

[First Reprint]
SENATE, No. 31

STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1997

By Senators DiFRANCESCO, INVERSO,
Kyrillos, Sinagra and Matheussen

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
18 within this State under operating authority conferred pursuant to
19 R.S.48:4-3, provided, however, that such corporations shall not be
20 exempt from the tax on net income imposed by section 5(c) of
21 P.L.1945, c.162 (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
30 any private shareholder or individual;

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 Senate SBA committee amendments adopted June 19, 1997.

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

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

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

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

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

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

45 (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
11 company or association and any business conducted by a trustee or
12 trustees wherein interest or ownership is evidenced by a certificate of
13 interest or ownership or similar written instrument. ¹[The term
14 corporation shall also mean and include any municipal electric utility
15 or 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
36 to pay taxes, interest or penalties under this act.

37 (i) "Fiscal year" shall mean an accounting period ending on any
38 day other than the last day of December on the basis of which the
39 taxpayer 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 and municipal electric corporations that were subject to
20 the provisions of P.L.1940, c.5 (54:30A-49 et seq.) prior to 1998,
21 shall be adjusted by substituting the New Jersey depreciation
22 allowance for federal tax depreciation with respect to assets placed in
23 service prior to January 1, 1998. For gas, electric, and gas and
24 electric public utilities, and municipal electric corporations that were
25 subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior
26 to 1998, the New Jersey depreciation allowance shall be computed as
27 follows: All depreciable assets placed in service prior to January 1,
28 1998 shall be considered a single asset account. The New Jersey tax
29 basis of this depreciable asset account shall be an amount equal to the
30 carryover adjusted basis for federal income tax purposes on December
31 31, 1997 of all depreciable assets in service on December 31, 1997,
32 increased by the excess, of the "net carrying value," defined to be
33 adjusted book basis of all assets and liabilities, excluding deferred
34 income taxes, recorded on the public utility's books of account on
35 December 31, 1997, over the carryover adjusted basis for federal
36 income tax purposes on December 31, 1997 of all assets and liabilities
37 owned by the gas, electric, or gas and electric public utility or
38 municipal electric corporation as of December 31, 1997. "Books of
39 account" for gas, gas and electric, and electric public utilities and
40 municipal electric corporations means the uniform system of accounts
41 as promulgated by the Federal Energy Regulatory Commission and
42 adopted by the Board of Public Utilities. The following adjustments
43 to entire net income shall be made pursuant to this section:

44 (A) Depreciation for property placed in service prior to January 1,
45 1998 shall be adjusted as follows:

46 (i) Depreciation for federal income tax purposes shall be

1 disallowed in full.

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

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

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

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

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

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

1 known as industrial banks, dealers in commercial paper and
2 acceptances, sales finance, personal finance, small loan and mortgage
3 financing businesses, as well as any other enterprise employing
4 moneyed capital coming into competition with the business of national
5 banks; provided that the holding of bonds, notes, or other evidences
6 of indebtedness by individual persons not employed or engaged in the
7 banking or investment business and representing merely personal
8 investments not made in competition with the business of national
9 banks, shall not be deemed financial business. Nor shall "financial
10 business" include national banks, production credit associations
11 organized under the Farm Credit Act of 1933 or the Farm Credit Act
12 of 1971, Pub.L. 92-181 (12 U.S.C. 2091 et seq.), stock and mutual
13 insurance companies duly authorized to transact business in this State,
14 security brokers or dealers or investment companies or bankers not
15 employing moneyed capital coming into competition with the business
16 of national banks, real estate investment trusts, or any of the following
17 entities organized under the laws of this State: credit unions, savings
18 banks, savings and loan and building and loan associations,
19 pawnbrokers, and State banks and trust companies.

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

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

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

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

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

4

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

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

32 c. All amounts remitted under P.L.1945, c.162 by any gas, electric,
33 gas and electric or telecommunication public utility or municipal
34 electric corporation shall be separately accounted for by the State
35 Treasurer.

36 d. A public utility , including a municipal electric corporation, with
37 gas, electric or telecommunications operations or any of them shall file
38 with the Board of Public Utilities amendments to its existing tariffs,
39 contracts or schedules of service designating the appropriate
40 apportionment of its corporation business tax liability in these tariffs,
41 contracts or schedules so that rates will not be increased for any class
42 of ratepayer as a result of the transition to this tax. The board may
43 permit gas, electric, gas and electric or telecommunications public
44 utilities or municipal electric corporations to establish new tariffs,
45 contracts or schedules, or to amend existing tariffs, contracts or
46 schedules, as necessary to comply with the provisions of this act.

1 e. A qualified taxpayer may claim a corporation business tax credit
 2 in accordance with the provisions of section 53 of P.L. , c.
 3 (C.) (now pending before the Legislature as this bill) ¹and for
 4 local energy utility franchise taxes paid and subject to the limitations
 5 of subparagraph (C) of paragraph (2) of subsection (k) of section 4 of
 6 P.L.1945, c.162 (C.54:10A-4).

7 f. A municipal electric corporation or utility that is required to file
 8 a corporation business tax return that is not required to file a federal
 9 corporation tax return shall file with the director a pro-forma federal
 10 corporation tax return at the same time it files its corporation business
 11 tax return. The director may promulgate rules and regulations and
 12 issue guidance with respect to all issues related to the pro-forma
 13 federal corporation tax return.¹

14
 15 4. (New section) If, in the first full privilege period commencing
 16 after the assessment under the Transitional Energy Facility Assessment
 17 Act, established in sections 36 through 49 of P.L. , c. (C.) (now
 18 pending before the Legislature as this bill), has terminated, or in any
 19 subsequent privilege period thereafter, a taxpayer that was formerly
 20 subject to the Transitional Energy Facility Assessment Act and whose
 21 liability under the Corporation Business Tax Act (1945), P.L.1945,
 22 c.162 (C.54:10A-1 et seq.), for such privilege period after the
 23 assessment under the Transitional Energy Facility Assessment Act has
 24 terminated, is less than the taxpayer's liability for the first full privilege
 25 period as a taxpayer under P.L.1945, c.162, then that taxpayer or
 26 corporate or noncorporate legal successor or assignee whether
 27 through any reorganization, sale, bankruptcy, consolidation, merger,
 28 or other transaction or occurrence of any kind without limitation, shall
 29 pay as its liability under P.L.1945, c.162 for any of those privilege
 30 periods after the assessment under the Transitional Energy Facility
 31 Assessment Act has terminated an amount equal to the higher of:

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

35 b. The amount of corporation business tax it would be liable to pay
 36 for such privilege period if its gas ¹[.] or¹ electric ¹ [or
 37 telecommunications]¹ operations were accounted for on a separate
 38 basis, pursuant to regulations as may be promulgated by the director.

39
 40 5. The title of P.L.1940, c.5 is amended to read as follows:

41 **AN ACT** for the taxation of the gross receipts of [street railway,
 42 traction,] sewerage[,] and water corporations, [and of the units of
 43 electricity and natural gas sold in the business of gas and electric
 44 light, heat and power corporations] using or occupying the public
 45 streets, highways, roads or other public places, for the exemption
 46 from taxation of the franchises, stock and certain property of such

1 corporations, and for the taxation of certain of the property of such
2 corporations not so exempted from taxation.

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

4

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

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

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

21

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

24 2. Definitions. As used in this act--unless the context otherwise
25 requires:

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

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

38 (c) "Gross receipts" means all receipts from the taxpayer's
39 business over, in, through or from the whole of its lines or mains but
40 does not include any sum or sums of money received by the taxpayer
41 in payment for [gas or electrical energy or] water sold and furnished
42 to another public utility which is also subject to the payment of a tax
43 based upon its gross receipts, [nor any sum or sums of money received
44 by the taxpayer from a cogenerator in payment for cogenerated
45 electrical energy resold by the taxpayer to the producing cogenerator
46 where produced, nor any sum or sums of money received by the

1 taxpayer from a cogenerator in payment for natural gas sold by the
2 taxpayer to the cogenerator and separately metered for use in a
3 cogeneration facility, nor in the case of a street railway or traction
4 corporation, the receipts from the operation of autobuses or vehicles
5 of the character described in R.S.48:15-41 through R.S.48:15-56,
6 inclusive,] ¹or to a gas, electric or gas and electric public utility
7 subject to the payment of taxes pursuant to P.L. , c. (C.)(now
8 pending before the Legislature as this bill), nor any sum or sums of
9 money received by the taxpayer in payment for water sold or furnished
10 that is used to generate electricity that is sold for resale or to an end
11 user other than the one on-site end user upon whose property is
12 located a co-generation facility or self-generation unit that generated
13 the electricity or upon the property purchased or leased from the one
14 on-site end user by the person owning the co-generation facility or
15 self-generation unit if such property is contiguous to the user's
16 property and is the property upon which is located a co-generation
17 facility or self-generation unit that generated the electricity¹, nor in
18 the case of a sewerage corporation, an amount equal to any sum or
19 sums of money payable by such sewerage corporation to any board,
20 commission, department, branch, agency or authority of the State or
21 of any county or municipality, for the treatment, purification or
22 disposal of sewage or other wastes, nor in the case of a water
23 purveyor, the amount which represents the water tax imposed by
24 section 11 of P.L.1983, c.443 (C.58:12A-21) and which is included in
25 the tariff altered pursuant to section 6 of P.L.1983, c.443
26 (C.58:12A-17).

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

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

35 (f) ["Apportionment value" or "apportionment valuation" means
36 the result obtained by multiplying the quantities of each class or type
37 of scheduled property of a taxpayer by the applicable unit value, and
38 the addition of such results.] Deleted by amendment, P.L. , c. .)

39 (g) "Public street, highway, road or other public place" includes
40 any street, highway, road or other public place which is open and used
41 by the public, even though the same has not been formally accepted as
42 a public street, highway, road, or other public place. However, for
43 purposes of computing the tax in connection with lines or mains
44 installed prior to February 19, 1991, "public street, highway, road or
45 other public place" shall not mean or include non-restricted roadways,
46 such as extended residential, commercial or recreational facility

1 driveways, or dead end streets, cul-de-sacs or alleys which are
2 connected to public roadways and are for access to or the use of
3 supermarkets, shopping malls, planned communities and the
4 connecting roads within or around the above facilities whether these
5 roadways shall be located on public or private property, unless such
6 shall have been determined a "public street, highway, road or other
7 public place" for the purposes of P.L.1940, c.5 (C.54:30A-49 et seq.)
8 prior to February 19, 1991.

9 (h) "Service connections" means the [wires or] pipes connecting
10 the building or place where the service or commodity supplied by the
11 taxpayer is used or delivered, or is made available for use or delivery,
12 with a supply line or supply main in the street, highway, road, or other
13 public place, or with such supply line or supply main on private
14 property.

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

17 (j) ["Cogenerator" means a person or business entity which owns
18 or operates a cogeneration facility in the State of New Jersey, which
19 facility is a plant, installation or other structure whose primary purpose
20 is the sequential production of electricity and steam or other forms of
21 useful energy which are used for industrial, commercial, heating or
22 cooling purposes; and which is designated by the Federal Energy
23 Regulatory Commission, or its successor, as a "qualifying facility"
24 pursuant to the provisions of the "Public Utility Regulatory Policies
25 Act of 1978," Pub. L.95-617.] ¹[(]¹ Deleted by amendment, P.L. ,
26 c. .)

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

40 (l) ["Class" means any segment, grouping or other division of an
41 electric company's or gas company's customers which is established for
42 the purpose of charging rates for electric or gas service. For the
43 purposes of this act, any such class shall be designated to be in the
44 residential class category or non-residential class category.] ¹[(]¹
45 Deleted by amendment, P.L. , c. .)

46 (m) [With respect to electric companies, (1) "residential class

1 category" means any class established by an electric company which
2 generally includes customers taking electric service under rate
3 schedules that are primarily residential in nature; and (2)
4 "non-residential class category" means any class established by an
5 electric company which generally includes customers taking electric
6 service under rate schedules that are primarily non-residential in
7 nature.] ¹[(¹ Deleted by amendment, P.L. ., c. .)]

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

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

17

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

20 3. [Street railway, traction, sewerage,] Sewerage and water [, gas
21 and electric light, heat and power] corporations using or occupying
22 public streets, highways, roads or other public places, and their
23 property and franchises, shall be subject to taxation only as in this act
24 provided. Any such corporation shall not be subject to any other
25 taxes upon its property, franchises, stock or gross receipts, and the
26 shares of stock of any such corporation shall not be taxed in the hands
27 of shareholders.

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

29

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

32 4. All the real estate as herein defined, [and the electric and gas
33 appliances to be used for the consumption of gas or electricity and
34 held for resale and not for the purpose of production, transmission or
35 distribution of gas or electric energy, and byproducts of gas
36 manufacture held for resale and not for the purpose of production,
37 transmission or distribution of gas or electric energy,] owned or held
38 by any taxpayer shall be assessed and taxed at local rates in the manner
39 provided by law for the taxation of similar property owned by other
40 corporations or individuals, and all proceedings for appeal, review and
41 collection available to municipalities and other corporations or
42 individuals with respect to similar property shall be applicable.

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

44

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

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

6 (a) A tax computed at the rate of 5% of such proportion of the
7 gross receipts of such taxpayer for the preceding calendar year as the
8 length of the lines or mains in this State, located along, in or over any
9 public street, highway, road or other public place, exclusive of service
10 connections, bears to the whole length of its lines or mains, exclusive
11 of service connections. In case the gross receipts of any such taxpayer
12 for any calendar year shall not exceed \$50,000.00 the tax on such
13 taxpayer for such calendar year shall be computed at the rate of 2%
14 instead of at the rate of 5%.

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

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

24 (1) A tax computed at the rate of 0.625% of such proportion of the
25 gross receipts of such taxpayer for the preceding calendar year as the
26 length of the lines or mains in this State, located along, in or over any
27 public street, highway, road or other public place, exclusive of service
28 connections, bears to the whole length of its lines or mains, exclusive
29 of service connections. In case the gross receipts of any such taxpayer
30 for any calendar year shall not exceed \$50,000.00 the tax on such
31 taxpayer for such calendar year shall be computed at the rate of 0.25%
32 instead of at the rate of 0.625%.

33 (2) A tax at the rate of 0.9375% upon the gross receipts of such
34 taxpayer for the preceding calendar year from its business over, on, in,
35 through or from its lines or mains in the State of New Jersey.

36 (P.L.1991, c.184, s.9)

37
38 11. Section 8 of P.L.1963, c.42 (C.54:30A-54.1) is amended to
39 read as follows:

40 8. The director shall annually, on or before April 1, 1964, and April
41 1 in each year thereafter, compute the excise taxes payable to the
42 State as provided in subsection (c) of section 6 hereof. [In making
43 such computation the director shall allow as a credit against the excise
44 taxes payable to the State as provided in subsection (c)(2) of section
45 6 hereof, the amount of taxes paid in the previous calendar year by
46 any such taxpayers pursuant to L.1961, c. 91, as amended and

1 supplemented.] Within 5 days after making such computation, the
2 director shall certify such taxes and the taxes provided for in section
3 2 of this act as a partial payment to the respective taxpayers who shall
4 make payment thereof to the director on or before May 1 next
5 succeeding.

6 (P.L.1971, c.108, s.1)

7

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

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

28 In the calculation of the tax due in accordance with section 6 of
29 P.L.1940, c.5 (C.54:30A-54) in the year 1972 and each applicable year
30 thereafter, every person, copartnership, association or corporation
31 subject to tax hereunder shall be entitled to a credit in the amount of
32 the tax paid hereunder as a partial payment in the preceding calendar
33 year and shall be entitled to the return, or credit against taxes due and
34 payable in the next year, of any amount so paid which shall be found
35 to be in excess of the total amount payable in accordance with section
36 6 of P.L.1940, c.5 (C.54:30A-54).

37 b. [For gas and electric light, heat and power corporations, on or
38 before April 1, 1993, and on or before April 1 of each year thereafter,
39 such corporations subject to the tax imposed pursuant to section 10 of
40 P.L.1991, c.184 (C.54:30A-54.6), shall pay to the director an amount
41 equal to 1/2 of the tax payable pursuant to subsection b. of section 10
42 of P.L.1991, c.184 (C.54:30A-54.6), for the preceding calendar year.
43 Each such payment shall be in addition to the tax payable pursuant to
44 section 10 of P.L.1991, c.184 (C.54:30A-54.6), and shall be
45 considered as a partial payment of the tax which will become due
46 pursuant to that section. In calculation of the tax due in accordance

1 with section 10 of P.L.1991, c.184 (C.54:30A-54.6) for the year 1992
2 and for each year thereafter every such corporation subject to this
3 subsection shall be entitled to a credit in the amount of the tax paid
4 hereunder as a partial payment in the preceding calendar year and shall
5 be entitled to the return, or credit against taxes due and payable in the
6 next year, of any amount so paid which shall be found to be in excess
7 of the total amount of tax payable pursuant to subsection b. of section
8 10 of P.L.1991, c.184 (C.54:30A-54.6).] Deleted by amendment,
9 P.L. . . . , c. . . .
10 (cf: P.L.1991, c.184, s.13)
11

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

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

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

34 c. In the year 1980 and in each year thereafter an advance payment
35 pursuant to subsection a. of this section shall be paid by each taxpayer
36 subject to subsection a. of this section in the manner provided for by
37 law for payment of the taxes due under section 6 of P.L.1940, c.5
38 (C.54:30A-54).

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

46 (2) Each gas and electric light, heat and power corporation, on or

1 before April 1, 1994, and on or before April 1 in each year thereafter,
2 shall pay to the director an advance payment as shall be computed by
3 the director equal to 55% of the increase in taxes due from a taxpayer
4 pursuant to subsection a. of section 10 of P.L.1991, c.184
5 (C.54:30A-54.6) during the preceding calendar year over the taxes due
6 from the taxpayer under such subsection a. of section 10 of P.L.1991,
7 c.184 in the calendar year immediately preceding that year.

8 (3) In calculating the amount of tax increase for the purposes of
9 paragraphs (1) and (2) of this subsection, advance payments made
10 pursuant to this section shall not be considered. Each advance
11 payment made pursuant to this subsection shall be in addition to the
12 taxes payable pursuant to section 10 of P.L.1991, c.184
13 (C.54:30A-54.6) and section 2 of P.L.1971, c. 108 (C.54:30A-54.1a)
14 and shall be considered as a partial payment of the tax to become due
15 and payable in the following year.] (Deleted by amendment, P.L. __, c. __.)
16

17 (cf: P.L.1991, 184, s.14)

18
19 14. Section 7 of P.L.1940, c.5 (C.54:30A-55) is amended to read
20 as follows:

21 7. (A) Every taxpayer shall on or before the first day of
22 September, 1941 and on or before the first day of September in each
23 year thereafter return to the Director of the Division of Taxation a
24 statement in such form, manner, and detail as the Director of the
25 Division of Taxation shall require, showing, as of the first day of July
26 of such year:

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

31 (2) The length of the taxpayer's lines and mains along, in, on or
32 over any public street, highway, road or other public place in this
33 State, exclusive of service connections [(but not including in the case
34 of a street railway or traction company the length of the lines operated
35 by autobuses or vehicles of the character described in R.S.48:15-41 et
36 seq.)]; and

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

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

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

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

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

15 (3) [Every taxpayer operating both gas and electric facilities shall
16 supply the information required by this subsection (B) in such manner
17 as the Director of the Division of Taxation shall require, separating its
18 gross receipts and sales of units from gas operations from its gross
19 receipts and sales of units from electric operations.] (Deleted by
20 amendment, P.L. , c. .)

21 (C) The statements herein provided for shall be subscribed and
22 sworn to by the president, a vice-president or chief officer of the
23 corporation making such return; any taxpayer or refusing or neglecting
24 to make the statements herein provided for shall forfeit and pay to the
25 State of New Jersey the sum of one hundred dollars (\$100) per day for
26 each day of such refusal or neglect, to be recovered in an action at law
27 in the name of the State and which, when recovered, shall be paid into
28 the State Treasury. It shall be the duty of the Director of the Division
29 of Taxation to certify any such default to the Attorney General of the
30 State who, thereupon, shall prosecute an action at law for such
31 penalty.

32 (D) The Director of the Division of Taxation shall audit and verify
33 the statements filed by taxpayers and whenever and in such respects as
34 he shall deem necessary or advisable. The Director of the Division of
35 Taxation may require any taxpayer to supply additional data and
36 information in such form and detail as he shall request, whenever he
37 may deem it necessary or helpful, for the proper performance of his
38 duties under this act.

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

40
41 15. Section 14 of P.L.1940, c.5 (C.54:30A-62) is amended to read
42 as follows:

43 14. Within five days after making the computation [and
44 apportionment] of the excise taxes under subsections (a) and (b) of
45 section 6 of P.L.1940, c.5 (C.54:30A-54) [and under subsection a. of
46 section 10 of P.L.1991, c.184 (C.54:30A-54.6),] the Director of the

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

35 The director may, by regulation, require that any payment of tax
36 made, on or before the date established pursuant to this section for the
37 payment, 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 form and content of the electronic funds
42 transfer message, the circumstances under which an electronic funds
43 transfer shall serve as a substitute for the filing of another form of
44 return, the means by which taxpayers will be provided with
45 acknowledgments of payments, and the classes of taxpayers subject to
46 the electronic funds transfer requirement shall be as prescribed by the

1 director.

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

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

9

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

12 15. When any corporation subject to taxation under this act shall
13 acquire the rights, property and franchises of using and occupying
14 public streets, highways, roads or other public places in this State[,
15 other than the right and franchise to operate autobuses or vehicles of
16 the character described in Title 48, chapter 15, section 41 to the end
17 of the chapter, of the Revised Statutes (Revised Statutes, section
18 48:15-41 et seq.),] of persons, copartnerships, associations or
19 corporations then subject to an excise tax based upon its gross
20 receipts, and shall retain such rights, property and franchises at the end
21 of the calendar year in which such acquisition occurs, then and in such
22 case on or before February 1 of the succeeding year, such acquiring
23 corporation shall return to the State Tax Commissioner in the manner
24 and form required by this act and in addition to the statements of
25 gross receipts[, scheduled property] and length of lines to be filed
26 under this act, a statement showing the gross receipts from the
27 business over, on, in, through or from the lines or mains of the
28 persons, copartnerships, associations or corporations whose rights,
29 property and franchises were acquired as aforesaid, from January 1 of
30 the year in which such property was acquired to the date of such
31 acquisition, together with a statement showing the [scheduled
32 property and] length of lines or mains as of July 1 of the year in which
33 such acquisition took place, as hereinbefore required, unless such
34 information has previously been supplied and filed with the State Tax
35 Commissioner. The total of the gross receipts as shown in both of
36 said statements to the State Tax Commissioner, or as otherwise
37 ascertained by him, shall be used in ascertaining[,] and fixing [and
38 apportioning] the excise tax imposed by section 6(a) of this act upon
39 such acquiring corporation, and if said rights, property and franchises
40 were acquired from a corporation subject to taxation under this act,
41 then the total of the gross receipts as shown in both of said statements
42 to the State Tax Commissioner, or as otherwise ascertained by him,
43 shall be used in ascertaining[,] and fixing [and apportioning] the
44 excise tax imposed by section 6(b) of this act upon such acquiring
45 corporation.

46 The total of the gross receipts as shown in both of said statements

1 to the State Tax Commissioner, or as otherwise ascertained by him,
2 shall be used in ascertaining and fixing the excise tax imposed by
3 section 6(c) of this act upon such acquiring corporation.

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

5

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

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

10 (a) Person. Person includes an individual, partnership, society,
11 association, joint stock company, corporation, public corporation or
12 public authority, estate, receiver, trustee, assignee, referee, and any
13 other person acting in a fiduciary or representative capacity, whether
14 appointed by a court or otherwise, and any combination of the
15 foregoing.

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

17 (c) Purchaser. A person who purchases property or who receives
18 services.

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

32 (e) Retail sale. (1) A sale of tangible personal property to any
33 person for any purpose, other than (A) for resale either as such or as
34 converted into or as a component part of a product produced for sale
35 by the purchaser, ¹ including the conversion of natural gas into another
36 intermediate or end product, other than electricity or thermal energy,
37 produced for sale by the purchaser,¹ or (B) for use by that person in
38 performing the services subject to tax under subsection (b) of section
39 3 where the property so sold becomes a physical component part of
40 the property upon which the services are performed or where the
41 property so sold is later actually transferred to the purchaser of the
42 service in conjunction with the performance of the service subject to
43 tax.

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

45 Sales of tangible personal property to all contractors,
46 subcontractors or repairmen of materials and supplies for use by them

1 in erecting structures for others, or building on, or otherwise
2 improving, altering, or repairing real property of others.

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

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

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

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

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

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

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

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

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

24 (f) Sale, selling or purchase. Any transfer of title or possession or
25 both, exchange or barter, rental, lease or license to use or consume,
26 conditional or otherwise, in any manner or by any means whatsoever
27 for a consideration, or any agreement therefor, including the rendering
28 of any service, taxable under this act, for a consideration or any
29 agreement therefor.

30 (g) Tangible personal property. Corporeal personal property of
31 any nature including energy.

32 (h) Use. The exercise of any right or power over tangible personal
33 property by the purchaser thereof and includes, but is not limited to,
34 the receiving, storage or any keeping or retention for any length of
35 time, withdrawal from storage, any installation, any affixation to real
36 or personal property, or any consumption of such property. Use also
37 includes the exercise of any right or power over intrastate or interstate
38 telecommunications. Use also includes the exercise of any right or
39 power over utility service.

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

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

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

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

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

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

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

19 (G) A person who ¹[, in the regular course of business,]¹ sells,
20 stores, delivers or transports energy to users or customers in this State
21 whether by mains, lines or pipes located within this State or by any
22 other means of delivery.

23 (2) In addition, when in the opinion of the director it is necessary
24 for the efficient administration of this act to treat any salesman,
25 representative, peddler or canvasser as the agent of the vendor,
26 distributor, supervisor or employer under whom he operates or from
27 whom he obtains tangible personal property sold by him or for whom
28 he solicits business, the director may, in his discretion, treat such agent
29 as the vendor jointly responsible with his principal, distributor,
30 supervisor or employer for the collection and payment over of the tax.

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

35 (k) Occupancy. The use or possession or the right to the use or
36 possession, of any room in a hotel.

37 (l) Occupant. A person who, for a consideration, uses, possesses,
38 or has the right to use or possess, any room in a hotel under any lease,
39 concession, permit, right of access, license to use or other agreement,
40 or otherwise.

41 (m) Permanent resident. Any occupant of any room or rooms in a
42 hotel for at least 90 consecutive days shall be considered a permanent
43 resident with regard to the period of such occupancy.

44 (n) Room. Any room or rooms of any kind in any part or portion
45 of a hotel, which is available for or let out for any purpose other than
46 a place of assembly.

- 1 (o) Admission charge. The amount paid for admission, including
2 any service charge and any charge for entertainment or amusement or
3 for the use of facilities therefor.
- 4 (p) Amusement charge. Any admission charge, dues or charge of
5 roof garden, cabaret or other similar place.
- 6 (q) Charge of a roof garden, cabaret or other similar place. Any
7 charge made for admission, refreshment, service, or merchandise at a
8 roof garden, cabaret or other similar place.
- 9 (r) Dramatic or musical arts admission charge. Any admission
10 charge paid for admission to a theater, opera house, concert hall or
11 other hall or place of assembly for a live, dramatic, choreographic or
12 musical performance.
- 13 (s) Lessor. Any person who is the owner, licensee, or lessee of any
14 premises or tangible personal property which he leases, subleases, or
15 grants a license to use to other persons.
- 16 (t) Place of amusement. Any place where any facilities for
17 entertainment, amusement, or sports are provided.
- 18 (u) Casual sale. Casual sale means an isolated or occasional sale
19 of an item of tangible personal property by a person who is not
20 regularly engaged in the business of making sales at retail where such
21 property was obtained by the person making the sale, through
22 purchase or otherwise, for his own use in this State.
- 23 (v) Motor vehicle. Motor vehicle shall include all vehicles
24 propelled otherwise than by muscular power (excepting such vehicles
25 as run only upon rails or tracks), trailers, semitrailers, housetrailers, or
26 any other type of vehicle drawn by a motor-driven vehicle, and
27 motorcycles, designed for operation on the public highways.
- 28 (w) "Persons required to collect tax" or "persons required to
29 collect any tax imposed by this act" shall include: every vendor of
30 tangible personal property or services; every recipient of amusement
31 charges; every operator of a hotel; every lessor; and every vendor of
32 telecommunications. Said terms shall also include any officer or
33 employee of a corporation or of a dissolved corporation who as such
34 officer or employee is under a duty to act for such corporation in
35 complying with any requirement of this act and any member of a
36 partnership. Provided, however, the vendor of tangible personal
37 property to all contractors, subcontractors or repairmen, consisting of
38 materials and supplies for use by them in erecting structures for others,
39 or building on, or otherwise improving, altering or repairing real
40 property of others, shall not be deemed a person required to collect
41 tax, and the tax imposed by any section of this act shall be paid
42 directly to the director by such contractors, subcontractors or
43 repairmen.
- 44 (x) "Customer" shall include: every purchaser of tangible personal
45 property or services; every patron paying or liable for the payment of
46 any amusement charge; and every occupant of a room or rooms in a

1 hotel.

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

17 (z) Director. Director means the Director of the Division of
18 Taxation of the State Department of the Treasury, or any officer,
19 employee or agency of the Division of Taxation in the Department of
20 the Treasury duly authorized by the director (directly, or indirectly by
21 one or more redelegations of authority) to perform the functions
22 mentioned or described in this act.

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

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

34 (cc) "Telecommunications" means the act or privilege of
35 originating or receiving messages or information through the use of
36 any kind of one-way or two-way communication; including but not
37 limited to voice, video, facsimile, teletypewriter, computer, cellular
38 mobile or portable telephone, specialized mobile or portable pager or
39 paging service, or any other type of communication; using electronic
40 or electromagnetic methods, and all services and equipment provided
41 in connection therewith or by means thereof. "Telecommunications"
42 shall not include:

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

45 (2) purchases of telecommunications by a telecommunications
46 provider for use as a component part of telecommunications provided

1 to an ultimate retail consumer who (A) originates or terminates the
2 taxable end-to-end communications or (B) pays charges exempt from
3 taxation pursuant to paragraph (5) of this subsection;

4 (3) services provided by a person, or by that person's wholly owned
5 subsidiary, not engaged in the business of rendering or offering
6 telecommunications services to the public, for private and exclusive
7 use within its organization, provided however, that
8 "telecommunications" shall include the sale of telecommunications
9 services attributable to the excess unused telecommunications capacity
10 of that person to another;

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

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

15 (dd) "Interstate telecommunication" means any telecommunication
16 that originates or terminates inside this State, including international
17 telecommunication.

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

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

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

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

26 (ii) "Self-generation unit" means a facility located on the user's
27 property, ¹or on property purchased or leased from the user by the
28 person owning the self-generation unit and such property is contiguous
29 to the user's property, ¹ which generates electricity to be used only by
30 that user on ¹ [that] the user's ¹ property and is not transported to the
31 user over wires that cross a property line or public thoroughfare
32 ¹unless the property line or public thoroughfare merely bifurcates the
33 user's or self-generation unit owner's otherwise contiguous property¹.

34 (jj) "Co-generation facility" means a facility the primary purpose of
35 which is the sequential production of electricity and steam or other
36 forms of useful energy which are used for industrial or commercial
37 heating or cooling purposes and which is designated by the Federal
38 Energy Regulatory Commission, or its successor, as a "qualifying
39 facility" pursuant to the provisions of the "Public Utility Regulatory
40 Policies Act of 1978," Pub.L. 95-617.

41 (kk) "Non-utility" means a company engaged in the sale, exchange
42 or transfer of natural gas that was not subject to the provisions

1 P.L.1940, c.5 (C.54:30A-49 et seq.) prior to December 31, 1997.

2 (cf: P.L.1995, c.184, s.1)

3

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

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

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

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

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

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

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

39 (4) Maintaining, servicing or repairing real property, other than a
40 residential heating system unit serving not more than three families
41 living independently of each other and doing their cooking on the
42 premises, whether the services are performed in or outside of a
43 building, as distinguished from adding to or improving such real
44 property by a capital improvement, but excluding services rendered by
45 an individual who is not in a regular trade or business offering his
46 services to the public, and excluding garbage removal and sewer

1 services performed on a regular contractual basis for a term not less
2 than 30 days.

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

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

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

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

14 Services otherwise taxable under paragraph (1) or (2) of this
15 subsection (b) are not subject to the taxes imposed under this
16 subsection, where the tangible personal property upon which the
17 services were performed is delivered to the purchaser outside this
18 State for use outside this State.

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

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

25 (2) In those instances where the vendor or any person whose
26 services are arranged for by the vendor, after the delivery of the food
27 or drink by or on behalf of the vendor for consumption off the
28 premises of the vendor, serves or assists in serving, cooks, heats or
29 provides other services with respect to the food or drink, except for
30 meals especially prepared for and delivered to homebound elderly, age
31 60 or older, and to disabled persons, or meals prepared and served at
32 a group-sitting at a location outside of the home to otherwise
33 homebound elderly persons, age 60 or older, and otherwise
34 homebound disabled persons, as all or part of any food service project
35 funded in whole or in part by government or as part of a private,
36 nonprofit food service project available to all such elderly or disabled
37 persons residing within an area of service designated by the private
38 nonprofit organization;

39 (3) In those instances where the sale is for consumption off the
40 premises of the vendor, and consists of a meal, or food prepared and
41 ready to be eaten, of a kind obtainable in restaurants as the main
42 course of a meal, including a sandwich, except where food other than
43 sandwiches is sold in an unheated state and is of a type commonly sold
44 in the same form and condition in food stores other than those which
45 are principally engaged in selling prepared foods; and

46 (4) Sales of food and beverages sold through coin-operated

1 vending machines, at the wholesale price of such sale, which shall be
2 defined as 70% of the retail vending machine selling price, except sales
3 of milk, which shall not be taxed. Nothing herein contained shall
4 affect other sales through coin-operated vending machines taxable
5 pursuant to subsection (a) above or the exemption thereto provided by
6 section 21 of P.L.1980, c.105 (C.54:32B-8.9).

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

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

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

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

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

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

37

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

40 6. Unless property or services have already been or will be subject
41 to the sales tax under this act, there is hereby imposed on and there
42 shall be paid by every person a use tax for the use within this State of
43 6%, except as otherwise exempted under this act, (A) of any tangible
44 personal property purchased at retail, including energy, provided
45 however, that electricity consumed by the generating facility that
46 produced it shall not be subject to tax, (B) of any tangible personal

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

1 at the applicable rate on the charge made by the utility service
2 provider.

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

4

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

7 17. (a) The retail sales tax imposed under subsection (a) of section
8 3 and the compensating use tax imposed under section 6, when
9 computed in respect to tangible personal property wherever
10 manufactured, processed or assembled and used by such manufacturer,
11 processor or assembler in the regular course of business within this
12 State, shall be based on the price at which items of the same kind of
13 tangible personal property are offered for sale by him.

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

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

25 (2) That the compensating use tax on such tangible personal
26 property brought into this State (other than for complete consumption
27 or for incorporation into real property located in this State) and used
28 in the performance of a contract or subcontract within this State by a
29 purchaser or user for a period of less than six months may be based,
30 at the option of the taxpayer, on the fair rental value of such property
31 for the period of use within this State.

32 (c) Leased tangible personal property which has been purchased
33 outside this State for lease outside of this State and subsequently
34 becomes subject to the compensating use tax imposed under this act
35 shall be taxed on the basis of the purchase price of such property,
36 provided however, that the compensating use tax on such property
37 brought into and used within this State may be based, at the option of
38 the lessor, on the total of the lease payments attributable to the lease
39 of that property attributable to the period of the lease remaining after
40 first use in this State.

41 (d) Unless tangible personal property purchased for lease has
42 already been subject to the sales tax imposed under subsection (a) of
43 section 3 or the compensating use tax imposed under section 6, the use
44 tax computed with respect to such property, in the discretion of the
45 director, may be assessed against the lessee or sub-lessee and shall be
46 based on the total of the periodic payments required under the lease.

1 The fact that the lessee has accepted in good faith the certificate of the
2 lessor, in the form prescribed by the director, and the fact that the tax
3 imposed on property purchased for lease in this act has been paid may
4 be considered by the director, but shall not be deemed conclusive if
5 good faith issuance or acceptance of such certificate is in question.

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

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

10

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

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

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

18

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

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

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

25

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

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

30 a. Sales of machinery, apparatus or equipment for use or
31 consumption directly and primarily in the production of tangible
32 personal property by manufacturing, processing, assembling or
33 refining;

34 b. Sales of machinery, apparatus or equipment for use or
35 consumption directly and primarily in the production, generation,
36 transmission or distribution of gas, electricity, refrigeration, steam or
37 water for sale or in the operation of sewerage systems;

38 c. Sales of telephones, telephone lines, cables, central office
39 equipment or station apparatus, or other machinery, equipment or
40 apparatus, or comparable telegraph equipment to a service provider
41 subject to the jurisdiction of the Board of Public Utilities or the
42 Federal Communications Commission, for use directly and primarily
43 in receiving at destination or initiating, transmitting and switching
44 telephone, telegraph or interactive telecommunications service for sale
45 to the general public;

46 d. Sales of machinery, apparatus, equipment, building materials, or

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

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

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

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

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

35

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

38 26. Receipts from sales of tangible personal property, except
39 energy, purchased for use or consumption directly and exclusively in
40 research and development in the experimental or laboratory sense are
41 exempt from the tax imposed under the Sales and Use Tax Act. Such
42 research and development shall not be deemed to include the ordinary
43 testing or inspection of materials or products for quality control,
44 efficiency surveys, management studies, consumer surveys,
45 advertising, promotions or research in connection with literary,

1 historical or similar projects.

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

3

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

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

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

16

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

20 (1) Is sold by a municipal electric utility in existence as of
21 December 31, 1995 and exempt from the provisions of P.L.1940, c.5
22 (C.54:30A-49 et seq.), ¹[provided however, that if the utility expands
23 service beyond] within¹ its municipal boundaries ¹[or expands its
24 facility base beyond the geographic service area fixed as of December
25 31, 1995; all receipts from sales made by the utility shall be subject to
26 the tax imposed under the Sales and Use Tax Act] except if the
27 customer is located within a franchise area served by an electric public
28 utility other than the municipal electric utility¹;

29 (2) Was generated by a facility located on the user's property ¹or
30 property purchased or leased from the user by the person owning the
31 co-generator and such property is contiguous to the user's property¹,
32 and ¹the electricity¹ was consumed by the ¹one on-site end¹ user on
33 ¹[such] the user's ¹property, and was not transported to the user over
34 wires that cross a property line or public thoroughfare ¹unless the
35 property line or public thoroughfare merely bifurcated the user's or co-
36 generator owner's otherwise contiguous property or the electricity was
37 consumed by an affiliated user on the same site, or by a non-affiliated
38 user on the same site with an electric distribution system which is
39 integrated and interconnected with the user on or before March 10,
40 1997; the director may promulgate rules and regulations and issue
41 guidance with respect to all issues related to affiliated users¹; or

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

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

45 (1) Natural gas or utility service that is used to ¹[produce]
46 generate ¹electricity that is sold ¹for resale¹ or to an end user other

1 than the ¹[producer] end user upon whose property is located a co-
2 generation facility or self-generation unit that generated the electricity
3 or upon the property purchased or leased from the end user by the
4 person owning the co-generation facility or self-generation unit if such
5 property is contiguous to the user's property and is the property upon
6 which is located a co-generation facility or self-generation unit that
7 generated the electricity¹; and

8 (2) Natural gas ¹[up to an amount used to generate electricity at
9 the facility's name plate capacity rating as of March 10, 1997, and
10 utility service, to be used by the person that owns a qualified
11 co-generation facility or a self-generation unit] and utility service that
12 is used for co-generation at any site at which a co-generation facility
13 was ¹ in operation on or before March 10, 1997, or for which an
14 application for an operating permit ¹or a construction permit and a
15 certificate of operation¹ in order to comply with air quality standards
16 under P.L.1954, c.212 (C.26:2C-1 et seq.) has been filed with the
17 Department of Environmental Protection on or before March 10,
18 1997, to produce electricity for ¹[the]¹ use ¹[by that person as the one
19 on-site end user] on that site¹.

20
21 27. Section 9 of P.L.1966, c.30 (C.54:32B-9) is amended to read
22 as follows:

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

27 (1) The State of New Jersey, or any of its agencies,
28 instrumentalities, public authorities, public corporations (including a
29 public corporation created pursuant to agreement or compact with
30 another State) or political subdivisions where it is the purchaser, user
31 or consumer, or where it is a vendor of services or property of a kind
32 not ordinarily sold by private persons;

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

37 (3) The United Nations or any international organization of which
38 the United States of America is a member where it is the purchaser,
39 user or consumer, or where it sells services or property of a kind not
40 ordinarily sold by private persons.

41 (b) Except as otherwise provided in this section any sale or
42 amusement charge by or to any of the following or any use or
43 occupancy by any of the following, where such sale, charge, use or
44 occupancy is directly related to the purposes for which the following
45 have been organized, shall not be subject to the sales and use taxes
46 imposed under this act:

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

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

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

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

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

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

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

38 (B) a society or organization conducted for the sole purpose of
39 maintaining symphony orchestras or operas and receiving substantial
40 support from voluntary contributions;

41 (C) national guard organizations, posts or organizations of war
42 veterans, or auxiliary units or societies of any such posts or
43 organizations, if such posts, organizations, units or societies are
44 organized in this State, and if no part of their net earnings inures to
45 the benefit of any private stockholder or individual; or

46 (D) a police or fire department of a political subdivision of the

1 State, or a volunteer fire company, ambulance, first aid, or emergency
2 company or squad, or exclusively to a retirement, pension or disability
3 fund for the sole benefit of members of a police or fire department or
4 to a fund for the heirs of such members.

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

7 (A) Any athletic game or exhibition unless the proceeds shall inure
8 exclusively to the benefit of elementary or secondary schools or unless
9 in the case of an athletic game between two elementary or secondary
10 schools, the entire gross proceeds from such game shall inure to the
11 benefit of one or more organizations described in subsection (b)(1) of
12 this section;

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

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

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

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

28 (C) Any admissions to historic sites, houses and shrines, and
29 museums conducted in connection therewith, maintained and operated
30 by a society or organization devoted to the preservation and
31 maintenance of such historic sites, houses, shrines and museums;
32 provided no part of the net earnings thereof inures to the benefit of
33 any private stockholder or individual.

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

35

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

38 11. Exemptions from use tax. The following uses of property shall
39 not be subject to the compensating use tax imposed under this act:

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

42 (2) In respect to the use of property purchased by the user while a
43 nonresident of this State, except in the case of tangible personal
44 property which the user, in the performance of a contract, incorporates
45 into real property located in the State or except in the case of tangible
46 personal property purchased for lease. A person while engaged in any

1 manner in carrying on in this State any employment, trade, business or
2 profession, not entirely in interstate or foreign commerce, shall not be
3 deemed a nonresident with respect to the use in this State of property
4 in such employment, trade, business or profession.

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

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

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

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

24 (7) In respect to the use of natural gas by an eligible person, other
25 than a co-generation facility, as defined in section 34 of P.L. ,c.
26 (C.) (now pending before the Legislature as this bill), who
27 purchases from a non-utility, up to the base level of volume as defined
28 in section 34 of P.L. , c. , but only as long as the eligible person
29 remains at the same physical site that was occupied on December 31,
30 1995.

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

32

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

35 12. (a) Every person required to collect the tax shall collect the tax
36 from the customer when collecting the price, service charge,
37 amusement charge or rent to which it applies. If the customer is given
38 any sales slip, invoice, receipt or other statement or memorandum of
39 the price, service charge, amusement charge or rent paid or payable,
40 the tax shall be stated, charged and shown separately on the first of
41 such documents given to him. The tax shall be paid to the person
42 required to collect it as trustee for and on account of the State.

43 (b) For the purpose of the proper administration of this act and to
44 prevent evasion of the tax hereby imposed, it shall be presumed that
45 all receipts for property or services of any type mentioned in
46 subsections (a), (b) and (c) of section 3, all rents for occupancy of the

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

37 (c) The director may provide by regulation that the tax upon
38 receipts from sales on the installment plan may be paid on the amount
39 of each installment and upon the date when such installment is due.
40 He may also provide by regulation for the exclusion from taxable
41 receipts, amusement charges or rents of amounts representing sales
42 where the contract of sale has been canceled, the property returned or
43 the receipt, charge or rent has been ascertained to be uncollectible or,
44 in the case the tax has been paid upon such receipt, charge or rent, for
45 refund or credit of the tax so paid.

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

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

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

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

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

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

34 (e) All vendors of energy or utility service shall include the tax
35 imposed by the Sales and Use Tax Act within the purchase price of the
36 tangible personal property or service ¹[, unless otherwise provided in
37 this act].

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

39

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

42 20. Retail sales of personal property (except motor vehicles and
43 energy) and sales of services (except telecommunications and utility
44 services) to a qualified business for the exclusive use or consumption
45 of such business within an enterprise zone are exempt from the taxes
46 imposed under the "Sales and Use Tax Act," P.L.1966, c.30

1 (C.54:32B-1 et seq.).
2 (cf: P.L.1990, c.40, s.9)

3

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

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

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

33 Notwithstanding the provisions of this act to the contrary, except
34 as may otherwise be provided by section 7 of P.L.1983, c.303
35 (C.52:27H-66), the authority may, in its discretion, determine whether
36 or not the provisions of this section shall apply to any enterprise zone
37 designated after the effective date of P.L.1985, c.142 (C.52:27H-66
38 et al.); provided, however, that the authority may make such a
39 determination only where the authority finds that the award of an
40 exemption of 50 percent of the tax imposed under the "Sales and Use
41 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) will not have any
42 adverse economic impact upon any other urban enterprise zone.

43 Notwithstanding any other provisions of law to the contrary, except
44 as provided in subsection b. of section 6 of P.L.1996, c.124 (C.13:1E-
45 116.6), after first depositing 10 percent of the gross amount of all
46 revenues received from the taxation of retail sales made by certified

1 vendors from business locations in designated enterprise zones to
2 which this exemption shall apply into the account created in the name
3 of the authority in the enterprise zone assistance fund pursuant to
4 section 29 of P.L.1983, c.303 (C.52:27H-88), the remaining 90
5 percent shall be deposited immediately upon collection by the
6 Department of the Treasury, as follows:

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

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

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

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

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

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

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

41

42 33. (New section) ¹a.¹ Receipts from the sale or use of energy and
43 utility service to or by ¹a.utility¹ corporation or person 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, or currently or formerly subject to taxation pursuant to
46 P.L.1940, c.5 (C.54:30A-49 et seq.), for their own use and

1 consumption, are exempt from the tax imposed under the Sales and
2 Use Tax Act.

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

7
8 34. (New section) a. As used in this act, "eligible person" means
9 any person other than a co-generation facility as defined in this act
10 whose last purchase and delivery of natural gas on or before December
11 31, 1995 was from ¹[an eligible supplier] a non-utility, or a co-
12 generation facility which ceased operation in 1996 and subsequently
13 began to purchase non-utility natural gas ¹ and who satisfactorily
14 documents such purchase to the director. ¹[As used in this act,
15 "eligible supplier" means an eligible person's contracted supplier as of
16 December 31, 1995 that was not a utility. If, at any time subsequent
17 to December 31, 1995 an eligible person other than a co-generation
18 facility purchases natural gas from a supplier other than its eligible
19 supplier, that person shall no longer be an "eligible person" for
20 purposes of this act;]¹

21 b. An eligible person ¹[other than a co-generation facility]¹ shall
22 determine and certify to the director, and satisfactorily document to
23 the director, a base level of volume as of December 31, 1995 ¹ or
24 December 31, 1996 in the case of a co-generation facility which ceased
25 operation in 1996 and subsequently began to purchase non-utility
26 natural gas¹, which shall be equal to the average annual volume of
27 natural gas units purchased by the eligible person from any non-utility
28 and delivered, but such computation shall not include any purchases
29 delivered prior to January 1, 1992, provided however, that the base
30 level of volume of an eligible person other than a co-generation facility
31 shall be reduced on an annual basis beginning in 1999 by multiplying
32 the base level of volume as of December 31, 1995 by the following
33 reduction ratios: 0.8 in 1999, 0.6 in 2000, 0.4 in 2001 and 0.2 in
34 2002. In 2003 and thereafter there shall be no exemption for
35 purchases of natural gas by an eligible person other than a co-
36 generation facility.

37 c. For purchases of natural gas from ¹[its eligible supplier] a non-
38 utility¹ on and after January 1, 1998 ¹through December 31, 2002¹, an
39 eligible person shall issue a direct payment certificate to ¹[its eligible
40 supplier] the non-utility¹ and shall pay any ¹sales and use¹ tax due
41 pursuant to the method prescribed by this section. Unless specifically
42 exempt from the tax imposed under the Sales and Use Tax Act
43 pursuant to subsection b. of section 26 of P.L. , c. (C.)
44 (now pending before the Legislature as this bill), utility service is
45 subject to the tax imposed pursuant to section 3 of P.L.1966, c.30
46 (C.54:32B-3).

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

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

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

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

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

21 (c) ¹[If in any given year, any part of the certified gross annual
22 volume (in units) was not purchased solely from its eligible supplier,
23 an exemption for purchases of natural gas from its eligible supplier
24 shall only be allowed up to the volume purchased from its eligible
25 supplier that does not exceed the base level of volume, and shall only
26 apply to purchases from its eligible supplier made prior to any
27 purchase from any other non-utility or a utility.] If the certified gross
28 annual volume in units was purchased from both a utility and non-
29 utility vendor or solely from a utility vendor, the director shall refund
30 to the eligible person all sales taxes paid on purchases not in excess of
31 the base level of volume. The eligible person shall remit to the
32 director all unpaid sales taxes on the purchases of natural gas that
33 exceed the base level of volume, based on the purchase price. ¹

34
35 35. (New section) a. A corporation that was subject to tax
36 pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
37 prior to January 1, 1998 shall be entitled to claim a credit against
38 remittances of sales and use tax after July 1, 1998 and after August 1
39 in each year thereafter pursuant to the provisions of section 53 of
40 P.L. c. (C.) (now pending before the Legislature as this bill).

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

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

4 b. The purpose of the Transitional Energy Facility Assessment Act
5 is to provide a complete framework and method for the assessment of
6 a transitional energy facility assessment on gas and electric light, heat
7 and power corporations , municipal or otherwise, that were subject to
8 tax pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
9 prior to January 1, 1998, or the corporate or non-corporate legal
10 successor or assignee whether through any reorganization, sale,
11 bankruptcy, consolidation, merger or other transaction or occurrence
12 of any kind without limitation, ¹[those municipal electric operations
13 not previously subject to P.L.1940, c.5 (C.54:30A-49 et seq.) which
14 expand beyond their municipal boundaries subsequent to December 31,
15 1995, and those municipal electric operations not previously subject
16 to P.L.1940, c.5 (C.54:30A-49 et seq.) which expand their facility
17 base subsequent to December 31, 1995, beyond its geographical
18 service area fixed as of December 31, 1995] and on municipal electric
19 corporations or utilities that were in existence as of January 1, 1995
20 but only those corporations' or utilities' sales of electricity that are not
21 exempt from sales tax under paragraph (1) of subsection a. of section
22 26 of P.L. , c. (C.) (now pending before the Legislature as
23 this bill) ¹.

24
25 37. (New section) As used in this act, unless the context requires
26 otherwise:

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

34 "Base year liability" means each remitter's unit energy tax liability
35 in the base year pursuant to the provisions of P.L.1940, c.5
36 (C.54:30A-49 et seq.) adjusted to reflect the remitter's total unit
37 energy tax rates in effect on January 1, 1997 ¹and local energy utility
38 franchise taxes paid¹;

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

41 a. The pro forma corporation business tax that would have been
42 booked by the remitter in the base year if the changes in the remitter's
43 rates implemented pursuant to section 67 of this act had been in effect
44 in that year. This amount shall reflect adjustments to the
45 determination of the corporation business tax, if any, filed in
46 accordance with section 67;

1 b. The pro forma sales and use tax that would have been collected
2 by the remitter in the base year if the changes in the remitter's rates
3 implemented pursuant to section 67 of this act had been in effect in
4 that year. The amount shall reflect adjustments to the sales and use
5 tax, if any, filed in accordance with section 67; and

6 c. The amount of tax derived pursuant to the customer-specific tax
7 ¹[classification] classifications¹ described in section 59 of this act;

8 "Board" means the Board of Public Utilities of the State of New
9 Jersey;

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

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

12 "Remitter" means any corporation subject to assessment under this
13 act; and

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

17
18 38. (New section) Each remitter's transitional energy facility
19 assessment shall be established pursuant to section 67 of this act.
20 Under no circumstances shall an assessment be made under this act for
21 any year commencing after December 31, 2002.

22
23 39. (New section) Every gas and electric light, heat and power
24 corporation ¹[, municipal or otherwise,]¹ subject to tax pursuant to the
25 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1,
26 1998, or the corporate or non-corporate legal successor or assignee
27 whether through any reorganization, sale, bankruptcy, consolidation,
28 merger or other occurrence of any kind without limitation, and every
29 corporation otherwise assessable set forth hereinbelow, shall annually
30 pay the transitional energy facility assessment set forth in section 67
31 of this act.

32
33 40. (New section) a. On or before February 1, 1999, and on or
34 before February 1 of each year thereafter until the year after the final
35 year in which there is imposed a transitional energy facility assessment,
36 every remitter shall return to the Director of the Division of Taxation
37 in the Department of the Treasury a statement in such form, manner
38 and detail as the director shall require showing:

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

42 b. The transitional energy facility assessment unit rate surcharges
43 (exclusive of the provision for corporation business taxes included
44 therein) as calculated pursuant to section 67 of this act applicable to
45 the prior calendar year.

- 1 41. (New section) a. Every remitter shall on or before October 15,
2 1998, and on or before October 15, in each year thereafter ¹ for years
3 in which the transitional energy facility assessment is imposed¹, return
4 to the Director of the Division of Taxation in the Department of the
5 Treasury and the Board of Public Utilities a statement in such form,
6 manner and detail as the director shall require showing the following:
- 7 (1) Sales and use tax collected and use tax liability through
8 September 30 of the current calendar year;
- 9 (2) Estimated sales tax collections and use tax liability for the
10 period from October 1 through December 31 of the current calendar
11 year;
- 12 (3) Estimated corporation business tax, ¹[exclusive of negative
13 deferred taxes] including negative and positive deferred corporation
14 business taxes shown separately¹, for the current privilege period
15 based upon actual taxable income from January 1 through September
16 30 and estimated taxable income from October 1 through December
17 31; and
- 18 (4) Actual transitional energy facility assessment liability from
19 January 1 through September 30 and estimated liability from October
20 1 through December 31 for the current calendar year.
- 21 b. On or before November 15, 1998, and on or before November
22 15 of each year thereafter ¹for years in which the transitional energy
23 facility assessment is imposed¹, the State Treasurer shall, with the
24 cooperation the Board of Public Utilities, calculate the percentage
25 reduction in the initial TEFA unit rate surcharges based upon the
26 formula set forth in section 67 of this act and the board shall report the
27 amount of such reduction to the remitters subject to the transitional
28 energy facility assessment.
- 29 c. Every remitter shall on or before February 1, 1998 file with the
30 director a statement showing:
- 31 (1) The total public utility tax advance payments paid in the initial
32 year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and
- 33 (2) The remitter's base year liability and each of the amounts
34 described in subsections (a), (b) and (c) in the definition of "base year
35 transitional energy facility assessment" in section 37 of this act.
- 36 d. For any remitter owning or holding both gas and electric
37 facilities and conducting both gas and electric business in this State
38 each of the amounts reported on the return required to be filed
39 pursuant to subsection c. shall be allocated by the director between
40 those operations in the proportion that the sum of the unit-based taxes
41 bore to the whole of the unit-based taxes in the base year ¹or such
42 other allocation methodology as the director shall prescribe¹.
- 43 e. The statements required pursuant to this section shall be
44 subscribed and sworn to by the president, a vice-president or chief
45 officer of the corporation preparing each statement. Any remitter
46 refusing or neglecting to make the statements herein provided for shall

1 forfeit and pay to the State of New Jersey the sum of \$100 per day for
2 each day of such refusal or neglect, to be recovered in an action at law
3 in the name of the State and which, when recovered, shall be paid into
4 the State Treasury. It shall be the duty of the director to certify any
5 such default to the Attorney General of the State who, thereupon, shall
6 prosecute an action at law for each penalty.

7 f. The Director of the Division of Taxation shall audit and verify
8 the statements filed by remitters whenever and in such respects the
9 director shall deem necessary or advisable. The director may require
10 any remitter to supply additional data and information in such form,
11 manner, and detail as the director shall request, whenever the director
12 may deem it necessary or helpful, for the proper performance of the
13 director's duties under this act.

14 g. The director may, by regulation, additionally require that all
15 filings required for the calculation and certification of assessment to
16 be paid by remitters established pursuant to this act shall be made in
17 an electronic form. The form and content of the electronic filing
18 message, the circumstances under which the electronic filing message
19 shall serve as a substitute for the filing of another return and the means
20 by which remitters shall be determined to be subject to this electronic
21 filing requirement shall be prescribed by the director.

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

26
27 42. (New section) a. On or before April 1, 1999, and on or before
28 April 1 of each year thereafter until the year after the final year in
29 which the transitional energy facility assessment is imposed, the
30 Director of the Division of Taxation shall send to each remitter a
31 statement showing the transitional energy facility assessment liability
32 for the prior calendar year, estimated payment received for the prior
33 calendar year and any overpayment or underpayment of the tax
34 liability for that calendar year.

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

38 c. Remitters shall treat any overpayment as determined in
39 subsection a. of this section, if any, as an estimated payment as set
40 forth in subsection d. of section 43 of this act.

41
42 43. (New section) a. (1) The liability for the transitional energy
43 facility assessment made against any remitter in the first year of
44 assessment shall be an amount equal to TEFA unit rate surcharges
45 (excluding the provision for corporation business taxes included
46 therein) determined in section 67 of this act multiplied by the

1 associated therms of natural gas and kilowatthours of electricity sold
2 or transported for sale to ultimate consumers in New Jersey in the first
3 year plus any advances paid in the initial year pursuant to P.L.1940,
4 c.5 (C.54:30A-49 et seq.) by that remitter.

5 (2) The liability for the transitional energy facility assessment made
6 against any remitter for each year subsequent to the first year shall be
7 an amount equal to the TEFA unit rate surcharges (excluding the
8 provision for corporation business taxes included therein) calculated
9 in section 67 of this act for that year multiplied by the associated
10 therms of natural gas and kilowatthours of electricity sold or
11 transported for sale to ultimate consumers in New Jersey in that year.

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

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

19 (2) Subsequent to the first year, each remitter shall make an
20 estimated payment on May 15 of each assessment year in which the
21 transitional energy facility assessment is in effect, in an amount equal
22 to the transitional energy facility assessment liability described in
23 subsection a. of this section for the immediately preceding assessment
24 year, excluding advances paid in the initial year pursuant to P.L.1940,
25 c.5 (C.54:30A-49 et seq.), reduced by the reduction percentage for the
26 current assessment year determined pursuant to paragraphs (2), (3)
27 and (4) of subsection d. of section 67 of this act less credits described
28 in subsection d. of this section, if any.

29 d. Any excess of the estimated payment made pursuant to
30 paragraphs (1) or (2) of subsection c. of this section over the liability
31 determined pursuant to subsection a. of this section shall be treated as
32 a credit against the estimated payment for the subsequent assessment
33 year and reduce the amount of the estimated payment required to be
34 made for that subsequent year. Any excess of the estimated payment
35 made pursuant to paragraph (2) of subsection c. of this section over
36 the liability for the final year of the transitional energy facility
37 assessment shall be utilized as a nonrefundable credit with an unlimited
38 carryforward against that remitter's corporation business tax liability
39 in the subsequent privilege period year. Such credit shall be applied
40 in full to each estimated corporation business tax payment beginning
41 in the subsequent privilege period until fully utilized.

42
43 44. (New section) All payments shall be made in full on an annual
44 basis to the State on or before May 15, 1998, and on or before May 15
45 of each year thereafter as long as this assessment shall remain in effect.

1 45. (New section) a. Within 30 days after making the computation
2 of the assessments under this act, the Director of the Division of
3 Taxation shall certify the amount of such assessments. Within 5 days
4 after making the computation of the assessments, the director shall
5 issue directly to each remitter statements of amounts due, and
6 payments with respect thereto shall be made by each taxpayer to the
7 director in the following manner: all assessments due shall be remitted
8 to the director on or before May 15, for calendar year 1998, and for
9 each calendar year thereafter. If for any reason the making and
10 delivering of a certificate of assessments shall be delayed until after
11 April 15 in any year, then all of the assessments for such year affected
12 by such certificate of assessment shall become due and payable 30 days
13 after the date of such certification of assessment. The administration,
14 collection and enforcement of the assessments payable by each remitter
15 under this act shall be subject to the provisions of the State Tax
16 Uniform Procedure Law, R.S.54:48-1 et seq., to the extent that the
17 provisions of that law are not inconsistent with the provisions of this
18 act.

19 b. The director may, by regulation, require that any payment of
20 assessment made on or before the date established therefore pursuant
21 to this act shall be by electronic funds transfer to such depositories as
22 the State Treasurer shall designate pursuant to section 1 of P.L.1956,
23 c.174 (C.52:18-16.1). A payment by electronic funds transfer shall be
24 deemed to be made on the date the payment is received by the
25 designated depository. The manner, form, and content of the
26 electronic funds transfer message, the circumstances under which an
27 electronic funds transfer shall serve as a substitute for the filing of
28 another form of return, the means by which taxpayers will be provided
29 with acknowledgments of payments, and the classes of taxpayers
30 subject to the electronic funds transfer requirement shall be as
31 prescribed by the director.

32 c. For the purposes of this section "electronic funds transfer"
33 means any transfer of funds, other than a transaction originated by
34 check, draft, or similar paper instrument, that is initiated through an
35 electronic terminal, telecommunication device, or computer for the
36 purpose of ordering, instructing or authorizing a financial institution
37 to debit or credit an account.

38

39 46. (New section) ¹[If a] a. ~~No~~¹ municipal ¹electric¹ corporation
40 ¹or utility,¹ not previously subject to assessment under P.L.1940, c.5
41 (C.54:30A-49 et seq.) ^{1,1} shall ¹[expand its service beyond its
42 municipal boundaries or shall expand its facility base beyond its
43 geographical service area fixed as of December 31, 1995, that
44 municipal corporation shall]¹ be deemed a remitter for the purposes of
45 enforcing the provisions of this act.

46 ¹ Notwithstanding the provisions of subsection a. of this section,

1 sections 36 through 45, sections 47 through 49 and section 67 of
2 P.L. , c. (C.)(now pending before the Legislature as this bill)
3 to the contrary, a municipal electric utility that collects sales tax for
4 electricity sales that are not exempt from sales tax pursuant to the
5 provisions of paragraph (1) of subsection a. of section 26 of P.L. ,
6 c. (C.)(now pending before the Legislature as this bill), shall
7 also collect on each such nonexempt sale during any year in which the
8 transitional energy facility assessment is imposed, an additional
9 assessment, in place of the transitional energy facility assessment
10 otherwise determined pursuant to those sections, equal to the "TEFA
11 unit rate surcharge" that would have been applicable to that sale if the
12 sale had been made by the electric public utility, other than a municipal
13 electric utility, within whose franchise area the customer is located.¹
14

15 47. (New section) A ¹[municipal]¹ corporation ¹or utility¹
16 determined to be a remitter pursuant to ¹[section 46 of]¹ this act shall
17 be subject to the transitional energy facility assessment. The amount
18 of the transitional energy facility assessment liability and estimated
19 payment shall be determined in accordance with ¹this act and¹
20 regulations as shall be promulgated by the Director of the Division of
21 Taxation in the Department of the Treasury.
22

23 48. (New section) The Director of the Division of Taxation in
24 making the assessment imposed by this act on any remitter for any year
25 shall deduct from or add to the assessment for the year any deduction
26 or addition to the extent and in the manner which may heretofore have
27 been or may hereafter be ordered or decreed by any judgment of the
28 Tax court or any court by reason of any error or omission in
29 connection with the assessment of the remitter in any prior year.
30

31 49. (New section) The Director of the Division of Taxation in the
32 Department of the Treasury shall promulgate such rules and
33 regulations applicable to remitters subject to this act as may be
34 necessary to effectuate the purposes and provisions of this act.
35

36 50. (New section) a. Sections 50 through 58 of this act shall be
37 known and may be cited as the "Uniform Transitional Utility
38 Assessment Act."
39

40 b. The purpose of the Uniform Transitional Utility Assessment Act
41 is to provide a complete framework and method for the making of a
42 uniform transitional utility assessment on telephone companies that
43 were subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.)
44 as of April 1, 1997, and gas and electric light, heat and power
45 corporations that were subject to the provisions of P.L.1940, c.5
46 (C.54:30A-49 et seq.), municipal or otherwise, prior to January 1,
1998 or their corporate or non-corporate legal successor or assignee

1 whether through any reorganization, sale, bankruptcy, consolidation,
2 merger or other transaction or occurrence of any kind without
3 limitation.

4

5 51. (New section) As used in this act, unless the context requires
6 otherwise:

7 "Annual assessment" means the assessment made against each
8 remitter in any year;

9 "Base year" means calendar year 1996;

10 "Remitter" means any corporation subject to assessment under this
11 act; and

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

15

16 52. (New section) a. Every gas and electric light, heat and power
17 corporation, municipal or otherwise, that was subject to the provisions
18 of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 and
19 every telephone company that was subject to the provisions of
20 P.L.1940, c.4 (C.54:30A-16 et seq.) as of April 1, 1997 shall annually
21 pay an annual assessment annually determined by the Director of the
22 Division of Taxation as provided in this section.

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

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

30 (b) The amount of estimated corporation business tax remitted
31 pursuant to section 15 of P.L.1945, c.162 (C.54:10A-15) as of June
32 20 in the first year;

33 (c) the payment of base year transitional energy facility assessment
34 as defined in section 37 of this act made on May 15 of that year; and

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

37 Each remitter shall allocate a portion of the uniform transitional
38 utility assessment to its liability for first year sales and use tax
39 remittance and first year corporation business tax liability and notify
40 the director of such allocation.

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

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

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

10 (3) The estimates described in paragraphs (1) and (2) of this
11 subsection, as applicable, shall be certified by the State Treasurer. The
12 State Treasurer may, based upon each remitter's immediate prior year's
13 sales tax remittances, immediate prior year's estimated corporation
14 business tax liability and/or payments, current year sales tax
15 remittances and current year estimated corporation business tax
16 payments, as well as the economic conditions of the State,
17 consideration of the State's revenues and expenditures and anticipated
18 revenues and expenditures for the fiscal year and any other factor or
19 factors which the State Treasurer deems relevant, reject the estimation
20 and not certify the same. The remitter shall within five business days
21 of the rejection recalculate the estimate and provide the recalculated
22 estimate to the State Treasurer or provide the State Treasurer with
23 sufficient justification of its original estimate. If the State Treasurer
24 fails to certify the original, recalculated or other agreed estimate
25 within five business days after the previous five business day period set
26 forth herein, the dispute shall be resolved pursuant to a procedure to
27 be established by regulations as shall be promulgated by the director.
28 Prior to such resolution, the remitter shall pay as its uniform
29 transitional utility assessment for that year an amount determined by
30 the State Treasurer which (a) for energy remitters shall not exceed the
31 greater of (i) 50% of the sum of the remitter's sales and use tax
32 remittances for the preceding year and the tax shown on the remitter's
33 corporation business tax return, or tentative return filed with an
34 application for extension of time to file, for the preceding year, or (ii)
35 50% of the net of the remitter's base year liability less the base year
36 transitional energy facility assessment both as defined in section 37 of
37 P.L. , c. (C.) (now pending before the Legislature as this
38 bill), and (b) for telecommunications remitters shall not exceed the
39 greater of (i) 50% of the tax shown on the remitter's corporation
40 business tax return, or tentative return filed with an application for
41 extension of time to file, for the preceding year, or (ii) 50% of the
42 remitter's base year gross receipts and franchise tax liability pursuant
43 to P.L.1940, c.4 (C.54:30A-16 et seq.).

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

1 53. (New section) Any amount paid by a remitter pursuant to this
2 act shall be available as a nonrefundable credit. Credits established
3 pursuant to payments made under the "Uniform Transitional Utility
4 Assessment Act" shall be granted only on the basis of the remitters
5 estimation as certified by the State Treasurer pursuant to section 52 of
6 this act, only against the tax in which the estimation is made, and shall
7 not be claimed until after July 1 for the first year of assessment and
8 after August 1st of each subsequent calendar year in which the uniform
9 transitional utility assessment is paid. If, in any calendar year, the
10 credits available against payments in any tax exceed the total amount
11 due in that tax, the remitter may elect to have the excess credits for
12 that year applied to the amounts due in that tax in subsequent years or,
13 if applicable, as a credit to the transitional energy facility assessment
14 payments to be made in the next year. Such credit shall be applied in
15 full to each estimated tax payment beginning in the subsequent year
16 until fully utilized. These credits may not be applied against any other
17 liability except as set forth hereinabove.

18

19 54. (New section) a. Every remitter that was subject to the
20 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1,
21 1998 shall on or before June 20, 1998, return to the Director of the
22 Division of Taxation a statement showing, as shall apply,:

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

25 (2) The amount of estimated corporation business tax remitted
26 pursuant to section 15 of P.L.1945, c.162 (C.54:10A-15) as of June
27 20, 1998.

28 (3) The percentage of the uniform transitional utility assessment the
29 director shall allocate to the sales and use tax and to the corporation
30 business tax.

31 b. Every remitter that was subject to the provisions of P.L.1940,
32 c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 shall on April 20,
33 1999, and on or before April 20 of each year thereafter, return to the
34 director a statement showing, as shall apply:

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

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

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

44 (2) Every remitter that was subject to the provisions of P.L.1940,
45 c.4 (C.54:30A-16 et seq.) on April 1, 1997 shall on or before April 20,
46 1999 and on or before April 20 of each year thereafter return to the

1 director a statement showing the estimated corporation business tax
2 liability for that year and the assumptions upon which that estimate is
3 based.

4 d. The statements herein provided for shall be subscribed and
5 sworn to by the president, a vice-president or chief officer of the
6 corporation making such return. Any remitter refusing or neglecting
7 to make the statements herein provided for shall forfeit and pay to the
8 State of New Jersey the sum of \$100 per day for each day of such
9 refusal or neglect, to be recovered in an action at law in the name of
10 the State and which, when recovered, shall be paid into the State
11 Treasury. It shall be the duty of the director to certify any such
12 default to the Attorney General of the State who, thereupon, shall
13 prosecute an action at law for such penalty.

14 e. The director shall audit and verify the statements filed by
15 remitters whenever and in such respects as the director shall deem
16 necessary or advisable. The director may require any remitter to
17 supply additional data and information in such form and detail as the
18 director shall request, whenever the director may deem it necessary or
19 helpful, for the proper performance of the director's duties under this
20 act.

21 f. The director may, by regulation, additionally require that all
22 filings required for the calculation and certification of assessments to
23 be paid by remitters established pursuant to this act shall be made in
24 an electronic form. The form and content of the electronic filing
25 message, the circumstances under which an electronic filing shall serve
26 as a substitute for the filing of another return, and the means by which
27 remitters shall be determined to be subject to this electronic filing
28 requirement shall be prescribed by the director.

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

33

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

41

42 56. (New section) a. Upon making the computation of the
43 assessments under this act, the Director of the Division of Taxation
44 shall certify the amount of such assessments. If for any reason the
45 making and delivering of a certificate of assessments shall be delayed
46 until after May 15, 1999 and after May 15 in any year thereafter, then

1 all of the assessments for such year affected by such certificate of
2 assessment shall become due and payable 10 days after the date of
3 such certification of assessment. The administration collection and
4 enforcement of the assessments payable by each remitter under this act
5 shall be subject to the provisions of the State Tax Uniform Procedure
6 Law, R.S.54:48-1 et seq., to the extent that the provisions of that law
7 are not inconsistent with the provisions of this act.

8 b. The director may, by regulation, require that any payment of
9 assessment made on or before the date established therefore pursuant
10 to this act shall be by electronic funds transfer to such depositories as
11 the State Treasurer shall designate pursuant to section 1 of P.L.1956,
12 c.174 (C.52:18-16.1). A payment by electronic funds transfer shall be
13 deemed to be made on the date the payment is received by the
14 designated depository. The manner, form, and content of the
15 electronic funds transfer message, the circumstances under which an
16 electronic funds transfer shall serve as a substitute for the filing of
17 another form of return, the means by which taxpayers will be provided
18 with acknowledgments of payments, and the classes of taxpayers
19 subject to the electronic funds transfer requirement shall be as
20 prescribed by the director.

21 c. For the purposes of this section "electronic funds transfer"
22 means any transfer of funds, other than a transaction originated by
23 check, draft, or similar paper instrument, that is initiated through an
24 electronic terminal, telecommunication device, or computer for the
25 purpose of ordering, instructing or authorizing a financial institution
26 to debit or credit an account.

27
28 57. (New section) The Director of the Division of Taxation in
29 making the assessment imposed by this act on any remitter for any year
30 shall deduct from or add to the assessment for that year any deduction
31 or addition to the extent and in the manner which may heretofore have
32 been or may hereafter be ordered or decreed by any judgment of the
33 Tax court or any court by reason of any error or omission in
34 connection with the assessment such remitter in any prior year.

35
36 58. (New section) The Director of the Division of Taxation in the
37 Department of the Treasury shall promulgate such rules and
38 regulations applicable to remitters subject to this act as may be
39 necessary to effectuate the purposes and provisions of this act.

40
41 59. (New section) a. Nothing in P.L. , c. (C.) (now
42 pending before the Legislature as this bill) shall be construed to alter
43 any terms or conditions of any contract for the duration of the
44 contract, for the retail sale of electricity ¹or natural gas¹ to an end
45 user that establishes a customer-specific tax classification and that was
46 approved by separate written order of the Board of Public Utilities

1 prior to January 1, 1998, notwithstanding any changes in the laws
2 under which those contracts were established.

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

7 ¹c. On and after January 1, 1998, no off-tariff rate agreement or
8 alternate regulation plan pursuant to P.L.1995, c.180 (C.48:2-21.24
9 et seq.) or pursuant to any other order of the board shall allow for any
10 reduction or exemption from any tax or surcharge imposed pursuant
11 to P.L. , c. (C.)(now pending before the Legislature as this bill)
12 and not otherwise allowed by the provisions of P.L. , c. (C.)(now
13 pending before the Legislature as this bill).¹

14

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

16 54:4-1. All property real and personal within the jurisdiction of this
17 State not expressly exempted from taxation or expressly excluded
18 from the operation of this chapter shall be subject to taxation annually
19 under this chapter. Such property shall be valued and assessed at the
20 taxable value prescribed by law. Land in agricultural or horticultural
21 use which is being taxed under the "Farmland Assessment Act of
22 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), shall be valued and
23 assessed as provided by that act. An executory contract for the sale
24 of land, under which the vendee is entitled to or does take possession
25 thereof, shall be deemed, for the purpose of this act, a mortgage of
26 said land for the unpaid balance of purchase price. Personal property
27 taxable under this chapter shall include, however, only the machinery,
28 apparatus or equipment of a petroleum refinery that is directly used to
29 manufacture petroleum products from crude oil in any of the series of
30 petroleum refining processes commencing with the introduction of
31 crude oil and ending with refined petroleum products, but shall
32 exclude items of machinery, apparatus or equipment which are located
33 on the grounds of a petroleum refinery but which are not directly used
34 to refine crude oil into petroleum products and the tangible goods and
35 chattels, exclusive of inventories, used in business of local exchange
36 telephone, telegraph and messenger systems, companies, corporations
37 or associations that were subject to tax as of April 1, 1997 under
38 P.L.1940, c.4 (C.54:30A-16 et seq.) as amended, and shall not include
39 any intangible personal property whatsoever whether or not such
40 personalty is evidenced by a tangible or intangible chose in action
41 except as otherwise provided by R.S.54:4-20 . As used in this
42 section, "local exchange telephone company" means a
43 telecommunications carrier providing dial tone and access to
44 [substantially all] 51% of a local telephone exchange. Property
45 omitted from any assessment may be assessed by the county board of
46 taxation, or otherwise, within such time and in such manner as shall be

1 provided by law. Real property taxable under this chapter means all
2 land and improvements thereon and includes personal property affixed
3 to the real property or an appurtenance thereto, unless:

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

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

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

10 b. The personal property so affixed is machinery, apparatus, or
11 equipment used or held for use in business and is neither a structure
12 nor machinery, apparatus or equipment the primary purpose of which
13 is to enable a structure to support, shelter, contain, enclose or house
14 persons or property. For purposes of this subsection, real property
15 shall include pipe racks, and piping and electrical wiring up to the
16 point of connections with the machinery, apparatus, or equipment of
17 a production process as defined in this section.

18 Real property, as defined herein, shall not be construed to affect any
19 transaction or security interest provided for under the provisions of
20 chapter 9 of Title 12A of the New Jersey Statutes (N.J.S.12A:9-101
21 et seq.). The provisions of this section shall not be construed to repeal
22 or in any way alter any exemption from, or any exception to, real
23 property taxation or any definition of personal property otherwise
24 provided by statutory law.

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

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

31
32 61. R.S.48:3-7.8 is amended to read as follows:

33 48:3-7.8. a. Every public utility shall at all times keep within this
34 State all records, books, accounts, documents and other writings
35 relating to contracts entered into, transactions had, services rendered,
36 business done and property within this State, and shall at no time
37 remove any of such records, books, accounts, documents or writings
38 from this State without the consent in writing of the board first had
39 and obtained.

40 b. The board may by order in writing grant consent and permission
41 under such regulations and conditions as it may see fit to impose for
42 the keeping of any such records, books, accounts, documents and
43 other writings outside of the State in such cases as the board may
44 determine that such consent or permission so granted may be of
45 financial advantage to the customers of the public utility within this
46 State. Such consent or permission so granted may be revoked by the

1 board at any time without notice. A public utility granted such
2 consent or permission shall on the notice in writing of the board
3 produce such records, books, accounts, documents and other writings
4 at such time and place within this State as the board may designate.

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

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

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

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

21
22 62. R.S.48:3-7.9 is amended to read as follows:

23 48:3-7.9. Every public utility and every natural gas vendor and
24 electric vendor subject to subsection c. of R.S.48:3-7.8, shall [within
25 fourteen days after March twelfth, one thousand nine hundred and
26 thirty-five,] file with the board a designation in writing of an agent,
27 resident of this State who shall have custody of such records, books,
28 accounts, documents and other writings, and upon whom process for
29 the production of the same may be served. Such designation shall set
30 out the name of such agent, his place of residence within this State and
31 his place of business. [Every] A public utility or vendor filing such
32 designation may at any time revoke such designation, provided, that
33 simultaneously with the revocation of such designation, a substituted
34 designation be filed by it with board.

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

36
37 63. (New section) The Board of Public Utilities may adopt,
38 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
39 (C.52:14B-1 et seq.), such rules as it deems necessary to implement
40 the provisions of this act.

41
42 64. (New section) On or before January 1, 2002, the State
43 Treasurer shall review and evaluate the administration and revenue
44 impact of the imposition of the sales and use tax on energy and utility
45 services pursuant to this act and shall advise the Legislature
46 accordingly.

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

5
6 66. (New section) a. For State budgetary purposes, the State
7 Treasurer shall direct that all tax monies collected pursuant to
8 contracts executed pursuant to tariff rate schedules and associated
9 gross receipts and franchise unit tax classes approved by separate
10 written orders of the Board of Public Utilities prior to the effective
11 date of this act shall be deposited in the State General Fund.

12 b. For State budgetary purposes, the collection of billings from
13 customers of a utility for natural gas, electricity and utility service
14 provided on and after January 1, 1998 and before the issuance by the
15 Board of Public Utilities of a written order approving, upon either an
16 interim or final basis, the rate filing of that utility required pursuant to
17 section 67 of this act, except for sales exempt as of December 31,
18 1997 from gross receipts and franchise taxes imposed pursuant to
19 P.L.1940, c.5 (C.54:30A-49 et seq.) and sales to which section 59 of
20 this act shall apply, shall be deemed to include the collection of the full
21 amount of sales and use tax that otherwise would have been due and
22 owing for the billing as if the sales and use tax was imposed pursuant
23 to P.L.1966, c.30 (C.54:32B-1 et seq.) and P.L. , c. (C.)
24 (now pending before the Legislature as this bill) at the time that the
25 natural gas, electricity or utility service was actually provided.

26
27 67. (New section) a. As used in this section:

28 "Base rates" means the rates, including minimum bills, charged for
29 utility commodities or service subject to the board's jurisdiction, other
30 than the rates charged under a utility's levelized energy adjustment
31 clause, hereinafter "LEAC," or levelized gas adjustment clause,
32 hereinafter "LGAC," or equivalent rate provision;

33 "Base year" means the calendar year 1996;

34 "Board" means the Board of Public Utilities;

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

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

40 "Utility service" means the supply, transmission, distribution or
41 transportation of electricity, natural gas or telecommunications
42 services or any combination of such commodities, processes or
43 services.

44 b. No later than 60 days after the date this act is enacted, each
45 electric, gas and telecommunications utility subject to the provisions
46 of this act shall file with the board, and shall simultaneously provide

1 copies to the Director of the Division of the Ratepayer Advocate,
2 revised tariffs and such other supporting schedules, narrative and
3 documentation required by this act, as set forth in this section, to
4 reflect in the utility's rates the changes in tax liability effected pursuant
5 to this act. No later than 90 days after the date of the utility's filing,
6 and after determining that the filing and the rate changes provided for
7 therein are in compliance with the provisions of this act, the board
8 shall approve the utility's filing and associated rates for billing to the
9 utility's customers, effective for utility service rendered on and after
10 January 1, 1998. If the board determines that the utility's filing and
11 the associated rate changes provided for therein are not in compliance
12 with the provisions of this act, the board shall require the utility to
13 amend or otherwise modify its filing to render it in compliance. The
14 board may also permit the rates provided for in the utility's filing to be
15 implemented on an interim basis pending the board's final
16 determination in the event the board, in its discretion, determines that
17 due to the filing's complexity, or for other valid reasons, including but
18 not limited to the enactment of this act after June 30, 1997, additional
19 time is needed for the board to complete its review of the filing. If the
20 rates approved by the board upon its final determination are less than
21 the rates implemented on an interim basis, the difference shall be
22 refunded to the utility's customers with interest computed in
23 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
24 implemented pursuant to this act shall not constitute a fixing of rates
25 pursuant to R.S.48:2-21 and shall not be subject to the hearing
26 requirements set forth in that section.

27 c. As of the effective date of the rate changes implemented
28 pursuant to this act, and except for rates applicable to sales that were
29 or are currently ¹ exempt from the unit-based energy taxes formerly
30 imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates
31 applicable to sales to which section 59 of this act applies, the board
32 shall remove from the base rates of each electric public utility and gas
33 public utility the unit tax rates included therein for the recovery of
34 those unit-based energy taxes, and include therein provision for the
35 recovery of corporation business tax imposed pursuant to P.L.1945,
36 c.162 (C.54:10A-1 et seq.), and additionally shall authorize the
37 collection of the sales and use tax imposed pursuant to P.L.1966, c.30
38 (C.54:32B-1 et seq.), as follows:

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

42 (2) The provision for corporation business tax initially included in
43 the base rates of each gas and electric utility shall be based on the
44 utility's after-tax net income earned in the base year as booked, unless
45 the board determines, in its discretion, that such income as booked is
46 unusually high or low or otherwise unrepresentative of the utility's

1 prospective net income, in which case the utility's base year net income
2 shall be adjusted as determined by the board.

3 To permit the board to make this determination, in addition to
4 including in its filing schedules showing its net income earned in the
5 base year as booked, the utility shall include adjustments to such
6 booked income to eliminate the effect of revenues, expenses and
7 extraordinary or other charges that are non-recurring, atypical, or
8 both, including, but not limited to an adjustment to eliminate the effect
9 of unusually hot or cold weather, and that would otherwise make the
10 utility's base year net income unusually high or low or otherwise
11 unrepresentative of the utility's prospective net income. If the
12 adjustment is being made to eliminate the effect of unusually hot or
13 cold weather, associated revenue and expense adjustments shall also
14 be made. Subject to the board's approval, such adjusted income shall
15 be the basis for the calculation of the initial provision for corporation
16 business tax to be included in the utility's base rates.

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

27 To reflect the provision for corporation business tax in base rates,
28 the demand charges, or charges per kilowatt, decatherm or million
29 cubic feet; the energy charges, or charges per kilowatthour or per
30 therm; and the customer charges, or charges other than demand and
31 energy charges, set forth in each base rate schedule, and the floor price
32 employed in parity rate schedules, included in the utility's tariff filed
33 with and approved by the board shall be increased by amounts
34 determined by multiplying such charges by the adjustment factor, "A
35 e, g" derived below:

$$36 \quad A e, g = \left(\frac{(I e, g) \times [Rs/(1-Re)]}{37 \quad (Br e, g)} \right)$$

1 where:
2
3 "A e, g" means the adjustment factor
4 applicable to electric base rates
5 (e), gas base rates (g), or both,
6 other than rates applicable to
7 sales that were exempt from unit-
8 based energy taxes formerly
9 imposed pursuant to P.L.1940,
10 c.5 (C.54:30A-49 et seq.) or to
11 which section 59 of this act
12 applies;
13
14 "I e, g" means the utility's base year
15 after-tax net income from electric
16 or gas sales, or both, and
17 transportation service subject to
18 the board's jurisdiction and other
19 operating revenue if such
20 revenue is reflected in the utility's
21 cost of service for ratemaking
22 purposes, adjusted as approved
23 by the board;
24
25 "Br e, g" means the utility's base year
26 revenue from base rates
27 applicable to electric or gas sales,
28 or both, and transportation
29 service subject to the board's
30 jurisdiction, but excluding sales
31 that were exempt from unit-
32 based energy taxes formerly
33 imposed pursuant to P.L.1940,
34 c.5 (C.54:30A-49 et seq.) or to
35 which section 59 of this act
36 applies;
37
38 "Rs" means the corporation business
39 tax rate, expressed as a decimal;
40
41 "Rf" means the applicable federal
42 corporation income tax rate
43 expressed as a decimal; and

1 "Re" equals $R_s + R_f(1-R_s)$.

2

3 The utility shall account for the changes in tax liability provided for
4 by this act effective January 1, 1998. Such accounting shall include
5 the recording on the utility's income statement and balance sheet of
6 deferred corporation business tax defined, for book accounting
7 purposes, as differences in corporation business tax expense arising
8 from timing differences in the recognition of revenue and expenses for
9 book and tax purposes.

10 (3) When billed to the utility's customers, the adjusted base rate
11 charges determined pursuant to paragraphs (1), (2), and (4) of this
12 subsection, and the charges determined pursuant to the utility's
13 levelized energy adjustment clause, levelized gas adjustment clause, or
14 both, as determined both upon the effective date of the rate changes
15 authorized by this act and as revised prospectively in accordance with
16 the utility's tariff filed with and approved by the board, and the
17 transitional energy facility assessment unit rate surcharges, hereinafter,
18 "TEFA unit rate surcharges," determined in accordance with
19 subsection d. of this section, shall be increased by an amount
20 determined by multiplying such charges by the sales and use tax rate
21 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the
22 utility's rates for service included in its tariff, for informational
23 purposes the tariff shall include such rates after application of the sales
24 and use tax authorized by this section.

25 (4) The utility's filing with the board to implement the rate changes
26 provided for by this act shall include an analysis, description, and
27 quantification of the effect of the changes in rates and tax payments
28 implemented pursuant to this act on the utility's requirement for cash
29 working capital, and if such requirement is less than the cash working
30 capital allowed for the collection and payment of unit-based energy
31 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
32 seq.) in determining the utility's base rates in effect prior to the rate
33 changes implemented pursuant to this act, and to the extent the
34 working capital reduction is not offset by a reduction in net deferred
35 taxes as provided for below, such base rates shall be reduced by the
36 reduction in the utility's revenue requirement associated with the
37 remaining reduction in the working capital requirement not so offset,
38 if any. The reduction in working capital shall be determined by using
39 the same methodology employed in establishing the working capital
40 allowance related to unit-based energy taxes reflected in the utility's
41 base rates in effect prior to the rate changes implemented pursuant to
42 this act. The reduction in the utility's revenue requirement associated
43 with the reduced working capital requirement shall be calculated using
44 the utility's last overall rate of return allowed by the board, including
45 provision for federal income taxes and the corporation business tax
46 implemented pursuant to this act payable on the equity portion of the

1 return, and shall be implemented on the effective date of the rate
2 changes provided for, and in the manner set forth in paragraph (2) of
3 this subsection.

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

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

15 The utility's filing with the board to implement the rate changes
16 provided for by this act shall also include an analysis, description and
17 quantification of net deferred taxes. For the purposes of this section,
18 "net deferred taxes" means deferred corporation business taxes, net of
19 federal deferred income taxes, associated with the tax and rate changes
20 implemented pursuant to this act, including deferred corporation
21 business tax recorded in accordance with section 4 of P.L.1945, c.162
22 (C.54:10A-4), projected for the calendar year in which this act takes
23 effect and for each year of the tax life of the asset giving rise to the
24 deferred corporation business taxes pursuant to section 4 of P.L.1945,
25 c.162 (C.54:10A-4).

26 If the change in such net deferred taxes projected for the calendar
27 year in which the rate changes implemented pursuant to this act takes
28 effect is negative and if the utility's requirement for working capital is
29 reduced as a result of the changes in rates and tax payments
30 implemented pursuant to this act, the working capital-related rate
31 reduction that otherwise would have been implemented pursuant to
32 this subsection shall be treated as set forth in subparagraph (a) or (b)
33 of this paragraph. For the purposes of this act, a change in net
34 deferred taxes is considered negative when it reduces an existing
35 deferred tax liability or creates a deferred tax asset on the utility's
36 balance sheet. An appropriate rate adjustment for the working capital
37 impacts of this act, reflecting all relevant facts and circumstances at
38 the time of the adjustment, shall be made in the year when the earlier
39 of the following events occur:

40 (a) The year in which the reduction in carrying costs assumed for
41 the rate reduction for working capital that would have been made but
42 for this paragraph is no longer required to offset, on a present value
43 basis, the annual carrying costs calculated on the accumulated balance
44 of negative net deferred taxes projected to be recorded by the utility,
45 its successors and assigns, over the tax life of the single asset account
46 giving rise to such net deferred taxes pursuant to section 4 of

1 P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph
2 (a):

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

6 (ii) The accumulated balance of such negative net deferred taxes
7 shall include net deferred taxes associated with all assets and liabilities
8 originally placed in service by the utility and held by the utility or a
9 company affiliated with the utility regardless of whether or not such
10 assets continue to be subject to regulation by the New Jersey Board of
11 Public Utilities.

12 (b) The year in which both an appropriate working capital
13 adjustment and the accumulated balance of negative deferred taxes, as
14 described in (ii) of subparagraph (a) of this paragraph (4), are reflected
15 in the utility's rate base in a rate proceeding before the board. It is the
16 intent of this section to fully compensate utilities on a present value
17 basis, for the carrying costs associated with negative net deferred taxes
18 arising as a result of this act, and to remit to ratepayers any credit due
19 them as a result of any overcompensation as may have occurred due
20 to the treatment of working capital and deferred taxes as set forth
21 herein or in subparagraph (a) of this paragraph (4). At the time the
22 above rate base adjustment is made, an analysis shall be made to
23 determine if such carrying costs have been or will be fully recovered
24 pursuant to the intent of this provision and any additional credit or
25 charge to ratepayers to adjust for ratepayer overpayments or
26 underpayments, if any shall be addressed.

27 If the change in net deferred taxes is positive, the increase shall be
28 added to, or increase, the reduction in the utility's requirement for
29 working capital if the requirement is reduced as a result of the rate and
30 tax payment changes implemented pursuant to this act, or subtracted
31 from the working capital requirement if it is increased, and the
32 resultant net working capital requirement shall be reflected in rates or
33 accrue carrying costs in the same manner as prescribed for changes in
34 the utility's requirement for working capital above.

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

39 d. (1) Electric and gas utilities shall file, for the board's review and
40 approval, initial TEFA unit rate surcharges determined by deducting
41 from each unit-based energy tax unit tax rate effective January 1, 1997
42 the following: (a) An amount per kilowatthour or per therm
43 determined by multiplying the total revenue received in the base year
44 from sales to which that unit tax rate would have been applicable by
45 the factor $Ru/(1 + Ru)$, where Ru is the sales and use tax rate imposed
46 under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and

1 dividing the result by the kilowatthours or therms billed in that unit tax
 2 rate class in the base year; and (b) An amount per kilowatthour or per
 3 therm determined by dividing the revenue that would have been
 4 received in the base year from the inclusion, in the manner prescribed
 5 in paragraph (2) of subsection c. of this section, of the corporation
 6 business tax in the rates applicable to sales billed in that unit tax rate
 7 class by the kilowatthours or therms billed in that rate class. In each
 8 case, the determination shall reflect the effect of adjustments that
 9 affect the level of sales and revenue, if any, as provided in subsection
 10 c. of this section. Of the resultant rate per kilowatthour or per therm,
 11 the portion for recovery of the utility's transitional energy facilities
 12 assessment liability shall be determined by multiplying such rate by the
 13 factor $(1 - R_s)$, where R_s is the corporation business tax rate expressed
 14 as a decimal. The TEFA unit rate surcharges shall constitute non-
 15 bypassable wires and/or mains charges of the utility, and shall be
 16 applied to all sales within the customer classes to which they apply,
 17 regardless of whether such customers are purchasing bundled or
 18 unbundled services from the utility, but shall not be applied to sales
 19 that were ¹or are currently ¹exempt from unit-based energy taxes
 20 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or
 21 to which section 59 of this act applies.

22 If, following the effective date of this act, a customer taking
 23 bundled service from the utility shall elect to obtain its requirements
 24 from another supplier and take transportation or wheeling service from
 25 the utility, the TEFA unit rate surcharge applicable to the bundled
 26 service shall continue to apply to the transportation or wheeling
 27 service. The TEFA components of the unit rate surcharges determined
 28 pursuant to this subsection (the components of the surcharges
 29 remaining after deducting the provision for corporation business tax
 30 included therein) shall be used to determine the transitional energy
 31 facility assessment liability pursuant to sections 36 through 49 of
 32 P.L. , c. (C.)(now pending before the Legislature as this bill).

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

37	January 1, 1999	20%
38	January 1, 2000	40%
39	January 1, 2001	60%
40	January 1, 2002	80%
41	January 1, 2003	100%

42

43 (3) For each year beginning with calendar year 1998 and ending
 44 with calendar year 2002, the TEFA surcharge adjustment shall be

1 determined as the difference between

2 (a) The sum of the estimated, or actual when known, (i) TEFA
3 liabilities, as defined in section 43 of this act, and sales and use taxes
4 collected and corporation business taxes¹[, for] booked for¹ the year
5 1998 by the gas and electric utilities and other entities subject to the
6 TEFA provisions of this act (the year 1998 liability), and (ii) the TEFA
7 liabilities of those utilities and entities in all years following the year
8 1998 through the year in which a determination is being made pursuant
9 to this subsection (the determination year); and

10 (b) The sum of (i) the total of each remitter's base year liability, as
11 defined in section 37 of this act, and (ii) the cumulative TEFA
12 obligation, defined as the sum through the determination year of the
13 amounts calculated by multiplying ¹, for the applicable year, ¹ the
14 percentage in the second column of the following table ¹[for the
15 applicable year]¹:

16		% of
17	Determination Year	Year 1998
18		TEFA
19	-----	-----
19	1999	80%
20	2000	60%
21	2001	40%
22	2002	20%

23
24 by the Year 1998 TEFA,

25 where the Year 1998 TEFA is calculated as the total of each remitter's
26 base year liability less the sales and use taxes collected and the
27 corporation business taxes booked for the privilege period ending in
28 calendar year 1998 by the gas and electric utilities and other entities
29 subject to the TEFA provisions of this act. For purposes of this
30 subsection, the amounts assumed for the determination year, including
31 the year 1998 liability when first determined for the purposes of this
32 subsection, shall be estimates based on nine months of actual data
33 through and including the month of September, and three months of
34 data forecast for the months of October through December.

35 (4) If the TEFA surcharge adjustment determined for the
36 determination year is positive (that is, if the amount determined
37 pursuant to subparagraph (a) of paragraph (3) of this subsection is
38 greater than the amount determined pursuant to subparagraph (b) of
39 paragraph (3) of this subsection), no reduction shall be made in the
40 reduction in the TEFA unit rate surcharges provided for in paragraph
41 (2) of this subsection for the year following the determination year.
42 If the TEFA surcharge adjustment is negative, the reduction in the
43 TEFA unit rate surcharges that otherwise would have been
44 implemented on January 1 of the year following the determination year

1 pursuant to paragraph (2) of this subsection shall be reduced by an
2 amount (by percentage points) equal to the percentage the TEFA
3 surcharge adjustment is of the total of the base year transitional energy
4 facility assessment of all remitters, as defined in section 37 of this act,
5 provided however, that such reduction in the reduction in the TEFA
6 unit rate surcharges shall not exceed the percentage shown in
7 paragraph (2) of this subsection for that year; and provided further
8 that in the first two years, that such reduction shall not exceed 10
9 percentage points for each year.

10 e. The utility's filing with the board to implement the rate changes
11 provided for by this act shall include proof of revenue schedules that
12 show for each rate schedule included in the utility's tariff, aggregated
13 by unit-based energy tax unit tax classes, the number of customers
14 billed under the rate schedule, the billing determinants of such
15 customers (i.e. the kilowatts of billing demand and kilowatthours of
16 electric energy consumed, and the million cubic feet/deca-therm subject
17 to gas capacity-related charges and deca-therm of gas consumed) and
18 the associated revenue, both as booked in the base year and on a pro
19 forma basis reflecting the rate changes implemented pursuant to this
20 act. The proof of revenue shall additionally show the amount of unit-
21 based energy taxes included in the base year revenue as booked, the
22 unit-based energy taxes that would have been collected at the unit-
23 based energy tax unit tax rates effective January 1, 1997, if different,
24 as well as the corporation business tax, sales and use tax and
25 transitional energy facility assessment revenue that would have been
26 collected or received on a pro forma basis if the rates implemented
27 pursuant to this act had been in effect in the base year.

28 f. The board may, in its discretion, permit the rate changes
29 provided for this act to be implemented as part of a pending base rate
30 case or other proceeding in which the utility's rates are to be changed,
31 provided that the effective date of the changes is not delayed beyond
32 the date on which the changes would have been implemented under
33 subsection c. of this section. The board may also, pursuant to its
34 powers provided by law, permit or require further modifications in the
35 implementation of this section to address unforeseen consequences
36 arising out of the implementation of this act.

37 g. Customers of the utility who are exempt from the sales and use
38 tax imposed on sales of gas and/or electricity or as a result of rate
39 changes occurring prior to the effective date of this act or for other
40 valid reasons are due a refund of sales or use tax inadvertently
41 imposed on such customers as a result of implementing the rate
42 changes provided for by this act shall file with the State Treasurer to
43 obtain such refunds. The State Treasurer shall promptly notify the
44 utility of customers granted refunds under this provision in order to
45 prevent additional collections of the sales and use tax from such
46 customers.

1 h. Public utilities providing telecommunications service regulated
2 by the board shall file for the board's review and approval revised
3 tariffs that eliminate from the rates applicable to such service the
4 excise tax liability included therein pursuant to P.L.1940, c.4
5 (C.54:30A-16 et seq.), and shall include therein the corporation
6 business tax calculated using ¹[the same methodology as set forth in
7 paragraph (2) of subsection c. of this section for gas and electric
8 utilities.] the methodology used in calculating the adjustment factor
9 set forth in paragraph (2) of subsection c. of this section. Subsection
10 d. of this section shall not apply to telecommunication utilities, and
11 telecommunication utilities subject to a plan of regulation other than
12 rate base/rate of return shall additionally not be required to file the rate
13 of return information required by paragraph (2) of subsection c. Such
14 utilities shall, however, include a narrative and/or other documentation
15 as required by the board to support the reasonableness of the after-tax
16 income, which may be adjusted to eliminate the effect of non-recurring
17 or other atypical events, on which the corporate business tax inclusion
18 in rates is based.¹ Telecommunications utilities shall comply with all
19 other applicable provisions of this section.

20 i. (1) The board shall not adjust the rates of a public utility, as
21 provided in subsections c. and d. of this section, for a purchase by a
22 cogenerator of natural gas and the transportation of that gas, that is
23 exempt from sales and use tax pursuant to paragraph (2) of subsection
24 b. of section 26 of this act. The board shall not allocate, in any future
25 rate case, any sales and use tax, corporation business tax, or
26 transitional energy facility assessment to rates for this purpose.

27 (2) The board shall adjust the rates, as provided in subsection c. of
28 this section, for a purchase by a cogenerator of any quantity of natural
29 gas and the transportation of that gas that is not exempt from sales and
30 use tax pursuant to paragraph (2) of subsection b. of section 26 of
31 this act.

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

41

42 68. (New section) Notwithstanding the use of the term assessment,
43 the transitional energy facility assessment tax is a State tax within the
44 meaning of section 164 of federal Internal Revenue Code of 1986, 26
45 U.S.C.§164, pursuant to which a deduction is allowed in arriving at
46 federal taxable income for the taxable year within which it is paid or

1 accrued and such amount shall be added back to entire net income
2 pursuant to subparagraph (c) of paragraph (2) of subsection (k) of
3 section 4 of P.L.1945, c.162 (C.54:10A-4).

4
5 69. (New section) a. No municipal, regional, or county
6 governmental agency may impose any fees, taxes, levies or
7 assessments in the nature of a local franchise, right of way, or gross
8 receipts fee, tax, levy or assessment against energy ¹companies
9 subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior
10 to January 1, 1998¹ or telecommunication companies ¹[subject to a
11 public utility tax immediately prior to January 1, 1998]¹. Nothing in
12 this section shall be construed as a bar to ¹reasonable¹ fees for
13 ¹actual¹ services made by any municipal, regional or county
14 governmental agency. ¹Nothing in this section shall be construed to
15 affect the franchising process or the assessment of franchise fees with
16 respect to the provision of cable television service in accordance with
17 the provisions of P.L.1972, c.186 (C.48:5A-1 et seq.).¹

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

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

1 ¹b. No municipality, regional or county governmental agency shall
2 directly or indirectly tax as real property, or include within the
3 assessment of real property, the public utility owned electrical
4 interconnect, water lines or gas lines, or any value thereof, which
5 were set forth in the list of scheduled property for gas systems and
6 electric light, heat and power systems in section 10 of P.L.1940, c.5
7 (C.54:30A-58), prior to enactment of this act whether or not on the
8 real estate of current or former remitters of the transitional energy
9 facility assessment.¹

10
11 71. (New section) Notwithstanding any other provision of law to
12 the contrary, for the period from January 1, 1998 through the date the
13 utility rate changes provided for in this act are implemented as set
14 forth in section 67 of this act, the sales and use tax imposed pursuant
15 to P.L.1966, c.30 (C.54:32B-1 et seq.) as amended and supplemented
16 by P.L. , c. (C.)(now pending before the Legislature as this
17 bill), upon sales and use of energy and utility service that were subject
18 to regulated rates that included unit-based energy taxes imposed
19 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) during that period,
20 shall be imposed upon the utility vendors of energy and utility service
21 in this State and shall not be imposed upon the purchasers thereof.
22 The amount of tax due under this section shall be payable by a utility
23 vendor to satisfy the utility vendor's tax liability on those sales and use
24 of energy and utility service under this section.

25
26 ¹72. (New section) Every telephone company that was subject to
27 the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) as of April
28 1,1997, that makes an advance payment of its applicable gross receipts
29 and franchise tax to the State in the final year of the existence of such
30 tax and treated such advance payment as an expense on its books and
31 records for that year, or its corporate or non-corporate legal successor
32 or assignee whether through any reorganization, sale, bankruptcy,
33 consolidation, merger or other occurrence of any kind without
34 limitation, shall on May 15, 1998, pay a telecommunication
35 assessment. The telecommunication assessment shall be equal to the
36 amount of the advances paid in 1997 pursuant to P.L.1940, c.4
37 (C.54:30A-16 et seq.) by that remitter. A credit against the liability
38 for the telecommunication assessment set forth in this section shall be
39 taken by the remitter in the amount of the advances it paid in 1997
40 pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.).¹

41
42 ¹73. (New section) The repeal of and amendments to various
43 provisions of law pursuant to P.L. , c. (C.)(now pending before
44 the Legislature as this bill), prospectively eliminating the imposition of
45 unit-based energy taxes on gas, electric and gas and electric public
46 utilities pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and

1 amendatory and supplementary acts thereto shall not affect the
2 obligation of each such public utility taxpayer, on or before April 1,
3 1998, to file a final tax form with the director pursuant to subsection
4 c. of section 10 of P.L.1991, c.184 (C.54:30A-54.6). Any remaining
5 tax liability due by the taxpayer on the final tax form shall be submitted
6 with the final tax form. However, any overpayment shown on the final
7 tax form shall be taken as a credit against the uniform transitional
8 utility assessment to be paid June 25, 1998 pursuant to sections 50
9 through 58 of P.L. c. , (C.)(now pending before the Legislature
10 as this bill).¹

11

12 ¹74. The State Treasurer and the Board of Public Utilities shall
13 cooperate to develop a statement to be included on energy users'
14 billings from their vendors that a portion of the charges in the billing
15 are dedicated to property tax relief.¹

16

17 ¹75. Host community benefit agreements between a municipality
18 and an electric generating facility within the municipality shall be of
19 full force and effect under law and shall be binding upon the parties to
20 the agreement.¹

21

22 ¹76. The Board of Public Utilities shall conduct a review of all
23 telecommunications taxes, including an analysis of alternative taxes,
24 and evaluate their potential for providing property tax relief and their
25 impact under the on-going transition to a more competitive and
26 technologically diverse market and submit its findings and
27 recommendations in a written report to the Governor and the
28 Legislature on or before December 31, 1997.¹

29

30 ¹[72.] ~~77.~~¹ The following are repealed:

31 Section 2 of P.L.1983, c.95 (C.48:2-29.37);

32 P.L.1940, c.4 (C.54:30A-16 through 54:30A-29);

33 Sections 6 and 8 of P.L.1963, c.41 (C.54:30A-18.1 and 54:30A-
34 18.2);

35 Section 2 of P.L.1971, c.109 (C.54:30A-18.1a);

36 Sections 1 and 2 of P.L.1979, c.35 (C.54:30A-18.4 and 54:30A-
37 18.5);

38 Sections 2, 10, 11, 12 and 24 of P.L.1991, c.184 (C.54:30A-18.6,
39 54:30A-54.6, 54:30A-54.7, 54:30A-54.8 and 54:30A-18.7);

40 Section 2 of P.L.1980, c.10 (C.54:30A-24.1);

41 Section 5 of P.L.1989, c.2 (C.54:30A-24.2);

42 Sections 25 and 27 of P.L.1991, c.184 (C.54:30A-24.3 and 54:30A-
43 24.4);

44 P.L.1961, c.91 (C.54:30A-51.1 through 54:30A-51.5);

45 Section 5 of P.L.1940, c.5 (C.54:30A-53);

46 Sections 8 through 13 of P.L.1940, c.5 (C.54:30A-56 through

1 54:30A-61);

2 Section 4 of P.L.1980, c.11 (C.54:30A-61.1);

3 Sections 19, 26 and 28 of P.L.1991, c.184 (C.54:30A-61.2 through
4 54:30A-61.4);

5 Sections 16, 17, 19 and 20 of P.L.1940, c.5 (C.54:30A-64 through
6 54:30A-67); and

7 Section 30 of P.L.1991, c.184 (C.54:30A-68).

8

9 ¹[73.]~~78.~~¹ This act shall take effect January 1, 1998, except that
10 this section and sections 49, 58, 63 and 67 shall take effect
11 immediately.

12

13

14

15

16 Revises taxation of gas, electric and telecommunications public
17 utilities and sales of electricity, natural gas and energy transportation
18 service under transitions to competitive markets.