

SENATE, No. 231

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators INVERSO and ADLER

1 AN ACT concerning the taxation of S corporations under the
2 corporation business tax, amending P.L.1945, c.162.

3
4 BE IT ENACTED by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read
8 as follows:

9 5. The franchise tax to be annually assessed to and paid by each
10 taxpayer shall be the sum of the amount computed under subsection
11 (a) hereof, or in the alternative to the amount computed under
12 subsection (a) hereof, the amount computed under subsection (f)
13 hereof, and the amount computed under subsection (c) hereof:

14 (a) That portion of its entire net worth as may be allocable to this
15 State as provided in section 6, multiplied by the following rates: 2
16 mills per dollar on the first \$100,000,000.00 of allocated net worth;
17 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill
18 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar
19 on all amounts of allocated net worth in excess of \$300,000,000.00;
20 provided, however, that with respect to reports covering accounting
21 or privilege periods set forth below, the rate shall be that percentage
22 of the rate set forth in this subsection for the appropriate year:

Table with 2 columns: Accounting or Privilege Periods Beginning on or After; The Percentage of the Rate to be Imposed Shall Be. Rows include dates from April 1, 1983 to July 1, 1986 with corresponding percentages (75%, 50%, 25%, 0).

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32 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 (c) (1) For a taxpayer that is not a New Jersey S corporation,
2 3¼% of its entire net income or such portion thereof as may be
3 allocable to this State as provided in section 6 of P.L.1945, c.162
4 (C.54:10A-6); provided, however, that with respect to reports
5 covering accounting or privilege periods or parts thereof ending after
6 December 31, 1967, the rate shall be 4¼%; and that with respect to
7 reports covering accounting or privilege periods or parts thereof
8 ending after December 31, 1971, the rate shall be 5½%; and that with
9 respect to reports covering accounting or privilege periods or parts
10 thereof ending after December 31, 1974, the rate shall be 7½%; and
11 that with respect to reports covering accounting or privilege periods
12 or parts thereof ending after December 31, 1979, the rate shall be 9%.

13 (2) For a taxpayer that is a New Jersey S corporation, for privilege
14 periods beginning before July 1, 1995 the rate determined by
15 subtracting the maximum tax bracket rate provided under
16 N.J.S.54A:2-1 for the [taxable] privilege period from the tax rate
17 provided under paragraph (1) of this subsection for the taxable period,
18 for privilege periods beginning on or after July 1, 1995 but before
19 July 1, 1996 the rate shall be 2.42% and for privilege periods
20 beginning on or after July 1, 1997 the rate shall be 2.00%, multiplied
21 by its entire net income that is not subject to federal income taxation
22 or such portion thereof as may be allocable to this State pursuant to
23 sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through
24 54:10A-10); plus

25 (3) For a taxpayer that is a New Jersey S corporation, the tax rate
26 provided under paragraph (1) of this subsection for the [taxable]
27 privilege period multiplied by any of its entire net income that is
28 subject to federal income taxation or such portion thereof as may be
29 allocable to this State pursuant to sections 6 through 10 of P.L.1945,
30 c.162 (C.54:10A-6 through 54:10A-10).

31 (d) Provided, however, that the franchise tax to be annually
32 assessed to and paid by any investment company or real estate
33 investment trust, which has elected to report as such and has filed its
34 return in the form and within the time provided in this act and the rules
35 and regulations promulgated in connection therewith, shall, in the case
36 of an investment company, be measured by 25% of its entire net
37 income and 25% of its entire net worth, and in the case of a real estate
38 investment trust, by 4% of its entire net income and 15% of its entire
39 net worth, at the rates hereinbefore set forth for the computation of
40 tax on net income and net worth, respectively, but in no case less than
41 \$250.00, and further provided, however, that the franchise tax to be
42 annually assessed to and paid by a regulated investment company
43 which for a period covered by its report satisfies the requirements of
44 Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal
45 Revenue Code shall be \$250.00.

46 (e) The tax assessed to any taxpayer pursuant to this section shall

1 not be less than \$25.00 in the case of a domestic corporation, \$50.00
 2 in the case of a foreign corporation, or \$250.00 in the case of an
 3 investment company or regulated investment company. Provided
 4 however, that for accounting or privilege periods beginning in calendar
 5 year 1994 and thereafter the minimum taxes for taxpayers other than
 6 an investment company or a regulated investment company shall be as
 7 provided in the following schedule:

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16 and provided further that the director shall adjust the minimum tax for
 17 accounting or privilege periods beginning in each fifth year following
 18 calendar year 1997 and each fifth year thereafter by multiplying the
 19 minimum tax for periods beginning in 1997 by an amount equal to one
 20 plus 75% of the increase, if any, in the annual average total producer
 21 price index for finished goods published by the federal Department of
 22 Labor, Bureau of Labor Statistics, for the year preceding the
 23 determination year over such index for calendar year 1996.

24 (f) In lieu of the portion of the tax based on net worth and to be
 25 computed under subsection (a) of this section, any taxpayer, the value
 26 of whose total assets everywhere, less reasonable reserves for
 27 depreciation, as of the close of the period covered by its report,
 28 amounts to less than \$150,000.00, may elect to pay the tax shown in
 29 a table which shall be promulgated by the director.

30 (cf: P.L.1993, c.173, s.2)

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 32 2. This act shall take effect immediately.

33 34 35 STATEMENT

36
 37 This bill changes the reduced corporation business tax rate on S
 38 corporations to a fixed rate of 2% over two years.

39 Under subchapter S of the federal Internal Revenue Code, certain
 40 business corporations with 35 or fewer shareholders may elect special
 41 tax treatment of most of their corporate income. Currently, New
 42 Jersey allows corporations that have elected the federal S corporation
 43 treatment to also elect special New Jersey taxation, including a
 44 reduced tax rate. The corporation business tax rate for S corporation
 45 income is determined as the difference between the regular corporation
 46 business tax rate (currently 9%) and the highest marginal rate under

1 the New Jersey gross income tax (currently 6.58%), so the S
2 corporation tax rate will be 2.42% for the 1995 taxable year.

3 If the highest marginal rate under the gross income tax is decreased
4 further to 6.37%, the S corporation tax rate will increase to 2.63% for
5 the 1996 taxable year and thereafter.

6 This bill holds the S corporation tax rate at 2.42% for the 1996 tax
7 year and sets the tax rate at 2.00% for tax years thereafter, so that the
8 rate will not increase if the gross income tax rates are again decreased
9 by the Legislature.

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14 Changes corporation business tax rate for S corporations to fixed 2%
15 rate over two years.