitions to competitive markets.