

[First Reprint]
SENATE, No. 2333

STATE OF NEW JERSEY

INTRODUCED DECEMBER 11, 1997

By Senators MARTIN and LITTELL

1 AN ACT exempting certain sales by municipal electric utilities from
2 sales tax and exempting municipal electric utilities and rural electric
3 cooperatives from corporation business tax, amending P.L.1945,
4 c.162 and P.L.1997, c.162.

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

8
9 1. Section 3 of P.L.1945, c.162 (C.54:10A-3) is amended to read
10 as follows:

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

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

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

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

27 (d) Cemetery corporations not conducted for pecuniary profit or
28 any private shareholder or individual;

29 (e) Nonprofit corporations, associations or organizations
30 established, organized or chartered, without capital stock, under the
31 provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of

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 December 15, 1997.

1 the New Jersey Statutes or under a special charter or under any similar
2 general or special law of this or any other State, and not conducted for
3 pecuniary profit of any private shareholders or individual;

4 (f) Sewerage and water corporations subject to a tax under the
5 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) or any statute or
6 law imposing a similar tax or taxes;

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

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

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

31 (j) Municipal electric corporations or utilities, and rural, electric
32 cooperatives which are exclusively owned and controlled by the
33 consumers they serve, that are in existence as of January 1, 1995 [and
34 were exempt from tax under the provisions of P.L.1940, c.5
35 (C.54:30A-49 et seq.)].

36 (cf: P.L.1997, c.162, s.1)

37

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

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

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

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

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

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

33 In the case of banking corporations which have international
34 banking facilities as defined in subsection (n), the foregoing aggregate
35 of values shall also be reduced by retained earnings of the international
36 banking facility. Retained earnings means the earnings accumulated
37 over the life of such facility and shall not include the distributive share
38 of dividends paid and federal income taxes paid or payable during the
39 tax year.

40 If in the opinion of the commissioner, the corporation's books do
41 not disclose fair valuations the commissioner may make a reasonable
42 determination of the net worth which, in his opinion, would reflect the
43 fair value of the assets, exclusive of subsidiary investments as defined
44 aforesaid, carried on the books of the corporation, in accordance with
45 sound accounting principles, and such determination shall be used as
46 net worth for the purpose of this act.

1 (e) "Indebtedness owing directly or indirectly" shall include,
2 without limitation thereto, all indebtedness owing to any stockholder
3 or shareholder and to members of his immediate family where a
4 stockholder and members of his immediate family together or in the
5 aggregate own 10% or more of the aggregate outstanding shares of
6 the taxpayer's capital stock of all classes.

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

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

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

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

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

32 (k) "Entire net income" shall mean total net income from all
33 sources, whether within or without the United States, and shall include
34 the gain derived from the employment of capital or labor, or from both
35 combined, as well as profit gained through a sale or conversion of
36 capital assets. For the purpose of this act, the amount of a taxpayer's
37 entire net income shall be deemed prima facie to be equal in amount to
38 the taxable income, before net operating loss deduction and special
39 deductions, which the taxpayer is required to report to the United
40 States Treasury Department for the purpose of computing its federal
41 income tax; provided, however, that in the determination of such entire
42 net income,

43 (1) Entire net income shall exclude for the periods set forth in
44 paragraph (2)(F)(i) of this subsection, any amount, except with respect
45 to qualified mass commuting vehicles as described in section
46 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately

1 prior to January 1, 1984, which is included in a taxpayer's federal
2 taxable income solely as a result of an election made pursuant to the
3 provisions of paragraph (8) of that section.

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

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

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

12 (C) Taxes paid or accrued to the United States, a possession or
13 territory of the United States, a state, a political subdivision thereof,
14 or the District of Columbia on or measured by profits or income, or
15 business presence or business activity, or the tax imposed by this act,
16 or any tax paid or accrued with respect to subsidiary dividends
17 excluded from entire net income as provided in paragraph (5) of
18 subsection (k) of this section;

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

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

21 (F) (i) The amount by which depreciation reported to the United
22 States Treasury Department for property placed in service on and after
23 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
24 years beginning on and after the effective date of P.L.1993, c.172, for
25 purposes of computing federal taxable income in accordance with
26 section 168 of the Internal Revenue Code in effect after December 31,
27 1980, exceeds the amount of depreciation determined in accordance
28 with the Internal Revenue Code provisions in effect prior to January
29 1, 1981, but only with respect to a taxpayer's accounting period ending
30 after December 31, 1981; provided, however, that where a taxpayer's
31 accounting period begins in 1981 and ends in 1982, no modification
32 shall be required with respect to this paragraph (F) for the report filed
33 for such period with respect to property placed in service during that
34 part of the accounting period which occurs in 1981. The provisions
35 of this subparagraph shall not apply to assets placed in service prior to
36 January 1, 1998 of a gas, gas and electric, and electric public utility
37 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
38 seq.) prior to 1998.

39 (ii) For the periods set forth in subparagraph (F)(i) of this
40 subsection, any amount, except with respect to qualified mass
41 commuting vehicles as described in section 168(f)(8)(D)(v) of the
42 Internal Revenue Code as in effect immediately prior to January 1,
43 1984, which the taxpayer claimed as a deduction in computing federal
44 income tax pursuant to a qualified lease agreement under paragraph
45 (8) of that section.

46 The director shall promulgate rules and regulations necessary to

1 carry out the provisions of this section, which rules shall provide,
2 among others, the manner in which the remaining life of property shall
3 be reported.

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

21 (ii) The amount of treble damages paid to the Department of
22 Environmental Protection pursuant to subsection a. of section 7 of
23 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
24 department in removing, or arranging for the removal of, an
25 unauthorized discharge upon failure of the discharger to comply with
26 a directive from the department to remove, or arrange for the removal
27 of, the discharge.

28 (H) The amount of any sales and use tax paid by a utility vendor
29 pursuant to section 71 of P.L.1997, c.162.

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

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

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

41 (B) Eligible gross income shall be the gross income derived by an
42 international banking facility, which shall include, but not be limited to,
43 gross income derived from:

44 (i) Making, arranging for, placing or carrying loans to foreign
45 persons, provided, however, that in the case of a foreign person which
46 is an individual, or which is a foreign branch of a domestic corporation

1 (other than a bank), or which is a foreign corporation or foreign
2 partnership which is controlled by one or more domestic corporations
3 (other than banks), domestic partnerships or resident individuals, all
4 the proceeds of the loan are for use outside of the United States;

5 (ii) Making or placing deposits with foreign persons which are
6 banks or foreign branches of banks (including foreign subsidiaries) or
7 foreign branches of the taxpayers or with other international banking
8 facilities;

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

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

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

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

23 (6) (A) Net operating loss deduction. There shall be allowed as a
24 deduction for the taxable year the net operating loss carryover to that
25 year.

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

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

43 (D) Change in ownership. Where there is a change in 50% or more
44 of the ownership of a corporation because of redemption or sale of
45 stock and the corporation changes the trade or business giving rise to
46 the loss, no net operating loss sustained before the changes may be

1 carried over to be deducted from income earned after such changes.
2 In addition where the facts support the premise that the corporation
3 was acquired under any circumstances for the primary purpose of the
4 use of its net operating loss carryover, the director may disallow the
5 carryover.

6 (7) The entire net income of gas, electric and gas and electric
7 public utilities [and municipal electric corporations] that were subject
8 to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to
9 1998, shall be adjusted by substituting the New Jersey depreciation
10 allowance for federal tax depreciation with respect to assets placed in
11 service prior to January 1, 1998. For gas, electric, and gas and electric
12 public utilities [, and municipal electric corporations] that were subject
13 to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to
14 1998, the New Jersey depreciation allowance shall be computed as
15 follows: All depreciable assets placed in service prior to January 1,
16 1998 shall be considered a single asset account. The New Jersey tax
17 basis of this depreciable asset account shall be an amount equal to the
18 carryover adjusted basis for federal income tax purposes on December
19 31, 1997 of all depreciable assets in service on December 31, 1997,
20 increased by the excess, of the "net carrying value," defined to be
21 adjusted book basis of all assets and liabilities, excluding deferred
22 income taxes, recorded on the public utility's books of account on
23 December 31, 1997, over the carryover adjusted basis for federal
24 income tax purposes on December 31, 1997 of all assets and liabilities
25 owned by the gas, electric, or gas and electric public utility [or
26 municipal electric corporation] as of December 31, 1997. "Books of
27 account" for gas, gas and electric, and electric public utilities [and
28 municipal electric corporations] means the uniform system of accounts
29 as promulgated by the Federal Energy Regulatory Commission and
30 adopted by the Board of Public Utilities. The following adjustments
31 to entire net income shall be made pursuant to this section:

32 (A) Depreciation for property placed in service prior to January 1,
33 1998 shall be adjusted as follows:

34 (i) Depreciation for federal income tax purposes shall be
35 disallowed in full.

36 (ii) A deduction shall be allowed for the New Jersey depreciation
37 allowance. The New Jersey depreciation allowance shall be computed
38 for the single asset account described above based on the New Jersey
39 tax basis as adjusted above as if all assets in the single asset account
40 were first placed in service on January 1, 1998. Depreciation shall be
41 computed using the straight line method over a thirty-year life. A full
42 year's depreciation shall be allowed in the initial tax year. No half-year
43 convention shall apply. The depreciable basis of the single account
44 shall be reduced by the adjusted federal tax basis of assets sold,
45 retired, or otherwise disposed of during any year on which gain or loss
46 is recognized for federal income tax purposes as described in

1 subparagraph (B) of this paragraph.

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

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

10 (8) In the case of taxpayers that are gas, electric, gas and electric,
11 or telecommunication public utilities as defined pursuant to subsection
12 (q) of this section, the director shall have authority to promulgate rules
13 and issue guidance correcting distortions and adjusting timing
14 differences resulting from the adoption of P.L.1997, c.162
15 (C.54:10A-5.25 et al.).

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

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

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

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

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

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

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

36 (cf: P.L.1997, c.162, s.2)

37

38 3. Section 3 of P.L.1997, c.162 (C.54:10A-5.25) is amended to
39 read as follows:

40 3. a. Gas, electric, gas and electric and telecommunications [and
41 municipal electric corporations] public utilities that were subject to a
42 public utility tax either pursuant to P.L.1940, c.5 (C.54:30A-17 et
43 seq.) or P.L.1940, c.4 (C.54:30A-49 et seq.) as of December 31, 1996,
44 shall be required to file and remit installment payments of estimated
45 corporation business tax pursuant to the provisions of subsection (f)
46 of section 15 of P.L.1945, c.162 (C.54:10A-15) during the calendar

1 year in which those taxpayers first become subject to the corporation
2 business tax, provided however, that the provisions of subsection d. of
3 section 5 of P.L.1981, c.184 (C.54:10A-15.4) shall not apply to those
4 taxpayers during that year.

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

21 c. All amounts remitted under P.L.1945, c.162 by any gas, electric,
22 gas and electric or telecommunication public utility [or municipal
23 electric corporation] shall be separately accounted for by the State
24 Treasurer.

25 d. A public utility [, including a municipal electric corporation]
26 with gas, electric or telecommunications operations or any of them
27 shall file with the Board of Public Utilities amendments to its existing
28 tariffs, contracts or schedules of service designating the appropriate
29 apportionment of its corporation business tax liability in these tariffs,
30 contracts or schedules so that rates will not be increased for any class
31 of ratepayer as a result of the transition to this tax. The board may
32 permit gas, electric, gas and electric or telecommunications public
33 utilities [or municipal electric corporations] to establish new tariffs,
34 contracts or schedules, or to amend existing tariffs, contracts or
35 schedules, as necessary to comply with the provisions of this act.

36 e. A qualified taxpayer may claim a corporation business tax credit
37 in accordance with the provisions of section 53 of P.L.1997, c.162
38 (C.54:30A-117) and for local energy utility franchise taxes paid and
39 subject to the limitations of subparagraph (C) of paragraph (2) of
40 subsection (k) of section 4 of P.L.1945, c.162 (C. 54:10A-4).

41 f. [A municipal electric corporation or utility that is required to file
42 a corporation business tax return that is not required to file a federal
43 corporation tax return shall file with the director a pro-forma federal
44 corporation tax return at the same time it files its corporation business
45 tax return. The director may promulgate rules and regulations and
46 issue guidance with respect to all issues related to the pro-forma

1 federal corporation tax return.] Deleted by amendment, P.L. . . . , c.
2 (now pending before the Legislature as this bill).
3 (cf: P.L.1997, c.162, s.3)

4
5 4. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended to
6 read as follows:

7 26. a. Receipts from the sale, exchange, delivery or use of
8 electricity are exempt from the tax imposed under the Sales and Use
9 Tax Act if the electricity:

10 (1) Is sold by a municipal electric utility in existence as of
11 December 31, 1995 [and exempt from the provisions of P.L.1940, c.5
12 (C.54:30A-49 et seq.)], within its municipal boundaries ¹or by a rural
13 electric cooperative¹ except if the customer is located within a
14 franchise area served by an electric public utility other than the
15 municipal electric utility ¹or rural electric cooperative¹ ;

16 (2) Was generated by a facility located on the user's property or
17 property purchased or leased from the user by the person owning the
18 co-generator and such property is contiguous to the user's property,
19 and the electricity was consumed by the one on-site end user on the
20 user's property, and was not transported to the user over wires that
21 cross a property line or public thoroughfare unless the property line or
22 public thoroughfare merely bifurcated the user's or co-generator
23 owner's otherwise contiguous property or the electricity was
24 consumed by an affiliated user on the same site, or by a non-affiliated
25 user on the same site with an electric distribution system which is
26 integrated and interconnected with the user on or before March 10,
27 1997; the director may promulgate rules and regulations and issue
28 guidance with respect to all issues related to affiliated users; or

29 (3) Is sold for resale.

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

32 (1) Natural gas or utility service that is used to generate electricity
33 that is sold for resale or to an end user other than the end user upon
34 whose property is located a co-generation facility or self-generation
35 unit that generated the electricity or upon the property purchased or
36 leased from the end user by the person owning the co-generation
37 facility or self-generation unit if such property is contiguous to the
38 user's property and is the property upon which is located a
39 co-generation facility or self-generation unit that generated the
40 electricity; and

41 (2) Natural gas and utility service that is used for co-generation at
42 any site at which a co-generation facility was in operation on or before
43 March 10, 1997, or for which an application for an operating permit
44 or a construction permit and a certificate of operation in order to
45 comply with air quality standards under P.L.1954, c.212 (C.26:2C-1
46 et seq.) has been filed with the Department of Environmental

1 Protection on or before March 10, 1997, to produce electricity for use
2 on that site.
3 (cf: P.L.1997, c.162, s.26)

4

5 5. This act shall take effect January 1, 1998 and if enacted after
6 that date shall be retroactive to that date.

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11 Exempts certain sales by municipal electric utilities from sales tax and
12 municipal electric utilities and rural electric cooperatives from
13 corporation business tax.