

P.L. 1997, CHAPTER 413, *approved January 19, 1998*
Assembly, No. 670 (*First Reprint*)

1 **AN ACT** exempting certain income of certain corporations of foreign
2 countries from taxation under the corporation business tax,
3 amending P.L.1945, c.162.

4

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

7

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

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

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

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

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

21 (d) "Net worth" shall mean the aggregate of the values disclosed
22 by the books of the corporation for (1) issued and outstanding capital
23 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
24 profits, and (4) surplus reserves which can reasonably be expected to
25 accrue to holders or owners of equitable shares, not including
26 reasonable valuation reserves, such as reserves for depreciation or
27 obsolescence or depletion. Notwithstanding the foregoing, net worth
28 shall not include any deduction for the amount of the excess
29 depreciation described in paragraph (2)(F) of subsection (k) of this
30 section. The foregoing aggregate of values shall be reduced by 50%
31 of the amount disclosed by the books of the corporation for investment

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 ACV committee amendments adopted June 3, 1996.

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

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

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

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

38 (f) "Investment company" shall mean any corporation whose
39 business during the period covered by its report consisted, to the
40 extent of at least 90% thereof of holding, investing and reinvesting in
41 stocks, bonds, notes, mortgages, debentures, patents, patent rights and
42 other securities for its own account, but this shall not include any
43 corporation which: (1) is a merchant or a dealer of stocks, bonds and
44 other securities, regularly engaged in buying the same and selling the
45 same to customers; or (2) had less than 90% of its average gross
46 assets in New Jersey, at cost, invested in stocks, bonds, debentures,

1 mortgages, notes, patents, patent rights or other securities or
2 consisting of cash on deposit during the period covered by its report;
3 or (3) is a banking corporation or a financial business corporation as
4 defined in the Corporation Business Tax Act.

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

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

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

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

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

28 (1) Entire net income shall exclude for the periods set forth in
29 paragraph (2)(F)(i) of this subsection, any amount, except with respect
30 to qualified mass commuting vehicles as described in section
31 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
32 prior to January 1, 1984, which is included in a taxpayer's federal
33 taxable income solely as a result of an election made pursuant to the
34 provisions of paragraph (8) of that section.

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

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

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

43 (C) Taxes paid or accrued to the United States, a possession or
44 territory of the United States, a state, a political subdivision thereof,
45 or the District of Columbia on or measured by profits or income, or
46 business presence or business activity, or the tax imposed by this act,

1 or any tax paid or accrued with respect to subsidiary dividends
2 excluded from entire net income as provided in paragraph (5) of
3 subsection (k) of this section;

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

5 (E) ¹[90% of interest on indebtedness owing directly or indirectly
6 to holders of 10% or more of the aggregate outstanding shares of the
7 taxpayer's capital stock of all classes; except that such interest may, in
8 any event, be deducted:

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

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

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

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

23 (v) In full to the extent it relates to debt of a banking corporation
24 to a bank holding company, of which the banking corporation is a
25 subsidiary, or to a debt of a banking corporation to another banking
26 corporation with respect to federal funds transactions governed by
27 section 23A of the Federal Reserve Act (12 U.S.C. §371c.) when both
28 banking corporations are subsidiaries of the same bank holding
29 company, as defined in 12 U.S.C. §1841.] (Deleted by amendment,
30 P.L.1995, c.418.)¹

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

45 (ii) For the periods set forth in subparagraph (F)(i) of this
46 subsection, any amount, except with respect to qualified mass

1 commuting vehicles as described in section 168(f)(8)(D)(v) of the
2 Internal Revenue Code as in effect immediately prior to January 1,
3 1984, which the taxpayer claimed as a deduction in computing federal
4 income tax pursuant to a qualified lease agreement under paragraph
5 (8) of that section.

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

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

27 (2) The amount of treble damages paid to the Department of
28 Environmental Protection ¹[and Energy]¹ pursuant to subsection a. of
29 section 7 of P.L.1976, c.141 (C.58:10-23.11f) ^{1,1} for costs incurred
30 by the department in removing, or arranging for the removal of, an
31 unauthorized discharge upon failure of the discharger to comply with
32 a directive from the department to remove, or arrange for the removal
33 of, the discharge.

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

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

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

45 (B) Eligible gross income shall be the gross income derived by an
46 international banking facility, which shall include, but not be limited to,

1 gross income derived from:

2 (i) Making, arranging for, placing or carrying loans to foreign
3 persons, provided, however, that in the case of a foreign person which
4 is an individual, or which is a foreign branch of a domestic corporation
5 (other than a bank), or which is a foreign corporation or foreign
6 partnership which is controlled by one or more domestic corporations
7 (other than banks), domestic partnerships or resident individuals, all
8 the proceeds of the loan are for use outside of the United States;

9 (ii) Making or placing deposits with foreign persons which are
10 banks or foreign branches of banks (including foreign subsidiaries) or
11 foreign branches of the taxpayers or with other international banking
12 facilities;

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

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

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

20 (5) Entire net income shall exclude 100% of dividends which were
21 included in computing such taxable income for federal income tax
22 purposes, paid to the taxpayer by one or more subsidiaries owned by
23 the taxpayer to the extent of the 80% or more ownership of investment
24 described in subsection (d) of this section. With respect to other
25 dividends, entire net income shall not include 50% of the total included
26 in computing such taxable income for federal income tax purposes.

27 (6) (A) Net operating loss deduction. There shall be allowed as
28 a deduction for the taxable year the net operating loss carryover to
29 that year.

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

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

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

10 (7) Notwithstanding paragraph (1) of this subsection, entire net
11 income shall not include the income derived by a corporation
12 organized in a foreign country from the international operation of a
13 ship or ships, or from the international operation of aircraft, if such
14 income is exempt from federal taxation pursuant to section 883 of the
15 federal Internal Revenue Code of 1986, 26 U.S.C.§883.

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

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

1 insurance companies duly authorized to transact business in this State,
2 security brokers or dealers or investment companies or bankers not
3 employing moneyed capital coming into competition with the business
4 of national banks, real estate investment trusts, or any of the following
5 entities organized under the laws of this State: credit unions, savings
6 banks, savings and loan and building and loan associations,
7 pawnbrokers, and State banks and trust companies.

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

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

28 (p) "New Jersey S corporation" means a corporation that is an S
29 corporation; which has made a valid election pursuant to section 3 of
30 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
31 corporation continuously since the effective date of the valid election
32 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).
33 (cf: P.L.1995, c.418)

34
35 2. This act shall take effect immediately.
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40 Exempts shipping and aircraft operation income of foreign national
41 corporations from corporation business tax if their home countries
42 exempt such income of U.S. corporations.