

SENATE, No. 871

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1996

By Senator CARDINALE

1 AN ACT concerning the taxation of certain New Jersey source gains,
2 supplementing P.L.1945, c.162 (C.54:10A-1 et seq.), and Title 54A
3 of the New Jersey Statutes.

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

7
8 1. a. In the determination of entire net income pursuant to
9 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a
10 taxpayer that is a qualified small business at the time of the sale or
11 exchange may exclude 50% of the gain for the fiscal or calendar
12 accounting period on the sale or exchange of New Jersey assets held
13 for more than three years but not more than five years and 100% of
14 the gain for the fiscal or calendar accounting period on the sale or
15 exchange of New Jersey assets held for more than five years; provided
16 however, that in that calculation the taxpayer may include 100% of the
17 loss for the fiscal or calendar accounting period on New Jersey assets
18 held for more than three years but not more than five years and 100%
19 of the loss for the fiscal or calendar accounting period on New Jersey
20 assets held for more than five years. For the purposes of this section
21 the holding period of an asset shall be the period for which the asset
22 was held by the taxpayer.

23 b. For the purposes of this section:

24 "New Jersey asset" means an asset which is real property or
25 tangible property, other than that of a kind properly includable in the
26 inventory of the taxpayer or held primarily for sale to customers in the
27 ordinary course of the taxpayer's business, located in this State at the
28 time of sale and an equity security in a corporation that was a qualified
29 small business at the time of the taxpayer's acquisition of the asset and
30 having its principal place from which the business was directed or
31 managed in this State at the time of the taxpayer's acquisition of the
32 asset.

33 "Qualified small business" means a corporation with respect to
34 which the aggregate amount of money, other property, other property
35 and services received by the corporation for stock, as a contribution
36 to capital, and as paid in surplus, plus the accumulated earnings and
37 profits to the corporation, does not exceed \$25,000,000.

1 2. a. In a calculation of the net gains less net losses derived from
2 the sale, exchange or other disposition of property under a category
3 of gross income defined pursuant to N.J.S.54A:5-1, a taxpayer may
4 exclude 50% of the gain for the taxable year on New Jersey assets held
5 for more than three years but not more than five years and 100% of
6 the gain for the taxable year on New Jersey assets held for more than
7 five years and otherwise includable in that category; provided
8 however, that in that calculation the taxpayer may include 100% of the
9 loss for the taxable year on New Jersey assets held for more than three
10 years but not more than five years and 100% of the loss for the taxable
11 year on New Jersey assets held for more than five years. For the
12 purposes of this section the holding period of an asset shall be the
13 period for which the asset was held by the taxpayer, or, if acquired
14 from a decedent, the period for which the asset was held by the
15 decedent and then subsequently by the taxpayer.

16 b. For the purposes of this section:

17 "New Jersey asset" means an asset which is real property or
18 tangible property, other than that of a kind properly includable in the
19 inventory of the taxpayer or held primarily for sale to customers in the
20 ordinary course of the taxpayer's business, located in this State at the
21 time of sale and an equity security in a corporation that was a qualified
22 small business at the time of the taxpayer's acquisition of the asset and
23 having its principal place from which the business was directed or
24 managed in this State at the time of the taxpayer's acquisition of the
25 asset or, if acquired from a decedent, at the time of the decedent's
26 acquisition of the asset.

27 "Qualified small business" means a corporation with respect to
28 which the aggregate amount of money, other property, other property
29 and services received by the corporation for stock, as a contribution
30 to capital, and as paid in surplus, plus the accumulated earnings and
31 profits to the corporation, does not exceed \$25,000,000.

32

33 3. This act shall take effect immediately and apply to sales or other
34 exchanges of assets occurring on and after its enactment.

35

36

37

STATEMENT

38

39 This bill excludes certain gains from the sale or exchange of New
40 Jersey assets held for extended investment periods. This special
41 treatment of investments in New Jersey will stimulate the economy of
42 the State, both by providing an incentive for future investment and by
43 removing tax barriers to the efficient use of property.

44 New Jersey assets means real property located in New Jersey at the
45 time of its sale, tangible property located in New Jersey at the time of
46 its sale, and equity securities in a qualified small business

1 headquartered in New Jersey at the time of the taxpayer's acquisition
2 of the security. A qualified small business is a business that has
3 \$25,000,000 or less capitalization.

4 Corporation business taxpayers that are themselves qualified small
5 businesses at the time that an asset is sold may exclude 50% of the
6 gain on New Jersey assets held for more than three years and 100% of
7 the gain on New Jersey assets held for more than five years from their
8 entire net income subject to apportionment and taxation. Individual
9 taxpayers may also exclude from their gross income subject to the
10 New Jersey gross income tax 50% of the gain on New Jersey assets
11 held for more than three years and 100% of the gain on New Jersey
12 assets held for more than five years.

13 The prospect of favorable tax treatment, allowing taxpayers to
14 exclude the gain on New Jersey assets from taxable income, will
15 provide an incentive for long-term investment in New Jersey. The bill
16 also allows the exclusion of the gains on New Jersey assets already
17 owned by taxpayers. Under current tax policy, gains are not taxed
18 until they are "realized" at the time of the sale of the asset. That
19 policy encourages taxpayers to retain assets they might otherwise sell,
20 so as to delay taxation. This bill grants a tax exclusion for long term
21 New Jersey asset gains, removing the tax incentive for holding on to
22 an asset and allowing assets to be sold for the purely economic reasons
23 of putting them to their best use.

24 The stimulation to economic transactions provided by this bill will
25 lead to an immediate break in the stagnation of the New Jersey
26 economy. The continued long term investment that this bill will
27 encourage will provide the foundation for business, and business
28 employment, for New Jersey's future.

29

30

31

32

33 Provides certain exclusions for New Jersey asset gains under the
34 corporation business tax and the gross income tax.