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## New Jersey State Legislature

### JOINT LEGISLATIVE COMMITTEE ON ECONOMIC RECOVERY

LEGISLATIVE OFFICE BUILDING, CN-068

TRENTON, NJ 08625-0068

(609) 984-7381

### COMMITTEE NOTICE

TO: MEMBERS OF THE JOINT LEGISLATIVE COMMITTEE ON  
ECONOMIC RECOVERY

FROM: SENATOR JACK SINAGRA, CHAIRPERSON  
ASSEMBLYWOMAN HARRIET DERMAN,  
VICE-CHAIRPERSON

SUBJECT: COMMITTEE MEETING - June 2, 1993

*The public may address comments and questions to Christopher R. Berry,  
Committee Aide, or make bill status and scheduling inquiries to Sharon  
Constantini, secretary, at (609) 984-7381.*

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The Joint Legislative Committee on Economic Recovery will meet on  
Wednesday, June 2, 1993 at 10:00 AM in Room 319 of the State House,  
Trenton, New Jersey.

The following bills will be considered:

|                                             |                                                                                                                                                   |
|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| S-1784<br>DiFrancesco                       | Allows corporation business tax<br>credit or property tax offset for<br>certain investments that create<br>new jobs in this State.                |
| A-2475<br>Corodemus/<br>Derman              | Allows corporation business tax<br>for small business investment in<br>new or expanded business facilities<br>that create new jobs in this State. |
| S-1820<br>Sinagra<br>A-2675<br>Warsh/Haines | Manufacturing Equipment and<br>Employment Investment Tax Credit Act.                                                                              |

(OVER)

Issued 5/25/93

# Committee Meeting

of

JOINT LEGISLATIVE COMMITTEE ON ECONOMIC RECOVERY

SENATE BILL Nos. 1784, 1820, 1821, 1824, 19, 219

and

ASSEMBLY BILL Nos. 2475, 2675, 273, 1870, 1015

(Bills Dealing With Business and Corporation Taxes)

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LOCATION: Room 319  
State House  
Trenton, New Jersey

DATE: June 2, 1993  
10:20 a.m.

## MEMBERS OF JOINT COMMITTEE PRESENT:

Senator Jack Sinagra, Chairperson  
Assemblywoman Harriet Derman, Vice-Chairperson  
Senator John O. Bennett  
Senator Peter Inverso  
Senator John H. Adler  
Assemblyman Jose F. Sosa  
Assemblywoman Barbara Wright



## ALSO PRESENT:

Christopher R. Berry  
Office of Legislative Services  
Aide, Joint Legislative Committee  
on Economic Recovery

### ***Hearing Recorded and Transcribed by***

The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, CN 068, Trenton, New Jersey 08625

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|                                               |                                                                                                                                                                |
|-----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| S-1821<br>Bennett                             | Permits corporations to use federal modified accelerated depreciation for certain property under the corporation business tax.                                 |
| A-273<br>Penn/Kavanaugh<br>(Proposed ACS)     | Exempts subchapter S corporations from the corporation business tax                                                                                            |
| A-1870<br>Derman<br>(Proposed ACS)            | Provides special corporation business tax rate for electing subchapter S corporations.                                                                         |
| S-1824<br>Inverso/<br>Adler<br>(Proposed SCS) | Provides special corporation business tax rate for electing subchapter S corporations.                                                                         |
| S-19<br>Haines<br>(Proposed SCS)              | Adopts certain federal income tax treatment of Subchapter S corporations under corporation business tax, and of their shareholders under the gross income tax. |
| A-1015<br>Catania/Zecker                      | Repeals the "Business Personal Property Tax Act."                                                                                                              |
| S-219<br>Littell                              | Repeals the "Business Personal Property Tax Act."                                                                                                              |

Copies of the proposed SCS for S-1824/S-19 and of the proposed ACS for A-273/A-1870 may be obtained in Room 319 of the Legislative Office Building after 12 Noon on Tuesday, June 1, 1993.

SENATE, No. 1784  
STATE OF NEW JERSEY

INTRODUCED MAY 13, 1993

By Senator DiFRANCESCO

1 AN ACT providing a credit against corporation business tax  
2 liability and allowed in certain cases as a property tax offset  
3 for investment in certain new or expanded business facilities  
4 that create new jobs in this State, supplementing P.L.1945,  
5 c.162 (C.54:10A-1 et seq.).  
6

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

9 1. This act shall be known and may be cited as the "New Jobs  
10 Investment Tax Credit Act."

11 2. As used in this act:

12 "Business relocation or expansion" means capital investment in  
13 a new or expanded business facility in this State.

14 "Business facility" means any factory, mill, plant, refinery,  
15 warehouse, building, complex of buildings or structural  
16 components of buildings, and all machinery, equipment and  
17 personal property located within this State, used in connection  
18 with the operation of the business of a corporation that is subject  
19 to the tax imposed pursuant to section 5 of P.L.1945, c.162  
20 (C.54:10A-5), and all facility preparation and start-up costs of  
21 the taxpayer for the business facility which it capitalizes for  
22 federal income tax purposes.

23 "Compensation" means wages, salaries, commissions or any  
24 other form of remuneration paid to employees for personal  
25 services.

26 "Controlled group" means one or more chains of corporations  
27 connected through stock ownership with a common parent  
28 corporation if stock possessing at least 50% of the voting power  
29 of all classes of stock of each of the corporations is owned  
30 directly or indirectly by one or more of the corporations; and the  
31 common parent owns directly stock possessing at least 50% of the  
32 voting power of all classes of stock of at least one of the other  
33 corporations.

34 "Director" means the Director of the Division of Taxation in  
35 the Department of the Treasury.

36 "Expanded business facility" means any business facility, other  
37 than a new business facility, resulting from acquisition,  
38 construction, reconstruction, installation or erection of  
39 improvements or additions to existing property if such  
40 improvements or additions are purchased on or after the  
41 operative date of this act, but only to the extent of a taxpayer's  
42 qualified investment in such improvements or additions.

43 "New business facility" means a business facility which:

44 a. is employed by a taxpayer in the conduct of a business  
45 which is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et  
46 seq.). Such facility shall not be considered a new business facility

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1 in the hands of a taxpayer if the taxpayer's only activity with  
2 respect to such facility is to lease it to another person;

3 b. is purchased by a taxpayer and is placed in service or use on  
4 or after the operative date of this act;

5 c. was not purchased by a taxpayer from a related person. The  
6 director may waive this requirement if the facility was acquired  
7 from a related person for its fair market value and the  
8 acquisition was not tax motivated;

9 d. was not in service or use during the 90 day period  
10 immediately prior to transfer of the title to the facility, provided  
11 that this restriction for the 90 day period may be waived by the  
12 director if the director determines that individuals employed at  
13 the facility may be considered as "new employees" as defined in  
14 this section.

15 "New employee" means an individual residing and domiciled in  
16 this State, hired by a taxpayer to fill a position or a job in this  
17 State which previously did not exist in the taxpayer's business  
18 enterprise in this State prior to the date on which the taxpayer's  
19 qualified investment is placed in service or use in this State  
20 provided that:

21 a. the individual's duties in connection with the operation of  
22 the business facility are on a regular, full-time and permanent  
23 basis or regular part-time and permanent basis;

24 b. the individual is not a related individual as defined in  
25 subsection (i) of section 51 of the federal Internal Revenue Code  
26 of 1986, 26 U.S.C. §51, or does not own 10% or more of the  
27 business with such ownership interest to be determined under the  
28 rules set forth in section 267 of the federal Internal Revenue  
29 Code of 1986, 26 U.S.C. §267;

30 c. the individual is not an individual who worked for the  
31 taxpayer during the six month period ending on the date the  
32 taxpayer's qualified investment is placed in service or use and is  
33 rehired by the taxpayer during the six month period beginning on  
34 the date the taxpayer's qualified investment is placed in service  
35 or use in this State; and

36 d. the individual is not an employee for whom the taxpayer is  
37 allowed a credit pursuant to section 19 of P.L.1983, c.303  
38 (C.52:27H-78) or section 12 of P.L.1985, c.227 (C.55:19-13).

39 As used in this definition: "full-time" means employment for at  
40 least 140 hours per month at a wage not less than the State or  
41 federal minimum wage, if either minimum wage provision is  
42 applicable to the business and "permanent basis" does not include  
43 employment that is temporary or seasonal and therefore the  
44 compensation paid to temporary or seasonal employees will not  
45 be considered for purposes of sections 4 and 6 of this act; and  
46 "part-time" means customarily performing such duties at least  
47 20 hours per week for at least six months during the tax year. In  
48 no event shall the number of new employees directly attributable  
49 to the qualified investment for the purpose of the credit allowed  
50 pursuant to this act exceed the total increase in the taxpayer's  
51 average employment in this State for the tax year over the  
52 average employment in this State for the previous tax year and in  
53 no event shall the number of new employees directly attributable  
54 to the qualified investment for the purpose of the credit allowed

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1 pursuant to this act exceed one half of the average employment  
2 in this State for the tax year; and provided, that the director may  
3 require that the net increase in the taxpayer's employment in  
4 this State be determined and certified for the taxpayer's  
5 controlled group.

6 Provided further, however, that individuals filling jobs saved as  
7 a direct result of taxpayer's qualified investment in property  
8 purchased for business relocation or expansion on or after the  
9 operative date of this act may be treated as new employees  
10 filling new jobs if the taxpayer certifies the material facts to the  
11 director and the director expressly finds that: but for the new  
12 employer purchasing the assets of a business in bankruptcy under  
13 chapter 7 or 11 of the United States Bankruptcy Code and such  
14 new employer making qualified investment in property purchased  
15 for business relocation or expansion, the assets would have been  
16 sold by the United States bankruptcy court in a liquidation sale  
17 and the jobs so saved would have been lost; or but for taxpayer's  
18 qualified investment in property purchased for business relocation  
19 or expansion in this State, the business facility in this State would  
20 have closed and the employees located at the facility would have  
21 lost their jobs; provided that the director shall not make this  
22 certification unless the director finds that the business is  
23 insolvent as defined in paragraph (32) of 11 U.S.C. §101 or that  
24 the business facility was destroyed in whole or in significant part  
25 by fire, flood or act of God.

26 "New job" means a job which did not exist in the business of  
27 the taxpayer in this State prior to the taxpayer's qualified  
28 investment being made, and which is filled by a new employee.

29 "Partnership" means a syndicate, group, pool, joint venture or  
30 other unincorporated organization through or by means of which  
31 any business, financial operation or venture is carried on, and  
32 which is not a trust or estate, a corporation or a sole  
33 proprietorship. The term "partner" includes a member in such a  
34 syndicate, group, pool, joint venture or organization.

35 "Property purchased for business relocation or expansion"  
36 means improvements to real property and tangible personal  
37 property, but only if that improvement or personal property was  
38 constructed or purchased and placed in service or use by the  
39 taxpayer, for use as a component part of a new or expanded  
40 business facility located in this State.

41 a. Property purchased for business relocation or expansion  
42 shall include only:

43 (1) improvements to real property placed in service or use on  
44 or after the operative date of this act by the taxpayer;

45 (2) tangible personal property placed in service or use by the  
46 taxpayer on or after the operative date of this act, with respect  
47 to which depreciation, or amortization in lieu of depreciation, is  
48 allowable in determining the corporation business tax liability of  
49 the taxpayer under P.L.1945, c.162, and which has a remaining  
50 recovery period of three or more years at the time the property  
51 is placed in service or use in this State; or

52 (3) tangible personal property owned and used by the taxpayer  
53 at a business location outside this State which is moved into this  
54 State on or after the operative date of this act, for use as a

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1 component part of a new or expanded business facility located in  
2 this State; provided that the property is depreciable or  
3 amortizable personal property for income tax purposes, and has a  
4 remaining recovery period of three or more years at the time the  
5 property is placed in service or use in this State.

6 b. Property purchased for business relocation or expansion  
7 shall not include:

8 (1) Repair costs, including materials used in the repair, unless  
9 for federal income tax purposes, the cost of the repair must be  
10 capitalized and not expensed;

11 (2) Airplanes;

12 (3) Property which is primarily used outside this State with  
13 that use being determined based upon the amount of time the  
14 property is actually used both within and without this State;

15 (4) Property which is acquired incident to the purchase of the  
16 stock or assets of the seller unless for good cause shown, the  
17 director consents to waiving this disqualification; or

18 (5) Property purchased on or after the operative date of this  
19 act, unless pursuant to a written contract to purchase executed  
20 prior to the operative date of this act, the cost or consideration  
21 for which cannot be quantified with any reasonable degree of  
22 accuracy at the time such property is placed in service or use;  
23 provided that if the contract of purchase specifies a minimum  
24 purchase price the amount thereof shall be used to determine the  
25 qualified investment in such property under section 5 of this act  
26 if the property otherwise qualifies as property purchased for  
27 business relocation or expansion.

28 c. Property shall be deemed to have been purchased prior to a  
29 specified date only if:

30 (1) the physical construction, reconstruction or erection of the  
31 property was begun prior to the specified date, or such property  
32 was constructed, reconstructed, erected or acquired pursuant to a  
33 written contract as existing and binding on the purchase prior to  
34 the specified date; or

35 (2) the machinery or equipment was owned by the taxpayer  
36 prior to the specified date, or was acquired by the taxpayer  
37 pursuant to a binding purchase contract which was in effect prior  
38 to the specified date.

39 "Purchase" means any acquisition of property, including an  
40 acquisition pursuant to a lease, but only if:

41 a. the property is not acquired from a person whose  
42 relationship to the person acquiring it would result in the  
43 disallowance of deductions under section 267 or subsection (b) of  
44 section 707 of the federal Internal Revenue Code of 1986, 26  
45 U.S.C. §267 or §707.

46 b. the property is not acquired by one member of a controlled  
47 group from another member of the same controlled group. The  
48 director may waive this requirement if the property was acquired  
49 from a related party for its then fair market value; and

50 c. the basis of the property for federal income tax purposes, in  
51 the hands of the person acquiring it, is not determined:

52 (1) in whole or in part by reference to the federal adjusted  
53 basis of such property in the hands of the person from whom it  
54 was acquired; or

1 (2) under subsection (e) of section 1014 of the federal Internal  
2 Revenue Code of 1986, 26 U.S.C. §1014.

3 "Related person" means:

4 a. a corporation, partnership, association or trust controlled by  
5 the taxpayer;

6 b. an individual, corporation, partnership, association or trust  
7 that is in control of the taxpayer;

8 c. a corporation, partnership, association or trust controlled by  
9 an individual, corporation, partnership, association or trust that is  
10 in control of the taxpayer; or

11 d. a member of the same controlled group as the taxpayer.

12 As used in the definition of related person and as is applicable  
13 to the definitions of purchase and small business taxpayer,  
14 "control," with respect to a corporation, means ownership,  
15 directly or indirectly, of stock possessing 50% or more of the  
16 total combined voting power of all classes of the stock of the  
17 corporation entitled to vote; "control," with respect to a trust,  
18 means ownership, directly or indirectly, of 50% or more of the  
19 beneficial interest in the principal or income of the trust. The  
20 ownership of stock in a corporation, of a capital or profits  
21 interest in a partnership or association or of a beneficial interest  
22 in a trust shall be determined in accordance with the rules for  
23 constructive ownership of stock provided in subsection (c) of  
24 section 267 of the federal Internal Revenue Code of 1986,  
25 26 U.S.C. §267, other than paragraph (3) of subsection (c) of that  
26 section.

27 "Small business taxpayer" means a taxpayer that has an annual  
28 payroll of \$2,000,000 or less and annual gross receipts of not  
29 more than \$6,000,000 for the tax year in which property  
30 purchased for business relocation or expansion is placed in service  
31 or use by the taxpayer; provided that beginning with tax years  
32 commencing on and after January 1 next following the operative  
33 date of this act the director shall prescribe the amount of annual  
34 payroll and annual gross receipts which shall apply by increasing  
35 each such amount hereinabove by an annual inflation adjustment  
36 factor, which prescribed amount shall be rounded to the next  
37 lowest multiple of \$50. "Annual inflation adjustment factor"  
38 means the factor calculated by dividing the consumer price index  
39 for urban wage earners and clerical workers for the nation, as  
40 prepared by the United States Department of Labor for  
41 September of the calendar year prior to the calendar year in  
42 which the tax year begins, by that index for September of the  
43 calendar year two years prior to the calendar year in which the  
44 tax year begins. The annual payroll of a taxpayer shall include  
45 the employees of its domestic and foreign affiliates, whether  
46 employed on a full-time, part-time, temporary, or other basis,  
47 during the preceding 12 months. If a taxpayer has not been in  
48 existence for 12 months, the payroll of the taxpayer shall be  
49 divided by the number of weeks, including fractions of a week,  
50 that it has been in business, and the result multiplied by 52. That  
51 amount shall then be added to the 12 month payrolls of its  
52 domestic and foreign affiliates to determine the annual payroll of  
53 the taxpayer for purposes of this definition. The annual gross  
54 receipts of a taxpayer shall include the annual gross receipts of

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1 its foreign and domestic affiliates. The annual gross receipts of a  
2 taxpayer which has been in business for three or more complete  
3 tax years means the average of the annual gross receipts of the  
4 business for the last three tax years. For purposes of this  
5 definition, the gross receipts of the taxpayer includes receipts  
6 from sales of tangible personal property and services, interests,  
7 rents, royalties, fees, commissions and receipts from any other  
8 source, but less returns and allowances, sales of fixed assets,  
9 interaffiliated transactions between a business and its domestic  
10 and foreign affiliates, and taxes collected for remittance to a  
11 third party, as shown on its books for federal income tax  
12 purposes. The annual receipts of a taxpayer that has been in  
13 business for less than three complete tax years means its total  
14 receipts for the period it has been in business, divided by the  
15 number of weeks including fractions of a week that it has been in  
16 business, and multiplied by 52. "Affiliates" includes all concerns  
17 that are affiliates of each other when either directly or indirectly  
18 one concern controls the other or a third party or parties controls  
19 both. In determining whether concerns are independently owned  
20 and operated and whether or not affiliation exists, the director  
21 shall consider all appropriate factors, including common  
22 ownership, common management and contractual relationships.  
23 "Concern" means any business entity organized for profit (even if  
24 its ownership is in the hands of a nonprofit entity), having a place  
25 of business located in this State, and which makes a contribution  
26 to the economy of this State through payment of taxes, or the  
27 sale or use in this State of tangible personal property, or the  
28 procurement or providing of services in this State, or the hiring  
29 of employees who work in this State. "Concern" includes but is  
30 not limited to any person as defined in R.S.1:1-2.

31 "Tax year" means the fiscal or calendar accounting year of a  
32 taxpayer.

33 3. a. A taxpayer shall be allowed a credit against the portion  
34 of the tax imposed in section 5 of P.L.1945, c.162 (C.54:10A-5),  
35 that is attributable to and the direct consequence of the  
36 taxpayer's qualified investment in a new or expanded business  
37 facility in this State which results in the creation of at least 5  
38 new jobs in the case of a small business taxpayer or at least 50  
39 new jobs in the case of any other taxpayer, provided that the  
40 median compensation of all new jobs included in the taxpayer's  
41 determination of the new jobs factor shall not be less than  
42 \$27,000 per year, provided that beginning with tax years  
43 commencing on and after January 1 next following the operative  
44 date of this act the director shall adjust the median annual  
45 compensation which shall apply as provided in subsection e. of  
46 this section. The amount of this credit shall be determined and  
47 applied as hereinafter provided.

48 b. The amount of the credit allowed shall be determined by  
49 multiplying the amount of the taxpayer's "qualified investment,"  
50 determined under section 5 of this act, in "property purchased for  
51 business relocation or expansion" by the taxpayer's new jobs  
52 factor determined under section 6 of this act. The product of  
53 this calculation shall establish the maximum amount of credit  
54 allowed under this act due to the qualified investment.

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1 its foreign and domestic affiliates. The annual gross receipts of a  
2 taxpayer which has been in business for three or more complete  
3 tax years means the average of the annual gross receipts of the  
4 business for the last three tax years. For purposes of this  
5 definition, the gross receipts of the taxpayer includes receipts  
6 from sales of tangible personal property and services, interests,  
7 rents, royalties, fees, commissions and receipts from any other  
8 source, but less returns and allowances, sales of fixed assets,  
9 interaffiliated transactions between a business and its domestic  
10 and foreign affiliates, and taxes collected for remittance to a  
11 third party, as shown on its books for federal income tax  
12 purposes. The annual receipts of a taxpayer that has been in  
13 business for less than three complete tax years means its total  
14 receipts for the period it has been in business, divided by the  
15 number of weeks including fractions of a week that it has been in  
16 business, and multiplied by 52. "Affiliates" includes all concerns  
17 that are affiliates of each other when either directly or indirectly  
18 one concern controls the other or a third party or parties controls  
19 both. In determining whether concerns are independently owned  
20 and operated and whether or not affiliation exists, the director  
21 shall consider all appropriate factors, including common  
22 ownership, common management and contractual relationships.  
23 "Concern" means any business entity organized for profit (even if  
24 its ownership is in the hands of a nonprofit entity), having a place  
25 of business located in this State, and which makes a contribution  
26 to the economy of this State through payment of taxes, or the  
27 sale or use in this State of tangible personal property, or the  
28 procurement or providing of services in this State, or the hiring  
29 of employees who work in this State. "Concern" includes but is  
30 not limited to any person as defined in R.S.1:1-2.

31 "Tax year" means the fiscal or calendar accounting year of a  
32 taxpayer.

33 3. a. A taxpayer shall be allowed a credit against the portion  
34 of the tax imposed in section 5 of P.L.1945, c.162 (C.54:10A-5),  
35 that is attributable to and the direct consequence of the  
36 taxpayer's qualified investment in a new or expanded business  
37 facility in this State which results in the creation of at least 5  
38 new jobs in the case of a small business taxpayer or at least 50  
39 new jobs in the case of any other taxpayer, provided that the  
40 median compensation of all new jobs included in the taxpayer's  
41 determination of the new jobs factor shall not be less than  
42 \$27,000 per year, provided that beginning with tax years  
43 commencing on and after January 1 next following the operative  
44 date of this act the director shall adjust the median annual  
45 compensation which shall apply as provided in subsection e. of  
46 this section. The amount of this credit shall be determined and  
47 applied as hereinafter provided.

48 b. The amount of the credit allowed shall be determined by  
49 multiplying the amount of the taxpayer's "qualified investment,"  
50 determined under section 5 of this act, in "property purchased for  
51 business relocation or expansion" by the taxpayer's new jobs  
52 factor determined under section 6 of this act. The product of  
53 this calculation shall establish the maximum amount of credit  
54 allowed under this act due to the qualified investment.

1 c. The amount of credit allowed shall be taken over a five year  
2 period, at the rate of one-fifth of the amount thereof per tax  
3 year, beginning with the tax year in which the taxpayer places  
4 the qualified investment in service or use in this State.

5 d. For purposes of the credit allowed by this section, property  
6 shall be considered placed in service or use in the earlier of the  
7 following tax years:

8 (1) The tax year in which, under the taxpayer's depreciation  
9 practice, the period for depreciation with respect to such  
10 property begins; or

11 (2) The taxable year in which the property is placed in a  
12 condition or state of readiness and availability for a specifically  
13 assigned function.

14 e. Beginning with tax years commencing on and after  
15 January 1 next following the operative date of this act the  
16 director shall prescribe the annual median compensation of all  
17 new jobs included in the taxpayer's determination of new jobs  
18 factor by increasing the amount of median compensation set  
19 forth in subsection a. of this section by an annual inflation  
20 adjustment factor, which prescribed amount shall be rounded to  
21 the next lowest multiple of \$50. "Annual inflation adjustment  
22 factor" means the factor calculated by dividing the consumer  
23 price index for urban wage earners and clerical workers for the  
24 nation, as prepared by the United States Department of Labor for  
25 September of the calendar year prior to the calendar year in  
26 which the tax year begins, by that index for September of the  
27 calendar year two years prior to the calendar year in which the  
28 tax year begins.

29 4. a. The aggregate annual credit allowed for a tax year shall  
30 be an amount equal to the sum of:

31 (1) The one-fifth part allowed under section 3 for qualified  
32 investment placed into service or use during a prior tax year, plus

33 (2) The one-fifth part allowed under section 3 for qualified  
34 investment placed into service or use during the current tax year.

35 b. (1) The amount determined under subsection a. shall be  
36 allowed as a credit against that portion of the taxpayer's  
37 corporation business tax liability which is attributable to and the  
38 direct result of the taxpayer's qualified investment. The amount  
39 determined under subsection a. and allowed as a credit against  
40 the tax imposed pursuant to section 5 of P.L.1945, c.162, for a  
41 tax year shall not reduce that tax liability by more than 50% of  
42 that portion of the taxpayer's tax liability otherwise due for the  
43 tax year which is attributable to and the direct result of the  
44 taxpayer's qualified investment and shall not reduce the tax  
45 liability for the tax year to an amount less than the statutory  
46 minimum provided in subsection (e) of section 5 of P.L.1945,  
47 c.162.

48 (2) If any amount of credit determined under subsection a.  
49 remains after the amount allowed as a credit under the  
50 limitations of paragraph (1) of this subsection, that amount of  
51 credit remaining shall be refunded to the taxpayer. The amount  
52 refunded to the taxpayer shall not exceed 50% of the sum of the  
53 amount of property taxes timely paid in the taxable year pursuant  
54 to R.S.54:4-1 et seq. and the amount of implicit property taxes

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1 paid through rent or lease payments in respect of property  
2 taxable pursuant to R.S.54:4-1 et seq., and for which taxes  
3 another party that is not a related person is liable, which is  
4 attributable to and the direct result of the taxpayer's qualified  
5 investment.

6 c. (1) If the taxes due under section 5 of P.L.1945, c.162  
7 (determined before application of allowable credits against the  
8 tax), the sum of the amount of property taxes timely paid in the  
9 taxable year pursuant to R.S.54:4-1 et seq. and the amount of  
10 implicit property taxes paid through rent or lease payments in  
11 respect of property taxable pursuant to R.S.54:4-1 et seq., and  
12 for which taxes another party that is not a related person is  
13 liable, are not solely attributable to and the direct result of the  
14 taxpayer's qualified investment, the amount of those taxes which  
15 are so attributable shall be determined by multiplying the amount  
16 of taxes due under those acts for the tax year (determined before  
17 application of allowable credits against tax) by a fraction, the  
18 numerator of which is all compensation paid during the tax year  
19 to all employees of the taxpayer employed in this State whose  
20 positions are directly attributable to the qualified investment.  
21 The denominator of the fraction is the compensation paid during  
22 the taxable year to all employees of the taxpayer employed in  
23 this State.

24 (2) Any credits allowable under section 42 of P.L.1987, c.102  
25 (C.54:10A-5.3), section 19 of P.L.1983, c.303 (C.52:27H-78), and  
26 section 12 of P.L.1985, c.227 (C.55:19-13), shall be applied  
27 against and reduce only the amount of corporation business tax  
28 not apportioned to the qualified investment under this act.  
29 Provided, that any excess of those credits may be applied against  
30 the amount of corporation business tax apportioned to the  
31 qualified investment under this act that is not offset by the  
32 amount of annual credit against the tax allowed under this act for  
33 the tax year, unless their application is otherwise prohibited by  
34 P.L.1987, c.102, P.L.1983, c.303, or P.L.1985, c.227.

35 (3) If any credit for the tax year pursuant to this section  
36 remains after application of the provisions of subsections a. and  
37 b. of this section, the amount thereof shall be forfeited. No  
38 carryover to a subsequent tax year or carryback to a prior tax  
39 year shall be allowed for the amount of any unused portion of any  
40 annual credit allowance.

41 d. For the purposes of this act, "implicit property taxes"  
42 means 15% of the amount of the rent or lease payments made by  
43 the taxpayer in respect of property taxable pursuant to  
44 R.S.54:4-1 et seq., and for which taxes another party that is not a  
45 related person is liable.

46 5. a. The qualified investment in property purchased for  
47 business relocation or expansion shall be the applicable  
48 percentage of the cost of each property purchased for business  
49 relocation or expansion which is placed in service or use in this  
50 State by the taxpayer during the tax year. Provided, that only  
51 the cost of property purchased for business relocation or  
52 expansion placed in service or use in this State during the tax  
53 year for which the average value of the taxpayer's real and  
54 tangible personal property within the State as shall be determined

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9

1 pursuant to subsection (A) of section 6 of P.L.1945, c.162  
2 (C.54:10A-6), is greater than that average value for the previous  
3 tax year, shall be considered in determining qualified investment.

4 b. For the purpose of subsection a., the applicable percentage  
5 of any cost of property purchased for business relocation or  
6 expansion shall be determined under the following table:

| 7  |                                      |                |
|----|--------------------------------------|----------------|
| 8  |                                      | The applicable |
| 9  | If property has a:                   | percentage is: |
| 10 |                                      |                |
| 11 | 3 year recovery period .....         | 35%            |
| 12 | 5 year recovery period .....         | 70%            |
| 13 | 7 year or more recovery period ..... | 100%           |
| 14 |                                      |                |
| 15 |                                      |                |

16 The recovery period of any property, for purposes of this  
17 section, shall be determined as of the date such property is first  
18 placed in service or use in this State by the taxpayer, determined  
19 in accordance with section 168 of the federal Internal Revenue  
20 Code of 1986, 26 U.S.C. §168.

21 c. For purposes of subsection a., the cost of each property  
22 purchased for business relocation or expansion shall be  
23 determined under the following restrictions:

24 (1) cost shall not include the value of property given in trade  
25 or exchange for the property purchased for business relocation or  
26 expansion;

27 (2) if property is damaged or destroyed by fire, flood, storm or  
28 other casualty, or is stolen, the cost of replacement property  
29 shall not include any insurance proceeds received in compensation  
30 for the loss;

31 (3) in the case of self-constructed property, the cost thereof  
32 shall be the amount properly charged to the capital account for  
33 depreciation in accordance with federal income tax law; and

34 (4) the cost of property used by the taxpayer out-of-State and  
35 then brought into this State shall be determined based on the  
36 remaining recovery period of the property at the time it is placed  
37 in service or use in this State, and the cost shall be the original  
38 cost of the property to the taxpayer less straight line  
39 depreciation allowable for the tax years or portions thereof the  
40 taxpayer used the property outside this State.

41 (5) The cost of equipment acquired by written lease is the  
42 minimum amount required by the agreement, agreements,  
43 contract or contracts to be paid over the term of the lease,  
44 provided however, that the minimum amount shall not include any  
45 amount required to be paid, as determined by the director, after  
46 the expiration of the recovery period of the equipment.

47 d. No amount of cost for property the cost of which qualifies  
48 for the credit allowable under section 42 of P.L.1987, c.102  
49 (C.54:10A-5.3), or for the credits allowed under the  
50 "Manufacturing Equipment and Employment Investment Tax  
51 Credit Act," P.L. , c. (C. )(now pending before the  
52 Legislature as Senate, No. or Assembly, No. ), shall be  
53 allowed as qualified investment under this section.

54 6. a. The new jobs factor used to determine the amount of

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1 credit allowed under this act shall be based on the number of new  
2 jobs created in this State that are directly attributable to the  
3 qualified investment of the taxpayer.

4 b. (1) (a) For a taxpayer that is not a small business taxpayer,  
5 if 50 new jobs are created and filled during the tax year in which  
6 the qualified investment is placed in service or use in this State,  
7 the applicable new jobs factor shall be 0.005. For each 50  
8 additional new jobs over the initial 50, up to 1000 total new jobs,  
9 the applicable new jobs factor of 0.005 shall be increased by  
10 adding thereto 0.005, up to a maximum new jobs factor of 0.10.

11 (b) During each of the remaining four years of the five year  
12 credit period, the taxpayer shall redetermine the new jobs factor  
13 for the tax year on the annual return based on the average  
14 number of new employees employed in new jobs during that tax  
15 year (determined on a monthly basis) created as the direct result  
16 of taxpayer's qualified investment.

17 (2) (a) For a taxpayer that is a small business taxpayer, if 5  
18 new jobs are created and filled during the tax year in which the  
19 qualified investment is placed in service or use in this State, the  
20 applicable new jobs factor shall be 0.005. For each 5 additional  
21 new jobs over the initial 5, up to 100 total new jobs, the  
22 applicable new jobs factor of 0.005 shall be increased by adding  
23 thereto 0.005, up to a maximum new jobs factor of 0.10.

24 (b) During each of the remaining four years of the five year  
25 credit period, the taxpayer shall redetermine the new jobs factor  
26 for the tax year on the annual return based on the average  
27 number of new employees employed in new jobs during that tax  
28 year (determined on a monthly basis) created as the direct result  
29 of taxpayer's qualified investment.

30 c. An employee's position shall be directly attributable to the  
31 qualified investment if:

32 (1) the employee's service is performed or the employee's  
33 base of operations is at the new or expanded business facility;

34 (2) the position did not exist prior to the construction,  
35 renovation, expansion or acquisition of the business facility and  
36 the making of the qualified investment; and

37 (3) but for the qualified investment, the position would not  
38 have existed.

39 d. With the annual corporation business tax return filed under  
40 P.L.1945, c.162, for each tax year during the five-year credit  
41 period for a qualified investment, the taxpayer shall certify:

42 (1) the new jobs factor for that tax year for the qualified  
43 investment;

44 (2) the amount of the credit allowed for that year for the  
45 qualified investment;

46 (3) that the qualified investment property continued to be used  
47 in the business, or if any of it was disposed of during the year, the  
48 date of disposition, and that such property was not disposed of  
49 prior to expiration of its recovery period, as determined under  
50 section 5 of this act; and

51 (4) that the new jobs are directly attributable to the qualified  
52 investment, are filled by individuals who meet the definition of  
53 new employee, and the median annual compensation of all new  
54 employees is equal to or greater than the minimum median annual

1 compensation required by section 3 of this act.

2 e. With the annual return for the corporation business tax  
3 imposed under P.L.1945, c.162, filed for the tax year in which the  
4 qualified investment is first placed in service or use in this State,  
5 the taxpayer shall estimate and certify the number of new jobs  
6 reasonably projected to be created by it in this State within the  
7 period prescribed in subsection g. of this section, that are, or will  
8 be directly attributable to the qualified investment of the  
9 taxpayer.

10 f. The hours of part-time employees shall be aggregated to  
11 determine the number of equivalent full-time employees for the  
12 purpose of determining the new jobs factor pursuant to subsection  
13 b. of this section but shall not be so aggregated for the purposes  
14 of subsection c. of this section.

15 g. With the annual return for the tax imposed under P.L.1945,  
16 c.162, filed for the third tax year in which the qualified  
17 investment is in service or use in this State, the taxpayer shall  
18 certify the actual number of new jobs created by it in this State,  
19 that are directly attributable to the qualified investment of the  
20 taxpayer.

21 (1) If the actual number of jobs created would result in a  
22 higher new jobs factor, the credit allowed under this act shall be  
23 redetermined and amended returns filed for the first and second  
24 tax years that the qualified investment was in service or use in  
25 this State.

26 (2) If the actual number of jobs created would result in a lower  
27 new jobs factor, the credit previously allowed under this act shall  
28 be redetermined and amended returns filed for the first and  
29 second tax years. Any additional taxes due under P.L.1945,  
30 c.162, shall be remitted with the amended returns filed with the  
31 director, together with any penalty and interest, for failure to  
32 pay any such tax when due as provided in the State Tax Uniform  
33 Procedure Act, R.S.54:48-et seq.

34 7. a. If during any tax year, property with respect to which a  
35 tax credit has been allowed under this act:

36 (1) is disposed of prior to the end of its recovery period, as  
37 determined under section 5 of this act; or

38 (2) ceases to be used in a new or expanded business facility of  
39 the taxpayer in this State prior to the end of its recovery period,  
40 as determined under section 5 of this act,

41 then the unused portion of the credit allowed for such property  
42 shall be forfeited for the tax year and all ensuing years.  
43 Additionally, except when the property is damaged or destroyed  
44 by fire, flood, storm or other casualty, or is stolen, the taxpayer  
45 shall redetermine the amount of credit allowed in all earlier  
46 years by reducing the applicable percentage of cost of such  
47 property allowed under section 5 of this act, to correspond with  
48 the percentage of cost allowable for the period of time that the  
49 property was actually used in this State in the new or expanded  
50 business facility of the taxpayer. The taxpayer shall then file a  
51 reconciliation statement with its annual corporation business tax  
52 return for the year in which the forfeiture occurs and pay any  
53 additional tax owed due to reduction of the amount of credit  
54 allowable for such earlier years, together with any penalty and

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1 interest for failure to pay any such tax as provided in the State  
2 Tax Uniform Procedure Act, R.S.54:48-1 et seq.

3 b. If during any tax year the taxpayer ceases operation of a  
4 new or expanded business facility in this State for which a credit  
5 was allowed under this act, before expiration of the recovery  
6 period of the property with respect to which a tax credit has been  
7 allowed under this act, then the unused portion of the allowed  
8 credit shall be forfeited for the tax year and all ensuing years.  
9 Additionally, except when the cessation is due to fire, flood,  
10 storm or other casualty, the taxpayer shall redetermine the  
11 amount of credit allowed in earlier years by reducing the  
12 applicable percentage of cost of such property allowed under  
13 section 5 of this act, to correspond with the percentage of cost  
14 allowable for the period of time that the property was actually  
15 used in this State in a new or expanded business facility of the  
16 taxpayer that is subject to tax under P.L.1945, c.162. The  
17 taxpayer shall then file a reconciliation statement with its annual  
18 corporation business tax return for the year in which the  
19 forfeiture occurs, and pay any additional taxes owed due to  
20 reduction of the amount of credit allowable for such earlier  
21 years, together with any penalty and interest for failure to pay  
22 any such tax as provided in the State Tax Uniform Procedure Act,  
23 R.S.54:48-1 et seq.

24 c. If during any tax year subsequent to the tax year in which  
25 the new jobs factor is redetermined as provided in section 6 of  
26 this act, the average number of employees of the taxpayer, for  
27 the then current tax year, employed in positions created because  
28 of and directly attributable to the qualified investment falls  
29 below the minimum number of new jobs created upon which the  
30 taxpayer's annual credit allowance is based, the taxpayer shall  
31 calculate what the taxpayer's annual credit allowance would  
32 have been had the taxpayer's new jobs factor been determined  
33 based upon the average number of employees, for the then  
34 current tax year, employed in positions created because of and  
35 directly attributable to the qualified investment. The difference  
36 between the result of this calculation and the taxpayer's annual  
37 credit allowance for the qualified investment as determined  
38 under section 3 of this act, shall be forfeited for the then current  
39 tax year, and for each succeeding tax year unless for a  
40 succeeding tax year the taxpayer's average employment in  
41 positions directly attributable to the qualified investment once  
42 again meets the level required to enable the taxpayer to utilize  
43 its full annual credit allowance for that tax year.

44 8. a. (1) Property of a small business taxpayer shall not be  
45 treated as disposed of under section 7 of this act by reason of a  
46 mere change in the form of conducting the business as long as the  
47 property is retained in a business of a small business taxpayer in  
48 this State, and the taxpayer retains a controlling interest in the  
49 successor business. In this event, the successor business shall be  
50 allowed to claim the amount of credit still available with respect  
51 to the new or expanded business facility or facilities transferred,  
52 and the small business taxpayer-transferor shall not be required  
53 to redetermine the amount of credit allowed in earlier tax years.

54 (2) Property of a taxpayer that is not a small business taxpayer

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1 shall not be treated as disposed of under section 7 of this act by  
2 reason of a mere change in the form of conducting the business as  
3 long as the property is retained in a business of a taxpayer in this  
4 State, and the taxpayer retains a controlling interest in the  
5 successor business. In this event, the successor business shall be  
6 allowed to claim the amount of credit still available with respect  
7 to the new or expanded business facility or facilities transferred,  
8 and the taxpayer-transferor shall not be required to redetermine  
9 the amount of credit allowed in earlier tax years.

10 b. (1) Property of a small business taxpayer shall be treated as  
11 disposed of under section 7 of this act by reason of a change in  
12 the form of conducting the business if the property is not  
13 retained in a business of a small business taxpayer in this State in  
14 which the small business taxpayer retains a controlling interest.

15 (2) Property of a small business taxpayer shall not be treated  
16 as disposed of under section 7 of this act by reason of any  
17 transfer or sale to a successor small business taxpayer which  
18 continues to operate the new or expanded business facility in this  
19 State. Upon transfer or sale, the successor shall acquire the  
20 amount of credit that remains available under this act for each  
21 subsequent tax year and the taxpayer-transferor shall not be  
22 required to redetermine the amount of credit allowed in earlier  
23 years.

24 (3) Property of a business that is not a small business taxpayer  
25 shall not be treated as disposed of under section 7 of this act by  
26 reason of any transfer or sale to a successor taxpayer which  
27 continues to operate the new or expanded business facility in this  
28 State. Upon transfer or sale, the successor shall acquire the  
29 amount of credit that remains available under this act for each  
30 subsequent tax year and the taxpayer-transferor shall not be  
31 required to redetermine the amount of credit allowed in earlier  
32 years.

33 (4) Property of a small business taxpayer shall be treated as  
34 disposed of under section 7 by reason of any transfer or sale to a  
35 successor that is not a small business taxpayer, whether or not  
36 the successor continues to operate the business in this State.  
37 Upon such transfer or sale, the successor shall not acquire any  
38 amount of credit under this act and the taxpayer-transferor shall  
39 redetermine, as required by this act, the amount of credit  
40 allowed in earlier years.

41 9. a. A taxpayer that claims credit under this act shall  
42 maintain sufficient records to establish the following facts for  
43 each item of qualified property:

44 (1) its identity;

45 (2) its actual or reasonably determined cost;

46 (3) its straight-line depreciation life;

47 (4) the month and tax year in which it was placed in service;

48 (5) the amount of credit taken; and

49 (6) the date it was disposed of or otherwise ceased to be  
50 qualified property.

51 b. A taxpayer that does not keep records required for  
52 identification of investment credit property shall be treated as  
53 having disposed of, during the tax year, any investment credit  
54 property which the taxpayer cannot establish was still on hand in

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14

1 this State at the end of that year.

2 c. If a taxpayer cannot establish when investment credit  
3 property reported for purposes of claiming this credit during a  
4 tax year was placed in service, the taxpayer shall be treated as  
5 having placed it in service in the most recent prior year in which  
6 similar property was placed in service unless the taxpayer can  
7 establish that the property placed in service in the most recent  
8 year is still on hand. In that event, the taxpayer shall be treated  
9 as having placed the property in service in the next most recent  
10 year.

11 10. a. The burden of proof shall be on a taxpayer to establish  
12 by clear and convincing evidence that the taxpayer is entitled to  
13 the credit allowed pursuant to this act.

14 b. Notwithstanding any provision of this act to the contrary,  
15 no credit shall be allowed or applied under this act for any  
16 qualified investment property placed in service or use until the  
17 person asserting a claim for the allowance of credit under this  
18 act makes written application to the director for allowance of  
19 the credit as provided in this subsection and receives written  
20 acknowledgement of its receipt from the director. An  
21 application for credit is timely made if filed no later than the  
22 last day of the due date without extensions, for filing the tax  
23 return required under section 15 of P.L.1945, c.162  
24 (C.54:10A-15), for the tax year in which the property to which  
25 the credit relates is placed in service or use and all information  
26 required by the director is provided as part of the application.

27 c. The failure to timely apply for the credit shall result in the  
28 forfeiture of 50% of the annual credit allowance otherwise  
29 allowable under this act. This penalty shall apply annually until  
30 such application is filed.

31 11. The Director of the Division of Taxation shall prepare and  
32 transmit to the Governor and the Legislature, on or before the  
33 second March 1 following the operative date of this section and  
34 annually thereafter, a report concerning the revenue cost and  
35 distributional impact of this act in such a manner as to facilitate  
36 an evaluation of its costs in State tax revenue foregone and its  
37 benefits in new job creation. To facilitate an understanding of  
38 the gross amount and percentage of credits claimed in relation to  
39 the size, number and income of corporations and the number of  
40 jobs created, the report shall include statistical analyses of the  
41 number and value of applications for credits, credits granted and  
42 anticipated to be granted, and the number of new jobs created  
43 and anticipated to be created. To facilitate an understanding of  
44 the distribution of the use of the credit, or any concentration of  
45 such use in a particular industry or by a particular taxpayer, and  
46 the creation of new jobs among corporations, the report shall  
47 include statistics of credit use and new jobs creation segregated  
48 by specific industry, displayed in a manner that facilitates an  
49 understanding of the relative distribution of credit claims and  
50 uses and the relative distribution of new jobs created. To  
51 facilitate an understanding of the distinction between the new  
52 jobs created as a result of the credit and the new jobs not  
53 resulting from the credit, the report shall include statistics  
54 concerning the mean cost in State tax revenue foregone of

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1 creating a new job in specific industries, the relative new job  
2 creation rates between corporations using the credit and those  
3 not using the credit, and increases in employment in the State  
4 and the region. The director shall include in the report such  
5 further observations and recommendations about the use or  
6 administration of the credit as the director deems appropriate.

7 12. The director shall promulgate rules and regulations  
8 pursuant to "Administrative Procedure Act, P.L.1968, c.410  
9 (C.52:14B-1 et seq.), as may be necessary to effectuate the  
10 purpose of this act.

11 13. This act shall take effect immediately but sections 1  
12 through 11 shall remain inoperative until the first day of the tax  
13 year next commencing after enactment and shall apply to  
14 property placed in service or use on or after that date.

15  
16  
17 STATEMENT  
18

19 This bill provides a tax credit to businesses that make  
20 investments that create new jobs in this State. The bill allows a  
21 credit against the corporation business tax equal to a percentage  
22 of certain costs of new or expanded business facilities in this  
23 State. The percentage of credit allowed depends upon the kind of  
24 investment made and the number of new jobs created, but can  
25 equal up to 10% of the investment costs.

26 A taxpayer is allowed a credit for investment through direct  
27 ownership or by lease in buildings, building components,  
28 equipment and capitalized start-up costs of new or expanded  
29 business facilities in New Jersey. The credit is applicable to  
30 investments in most industrial sectors including manufacturing,  
31 wholesale distribution, warehousing, retailing and service  
32 businesses. If manufacturing equipment is allowed a credit under  
33 the "Manufacturing Equipment and Employment Investment Tax  
34 Credit Act," which is now pending before the Legislature as  
35 Senate, No. or Assembly, No. , the credit under this bill is  
36 not available for that manufacturing investment.

37 The cost of property considered as a "qualified investment"  
38 and allowed in the calculation of the credit is based upon the  
39 expected depreciation life of the property for federal income tax  
40 purposes. The cost of new investment property with a  
41 depreciation life of three years is allowed at 35% of cost, five  
42 years at 70% of cost and seven or more years at 100% of cost.

43 The credit is also conditioned on the number of new jobs  
44 created by the new investment. A "new job" is the employment  
45 of a New Jersey resident at the new or expanded business facility  
46 on a full or full-time equivalent (but not seasonal) basis in a  
47 position created by the qualified investment. The qualified  
48 investment amount is allowed as a credit amount to the extent  
49 new jobs are created. The number of new jobs that a taxpayer  
50 must create depends on the size of the taxpayer.

51 A small business taxpayer, defined as a taxpayer with annual  
52 payroll of \$2 million or less and annual gross receipts of \$6  
53 million or less, must create a minimum of 5 new jobs to be  
54 allowed a credit of one half of one percent of the qualified

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16

1 investment. That new jobs factor is increased one-half of one  
2 percent for each additional 5 new jobs created over the 5 new job  
3 minimum, up to a 10 percent credit for 100 new jobs created.

4 A taxpayer that is not a small business must create a minimum  
5 of 50 new jobs to be allowed a credit of one half of one percent  
6 of the qualified investment. That new jobs factor is increased  
7 one-half of one percent for each additional 50 new jobs created  
8 over the 50 new job minimum, up to a 10 percent credit for 1000  
9 new jobs created.

10 One-fifth of the credit may be used to offset up to 50% of the  
11 corporation business tax liability of a taxpayer resulting from the  
12 increased investment and employment in the year that the  
13 investment property is put into service, any remaining credit may  
14 be rebated in an amount not to exceed 50% of the property tax  
15 liability of a taxpayer resulting from the increased investment  
16 and employment, and one-fifth of the credit may be used in a  
17 similar manner in each of the four years thereafter. If the  
18 corporation business tax liability resulting from the increased  
19 investment cannot be readily determined, the liability is  
20 apportioned on the basis of the compensation paid to the new  
21 employees relative to total New Jersey compensation paid by the  
22 corporation. The annual credit amount cannot reduce the annual  
23 tax attributable to the increased investment below 50% of the  
24 amount otherwise due on the attributable investment or below  
25 the statutory minimum tax, and credit amounts that are not  
26 usable in a tax year may not be carried forward for use in  
27 subsequent tax years.

28 Annual Department of Treasury summary reports will assure  
29 that the Legislature is made aware of the total dollar value of  
30 the credits granted per year and to date, the relationship of a  
31 taxpayer's size and business line to credits granted, and provide a  
32 warning of any problems with the implementation of the credit.  
33 Regular review of individual taxpayers' credits will assure that  
34 they receive the benefits of their investment. The review  
35 process will include an in-depth review of the credit relating to a  
36 particular investment in the third year of the credit, and annual  
37 recalculation of a credit allowance, if necessary. The review of  
38 individual taxpayers' use of the credit will provide the input for  
39 the annual Treasury report summarizing credit use.

40

41

42

43

44 Allows corporation business tax credit or property tax offset for  
45 certain investments that create new jobs in this State.

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2475

STATE OF NEW JERSEY

ADOPTED JUNE 3, 1993

Sponsored by Assemblyman CORODEMUS  
and Assemblywoman DERMAN

1 AN ACT providing a credit against corporation business tax  
2 liability and allowed in certain cases as a property tax offset  
3 for investment in certain new or expanded business facilities  
4 that create new jobs in this State, supplementing P.L.1945,  
5 c.162 (C.54:10A-1 et seq.).  
6

7 BE IT ENACTED by the Senate and General Assembly of the  
8 State of New Jersey:

9 1. This act shall be known and may be cited as the "New Jobs  
10 Investment Tax Credit Act."

11 2. As used in this act:

12 "Business relocation or expansion" means capital investment in  
13 a new or expanded business facility in this State.

14 "Business facility" means any factory, mill, plant, refinery,  
15 warehouse, building, complex of buildings or structural  
16 components of buildings, and all machinery, equipment and  
17 personal property located within this State, used in connection  
18 with the operation of the business of a corporation that is subject  
19 to the tax imposed pursuant to section 5 of P.L.1945, c.162  
20 (C.54:10A-5), and all facility preparation and start-up costs of  
21 the taxpayer for the business facility which it capitalizes for  
22 federal income tax purposes.

23 "Compensation" means wages, salaries, commissions or any  
24 other form of remuneration paid to employees for personal  
25 services.

26 "Controlled group" means one or more chains of corporations  
27 connected through stock ownership with a common parent  
28 corporation if stock possessing at least 50% of the voting power  
29 of all classes of stock of each of the corporations is owned  
30 directly or indirectly by one or more of the corporations; and the  
31 common parent owns directly stock possessing at least 50% of the  
32 voting power of all classes of stock of at least one of the other  
33 corporations.

34 "Director" means the Director of the Division of Taxation in  
35 the Department of the Treasury.

36 "Expanded business facility" means any business facility, other  
37 than a new business facility, resulting from acquisition,  
38 construction, reconstruction, installation or erection of  
39 improvements or additions to existing property if such  
40 improvements or additions are purchased on or after the  
41 operative date of this act, but only to the extent of a taxpayer's  
42 qualified investment in such improvements or additions.

43 "New business facility" means a business facility which:

44 a. is employed by a taxpayer in the conduct of a business  
45 which is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et  
46 seq.). Such facility shall not be considered a new business facility

ACS for A2475

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1 in the hands of a taxpayer if the taxpayer's only activity with  
2 respect to such facility is to lease it to another person;

3 b. is purchased by a taxpayer and is placed in service or use on  
4 or after the operative date of this act;

5 c. was not purchased by a taxpayer from a related person. The  
6 director may waive this requirement if the facility was acquired  
7 from a related person for its fair market value and the  
8 acquisition was not tax motivated;

9 d. was not in service or use during the 90 day period  
10 immediately prior to transfer of the title to the facility, provided  
11 that this restriction for the 90 day period may be waived by the  
12 director if the director determines that individuals employed at  
13 the facility may be considered as "new employees" as defined in  
14 this section.

15 "New employee" means an individual residing and domiciled in  
16 this State, hired by a taxpayer to fill a position or a job in this  
17 State which previously did not exist in the taxpayer's business  
18 enterprise in this State prior to the date on which the taxpayer's  
19 qualified investment is placed in service or use in this State  
20 provided that:

21 a. the individual's duties in connection with the operation of  
22 the business facility are on a regular, full-time and permanent  
23 basis or regular part-time and permanent basis;

24 b. the individual is not a related individual as defined in  
25 subsection (i) of section 51 of the federal Internal Revenue Code  
26 of 1986, 26 U.S.C. §51, or does not own 10% or more of the  
27 business with such ownership interest to be determined under the  
28 rules set forth in section 267 of the federal Internal Revenue  
29 Code of 1986, 26 U.S.C. §267;

30 c. the individual is not an individual who worked for the  
31 taxpayer during the six month period ending on the date the  
32 taxpayer's qualified investment is placed in service or use and is  
33 rehired by the taxpayer during the six month period beginning on  
34 the date the taxpayer's qualified investment is placed in service  
35 or use in this State; and

36 d. the individual is not an employee for whom the taxpayer is  
37 allowed a credit pursuant to section 19 of P.L.1983, c.303  
38 (C.52:27H-78) or section 12 of P.L.1985, c.227 (C.55:19-13).

39 As used in this definition: "full-time" means employment for at  
40 least 140 hours per month at a wage not less than the State or  
41 federal minimum wage, if either minimum wage provision is  
42 applicable to the business and "permanent basis" does not include  
43 employment that is temporary or seasonal and therefore the  
44 compensation paid to temporary or seasonal employees will not  
45 be considered for purposes of sections 4 and 6 of this act; and  
46 "part-time" means customarily performing such duties at least  
47 20 hours per week for at least six months during the tax year. In  
48 no event shall the number of new employees directly attributable  
49 to the qualified investment for the purpose of the credit allowed  
50 pursuant to this act exceed the total increase in the taxpayer's  
51 average employment in this State for the tax year over the  
52 average employment in this State for the previous tax year and in  
53 no event shall the number of new employees directly attributable  
54 to the qualified investment for the purpose of the credit allowed

1 pursuant to this act exceed one half of the average employment  
2 in this State for the tax year; and provided, that the director may  
3 require that the net increase in the taxpayer's employment in  
4 this State be determined and certified for the taxpayer's  
5 controlled group.

6 Provided further, however, that individuals filling jobs saved as  
7 a direct result of taxpayer's qualified investment in property  
8 purchased for business relocation or expansion on or after the  
9 operative date of this act may be treated as new employees  
10 filling new jobs if the taxpayer certifies the material facts to the  
11 director and the director expressly finds that: but for the new  
12 employer purchasing the assets of a business in bankruptcy under  
13 chapter 7 or 11 of the United States Bankruptcy Code and such  
14 new employer making qualified investment in property purchased  
15 for business relocation or expansion, the assets would have been  
16 sold by the United States bankruptcy court in a liquidation sale  
17 and the jobs so saved would have been lost; or but for taxpayer's  
18 qualified investment in property purchased for business relocation  
19 or expansion in this State, the business facility in this State would  
20 have closed and the employees located at the facility would have  
21 lost their jobs; provided that the director shall not make this  
22 certification unless the director finds that the business is  
23 insolvent as defined in paragraph (32) of 11 U.S.C. §101 or that  
24 the business facility was destroyed in whole or in significant part  
25 by fire, flood or act of God.

26 "New job" means a job which did not exist in the business of  
27 the taxpayer in this State prior to the taxpayer's qualified  
28 investment being made, and which is filled by a new employee.

29 "Partnership" means a syndicate, group, pool, joint venture or  
30 other unincorporated organization through or by means of which  
31 any business, financial operation or venture is carried on, and  
32 which is not a trust or estate, a corporation or a sole  
33 proprietorship. The term "partner" includes a member in such a  
34 syndicate, group, pool, joint venture or organization.

35 "Property purchased for business relocation or expansion"  
36 means improvements to real property and tangible personal  
37 property, but only if that improvement or personal property was  
38 constructed or purchased and placed in service or use by the  
39 taxpayer, for use as a component part of a new or expanded  
40 business facility located in this State.

41 a. Property purchased for business relocation or expansion  
42 shall include only:

43 (1) improvements to real property placed in service or use on  
44 or after the operative date of this act by the taxpayer;

45 (2) tangible personal property placed in service or use by the  
46 taxpayer on or after the operative date of this act, with respect  
47 to which depreciation, or amortization in lieu of depreciation, is  
48 allowable in determining the corporation business tax liability of  
49 the taxpayer under P.L.1945, c.162, and which has a remaining  
50 recovery period of three or more years at the time the property  
51 is placed in service or use in this State; or

52 (3) tangible personal property owned and used by the taxpayer  
53 at a business location outside this State which is moved into this  
54 State on or after the operative date of this act, for use as a

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1 component part of a new or expanded business facility located in  
2 this State; provided that the property is depreciable or  
3 amortizable personal property for income tax purposes, and has a  
4 remaining recovery period of three or more years at the time the  
5 property is placed in service or use in this State.

6 b. Property purchased for business relocation or expansion  
7 shall not include:

8 (1) Repair costs, including materials used in the repair, unless  
9 for federal income tax purposes, the cost of the repair must be  
10 capitalized and not expensed;

11 (2) Airplanes;

12 (3) Property which is primarily used outside this State with  
13 that use being determined based upon the amount of time the  
14 property is actually used both within and without this State;

15 (4) Property which is acquired incident to the purchase of the  
16 stock or assets of the seller unless for good cause shown, the  
17 director consents to waiving this disqualification; or

18 (5) Property purchased on or after the operative date of this  
19 act, unless pursuant to a written contract to purchase executed  
20 prior to the operative date of this act, the cost or consideration  
21 for which cannot be quantified with any reasonable degree of  
22 accuracy at the time such property is placed in service or use;  
23 provided that if the contract of purchase specifies a minimum  
24 purchase price the amount thereof shall be used to determine the  
25 qualified investment in such property under section 5 of this act  
26 if the property otherwise qualifies as property purchased for  
27 business relocation or expansion.

28 c. Property shall be deemed to have been purchased prior to a  
29 specified date only if:

30 (1) the physical construction, reconstruction or erection of the  
31 property was begun prior to the specified date, or such property  
32 was constructed, reconstructed, erected or acquired pursuant to a  
33 written contract as existing and binding on the purchase prior to  
34 the specified date; or

35 (2) the machinery or equipment was owned by the taxpayer  
36 prior to the specified date, or was acquired by the taxpayer  
37 pursuant to a binding purchase contract which was in effect prior  
38 to the specified date.

39 "Purchase" means any acquisition of property, including an  
40 acquisition pursuant to a lease, but only if:

41 a. the property is not acquired from a person whose  
42 relationship to the person acquiring it would result in the  
43 disallowance of deductions under section 267 or subsection (b) of  
44 section 707 of the federal Internal Revenue Code of 1986, 26  
45 U.S.C. §267 or §707.

46 b. the property is not acquired by one member of a controlled  
47 group from another member of the same controlled group. The  
48 director may waive this requirement if the property was acquired  
49 from a related party for its then fair market value; and

50 c. the basis of the property for federal income tax purposes, in  
51 the hands of the person acquiring it, is not determined:

52 (1) in whole or in part by reference to the federal adjusted  
53 basis of such property in the hands of the person from whom it  
54 was acquired; or

1 (2) under subsection (e) of section 1014 of the federal Internal  
2 Revenue Code of 1986, 26 U.S.C. §1014.

3 "Related person" means:

4 a. a corporation, partnership, association or trust controlled by  
5 the taxpayer;

6 b. an individual, corporation, partnership, association or trust  
7 that is in control of the taxpayer;

8 c. a corporation, partnership, association or trust controlled by  
9 an individual, corporation, partnership, association or trust that is  
10 in control of the taxpayer; or

11 d. a member of the same controlled group as the taxpayer.

12 As used in the definition of related person and as is applicable  
13 to the definitions of purchase and small business taxpayer,  
14 "control," with respect to a corporation, means ownership,  
15 directly or indirectly, of stock possessing 50% or more of the  
16 total combined voting power of all classes of the stock of the  
17 corporation entitled to vote; "control," with respect to a trust,  
18 means ownership, directly or indirectly, of 50% or more of the  
19 beneficial interest in the principal or income of the trust. The  
20 ownership of stock in a corporation, of a capital or profits  
21 interest in a partnership or association or of a beneficial interest  
22 in a trust shall be determined in accordance with the rules for  
23 constructive ownership of stock provided in subsection (c) of  
24 section 267 of the federal Internal Revenue Code of 1986,  
25 26 U.S.C. §267, other than paragraph (3) of subsection (c) of that  
26 section.

27 "Small business taxpayer" means a taxpayer that has an annual  
28 payroll, as calculated pursuant to section 6 of P.L.1945, c.162  
29 (C.54:10A-6), of \$2,000,000 or less and annual gross receipts, as  
30 calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),  
31 of not more than \$6,000,000 for the tax year in which property  
32 purchased for business relocation or expansion is placed in service  
33 or use by the taxpayer; provided that beginning with tax years  
34 commencing on and after January 1 next following the operative  
35 date of this act the director shall prescribe the amount of annual  
36 payroll and annual gross receipts which shall apply by increasing  
37 each such amount hereinabove by an annual inflation adjustment  
38 factor, which prescribed amount shall be rounded to the next  
39 lowest multiple of \$50. "Annual inflation adjustment factor"  
40 means the factor calculated by dividing the consumer price index  
41 for urban wage earners and clerical workers for the nation, as  
42 prepared by the United States Department of Labor for  
43 September of the calendar year prior to the calendar year in  
44 which the tax year begins, by that index for September of the  
45 calendar year two years prior to the calendar year in which the  
46 tax year begins. The annual payroll of a taxpayer shall include  
47 the employees of its domestic and foreign affiliates, whether  
48 employed on a full-time, part-time, temporary, or other basis,  
49 during the preceding 12 months. If a taxpayer has not been in  
50 existence for 12 months, the payroll of the taxpayer shall be  
51 divided by the number of weeks, including fractions of a week,  
52 that it has been in business, and the result multiplied by 52. That  
53 amount shall then be added to the 12 month payrolls of its  
54 domestic and foreign affiliates to determine the annual payroll of

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1 the taxpayer for purposes of this definition. The annual gross  
2 receipts of a taxpayer shall include the annual gross receipts of  
3 its foreign and domestic affiliates. The annual gross receipts of a  
4 taxpayer which has been in business for three or more complete  
5 tax years means the average of the annual gross receipts of the  
6 business for the last three tax years. For purposes of this  
7 definition, the gross receipts of the taxpayer includes receipts  
8 from sales of tangible personal property and services, interests,  
9 rents, royalties, fees, commissions and receipts from any other  
10 source, but less returns and allowances, sales of fixed assets,  
11 interaffiliated transactions between a business and its domestic  
12 and foreign affiliates, and taxes collected for remittance to a  
13 third party, as shown on its books for federal income tax  
14 purposes. The annual receipts of a taxpayer that has been in  
15 business for less than three complete tax years means its total  
16 receipts for the period it has been in business, divided by the  
17 number of weeks including fractions of a week that it has been in  
18 business, and multiplied by 52. "Affiliates" includes all concerns  
19 that are affiliates of each other when either directly or indirectly  
20 one concern controls the other or a third party or parties controls  
21 both. In determining whether concerns are independently owned  
22 and operated and whether or not affiliation exists, the director  
23 shall consider all appropriate factors, including common  
24 ownership, common management and contractual relationships.  
25 "Concern" means any business entity organized for profit (even if  
26 its ownership is in the hands of a nonprofit entity), having a place  
27 of business located in this State, and which makes a contribution  
28 to the economy of this State through payment of taxes, or the  
29 sale or use in this State of tangible personal property, or the  
30 procurement or providing of services in this State, or the hiring  
31 of employees who work in this State. "Concern" includes but is  
32 not limited to any person as defined in R.S.1:1-2.

33 "Tax year" means the fiscal or calendar accounting year of a  
34 taxpayer.

35 3. a. A taxpayer shall be allowed a credit against the portion  
36 of the tax imposed in section 5 of P.L.1945, c.162 (C.54:10A-5),  
37 that is attributable to and the direct consequence of the  
38 taxpayer's qualified investment in a new or expanded business  
39 facility in this State which results in the creation of at least 5  
40 new jobs in the case of a small business taxpayer or at least 50  
41 new jobs in the case of any other taxpayer, provided that the  
42 median compensation of all new jobs included in the taxpayer's  
43 determination of the new jobs factor shall not be less than  
44 \$27,000 per year, provided that beginning with tax years  
45 commencing on and after January 1 next following the operative  
46 date of this act the director shall adjust the median annual  
47 compensation which shall apply as provided in subsection e. of  
48 this section. The amount of this credit shall be determined and  
49 applied as hereinafter provided.

50 b. The amount of the credit allowed shall be determined by  
51 multiplying the amount of the taxpayer's "qualified investment,"  
52 determined under section 5 of this act, in "property purchased for  
53 business relocation or expansion" by the taxpayer's new jobs  
54 factor determined under section 6 of this act. The product of

1 this calculation shall establish the maximum amount of credit  
2 allowed under this act due to the qualified investment.

3 c. The amount of credit allowed shall be taken over a five year  
4 period, at the rate of one-fifth of the amount thereof per tax  
5 year, beginning with the tax year in which the taxpayer places  
6 the qualified investment in service or use in this State.

7 d. For purposes of the credit allowed by this section, property  
8 shall be considered placed in service or use in the earlier of the  
9 following tax years:

10 (1) The tax year in which, under the taxpayer's depreciation  
11 practice, the period for depreciation with respect to such  
12 property begins; or

13 (2) The taxable year in which the property is placed in a  
14 condition or state of readiness and availability for a specifically  
15 assigned function.

16 e. Beginning with tax years commencing on and after  
17 January 1 next following the operative date of this act the  
18 director shall prescribe the annual median compensation of all  
19 new jobs included in the taxpayer's determination of new jobs  
20 factor by increasing the amount of median compensation set  
21 forth in subsection a. of this section by an annual inflation  
22 adjustment factor, which prescribed amount shall be rounded to  
23 the next lowest multiple of \$50. "Annual inflation adjustment  
24 factor" means the factor calculated by dividing the consumer  
25 price index for urban wage earners and clerical workers for the  
26 nation, as prepared by the United States Department of Labor for  
27 September of the calendar year prior to the calendar year in  
28 which the tax year begins, by that index for September of the  
29 calendar year two years prior to the calendar year in which the  
30 tax year begins.

31 4. a. The aggregate annual credit allowed for a tax year shall  
32 be an amount equal to the sum of:

33 (1) The one-fifth part allowed under section 3 for qualified  
34 investment placed into service or use during a prior tax year, plus

35 (2) The one-fifth part allowed under section 3 for qualified  
36 investment placed into service or use during the current tax year.

37 b. (1) The amount determined under subsection a. shall be  
38 allowed as a credit against that portion of the taxpayer's  
39 corporation business tax liability which is attributable to and the  
40 direct result of the taxpayer's qualified investment. The amount  
41 determined under subsection a. and allowed as a credit against  
42 the tax imposed pursuant to section 5 of P.L.1945, c.162, for a  
43 tax year shall not reduce that tax liability by more than 50% of  
44 that portion of the taxpayer's tax liability otherwise due for the  
45 tax year which is attributable to and the direct result of the  
46 taxpayer's qualified investment and shall not reduce the tax  
47 liability for the tax year to an amount less than the statutory  
48 minimum provided in subsection (e) of section 5 of P.L.1945,  
49 c.162.

50 (2) If any amount of credit determined under subsection a.  
51 remains after the amount allowed as a credit under the  
52 limitations of paragraph (1) of this subsection, that amount of  
53 credit remaining shall be refunded to the taxpayer. The amount  
54 refunded to the taxpayer shall not exceed 50% of the sum of the

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1 amount of property taxes timely paid in the taxable year pursuant  
2 to R.S.54:4-1 et seq. and the amount of implicit property taxes  
3 paid through rent or lease payments in respect of property  
4 taxable pursuant to R.S.54:4-1 et seq., and for which taxes  
5 another party that is not a related person is liable, which is  
6 attributable to and the direct result of the taxpayer's qualified  
7 investment.

8 c. (1) If the taxes due under section 5 of P.L.1945, c.162  
9 (determined before application of allowable credits against the  
10 tax), the sum of the amount of property taxes timely paid in the  
11 taxable year pursuant to R.S.54:4-1 et seq. and the amount of  
12 implicit property taxes paid through rent or lease payments in  
13 respect of property taxable pursuant to R.S.54:4-1 et seq., and  
14 for which taxes another party that is not a related person is  
15 liable, are not solely attributable to and the direct result of the  
16 taxpayer's qualified investment, the amount of those taxes which  
17 are so attributable shall be determined by multiplying the amount  
18 of taxes due under those acts for the tax year (determined before  
19 application of allowable credits against tax) by a fraction, the  
20 numerator of which is all compensation paid during the tax year  
21 to all employees of the taxpayer employed in this State whose  
22 positions are directly attributable to the qualified investment.  
23 The denominator of the fraction is the compensation paid during  
24 the taxable year to all employees of the taxpayer employed in  
25 this State.

26 (2) Any credits allowable under section 42 of P.L.1987, c.102  
27 (C.54:10A-5.3), section 19 of P.L.1983, c.303 (C.52:27H-78), and  
28 section 12 of P.L.1985, c.227 (C.55:19-13), shall be applied  
29 against and reduce only the amount of corporation business tax  
30 not apportioned to the qualified investment under this act.  
31 Provided, that any excess of those credits may be applied against  
32 the amount of corporation business tax apportioned to the  
33 qualified investment under this act that is not offset by the  
34 amount of annual credit against the tax allowed under this act for  
35 the tax year, unless their application is otherwise prohibited by  
36 P.L.1987, c.102, P.L.1983, c.303, or P.L.1985, c.227.

37 (3) If any credit for the tax year pursuant to this section  
38 remains after application of the provisions of subsections a. and  
39 b. of this section, the amount thereof shall be forfeited. No  
40 carryover to a subsequent tax year or carryback to a prior tax  
41 year shall be allowed for the amount of any unused portion of any  
42 annual credit allowance.

43 d. For the purposes of this act, "implicit property taxes"  
44 means 15% of the amount of the rent or lease payments made by  
45 the taxpayer in respect of property taxable pursuant to  
46 R.S.54:4-1 et seq., and for which taxes another party that is not a  
47 related person is liable.

48 5. a. The qualified investment in property purchased for  
49 business relocation or expansion shall be the applicable  
50 percentage of the cost of each property purchased for business  
51 relocation or expansion which is placed in service or use in this  
52 State by the taxpayer during the tax year. Provided, that only  
53 the cost of property purchased for business relocation or  
54 expansion placed in service or use in this State during the tax

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1 year for which the average value of the taxpayer's real and  
2 tangible personal property within the State as shall be determined  
3 pursuant to subsection (A) of section 6 of P.L.1945, c.162  
4 (C.54:10A-6), is greater than that average value for the previous  
5 tax year, shall be considered in determining qualified investment.

6 b. For the purpose of subsection a., the applicable percentage  
7 of any cost of property purchased for business relocation or  
8 expansion shall be determined under the following table:

| 9  |                                      |                |
|----|--------------------------------------|----------------|
| 10 |                                      | The applicable |
| 11 | If property has a:                   | percentage is: |
| 12 |                                      |                |
| 13 | 3 year recovery period .....         | 35%            |
| 14 | 5 year recovery period .....         | 70%            |
| 15 | 7 year or more recovery period ..... | 100%           |
| 16 |                                      |                |
| 17 |                                      |                |

18 The recovery period of any property, for purposes of this  
19 section, shall be determined as of the date such property is first  
20 placed in service or use in this State by the taxpayer, determined  
21 in accordance with section 168 of the federal Internal Revenue  
22 Code of 1986, 26 U.S.C. §168.

23 c. For purposes of subsection a., the cost of each property  
24 purchased for business relocation or expansion shall be  
25 determined under the following restrictions:

26 (1) cost shall not include the value of property given in trade  
27 or exchange for the property purchased for business relocation or  
28 expansion;

29 (2) if property is damaged or destroyed by fire, flood, storm or  
30 other casualty, or is stolen, the cost of replacement property  
31 shall not include any insurance proceeds received in compensation  
32 for the loss;

33 (3) in the case of self-constructed property, the cost thereof  
34 shall be the amount properly charged to the capital account for  
35 depreciation in accordance with federal income tax law; and

36 (4) the cost of property used by the taxpayer out-of-State and  
37 then brought into this State shall be determined based on the  
38 remaining recovery period of the property at the time it is placed  
39 in service or use in this State, and the cost shall be the original  
40 cost of the property to the taxpayer less straight line  
41 depreciation allowable for the tax years or portions thereof the  
42 taxpayer used the property outside this State.

43 (5) The cost of equipment acquired by written lease is the  
44 minimum amount required by the agreement, agreements,  
45 contract or contracts to be paid over the term of the lease,  
46 provided however, that the minimum amount shall not include any  
47 amount required to be paid, as determined by the director, after  
48 the expiration of the recovery period of the equipment.

49 d. No amount of cost for property the cost of which qualifies  
50 for the credit allowable under section 42 of P.L.1987, c.102  
51 (C.54:10A-5.3), or for the credits allowed under the  
52 "Manufacturing Equipment and Employment Investment Tax  
53 Credit Act," P.L. , c. (C. )(now pending before the  
54 Legislature as Senate, No. or Assembly, No. ), shall be

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1 allowed as qualified investment under this section.

2 6. a. The new jobs factor used to determine the amount of  
3 credit allowed under this act shall be based on the number of new  
4 jobs created in this State that are directly attributable to the  
5 qualified investment of the taxpayer.

6 b. (1) (a) For a taxpayer that is not a small business taxpayer,  
7 if 50 new jobs are created and filled during the tax year in which  
8 the qualified investment is placed in service or use in this State,  
9 the applicable new jobs factor shall be 0.005. For each 50  
10 additional new jobs over the initial 50, up to 1000 total new jobs,  
11 the applicable new jobs factor of 0.005 shall be increased by  
12 adding thereto 0.005, up to a maximum new jobs factor of 0.10.

13 (b) During each of the remaining four years of the five year  
14 credit period, the taxpayer shall redetermine the new jobs factor  
15 for the tax year on the annual return based on the average  
16 number of new employees employed in new jobs during that tax  
17 year (determined on a monthly basis) created as the direct result  
18 of taxpayer's qualified investment.

19 (2) (a) For a taxpayer that is a small business taxpayer, if 5  
20 new jobs are created and filled during the tax year in which the  
21 qualified investment is placed in service or use in this State, the  
22 applicable new jobs factor shall be 0.005. For each 5 additional  
23 new jobs over the initial 5, up to 100 total new jobs, the  
24 applicable new jobs factor of 0.005 shall be increased by adding  
25 thereto 0.005, up to a maximum new jobs factor of 0.10.

26 (b) During each of the remaining four years of the five year  
27 credit period, the taxpayer shall redetermine the new jobs factor  
28 for the tax year on the annual return based on the average  
29 number of new employees employed in new jobs during that tax  
30 year (determined on a monthly basis) created as the direct result  
31 of taxpayer's qualified investment.

32 c. An employee's position shall be directly attributable to the  
33 qualified investment if:

34 (1) the employee's service is performed or the employee's  
35 base of operations is at the new or expanded business facility;

36 (2) the position did not exist prior to the construction,  
37 renovation, expansion or acquisition of the business facility and  
38 the making of the qualified investment; and

39 (3) but for the qualified investment, the position would not  
40 have existed.

41 d. With the annual corporation business tax return filed under  
42 P.L.1945, c.162, for each tax year during the five-year credit  
43 period for a qualified investment, the taxpayer shall certify:

44 (1) the new jobs factor for that tax year for the qualified  
45 investment;

46 (2) the amount of the credit allowed for that year for the  
47 qualified investment;

48 (3) that the qualified investment property continued to be used  
49 in the business, or if any of it was disposed of during the year, the  
50 date of disposition, and that such property was not disposed of  
51 prior to expiration of its recovery period, as determined under  
52 section 5 of this act; and

53 (4) that the new jobs are directly attributable to the qualified  
54 investment, are filled by individuals who meet the definition of

1 new employee, and the median annual compensation of all new  
2 employees is equal to or greater than the minimum median annual  
3 compensation required by section 3 of this act.

4 e. With the annual return for the corporation business tax  
5 imposed under P.L.1945, c.162, filed for the tax year in which the  
6 qualified investment is first placed in service or use in this State,  
7 the taxpayer shall estimate and certify the number of new jobs  
8 reasonably projected to be created by it in this State within the  
9 period prescribed in subsection g. of this section, that are, or will  
10 be directly attributable to the qualified investment of the  
11 taxpayer.

12 f. The hours of part-time employees shall be aggregated to  
13 determine the number of equivalent full-time employees for the  
14 purpose of determining the new jobs factor pursuant to subsection  
15 b. of this section but shall not be so aggregated for the purposes  
16 of subsection c. of this section.

17 g. With the annual return for the tax imposed under P.L.1945,  
18 c.162, filed for the third tax year in which the qualified  
19 investment is in service or use in this State, the taxpayer shall  
20 certify the actual number of new jobs created by it in this State,  
21 that are directly attributable to the qualified investment of the  
22 taxpayer.

23 (1) If the actual number of jobs created would result in a  
24 higher new jobs factor, the credit allowed under this act shall be  
25 redetermined and amended returns filed for the first and second  
26 tax years that the qualified investment was in service or use in  
27 this State.

28 (2) If the actual number of jobs created would result in a lower  
29 new jobs factor, the credit previously allowed under this act shall  
30 be redetermined and amended returns filed for the first and  
31 second tax years. Any additional taxes due under P.L.1945,  
32 c.162, shall be remitted with the amended returns filed with the  
33 director, together with any penalty and interest, for failure to  
34 pay any such tax when due as provided in the State Tax Uniform  
35 Procedure Act, R.S.54:48-et seq.

36 7. a. If during any tax year, property with respect to which a  
37 tax credit has been allowed under this act:

38 (1) is disposed of prior to the end of its recovery period, as  
39 determined under section 5 of this act; or

40 (2) ceases to be used in a new or expanded business facility of  
41 the taxpayer in this State prior to the end of its recovery period,  
42 as determined under section 5 of this act, then the unused portion  
43 of the credit allowed for such property shall be forfeited for the  
44 tax year and all ensuing years. Additionally, except when the  
45 property is damaged or destroyed by fire, flood, storm or other  
46 casualty, or is stolen, the taxpayer shall redetermine the amount  
47 of credit allowed in all earlier years by reducing the applicable  
48 percentage of cost of such property allowed under section 5 of  
49 this act, to correspond with the percentage of cost allowable for  
50 the period of time that the property was actually used in this  
51 State in the new or expanded business facility of the taxpayer.  
52 The taxpayer shall then file a reconciliation statement with its  
53 annual corporation business tax return for the year in which the  
54 forfeiture occurs and pay any additional tax owed due to

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1 reduction of the amount of credit allowable for such earlier  
2 years, together with any penalty and interest for failure to pay  
3 any such tax as provided in the State Tax Uniform Procedure Act,  
4 R.S.54:48-1 et seq.

5 b. If during any tax year the taxpayer ceases operation of a  
6 new or expanded business facility in this State for which a credit  
7 was allowed under this act, before expiration of the recovery  
8 period of the property with respect to which a tax credit has been  
9 allowed under this act, then the unused portion of the allowed  
10 credit shall be forfeited for the tax year and all ensuing years.  
11 Additionally, except when the cessation is due to fire, flood,  
12 storm or other casualty, the taxpayer shall redetermine the  
13 amount of credit allowed in earlier years by reducing the  
14 applicable percentage of cost of such property allowed under  
15 section 5 of this act, to correspond with the percentage of cost  
16 allowable for the period of time that the property was actually  
17 used in this State in a new or expanded business facility of the  
18 taxpayer that is subject to tax under P.L.1945, c.162. The  
19 taxpayer shall then file a reconciliation statement with its annual  
20 corporation business tax return for the year in which the  
21 forfeiture occurs, and pay any additional taxes owed due to  
22 reduction of the amount of credit allowable for such earlier  
23 years, together with any penalty and interest for failure to pay  
24 any such tax as provided in the State Tax Uniform Procedure Act,  
25 R.S.54:48-1 et seq.

26 c. If during any tax year subsequent to the tax year in which  
27 the new jobs factor is redetermined as provided in section 6 of  
28 this act, the average number of employees of the taxpayer, for  
29 the then current tax year, employed in positions created because  
30 of and directly attributable to the qualified investment falls  
31 below the minimum number of new jobs created upon which the  
32 taxpayer's annual credit allowance is based, the taxpayer shall  
33 calculate what the taxpayer's annual credit allowance would  
34 have been had the taxpayer's new jobs factor been determined  
35 based upon the average number of employees, for the then  
36 current tax year, employed in positions created because of and  
37 directly attributable to the qualified investment. The difference  
38 between the result of this calculation and the taxpayer's annual  
39 credit allowance for the qualified investment as determined  
40 under section 3 of this act, shall be forfeited for the then current  
41 tax year, and for each succeeding tax year unless for a  
42 succeeding tax year the taxpayer's average employment in  
43 positions directly attributable to the qualified investment once  
44 again meets the level required to enable the taxpayer to utilize  
45 its full annual credit allowance for that tax year.

46 8. a. (1) Property of a small business taxpayer shall not be  
47 treated as disposed of under section 7 of this act by reason of a  
48 mere change in the form of conducting the business as long as the  
49 property is retained in a business of a small business taxpayer in  
50 this State, and the taxpayer retains a controlling interest in the  
51 successor business. In this event, the successor business shall be  
52 allowed to claim the amount of credit still available with respect  
53 to the new or expanded business facility or facilities transferred,  
54 and the small business taxpayer-transferor shall not be required

1 to redetermine the amount of credit allowed in earlier tax years.

2 (2) Property of a taxpayer that is not a small business taxpayer  
3 shall not be treated as disposed of under section 7 of this act by  
4 reason of a mere change in the form of conducting the business as  
5 long as the property is retained in a business of a taxpayer in this  
6 State, and the taxpayer retains a controlling interest in the  
7 successor business. In this event, the successor business shall be  
8 allowed to claim the amount of credit still available with respect  
9 to the new or expanded business facility or facilities transferred,  
10 and the taxpayer-transferor shall not be required to redetermine  
11 the amount of credit allowed in earlier tax years.

12 b. (1) Property of a small business taxpayer shall be treated as  
13 disposed of under section 7 of this act by reason of a change in  
14 the form of conducting the business if the property is not  
15 retained in a business of a small business taxpayer in this State in  
16 which the small business taxpayer retains a controlling interest.

17 (2) Property of a small business taxpayer shall not be treated  
18 as disposed of under section 7 of this act by reason of any  
19 transfer or sale to a successor small business taxpayer which  
20 continues to operate the new or expanded business facility in this  
21 State. Upon transfer or sale, the successor shall acquire the  
22 amount of credit that remains available under this act for each  
23 subsequent tax year and the taxpayer-transferor shall not be  
24 required to redetermine the amount of credit allowed in earlier  
25 years.

26 (3) Property of a business that is not a small business taxpayer  
27 shall not be treated as disposed of under section 7 of this act by  
28 reason of any transfer or sale to a successor taxpayer which  
29 continues to operate the new or expanded business facility in this  
30 State. Upon transfer or sale, the successor shall acquire the  
31 amount of credit that remains available under this act for each  
32 subsequent tax year and the taxpayer-transferor shall not be  
33 required to redetermine the amount of credit allowed in earlier  
34 years.

35 (4) Property of a small business taxpayer shall be treated as  
36 disposed of under section 7 by reason of any transfer or sale to a  
37 successor that is not a small business taxpayer, whether or not  
38 the successor continues to operate the business in this State.  
39 Upon such transfer or sale, the successor shall not acquire any  
40 amount of credit under this act and the taxpayer-transferor shall  
41 redetermine, as required by this act, the amount of credit  
42 allowed in earlier years.

43 9. a. A taxpayer that claims credit under this act shall  
44 maintain sufficient records to establish the following facts for  
45 each item of qualified property:

- 46 (1) its identity;  
47 (2) its actual or reasonably determined cost;  
48 (3) its straight-line depreciation life;  
49 (4) the month and tax year in which it was placed in service;  
50 (5) the amount of credit taken; and  
51 (6) the date it was disposed of or otherwise ceased to be  
52 qualified property.

53 b. A taxpayer that does not keep records required for  
54 identification of investment credit property shall be treated as

1 having disposed of, during the tax year, any investment credit  
2 property which the taxpayer cannot establish was still on hand in  
3 this State at the end of that year.

4 c. If a taxpayer cannot establish when investment credit  
5 property reported for purposes of claiming this credit during a  
6 tax year was placed in service, the taxpayer shall be treated as  
7 having placed it in service in the most recent prior year in which  
8 similar property was placed in service unless the taxpayer can  
9 establish that the property placed in service in the most recent  
10 year is still on hand. In that event, the taxpayer shall be treated  
11 as having placed the property in service in the next most recent  
12 year.

13 10. a. The burden of proof shall be on a taxpayer to establish  
14 by clear and convincing evidence that the taxpayer is entitled to  
15 the credit allowed pursuant to this act.

16 b. Notwithstanding any provision of this act to the contrary,  
17 no credit shall be allowed or applied under this act for any  
18 qualified investment property placed in service or use until the  
19 person asserting a claim for the allowance of credit under this  
20 act makes written application to the director for allowance of  
21 the credit as provided in this subsection and receives written  
22 acknowledgement of its receipt from the director. An  
23 application for credit is timely made if filed no later than the  
24 last day of the due date without extensions, for filing the tax  
25 return required under section 15 of P.L.1945, c.162  
26 (C.54:10A-15), for the tax year in which the property to which  
27 the credit relates is placed in service or use and all information  
28 required by the director is provided as part of the application.

29 c. The failure to timely apply for the credit shall result in the  
30 forfeiture of 50% of the annual credit allowance otherwise  
31 allowable under this act. This penalty shall apply annually until  
32 such application is filed.

33 11. The Director of the Division of Taxation shall prepare and  
34 transmit to the Governor and the Legislature, on or before the  
35 second March 1 following the operative date of this section and  
36 annually thereafter, a report concerning the revenue cost and  
37 distributional impact of this act in such a manner as to facilitate  
38 an evaluation of its costs in State tax revenue foregone and its  
39 benefits in new job creation. To facilitate an understanding of  
40 the gross amount and percentage of credits claimed in relation to  
41 the size, number and income of corporations and the number of  
42 jobs created, the report shall include statistical analyses of the  
43 number and value of applications for credits, credits granted and  
44 anticipated to be granted, and the number of new jobs created  
45 and anticipated to be created. To facilitate an understanding of  
46 the distribution of the use of the credit, or any concentration of  
47 such use in a particular industry or by a particular taxpayer, and  
48 the creation of new jobs among corporations, the report shall  
49 include statistics of credit use and new jobs creation segregated  
50 by specific industry, displayed in a manner that facilitates an  
51 understanding of the relative distribution of credit claims and  
52 uses and the relative distribution of new jobs created. To  
53 facilitate an understanding of the distinction between the new  
54 jobs created as a result of the credit and the new jobs not

1 resulting from the credit, the report shall include statistics  
2 concerning the mean cost in State tax revenue forgone of  
3 creating a new job in specific industries, the relative new job  
4 creation rates between corporations using the credit and those  
5 not using the credit, and increases in employment in the State  
6 and the region. The director shall include in the report such  
7 further observations and recommendations about the use or  
8 administration of the credit as the director deems appropriate.

9 12. Notwithstanding the provisions of subsection (g) of  
10 R.S.43:21-11 to the contrary, the Commissioner of the  
11 Department of Labor shall provide the Director of the Division of  
12 Taxation such copies of the quarterly reports filed by taxpayers  
13 with the Department of Labor pursuant to subparagraph (A) of  
14 paragraph (2) of subsection (a) of R.S.43:21-14 as the director  
15 may request to verify the qualifications of the taxpayers to the  
16 credits allowed under this act. The director shall not use the  
17 reports provided for any purpose other than the administration of  
18 the credits allowed under this act, and reports so provided shall  
19 be deemed files and records of the director pursuant to  
20 R.S.54:50-8.

21 13. The director shall promulgate rules and regulations  
22 pursuant to "Administrative Procedure Act, P.L.1968, c.410  
23 (C.52:14B-1 et seq.), as may be necessary to effectuate the  
24 purpose of this act.

25 14. This act shall take effect immediately but sections 1  
26 through 12 shall remain inoperative until the first day of the tax  
27 year next commencing after enactment and shall apply to  
28 property placed in service or use on or after that date.

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33 Allows corporation business tax credit or property tax offset for  
34 certain investments that create new jobs in this State.

JOINT LEGISLATIVE COMMITTEE  
ON ECONOMIC RECOVERY

STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2475**

**STATE OF NEW JERSEY**

DATED: JUNE 2, 1993

The Joint Legislative Committee on Economic Recovery reports favorably an Assembly Committee Substitute for Assembly Bill No. 2475. As reported, this substitute bill is identical to S-1784, as released and amended by the committee on this date.

The substitute bill provides a tax credit to businesses that make investments that create new jobs in this State. The bill allows a credit against the corporation business tax equal to a percentage of certain costs of new or expanded business facilities in this State. The percentage of credit allowed depends upon the kind of investment made and the number of new jobs created, but can equal up to 10% of the investment costs.

A taxpayer is allowed a credit for investment through direct ownership or by lease in buildings, building components, equipment and capitalized start-up costs of new or expanded business facilities in New Jersey. The credit is applicable to investments in most industrial sectors including manufacturing, wholesale distribution, warehousing, retailing and service businesses. If manufacturing equipment is allowed a credit under the "Manufacturing Equipment and Employment Investment Tax Credit Act," contained in S-1820 or A-2675, the credit under this bill is not available for that manufacturing investment.

The cost of property considered as a "qualified investment" and allowed in the calculation of the credit is based upon the expected depreciation life of the property for federal income tax purposes. The cost of new investment property with a depreciation life of three years is allowed at 35% of cost, five years at 70% of cost and seven or more years at 100% of cost.

The credit is also conditioned on the number of new jobs created by the new investment. A "new job" is the employment of a New Jersey resident at the new or expanded business facility on a full or full-time equivalent (but not seasonal) basis in a position created by the qualified investment. The qualified investment amount is allowed as a credit amount to the extent new jobs are created. The number of new jobs that a taxpayer must create depends on the size of the taxpayer.

A small business taxpayer, defined as a taxpayer with annual payroll of \$2 million or less and annual gross receipts of \$6 million or less, must create a minimum of 5 new jobs to be allowed a credit of one half of one percent of the qualified investment. That new jobs factor is increased one-half of one percent for each additional 5 new jobs created over the 5 new job minimum, up to a 10 percent credit for 100 new jobs created.

A taxpayer that is not a small business must create a minimum of 50 new jobs to be allowed a credit of one half of one percent of the qualified investment. That new jobs factor is increased one-half of one percent for each additional 50 new jobs created over the 50 new job minimum, up to a 10 percent credit for 1000 new jobs created.

One-fifth of the credit may be used to offset up to 50% of the corporation business tax liability of a taxpayer resulting from the increased investment and employment in the year that the investment property is put into service; any remaining credit may be rebated in an amount not to exceed 50% of the property tax liability of a taxpayer resulting from the increased investment and employment, and one-fifth of the credit may be used in a similar manner in each of the four years thereafter. If the corporation business tax liability resulting from the increased investment cannot be readily determined, the liability is apportioned on the basis of the compensation paid to the new employees relative to total New Jersey compensation paid by the corporation. The annual credit amount cannot reduce the annual tax attributable to the increased investment below 50% of the amount otherwise due on the attributable investment or below the statutory minimum tax, and credit amounts that are not usable in a tax year may not be carried forward for use in subsequent tax years.

Annual Department of Treasury summary reports will assure that the Legislature is made aware of the total dollar value of the credits granted per year and to date, the relationship of a taxpayer's size and business line to credits granted, and provide a warning of any problems with the implementation of the credit. Regular review of individual taxpayers' credits will assure that they receive the benefits of their investment. The review process will include an in-depth review of the credit relating to a particular investment in the third year of the credit, and annual recalculation of a credit allowance, if necessary. The review of individual taxpayers' use of the credit will provide the input for the annual Treasury report summarizing credit use.

The bill also permits the Department of Labor to release information to the Division of Taxation necessary to verify the qualifications of taxpayers applying for the credits under this bill.

FISCAL IMPACT:

The Division of Taxation, Department of the Treasury, has estimated that approximately \$10 million of investment credits will be granted in the first year of the bill's implementation, which will have primary impact on the fiscal year following the fiscal year of implementation. That estimate is based on assumptions about the utilization of the credit and the level of business investment in the State that may be affected in future years by changes in the business environment and the availability of the credit. In years following the first year in which investment credits are granted further credits are granted with revenue impact that, because the credits depend on the creation of additional jobs in New Jersey, cannot be determined at this time.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2475

STATE OF NEW JERSEY

DATED: JUNE 3, 1993

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2475 (Acs).

Assembly Bill No. 2475 (Acs) provides a tax credit to businesses that make investments that create new jobs in this State. The bill allows a credit against the corporation business tax equal to a percentage of certain costs of new or expanded business facilities in this State. The percentage of credit allowed depends upon the kind of investment made and the number of new jobs created, but can equal up to 10% of the investment costs.

A taxpayer is allowed a credit for investment through direct ownership or by lease in buildings, building components, equipment and capitalized start-up costs of new or expanded business facilities in New Jersey. The credit is applicable to investments in most industrial sectors including manufacturing, wholesale distribution, warehousing, retailing and service businesses. If manufacturing equipment is allowed a credit under the proposed "Manufacturing Equipment and Employment Investment Tax Credit Act," contained in S-1820 or A-2675, the credit under this bill is not available for that manufacturing investment.

The cost of property considered as a "qualified investment" and allowed in the calculation of the credit is based upon the expected depreciation life of the property for federal income tax purposes. The cost of new investment property with a depreciation life of three years is allowed at 35% of cost, five years at 70% of cost and seven or more years at 100% of cost.

The credit is also conditioned on the number of new jobs created by the new investment. A "new job" is the employment of a New Jersey resident at the new or expanded business facility on a full or full-time equivalent (but not seasonal) basis in a position created by the qualified investment. The qualified investment amount is allowed as a credit amount to the extent new jobs are created. The number of new jobs that a taxpayer must create depends on the size of the taxpayer.

A small business taxpayer, defined as a taxpayer with annual payroll of \$2 million or less and annual gross receipts of \$6 million or less, must create a minimum of 5 new jobs to be allowed a credit of one half of one percent of the qualified investment. That new jobs factor is increased one-half of one percent for each additional 5 new jobs created over the 5 new job minimum, up to a 10 percent credit for 100 new jobs created.

A taxpayer that is not a small business must create a minimum of 50 new jobs to be allowed a credit of one half of one percent of the qualified investment. That new jobs factor is increased one-half of one percent for each additional 50 new jobs created over the 50 new job minimum, up to a 10 percent credit for 1000 new jobs created.

One-fifth of the credit may be used to offset up to 50% of the corporation business tax liability of a taxpayer resulting from the increased investment and employment in the year that the investment property is put into service, any remaining credit may be rebated in an amount not to exceed 50% of the property tax liability of a taxpayer resulting from the increased investment and employment, and one-fifth of the credit may be used in a similar manner in each of the four years thereafter. If the corporation business tax liability resulting from the increased investment cannot be readily determined, the liability is apportioned on the basis of the compensation paid to the new employees relative to total New Jersey compensation paid by the corporation. The annual credit amount cannot reduce the annual tax attributable to the increased investment below 50% of the amount otherwise due on the attributable investment or below the statutory minimum tax, and credit amounts that are not usable in a tax year may not be carried forward for use in subsequent tax years.

Annual Department of Treasury summary reports will assure that the Legislature is made aware of the total dollar value of the credits granted per year and to date, the relationship of a taxpayer's size and business line to credits granted, and provide a warning of any problems with the implementation of the credit. Regular review of individual taxpayers' credits will assure that they receive the benefits of their investment. The review process will include an in-depth review of the credit relating to a particular investment in the third year of the credit, and annual recalculation of a credit allowance, if necessary. The review of individual taxpayers' use of the credit will provide the input for the annual Treasury report summarizing credit use.

The bill also permits the Department of Labor to release information to the Division of Taxation necessary to verify the qualifications of taxpayers applying for the credits under this bill.

FISCAL IMPACT:

The Division of Taxation, Department of the Treasury, has estimated that approximately \$10 million of investment credits will be granted in the first year of the bill's implementation, which will have primary impact on the fiscal year following the fiscal year of implementation. That estimate is based on assumptions about the utilization of the credit and the level of business investment in the State that may be affected in future years by changes in the business environment and the availability of the credit. In years following the first year in which investment credits are granted further credits are granted with revenue impact that, because the credits depend on the creation of additional jobs in New Jersey, cannot be determined at this time.

SENATE, No. 1820

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1993

By Senator SINAGRA

1 AN ACT providing a credit against corporation business tax  
2 liability for investment in certain manufacturing equipment  
3 and for certain increased employment, supplementing P.L.1945,  
4 c.162 (C.54:10A-1 et seq.).

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

8 1. This act shall be known and may be cited as the  
9 "Manufacturing Equipment and Employment Investment Credit  
10 Act."

11 2. For the purposes of this act:

12 "Control," with respect to a corporation, means ownership,  
13 directly or indirectly, of stock possessing 50% or more of the  
14 total combined voting power of all classes of the stock of the  
15 corporation entitled to vote; "control," with respect to a trust,  
16 means ownership, directly or indirectly, of 50% or more of the  
17 beneficial interest in the principal or income of the trust. The  
18 ownership of stock in a corporation, of a capital or profits  
19 interest in a partnership or association or of a beneficial interest  
20 in a trust shall be determined in accordance with the rules for  
21 constructive ownership of stock provided in subsection (c) of  
22 section 267 of the federal Internal Revenue Code of 1986, 26  
23 U.S.C. §267, other than paragraph (3) of subsection (c) of that  
24 section.

25 "Controlled group" means one or more chains of corporations  
26 connected through stock ownership with a common parent  
27 corporation if stock possessing at least 50% of the voting power  
28 of all classes of stock of each of the corporations is owned  
29 directly or indirectly by one or more of the corporations; and the  
30 common parent owns directly stock possessing at least 50% of the  
31 voting power of all classes of stock of at least one of the other  
32 corporations.

33 "Director" means the Director of the Division of Taxation in  
34 the Department of the Treasury.

35 "Full-time employee" means an employee working for the  
36 taxpayer for at least 140 hours per month at a wage not less than  
37 the State or federal minimum wage, if either minimum wage  
38 provision is applicable to the business, on a permanent basis,  
39 which does not include employment that is temporary or seasonal.

40 "Investment credit base" means the cost of qualified  
41 equipment. The cost of qualified equipment shall not include the  
42 value of equipment given in trade or exchange for the equipment  
43 purchased for business relocation or expansion. If equipment is  
44 damaged or destroyed by fire, flood, storm or other casualty, or  
45 is stolen, the cost of replacement equipment shall not include any  
46 insurance proceeds received in compensation for the loss. In the

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1 case of self-constructed equipment, the cost thereof shall be the  
2 amount properly charged to the capital account for depreciation  
3 in accordance with federal income tax law. The cost of  
4 equipment acquired by written lease is the minimum amount  
5 required by the agreement, agreements, contract or contracts to  
6 be paid over the term of the lease, provided however, that the  
7 minimum amount shall not include any amount required to be  
8 paid, as determined by the director, after the expiration of the  
9 useful life of the equipment.

10 "Number of new employees" means the increase in the average  
11 number of full-time employees and full-time employee  
12 equivalents residing and domiciled in this State employed at work  
13 locations in this State from the employment base year to the  
14 employment measurement year. The employment base year is  
15 the tax year immediately preceding the tax year for which the  
16 credit pursuant to section 3 of P.L. , c. (C. ) (now pending  
17 before the legislature as this bill), is allowed, provided that if the  
18 taxpayer was not subject to tax and did not have a tax year  
19 immediately proceed the tax year for which a credit pursuant to  
20 section 3 of P.L. , c. (C. ), was allowed the employment  
21 base year is the tax year in which the credit pursuant to section 3  
22 of P.L. , c. (C. ), was allowed. The measurement year is the  
23 tax year immediately following the tax year in which the credit  
24 pursuant to section 3 of P.L. , c. (C. ), was allowed. The  
25 hours of part-time employees shall be aggregated to determine  
26 the number of full-time employee equivalents.

27 "Part-time employee" means an employee working for the  
28 taxpayer for at least 20 hours per week for at least six months  
29 during the tax year.

30 "Purchase" means any acquisition of property, including an  
31 acquisition pursuant to a lease, but only if:

32 a. the property is not acquired from a person whose  
33 relationship to the person acquiring it would result in the  
34 disallowance of deductions under section 267 or subsection (b) of  
35 section 707 of the federal Internal Revenue Code of 1986, 26  
36 U.S.C. §267 or §707.

37 b. the property is not acquired by one member of a controlled  
38 group from another member of the same controlled group. The  
39 director may waive this requirement if the property was acquired  
40 from a related person for its then fair market value; and

41 c. the basis of the property for federal income tax purposes, in  
42 the hands of the person acquiring it, is not determined:

43 (1) in whole or in part by reference to the federal adjusted  
44 basis of such property in the hands of the person from whom it  
45 was acquired; or

46 (2) under subsection (e) of section 1014 of the federal Internal  
47 Revenue Code of 1986, 26 U.S.C. §1014.

48 "Qualified equipment" means machinery, apparatus or  
49 equipment acquired by purchase for use or consumption by the  
50 taxpayer directly and primarily in the production of tangible  
51 personal property by manufacturing, processing, assembling or  
52 refining, having a useful life of four or more years, placed in  
53 service in this State during the first or second tax year  
54 commencing in the first or second calendar year following the

1 enactment of P.L. , c. (C. )(now pending before the  
2 legislature as this bill). Qualified equipment does not include  
3 tangible personal property which the taxpayer contracts or agrees  
4 to lease or rent to another person or licenses another person to  
5 use.

6 "Related person" means:

7 a. a corporation, partnership, association or trust controlled by  
8 the taxpayer;

9 b. an individual, corporation, partnership, association or trust  
10 that is in control of the taxpayer;

11 c. a corporation, partnership, association or trust controlled by  
12 an individual, corporation, partnership, association or trust that is  
13 in control of the taxpayer; or

14 d. a member of the same controlled group as the taxpayer.

15 "Tax year" means the fiscal or calendar accounting year of a  
16 taxpayer.

17 3. a. A taxpayer shall be allowed a credit against the tax  
18 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in  
19 an amount equal to 2% of the investment credit base of qualified  
20 equipment placed in service in the tax year, up to a maximum  
21 allowed credit for the tax year of \$1,000,000,

22 b. The tax imposed for the tax year pursuant to section 5 of  
23 P.L.1945, c.162, shall first be reduced by the amount of any  
24 credit allowed pursuant to section 19 of P.L.1983, c.303  
25 (C.52:27H-78), then by any credit allowed pursuant to section 12  
26 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed  
27 pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), prior to  
28 applying any credits allowable pursuant to this section. Credits  
29 allowable pursuant to this section shall be applied in the order of  
30 the credits' tax years. The amount of the credits applied under  
31 this section against the tax imposed pursuant to section 5 of  
32 P.L.1945, c.162, for a tax year shall not exceed 50% of the tax  
33 liability otherwise due and shall not reduce the tax liability to an  
34 amount less than the statutory minimum provided in subsection  
35 (e) of section 5 of P.L.1945, c.162.

36 c. The amount of tax year credit otherwise allowable under  
37 subsection a. of this section which cannot be applied for the tax  
38 year due to the limitations of subsection b. of this section may be  
39 carried over, if necessary, to the seven accounting years  
40 following a credit's tax year. Provided however, that a taxpayer  
41 may not carry over any amount of credit or credits allowed under  
42 subsection a. of this section to a tax year during which a  
43 corporate acquisition with respect to which the taxpayer was a  
44 target corporation occurred or during which the taxpayer was a  
45 party to a merger or a consolidation, or to any subsequent tax  
46 year, if the credit was allowed for a tax year prior to the year of  
47 acquisition, merger or consolidation; provided further, however,  
48 that if in the case of a corporate merger or corporate  
49 consolidation the taxpayer can demonstrate, through the  
50 submission of a copy of the plan of merger or consolidation and  
51 such other evidence as may be required by the director, the  
52 identity of the constituent corporation which was the acquiring  
53 person, a credit allowed to the acquiring person may be carried  
54 over by the taxpayer. "Acquiring person" means the constituent

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1 corporation the stockholders of which own the largest proportion  
2 of the total voting power in the surviving or consolidated  
3 corporation after the merger or consolidation.

4 d. (1) With respect to equipment that is three-year property,  
5 as described in subsection (e) of section 168 of the federal  
6 Internal Revenue Code of 1986, 26 U.S.C. §168, which is disposed  
7 of or ceases to be qualified equipment prior to the end of the 36  
8 month period following being placed in service in this State, the  
9 amount of credit allowed shall be that portion of the credit  
10 provided for in subsection a. of this section which represents the  
11 ratio which the months of qualified use bear to 36, and the  
12 difference between the credit taken and the credit allowed for  
13 actual use shall be forfeited. Additionally, except when the  
14 property is damaged or destroyed by fire, flood, storm or other  
15 casualty, or is stolen, the taxpayer shall redetermine the amount  
16 of credit allowed for the tax year of the credit by reducing the  
17 investment credit base by the cost of the amount of the disposed  
18 or disqualified equipment. If the redetermination of the credit  
19 results in an increase in final liability for any tax year in which  
20 the credit was applied, then, notwithstanding the four year  
21 limitation of subsection b. of R.S.54:49-6 to the contrary, the  
22 amount of unpaid liability, if any, shall be considered a deficiency  
23 for the purposes of the State Tax Uniform Procedure Law,  
24 R.S.54:48-1 et seq. The amount of credit allowed for actual use  
25 shall be determined by multiplying the original credit by the ratio  
26 which the months of qualified use bear to 36.

27 (2) With respect to property other than that described in  
28 subparagraph (1) of this subsection which is disposed of or ceases  
29 to be qualified equipment prior to the end of the 60 month period  
30 following being placed in service in this State, the amount of  
31 credit allowed shall be that portion of the credit provided for in  
32 subsection a. of this section which represents the ratio which the  
33 months of qualified use bear to 60, and the difference between  
34 the credit taken and the credit allowed for actual use shall be  
35 forfeited. Additionally, except when the property is damaged or  
36 destroyed by fire, flood, storm or other casualty, or is stolen, the  
37 taxpayer shall redetermine the amount of credit allowed for the  
38 tax year of the credit by reducing the investment credit base by  
39 the cost of the amount of the disposed or disqualified equipment.  
40 If the redetermination of the credit results in an increase in final  
41 liability for any tax year in which the credit was applied, then,  
42 notwithstanding the four year limitation of subsection b. of  
43 R.S.54:49-6 to the contrary, the amount of unpaid liability, if  
44 any, shall be considered a deficiency for the purposes of the State  
45 Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of  
46 credit allowed for actual use shall be determined by multiplying  
47 the original credit by the ratio which the months of qualified use  
48 bear to 60.

49 4. a. A taxpayer allowed a credit under section 3 of P.L. ,  
50 c. (C. )(now pending before the Legislature as his bill) with  
51 respect to the investment credit base, shall be allowed a credit  
52 for the increase in employment by the taxpayer determined by  
53 the number of new employees for each of the two years next  
54 succeeding the tax year for which the credit under

1 section 3 of P.L. , c. (C. )(now pending before the  
2 Legislature as this bill) is allowed, in an amount equal to 3% of  
3 the investment credit base, not to exceed a maximum allowed  
4 amount for each of the two tax years of \$1,000 multiplied by the  
5 number of new employees.

6 b. The tax imposed for the tax year pursuant to section 5 of  
7 P.L.1945, c.162, shall first be reduced by the amount of any  
8 credit allowed pursuant to section 19 of P.L.1983, c.303  
9 (C.52:27H-78), then by any credit allowed pursuant to section 12  
10 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed  
11 pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), and  
12 then by any credit allowed pursuant to section 3 of P.L. , c.  
13 (C. )(now pending before the Legislature as his bill), prior to  
14 applying any credits allowable pursuant to this section. Credits  
15 allowable pursuant to this section shall be applied in the order of  
16 the tax year of the credit allowed pursuant to section 3 of P.L.  
17 , c. (C. )(now pending before the Legislature as his bill), to  
18 which the credit under this section relates and then by the order  
19 of the credits' tax years. The amount of the credits applied  
20 under this section against the tax imposed pursuant to section 5  
21 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax  
22 liability otherwise due and shall not reduce the tax liability to an  
23 amount less than the statutory minimum provided in subsection  
24 (e) of section 5 of P.L.1945, c.162.

25 c. The amount of tax year credit otherwise allowable under  
26 subsection a. of this section which cannot be applied for the tax  
27 year due to the limitations of subsection b. of this section may be  
28 carried over, if necessary, to the seven accounting years  
29 following a credit's tax year. Provided however, that a taxpayer  
30 may not carry over any amount of credit or credits allowed under  
31 subsection a. of this section to a tax year during which a  
32 corporate acquisition with respect to which the taxpayer was a  
33 target corporation occurred or during which the taxpayer was a  
34 party to a merger or a consolidation, or to any subsequent tax  
35 year, if the credit was allowed for a tax year prior to the year of  
36 acquisition, merger or consolidation; provided further, however,  
37 that if in the case of a corporate merger or corporate  
38 consolidation the taxpayer can demonstrate, through the  
39 submission of a copy of the plan of merger or consolidation and  
40 such other evidence as may be required by the director, the  
41 identity of the constituent corporation which was the acquiring  
42 person, a credit allowed to the acquiring person may be carried  
43 over by the taxpayer. "Acquiring person" means the constituent  
44 corporation the stockholders of which own the largest proportion  
45 of the total voting power in the surviving or consolidated  
46 corporation after the merger or consolidation.

47 d. (1) With respect to equipment that is three-year property,  
48 as described in subsection (e) of section 168 of the federal  
49 Internal Revenue Code of 1986, 26 U.S.C. §168, which is disposed  
50 of or ceases to be qualified equipment prior to the end of the 36  
51 month period following being placed in service in this State, the  
52 amount of credit allowed shall be that portion of the credit  
53 provided for in subsection a. of this section which represents the  
54 ratio which the months of qualified use bear to 36, and the

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1 difference between the credit taken and the credit allowed for  
2 actual use shall be forfeited. Additionally, except when the  
3 property is damaged or destroyed by fire, flood, storm or other  
4 casualty, or is stolen, the taxpayer shall redetermine the amount  
5 of credit allowed for the tax year of the credit by reducing the  
6 investment credit base by the cost of the amount of the disposed  
7 or disqualified equipment. If the redetermination of the credit  
8 results in an increase in final liability for any tax year in which  
9 the credit was applied, then, notwithstanding the four year  
10 limitation of subsection b. of R.S.54:49-6 to the contrary, the  
11 amount of unpaid liability, if any, shall be considered a deficiency  
12 for the purposes of the State Tax Uniform Procedure Law,  
13 R.S.54:48-1 et seq. The amount of credit allowed for actual use  
14 shall be determined by multiplying the original credit by the ratio  
15 which the months of qualified use bear to 36.

16 (2) With respect to property other than that described in  
17 subparagraph (1) of this subsection which is disposed of or ceases  
18 to be qualified equipment prior to the end of the 60 month period  
19 following being placed in service in this State, the amount of  
20 credit allowed shall be that portion of the credit provided for in  
21 subsection a. of this section which represents the ratio which the  
22 months of qualified use bear to 60, and the difference between  
23 the credit taken and the credit allowed for actual use shall be  
24 forfeited. Additionally, except when the property is damaged or  
25 destroyed by fire, flood, storm or other casualty, or is stolen, the  
26 taxpayer shall redetermine the amount of credit allowed for the  
27 tax year of the credit by reducing the investment credit base by  
28 the cost of the amount of the disposed or disqualified equipment.  
29 If the redetermination of the credit results in an increase in final  
30 liability for any tax year in which the credit was applied, then,  
31 notwithstanding the four year limitation of subsection b. of  
32 R.S.54:49-6 to the contrary, the amount of unpaid liability, if  
33 any, shall be considered a deficiency for the purposes of the State  
34 Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of  
35 credit allowed for actual use shall be determined by multiplying  
36 the original credit by the ratio which the months of qualified use  
37 bear to 60.

38 5. a. A taxpayer that claims credit under this act shall  
39 maintain sufficient records to establish the following facts for  
40 each item of qualified equipment:

- 41 (1) its identity;
- 42 (2) its actual or reasonably determined cost;
- 43 (3) its useful depreciation life;
- 44 (4) the month and tax year in which it was placed in service;
- 45 (5) the amount of credit taken; and
- 46 (6) the date it was disposed of or otherwise ceased to be  
47 qualified equipment.

48 b. A taxpayer that does not keep records required for  
49 identification of qualified equipment shall be treated as having  
50 disposed of, during the tax year, any qualified equipment which  
51 the taxpayer cannot establish was still on hand in this State at  
52 the end of that year.

53 c. If a taxpayer cannot establish when qualified equipment  
54 reported for purposes of claiming this credit during a tax year

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1 was placed in service, the taxpayer shall be treated as having  
2 placed it in service in the most recent prior year in which similar  
3 property was placed in service unless the taxpayer can establish  
4 that the property placed in service in the most recent year is still  
5 on hand. In that event, the taxpayer shall be treated as having  
6 placed the property in service in the next most recent year.

7 d. The burden of proof shall be on a taxpayer to establish by a  
8 preponderance of the evidence that the taxpayer is entitled to  
9 the credit allowed pursuant to this act.

10 6. The Director of the Division of Taxation shall prepare and  
11 transmit to the Governor, the Legislature, and the State Revenue  
12 Forecasting Advisory Commission on or before the September 1  
13 next following the first calendar year during which equipment  
14 placed in service may be qualified equipment, a report concerning  
15 the revenue cost and distributional impact of this act in such a  
16 manner as to facilitate an evaluation of its costs in State tax  
17 revenue foregone and its benefits in new job creation. To  
18 facilitate an understanding of the gross amount and percentage of  
19 credits claimed in relation to the size, number and income of  
20 corporations and the number of new employees, the report shall  
21 include statistical analyses of the number and value of credits  
22 granted and anticipated to be granted, and the number of new  
23 employees. To facilitate an understanding of the distinction  
24 between the number of new employees resulting from the  
25 availability of the credits and the number of new employees not  
26 resulting from availability of the credits, the report shall include  
27 statistics concerning the mean cost, in State tax revenue forgone,  
28 of providing the credits resulting in employment of a single  
29 full-time employee in specific industries, the relative rate of  
30 increase in the number of new employees between corporations  
31 using the credit and those not using the credit, and increases in  
32 employment in the State and the region. The director shall  
33 include in the report such further observations and  
34 recommendations about the use or administration of the credit as  
35 the director deems appropriate.

36 The State Revenue Forecasting Advisory Commission shall  
37 prepare and transmit to the Governor and Legislature, on or  
38 before the November 1 next following the first calendar year  
39 during which equipment placed in service may be qualified  
40 equipment, a report providing a cost-benefit analysis of the  
41 credits provided under this act and the retention and stimulation  
42 of employment in the manufacturing sector, together with its  
43 recommendations as to whether the credits provided under this  
44 act should be extended to equipment placed in service after the  
45 second tax year following the enactment of this act or whether  
46 the credits provided under this act should be made permanent.

47 7. The director shall promulgate rules and regulations pursuant  
48 to "Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1  
49 et seq.), as may be necessary to effectuate the purpose of this  
50 act.

51 8. This act shall take effect immediately.

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STATEMENT

This bill provides a tax credit to businesses that make investments in this State's manufacturing sector, and provides an additional credit if the taxpayer increases employment in this State. The bill allows a credit against the corporation business tax equal to two percent of a corporation's investment in machinery, apparatus or equipment having a federal depreciation useful life of 4 years or more, placed in service in this State, and used or consumed directly and primarily in the production of tangible personal property. The credit may not exceed \$1,000,000 per taxpayer annually. The credit is a temporary credit, which is available for qualified equipment placed in service in the two tax years following the enactment of the bill.

An additional credit is allowed in the two years following a taxpayer's investment in qualified equipment. In each of those two years the additional credit may be up to 3 percent of the manufacturing equipment investment amount, not to exceed \$1,000 per additional job created in New Jersey. An additional job created in New Jersey means the increase in full-time (140 hours or more per month) and full-time equivalent (the sum of part-time nonseasonal employees working at least 20 hours per week) employment provided to New Jersey residents measured against the number of the taxpayer's full-time and full-time equivalent New Jersey resident employees in the tax year preceding the tax year in which the credit for manufacturing investment was allowed.

The annual credit amounts cannot reduce the annual corporation business liability below 50% of the amount otherwise due for the tax year or below the statutory minimum tax, and credit amounts that are not usable in a tax year may be carried forward for up to seven tax years.

A Department of Treasury summary report will assure that the Legislature is made aware of the total dollar value of the credits granted and provide a warning of any problems with the implementation of the credit. The Department of Treasury report will serve as the basis of an analysis by the State Revenue Forecasting Advisory Commission of whether the temporary credit should be extended or made permanent.

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Manufacturing Equipment and Employment Investment Tax Credit Act.

[FIRST REPRINT]  
ASSEMBLY, No. 2675

STATE OF NEW JERSEY

INTRODUCED MAY 24, 1993

By Assemblyman WARSH, Assemblywoman HAINES,  
Assemblymen Roma, Mikulak, Augustine, Garrett,  
DiGaetano, Kelly and Arnone

1 AN ACT providing a credit against corporation business tax  
2 liability for investment in certain manufacturing equipment  
3 and for certain increased employment, supplementing P.L.1945,  
4 c.162 (C.54:10A-1 et seq.).

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

8 1. This act shall be known and may be cited as the  
9 "Manufacturing Equipment and Employment Investment Tax  
10 Credit Act."

11 2. For the purposes of this act:

12 "Control," with respect to a corporation, means ownership,  
13 directly or indirectly, of stock possessing 50% or more of the  
14 total combined voting power of all classes of the stock of the  
15 corporation entitled to vote; "control," with respect to a trust,  
16 means ownership, directly or indirectly, of 50% or more of the  
17 beneficial interest in the principal or income of the trust. The  
18 ownership of stock in a corporation, of a capital or profits  
19 interest in a partnership or association or of a beneficial interest  
20 in a trust shall be determined in accordance with the rules for  
21 constructive ownership of stock provided in subsection (c) of  
22 section 267 of the federal Internal Revenue Code of 1986, 26  
23 U.S.C. §267, other than paragraph (3) of subsection (c) of that  
24 section.

25 "Controlled group" means one or more chains of corporations  
26 connected through stock ownership with a common parent  
27 corporation if stock possessing at least 50% of the voting power  
28 of all classes of stock of each of the corporations is owned  
29 directly or indirectly by one or more of the corporations; and the  
30 common parent owns directly stock possessing at least 50% of the  
31 voting power of all classes of stock of at least one of the other  
32 corporations.

33 "Director" means the Director of the Division of Taxation in  
34 the Department of the Treasury.

35 "Full-time employee" means an employee working for the  
36 taxpayer for at least 140 hours per month at a wage not less than  
37 the State or federal minimum wage, if either minimum wage  
38 provision is applicable to the business, on a permanent basis,  
39 which does not include employment that is temporary or seasonal.

40 "Investment credit base" means the cost of qualified  
41 equipment. The cost of qualified equipment shall not include the  
42 value of equipment given in trade or exchange for the equipment

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

JCER committee amendments adopted June 3, 1993.

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1 purchased for business relocation or expansion. If equipment is  
2 damaged or destroyed by fire, flood, storm or other casualty, or  
3 is stolen, the cost of replacement equipment shall not include any  
4 insurance proceeds received in compensation for the loss. In the  
5 case of self-constructed equipment, the cost thereof shall be the  
6 amount properly charged to the capital account for depreciation  
7 in accordance with federal income tax law. The cost of  
8 equipment acquired by written lease is the minimum amount  
9 required by the agreement, agreements, contract or contracts to  
10 be paid over the term of the lease, provided however, that the  
11 minimum amount shall not include any amount required to be  
12 paid, as determined by the director, after the expiration of the  
13 useful life of the equipment.

14 "Number of new employees" means the increase in the average  
15 number of full-time employees and full-time employee  
16 equivalents residing and domiciled in this State employed at work  
17 locations in this State from the employment base year to the  
18 employment measurement year. The employment base year is  
19 the tax year immediately preceding the tax year for which the  
20 credit pursuant to section 3 of P.L. , c. (C. ) (now pending  
21 before the legislature as this bill), is allowed, provided that if the  
22 taxpayer was not subject to tax and did not have a tax year  
23 immediately proceed the tax year for which a credit pursuant to  
24 section 3 of P.L. , c. (C. ), was allowed the employment  
25 base year is the tax year in which the credit pursuant to section 3  
26 of P.L. , c. (C. ), was allowed. The measurement year is the  
27 tax year immediately following the tax year in which the credit  
28 pursuant to section 3 of P.L. , c. (C. ), was allowed. The  
29 hours of part-time employees shall be aggregated to determine  
30 the number of full-time employee equivalents.

31 "Part-time employee" means an employee working for the  
32 taxpayer for at least 20 hours per week for at least six months  
33 during the tax year.

34 "Purchase" means any acquisition of property, including an  
35 acquisition pursuant to a lease, but only if:

36 a. the property is not acquired from a person whose  
37 relationship to the person acquiring it would result in the  
38 disallowance of deductions under section 267 or subsection (b) of  
39 section 707 of the federal Internal Revenue Code of 1986, 26  
40 U.S.C. §267 or §707.

41 b. the property is not acquired by one member of a controlled  
42 group from another member of the same controlled group. The  
43 director may waive this requirement if the property was acquired  
44 from a related person for its then fair market value; and

45 c. the basis of the property for federal income tax purposes, in  
46 the hands of the person acquiring it, is not determined:

47 (1) in whole or in part by reference to the federal adjusted  
48 basis of such property in the hands of the person from whom it  
49 was acquired; or

50 (2) under subsection (e) of section 1014 of the federal Internal  
51 Revenue Code of 1986, 26 U.S.C. §1014.

52 "Qualified equipment" means machinery, apparatus or  
53 equipment acquired by purchase for use or consumption by the  
54 taxpayer directly and primarily in the production of tangible

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3

1 personal property by manufacturing, processing, assembling or  
2 refining, <sup>1</sup>as defined pursuant to subsection a. of section 25 of  
3 P.L.1980, c.105 (C.54:32B-8.13),<sup>1</sup> having a useful life of four or  
4 more years, placed in service in this State <sup>1</sup>[during the first or  
5 second tax year commencing in the first or second calendar year  
6 following the enactment of P.L. , c. (C. )(now pending  
7 before the legislature as this bill)]<sup>1</sup>. Qualified equipment does  
8 not include tangible personal property which the taxpayer  
9 contracts or agrees to lease or rent to another person or licenses  
10 another person to use.

11 "Related person" means:

12 a. a corporation, partnership, association or trust controlled by  
13 the taxpayer;

14 b. an individual, corporation, partnership, association or trust  
15 that is in control of the taxpayer;

16 c. a corporation, partnership, association or trust controlled by  
17 an individual, corporation, partnership, association or trust that is  
18 in control of the taxpayer; or

19 d. a member of the same controlled group as the taxpayer.

20 "Tax year" means the fiscal or calendar accounting year of a  
21 taxpayer.

22 3. a. A taxpayer shall be allowed a credit against the tax  
23 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in  
24 an amount equal to 2% of the investment credit base of qualified  
25 equipment placed in service in the tax year, up to a maximum  
26 allowed credit for the tax year of \$1,000,000,

27 b. The tax imposed for the tax year pursuant to section 5 of  
28 P.L.1945, c.162, shall first be reduced by the amount of any  
29 credit allowed pursuant to section 19 of P.L.1983, c.303  
30 (C.52:27H-78), then by any credit allowed pursuant to section 12  
31 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed  
32 pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), prior to  
33 applying any credits allowable pursuant to this section. Credits  
34 allowable pursuant to this section shall be applied in the order of  
35 the credits' tax years. The amount of the credits applied under  
36 this section <sup>1</sup>and section 4 of P.L. , c. (C. ) (now pending  
37 before the Legislature as this bill),<sup>1</sup> against the tax imposed  
38 pursuant to section 5 of P.L.1945, c.162, for a tax year shall not  
39 exceed 50% of the tax liability otherwise due and shall not reduce  
40 the tax liability to an amount less than the statutory minimum  
41 provided in subsection (e) of section 5 of P.L.1945, c.162.

42 c. The amount of tax year credit otherwise allowable under  
43 subsection a. of this section which cannot be applied for the tax  
44 year due to the limitations of subsection b. of this section may be  
45 carried over, if necessary, to the seven <sup>1</sup>[accounting] tax<sup>1</sup> years  
46 following a credit's tax year. Provided however, that a taxpayer  
47 may not carry over any amount of credit or credits allowed under  
48 subsection a. of this section to a tax year during which a  
49 corporate acquisition with respect to which the taxpayer was a  
50 target corporation occurred or during which the taxpayer was a  
51 party to a merger or a consolidation, or to any subsequent tax  
52 year, if the credit was allowed for a tax year prior to the year of  
53 acquisition, merger or consolidation; provided further, however,  
54 that if in the case of a corporate merger or corporate

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4

1 consolidation the taxpayer can demonstrate, through the  
2 submission of a copy of the plan of merger or consolidation and  
3 such other evidence as may be required by the director, the  
4 identity of the constituent corporation which was the acquiring  
5 person, a credit allowed to the acquiring person may be carried  
6 over by the taxpayer. "Acquiring person" means the constituent  
7 corporation the stockholders of which own the largest proportion  
8 of the total voting power in the surviving or consolidated  
9 corporation after the merger or consolidation.

10 d. (1) With respect to equipment that is three-year property,  
11 as described in subsection (e) of section 168 of the federal  
12 Internal Revenue Code of 1986, 26 U.S.C. §168, which is disposed  
13 of or ceases to be qualified equipment prior to the end of the 36  
14 month period following being placed in service in this State, the  
15 amount of credit allowed shall be that portion of the credit  
16 provided for in subsection a. of this section which represents the  
17 ratio which the months of qualified use bear to 36, and the  
18 difference between the credit taken and the credit allowed for  
19 actual use shall be forfeited. Additionally, except when the  
20 property is damaged or destroyed by fire, flood, storm or other  
21 casualty, or is stolen, the taxpayer shall redetermine the amount  
22 of credit allowed for the tax year of the credit by reducing the  
23 investment credit base by the cost of the amount of the disposed  
24 or disqualified equipment. If the redetermination of the credit  
25 results in an increase in final liability for any tax year in which  
26 the credit was applied, then, notwithstanding the four year  
27 limitation of subsection b. of R.S.54:49-6 to the contrary, the  
28 amount of unpaid liability, if any, shall be considered a deficiency  
29 for the purposes of the State Tax Uniform Procedure Law,  
30 R.S.54:48-1 et seq. The amount of credit allowed for actual use  
31 shall be determined by multiplying the original credit by the ratio  
32 which the months of qualified use bear to 36.

33 (2) With respect to property other than that described in  
34 subparagraph (1) of this subsection which is disposed of or ceases  
35 to be qualified equipment prior to the end of the 60 month period  
36 following being placed in service in this State, the amount of  
37 credit allowed shall be that portion of the credit provided for in  
38 subsection a. of this section which represents the ratio which the  
39 months of qualified use bear to 60, and the difference between  
40 the credit taken and the credit allowed for actual use shall be  
41 forfeited. Additionally, except when the property is damaged or  
42 destroyed by fire, flood, storm or other casualty, or is stolen, the  
43 taxpayer shall redetermine the amount of credit allowed for the  
44 tax year of the credit by reducing the investment credit base by  
45 the cost of the amount of the disposed or disqualified equipment.  
46 If the redetermination of the credit results in an increase in final  
47 liability for any tax year in which the credit was applied, then,  
48 notwithstanding the four year limitation of subsection b. of  
49 R.S.54:49-6 to the contrary, the amount of unpaid liability, if  
50 any, shall be considered a deficiency for the purposes of the State  
51 Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of  
52 credit allowed for actual use shall be determined by multiplying  
53 the original credit by the ratio which the months of qualified use  
54 bear to 60.

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5

1 4. a. A taxpayer allowed a credit under section 3 of P.L. ,  
2 c. (C. )(now pending before the Legislature as his bill), with  
3 respect to the investment credit base, shall be allowed a credit  
4 for the increase in employment by the taxpayer determined by  
5 the number of new employees for each of the two <sup>1</sup>tax<sup>1</sup> years  
6 next succeeding the tax year for which the credit under section 3  
7 of P.L. , c. (C. )(now pending before the Legislature as this  
8 bill), is allowed, in an amount equal to 3% of the investment  
9 credit base, not to exceed a maximum allowed amount for each  
10 of the two tax years of \$1,000 multiplied by the number of new  
11 employees.

12 b. The tax imposed for the tax year pursuant to section 5 of  
13 P.L.1945, c.162, shall first be reduced by the amount of any  
14 credit allowed pursuant to section 19 of P.L.1983, c.303  
15 (C.52:27H-78), then by any credit allowed pursuant to section 12  
16 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed  
17 pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), and  
18 then by any credit allowed pursuant to section 3 of P.L. , c.  
19 (C. )(now pending before the Legislature as his bill), prior to  
20 applying any credits allowable pursuant to this section. Credits  
21 allowable pursuant to this section shall be applied in the order of  
22 the tax year of the credit allowed pursuant to section 3 of P.L.  
23 , c. (C. )(now pending before the Legislature as his bill), to  
24 which the credit under this section relates and then by the order  
25 of the credits' tax years. The amount of the credits applied  
26 under this section <sup>1</sup>and section 3 of P.L. , c. (C. ) (now  
27 pending before the Legislature as this bill),<sup>1</sup> against the tax  
28 imposed pursuant to section 5 of P.L.1945, c.162, for a tax year  
29 shall not exceed 50% of the tax liability otherwise due and shall  
30 not reduce the tax liability to an amount less than the statutory  
31 minimum provided in subsection (e) of section 5 of P.L.1945,  
32 c.162.

33 c. The amount of tax year credit otherwise allowable under  
34 subsection a. of this section which cannot be applied for the tax  
35 year due to the limitations of subsection b. of this section may be  
36 carried over, if necessary, to the seven <sup>1</sup>[accounting] tax<sup>1</sup> years  
37 following a credit's tax year. Provided however, that a taxpayer  
38 may not carry over any amount of credit or credits allowed under  
39 subsection a. of this section to a tax year during which a  
40 corporate acquisition with respect to which the taxpayer was a  
41 target corporation occurred or during which the taxpayer was a  
42 party to a merger or a consolidation, or to any subsequent tax  
43 year, if the credit was allowed for a tax year prior to the year of  
44 acquisition, merger or consolidation; provided further, however,  
45 that if in the case of a corporate merger or corporate  
46 consolidation the taxpayer can demonstrate, through the  
47 submission of a copy of the plan of merger or consolidation and  
48 such other evidence as may be required by the director, the  
49 identity of the constituent corporation which was the acquiring  
50 person, a credit allowed to the acquiring person may be carried  
51 over by the taxpayer. "Acquiring person" means the constituent  
52 corporation the stockholders of which own the largest proportion  
53 of the total voting power in the surviving or consolidated  
54 corporation after the merger or consolidation.

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6

1 d. (1) With respect to equipment that is three-year property,  
2 as described in subsection (e) of section 168 of the federal  
3 Internal Revenue Code of 1986, 26 U.S.C. §168, which is disposed  
4 of or ceases to be qualified equipment prior to the end of the 36  
5 month period following being placed in service in this State, the  
6 amount of credit allowed shall be that portion of the credit  
7 provided for in subsection a. of this section which represents the  
8 ratio which the months of qualified use bear to 36, and the  
9 difference between the credit taken and the credit allowed for  
10 actual use shall be forfeited. Additionally, except when the  
11 property is damaged or destroyed by fire, flood, storm or other  
12 casualty, or is stolen, the taxpayer shall redetermine the amount  
13 of credit allowed for the tax year of the credit by reducing the  
14 investment credit base by the cost of the amount of the disposed  
15 or disqualified equipment. If the redetermination of the credit  
16 results in an increase in final liability for any tax year in which  
17 the credit was applied, then, notwithstanding the four year  
18 limitation of subsection b. of R.S.54:49-6 to the contrary, the  
19 amount of unpaid liability, if any, shall be considered a deficiency  
20 for the purposes of the State Tax Uniform Procedure Law,  
21 R.S.54:48-1 et seq. The amount of credit allowed for actual use  
22 shall be determined by multiplying the original credit by the ratio  
23 which the months of qualified use bear to 36.

24 (2) With respect to property other than that described in  
25 subparagraph (1) of this subsection which is disposed of or ceases  
26 to be qualified equipment prior to the end of the 60 month period  
27 following being placed in service in this State, the amount of  
28 credit allowed shall be that portion of the credit provided for in  
29 subsection a. of this section which represents the ratio which the  
30 months of qualified use bear to 60, and the difference between  
31 the credit taken and the credit allowed for actual use shall be  
32 forfeited. Additionally, except when the property is damaged or  
33 destroyed by fire, flood, storm or other casualty, or is stolen, the  
34 taxpayer shall redetermine the amount of credit allowed for the  
35 tax year of the credit by reducing the investment credit base by  
36 the cost of the amount of the disposed or disqualified equipment.  
37 If the redetermination of the credit results in an increase in final  
38 liability for any tax year in which the credit was applied, then,  
39 notwithstanding the four year limitation of subsection b. of  
40 R.S.54:49-6 to the contrary, the amount of unpaid liability, if  
41 any, shall be considered a deficiency for the purposes of the State  
42 Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of  
43 credit allowed for actual use shall be determined by multiplying  
44 the original credit by the ratio which the months of qualified use  
45 bear to 60.

46 5. a. A taxpayer that claims credit under this act shall  
47 maintain sufficient records to establish the following facts for  
48 each item of qualified equipment:

- 49 (1) its identity;  
50 (2) its actual or reasonably determined cost;  
51 (3) its useful depreciation life;  
52 (4) the month and tax year in which it was placed in service;  
53 (5) the amount of credit taken; and  
54 (6) the date it was disposed of or otherwise ceased to be

1 qualified equipment.

2 b. A taxpayer that does not keep records required for  
3 identification of qualified equipment shall be treated as having  
4 disposed of, during the tax year, any qualified equipment which  
5 the taxpayer cannot establish was still on hand in this State at  
6 the end of that year.

7 c. If a taxpayer cannot establish when qualified equipment  
8 reported for purposes of claiming this credit during a tax year  
9 was placed in service, the taxpayer shall be treated as having  
10 placed it in service in the most recent prior year in which similar  
11 property was placed in service unless the taxpayer can establish  
12 that the property placed in service in the most recent year is still  
13 on hand. In that event, the taxpayer shall be treated as having  
14 placed the property in service in the next most recent year.

15 d. The burden of proof shall be on a taxpayer to establish by a  
16 preponderance of the evidence that the taxpayer is entitled to  
17 the credit allowed pursuant to this act.

18 6. The Director of the Division of Taxation shall prepare and  
19 transmit to the Governor, the Legislature, and the State Revenue  
20 Forecasting Advisory Commission on or before the September 1  
21 next following the <sup>1</sup>[first calendar year during which equipment  
22 placed in service may be qualified equipment] January 1 next  
23 following enactment of this section and annually on or before  
24 each September 1 thereafter<sup>1</sup>, a report concerning the revenue  
25 cost and distributional impact of this act in such a manner as to  
26 facilitate an evaluation of its costs in State tax revenue foregone  
27 and its benefits in new job creation. To facilitate an  
28 understanding of the gross amount and percentage of credits  
29 claimed in relation to the size, number and income of  
30 corporations and the number of new employees, the report shall  
31 include statistical analyses of the number and value of credits  
32 granted and anticipated to be granted, and the number of new  
33 employees. To facilitate an understanding of the distinction  
34 between the number of new employees resulting from the  
35 availability of the credits and the number of new employees not  
36 resulting from availability of the credits, the report shall include  
37 statistics concerning the mean cost, in State tax revenue forgone,  
38 of providing the credits resulting in employment of a single  
39 full-time employee in specific industries, the relative rate of  
40 increase in the number of new employees between corporations  
41 using the credit and those not using the credit, and increases in  
42 employment in the State and the region. The director shall  
43 include in the report such further observations and  
44 recommendations about the use or administration of the credit as  
45 the director deems appropriate.

46 The State Revenue Forecasting Advisory Commission shall  
47 prepare and transmit to the Governor and Legislature, on or  
48 before the November 1 next following the <sup>1</sup>[first calendar year  
49 during which equipment placed in service may be qualified  
50 equipment] January 1 next following the enactment of this  
51 section and biennially on or before each second November 1  
52 thereafter<sup>1</sup>, a report providing a cost-benefit analysis of the  
53 credits provided under this act and the retention and stimulation  
54 of employment in the manufacturing sector, together with its

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8

1 recommendations as to whether the credits provided under this  
2 act should <sup>1</sup>[be extended to equipment placed in service after the  
3 second tax year following the enactment of this act or whether  
4 the credits provided under this act should be made] remain<sup>1</sup>  
5 permanent.

6 <sup>1</sup>7. Notwithstanding the provisions of subsection (g) of  
7 R.S.43:21-11 to the contrary, the Commissioner of the  
8 Department of Labor shall provide the Director of the Division of  
9 Taxation such copies of the quarterly reports filed by taxpayers  
10 with the Department of Labor pursuant to subparagraph (A) of  
11 paragraph (2) of subsection (a) of R.S.43:21-14 as the director  
12 may request to verify the qualifications of the taxpayers to the  
13 credits allowed under this act. The director shall not use the  
14 reports provided for any purpose other than the administration of  
15 the credits allowed under this act, and reports so provided shall  
16 be deemed files and records of the director pursuant to  
17 R.S.54:50-8.<sup>1</sup>

18 <sup>1</sup>[7.] <sup>8.</sup><sup>1</sup> The director shall promulgate rules and regulations  
19 pursuant to "Administrative Procedure Act, P.L.1968, c.410  
20 (C.52:14B-1 et seq.), as may be necessary to effectuate the  
21 purpose of this act.

22 <sup>1</sup>[8.] <sup>9.</sup><sup>1</sup> This act shall take effect immediately <sup>1</sup>and sections 1  
23 through 7 shall apply to tax years beginning on and after the  
24 January 1 next following their enactment<sup>1</sup>.

25

26

27

28

29 Manufacturing Equipment and Employment Investment Tax  
30 Credit Act.

JOINT LEGISLATIVE COMMITTEE  
ON ECONOMIC RECOVERY

STATEMENT TO

ASSEMBLY, No. 2675

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 2, 1993

The Joint Legislative Committee on Economic Recovery reports favorably Assembly Bill No. 2675 with committee amendments.

As amended, Assembly Bill No. 2675 provides a tax credit to businesses that make investments in this State's manufacturing sector, and provides an additional credit if the taxpayer increases employment in this State. The bill allows a credit against the corporation business tax equal to two percent of a corporation's investment in machinery, apparatus or equipment having a federal depreciation useful life of 4 years or more, placed in service in this State, and used or consumed directly and primarily in the production of tangible personal property. The credit may not exceed \$1,000,000 per taxpayer annually. The credit is available for qualified equipment placed in service in fiscal or calendar accounting years beginning on and after January 1 following the enactment of the bill into law.

An additional credit is allowed in each of the two years following a taxpayer's investment in qualified equipment. In each of those two years the additional credit may be up to 3 percent of the manufacturing equipment investment amount, not to exceed \$1,000 per additional job created in New Jersey. An additional job created in New Jersey means the increase in full-time (140 hours or more per month) and full-time equivalent (the sum of part-time nonseasonal employees working at least 20 hours per week) employment provided to New Jersey residents measured against the number of the taxpayer's full-time and full-time equivalent New Jersey resident employees in the tax year preceding the tax year in which the credit for manufacturing investment was allowed.

The annual credit amounts cannot reduce the annual corporation business liability below 50% of the amount otherwise due for the tax year or below the statutory minimum tax, and credit amounts that are not usable in a tax year may be carried forward for up to seven tax years.

An annual Department of Treasury summary report will assure that the Legislature is made aware of the total dollar value of the credits granted and provide a warning of any problems with the implementation of the credit. The Department of Treasury report will serve as the basis of an analysis by the State Revenue Forecasting Advisory Commission of whether the credit should remain a permanent credit.

FISCAL IMPACT:

The Division of Taxation, Department of the Treasury, has estimated that approximately \$20 million of investment credits will

be granted in the first year of the bill's implementation, which will have primary impact on the fiscal year following the fiscal year of implementation. That estimate is based on assumptions about the utilization of the credit and the level of business investment in the State that may be affected in future years by changes in the business environment and the availability of the credit. In years following the first year in which investment credits are granted further credits are granted with revenue impact that, because the credits depend on the creation of additional jobs in New Jersey, cannot be determined at this time.

COMMITTEE AMENDMENTS:

The amendments make the credits a permanent feature of the corporation business tax, clarify limitations on the application of the credits, and make technical changes in legal references. With these amendments, this bill is identical to S-1820 as released and amended by the committee on this date.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 2675

STATE OF NEW JERSEY

DATED: JUNE 3, 1993

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2675 (Aca).

Assembly Bill No. 2675 (Aca) provides a tax credit to businesses that make investments in this State's manufacturing sector, and provides an additional credit if the taxpayer increases employment in this State. The bill allows a credit against the corporation business tax equal to two percent of a corporation's investment in machinery, apparatus or equipment having a federal depreciation useful life of 4 years or more, placed in service in this State, and used or consumed directly and primarily in the production of tangible personal property. The credit may not exceed \$1,000,000 per taxpayer annually. The credit is available for qualified equipment placed in service in fiscal or calendar accounting years beginning on and after the January 1 following the enactment of the bill into law.

An additional credit is allowed in each of the two years following a taxpayer's investment in qualified equipment. In each of those two years the additional credit may be up to 3 percent of the manufacturing equipment investment amount, not to exceed \$1,000 per additional job created in New Jersey. An additional job created in New Jersey means the increase in full-time (140 hours or more per month) and full-time equivalent (the sum of part-time nonseasonal employees working at least 20 hours per week) employment provided to New Jersey residents measured against the number of the taxpayer's full-time and full-time equivalent New Jersey resident employees in the tax year preceding the tax year in which the credit for manufacturing investment was allowed.

The annual credit amounts cannot reduce the annual corporation business liability below 50% of the amount otherwise due for the tax year or below the statutory minimum tax, and credit amounts that are not usable in a tax year may be carried forward for up to seven tax years.

An annual Department of Treasury summary report will assure that the Legislature is made aware of the total dollar value of the credits granted and provide a warning of any problems with the implementation of the credit. The Department of Treasury report will serve as the basis of an analysis by the State Revenue Forecasting Advisory Commission of whether the credit should remain a permanent credit.

FISCAL IMPACT:

The Division of Taxation, Department of the Treasury, has estimated that approximately \$20 million of investment credits will be granted in the first year of the bill's implementation, which will have primary impact on the fiscal year following the fiscal year of

implementation. That estimate is based on assumptions about the utilization of the credit and the level of business investment in the State that may be affected in future years by changes in the business environment and the availability of the credit. In years following the first year in which investment credits are granted further credits are granted with revenue impact that, because the credits depend on the creation of additional jobs in New Jersey, cannot be determined at this time.

SENATE, No. 1821

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1993

By Senator BENNETT

1 AN ACT concerning depreciation deductions under the  
2 corporation business tax, amending P.L.1945, c.162.

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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2

1 credits or for the purpose of status as a controlled foreign  
2 corporation. In calculating the net worth of a taxpayer entitled  
3 to reduction for investment in subsidiaries, the amount of  
4 liabilities of the taxpayer shall be reduced by such proportion of  
5 the liabilities as corresponds to the ratio which the excluded  
6 portion of the subsidiary values bears to the total assets of the  
7 taxpayer.

8 In the case of banking corporations which have international  
9 banking facilities as defined in subsection (n), the foregoing  
10 aggregate of values shall also be reduced by retained earnings of  
11 the international banking facility. Retained earnings means the  
12 earnings accumulated over the life of such facility and shall not  
13 include the pro rata share of dividends paid and federal income  
14 taxes paid or payable during the tax year.

15 If in the opinion of the commissioner, the corporation's books  
16 do not disclose fair valuations the commissioner may make a  
17 reasonable determination of the net worth which, in his opinion,  
18 would reflect the fair value of the assets, exclusive of subsidiary  
19 investments as defined aforesaid, carried on the books of the  
20 corporation, in accordance with sound accounting principles, and  
21 such determination shall be used as net worth for the purpose of  
22 this act.

23 (e) "Indebtedness owing directly or indirectly" shall include,  
24 without limitation thereto, all indebtedness owing to any  
25 stockholder or shareholder and to members of his immediate  
26 family where a stockholder and members of his immediate family  
27 together or in the aggregate own 10% or more of the aggregate  
28 outstanding shares of the taxpayer's capital stock of all classes.

29 (f) "Investment company" shall mean any corporation whose  
30 business during the period covered by its report consisted, to the  
31 extent of at least 90% thereof of holding, investing and  
32 reinvesting in stocks, bonds, notes, mortgages, debentures,  
33 patents, patent rights and other securities for its own account,  
34 but this shall not include any corporation which: (1) is a merchant  
35 or a dealer of stocks, bonds and other securities, regularly  
36 engaged in buying the same and selling the same to customers; or  
37 (2) had less than 90% of its average gross assets in New Jersey, at  
38 cost, invested in stocks, bonds, debentures, mortgages, notes,  
39 patents, patent rights or other securities or consisting of cash on  
40 deposit during the period covered by its report; or (3) is a banking  
41 corporation or a financial business corporation as defined in the  
42 Corporation Business Tax Act.

43 (g) "Regulated investment company" shall mean any  
44 corporation which for a period covered by its report, is registered  
45 and regulated under the Investment Company Act of 1940  
46 (54 Stat. 789), as amended.

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

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

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

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3

1 (k) "Entire net income" shall mean total net income from all  
2 sources, whether within or without the United States, and shall  
3 include the gain derived from the employment of capital or labor,  
4 or from both combined, as well as profit gained through a sale or  
5 conversion of capital assets. For the purpose of this act, the  
6 amount of a taxpayer's entire net income shall be deemed prima  
7 facie to be equal in amount to the taxable income, before net  
8 operating loss deduction and special deductions, which the  
9 taxpayer is required to report to the United States Treasury  
10 Department for the purpose of computing its federal income tax;  
11 provided, however, that in the determination of such entire net  
12 income,

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

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

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

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

29 (C) Taxes paid or accrued to the United States on or measured  
30 by profits or income, or the tax imposed by this act, or any tax  
31 paid or accrued with respect to subsidiary dividends excluded  
32 from entire net income as provided in paragraph (5) of subsection  
33 (k) of this section;

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

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

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

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

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

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

53 (v) In full to the extent it relates to debt of a banking  
54 corporation to a bank holding company, of which the banking

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4

1 corporation is a subsidiary, or to a debt of a banking corporation  
2 to another banking corporation with respect to federal funds  
3 transactions governed by section 23A of the Federal Reserve Act  
4 (12 U.S.C. § 371c.) when both banking corporations are  
5 subsidiaries of the same bank holding company, as defined in 12  
6 U.S.C. §1841.

7 (F) (i) The amount by which depreciation reported to the  
8 United States Treasury Department for property placed in service  
9 on and after January 1, 1981, but prior to taxpayer fiscal or  
10 calendar accounting years beginning on and after the effective  
11 date of P.L. , c. (Now pending before the legislature as this  
12 bill), for purposes of computing federal taxable income in  
13 accordance with section 168 of the Internal Revenue Code in  
14 effect after December 31, 1980, exceeds the amount of  
15 depreciation determined in accordance with the Internal Revenue  
16 Code provisions in effect prior to January 1, 1981, but only with  
17 respect to a taxpayer's accounting period ending after  
18 December 31, 1981; provided, however, that where a taxpayer's  
19 accounting period begins in 1981 and ends in 1982, no  
20 modification shall be required with respect to this paragraph (F)  
21 for the report filed for such period with respect to property  
22 placed in service during that part of the accounting period which  
23 occurs in 1981.

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

31 The director shall promulgate rules and regulations necessary  
32 to carry out the provisions of this section, which rules shall  
33 provide, among others, the manner in which the remaining life of  
34 property shall be reported.

35 (G) (1) The amount of any civil, civil administrative, or  
36 criminal penalty or fine, including a penalty or fine under an  
37 administrative consent order, assessed and collected for a  
38 violation of a State or federal environmental law, an  
39 administrative consent order, or an environmental ordinance or  
40 resolution of a local governmental entity, and any interest earned  
41 on the penalty or fine, and any economic benefits having accrued  
42 to the violator as a result of a violation, which benefits are  
43 assessed and recovered in a civil, civil administrative, or criminal  
44 action, or pursuant to an administrative consent order. The  
45 provisions of this paragraph shall not apply to a penalty or fine  
46 assessed or collected for a violation of a State or federal  
47 environmental law, or local environmental ordinance or  
48 resolution, if the penalty or fine was for a violation that resulted  
49 from fire, riot, sabotage, flood, storm event, natural cause, or  
50 other act of God beyond the reasonable control of the violator, or  
51 caused by an act or omission of a person who was outside the  
52 reasonable control of the violator.

53 (2) The amount of treble damages paid to the Department of  
54 Environmental Protection pursuant to subsection a. of section 7

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5

1 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the  
2 department in removing, or arranging for the removal of, an  
3 unauthorized discharge upon failure of the discharger to comply  
4 with a directive from the department to remove, or arrange for  
5 the removal of, the discharge.

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

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

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

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

21 (i) Making, arranging for, placing or carrying loans to foreign  
22 persons, provided, however, that in the case of a foreign person  
23 which is an individual, or which is a foreign branch of a domestic  
24 corporation (other than a bank), or which is a foreign corporation  
25 or foreign partnership which is controlled by one or more  
26 domestic corporations (other than banks), domestic partnerships  
27 or resident individuals, all the proceeds of the loan are for use  
28 outside of the United States;

29 (ii) Making or placing deposits with foreign persons which are  
30 banks or foreign branches of banks (including foreign subsidiaries)  
31 or foreign branches of the taxpayers or with other international  
32 banking facilities; or

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

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

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

41 (5) Entire net income shall exclude 100% of dividends which  
42 were included in computing such taxable income for federal  
43 income tax purposes, paid to the taxpayer by one or more  
44 subsidiaries owned by the taxpayer to the extent of the 80% or  
45 more ownership of investment described in subsection (d) of this  
46 section. With respect to other dividends, entire net income shall  
47 not include 50% of the total included in computing such taxable  
48 income for federal income tax purposes.

49 (6) (A) Net operating loss deduction. There shall be allowed as  
50 a deduction for the taxable year the net operating loss carryover  
51 to that year.

52 (B) Net operating loss carryover. A net operating loss for any  
53 taxable year ending after June 30, 1984 shall be a net operating  
54 loss carryover to each of the seven years following the year of

1 the loss. The entire amount of the net operating loss for any  
2 taxable year (the "loss year") shall be carried to the earliest of  
3 the taxable years to which the loss may be carried. The portion  
4 of the loss which shall be carried to each of the other taxable  
5 years shall be the excess, if any, of the amount of the loss over  
6 the sum of the entire net income, computed without the  
7 exclusions permitted in paragraphs (4) and (5) of this subsection  
8 or the net operating loss deduction provided by subparagraph (A)  
9 of this paragraph, for each of the prior taxable years to which the  
10 loss may be carried.

11 (C) Net operating loss. For purposes of this paragraph the term  
12 "net operating loss" means the excess of the deductions over the  
13 gross income used in computing entire net income without the net  
14 operating loss deduction provided for in subparagraph (A) of this  
15 paragraph and the exclusions in paragraphs (4) and (5) of this  
16 subsection.

17 (D) Change in ownership. Where there is a change in 50% or  
18 more of the ownership of a corporation because of redemption or  
19 sale of stock and the corporation changes the trade or business  
20 giving rise to the loss, no net operating loss sustained before the  
21 changes may be carried over to be deducted from income earned  
22 after such changes. In addition where the facts support the  
23 premise that the corporation was acquired under any  
24 circumstances for the primary purpose of the use of its net  
25 operating loss carryover, the director may disallow the carryover.

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

29 (m) "Financial business corporation" shall mean any corporate  
30 enterprise which is (1) in substantial competition with the  
31 business of national banks and which (2) employs moneyed capital  
32 with the object of making profit by its use as money, through  
33 discounting and negotiating promissory notes, drafts, bills of  
34 exchange and other evidences of debt; buying and selling  
35 exchange; making of or dealing in secured or unsecured loans and  
36 discounts; dealing in securities and shares of corporate stock by  
37 purchasing and selling such securities and stock without recourse,  
38 solely upon the order and for the account of customers; or  
39 investing and reinvesting in marketable obligations evidencing  
40 indebtedness of any person, copartnership, association or  
41 corporation in the form of bonds, notes or debentures commonly  
42 known as investment securities; or dealing in or underwriting  
43 obligations of the United States, any state or any political  
44 subdivision thereof, or of a corporate instrumentality of any of  
45 them. This shall include, without limitation of the foregoing,  
46 business commonly known as industrial banks, dealers in  
47 commercial paper and acceptances, sales finance, personal  
48 finance, small loan and mortgage financing businesses, as well as  
49 any other enterprise employing moneyed capital coming into  
50 competition with the business of national banks; provided that the  
51 holding of bonds, notes, or other evidences of indebtedness by  
52 individual persons not employed or engaged in the banking or  
53 investment business and representing merely personal  
54 investments not made in competition with the business of

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7

1 national banks, shall not be deemed financial business. Nor shall  
2 "financial business" include national banks, production credit  
3 associations organized under the Farm Credit Act of 1933 or the  
4 Farm Credit Act of 1971, Pub.L.92-181 (12 U.S.C. §2091 et seq.),  
5 stock and mutual insurance companies duly authorized to transact  
6 business in this State, security brokers or dealers or investment  
7 companies or bankers not employing moneyed capital coming into  
8 competition with the business of national banks, real estate  
9 investment trusts, or any of the following entities organized  
10 under the laws of this State: credit unions, savings banks, savings  
11 and loan and building and loan associations, pawnbrokers, and  
12 State banks and trust companies.

13 (n) "International banking facility" shall mean a set of asset  
14 and liability accounts segregated on the books and records of a  
15 depository institution, United States branch or agency of a  
16 foreign bank, or an Edge or Agreement Corporation that includes  
17 only international banking facility time deposits and international  
18 banking facility extensions of credit as such terms are defined in  
19 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the  
20 board of governors of the Federal Reserve System, 12 CFR Part  
21 204, effective December 3, 1981. In the event that the United  
22 States enacts a law, or the board of governors of the Federal  
23 Reserve System adopts a regulation which amends the present  
24 definition of international banking facility or of such facilities'  
25 time deposits or extensions of credit, the Commissioner of  
26 Banking shall forthwith adopt regulations defining such terms in  
27 the same manner as such terms are set forth in the laws of the  
28 United States or the regulations of the board of governors of the  
29 Federal Reserve System. The regulations of the Commissioner of  
30 Banking shall thereafter provide the applicable definitions.  
31 (cf: P.L.1990, c.79, s.2)

32 2. This act shall take effect immediately.  
33  
34

#### 35 STATEMENT

36  
37 This bill permits corporations to use the federal modified  
38 accelerated cost recovery system for depreciation of property  
39 under the New Jersey corporation business tax, recoupling the  
40 rates of depreciation used under the corporation business tax to  
41 the rates used under the federal corporate income tax. The  
42 provisions of this bill apply to property placed into service in  
43 taxpayer fiscal or calendar accounting years that begin on or  
44 after the effective date of this act.  
45  
46

47  
48  
49 Permits corporations to use federal modified accelerated  
50 depreciation for certain property under the corporation business  
51 tax.

JOINT LEGISLATIVE COMMITTEE  
ON ECONOMIC RECOVERY

STATEMENT TO

SENATE, No. 1821

STATE OF NEW JERSEY

DATED: JUNE 2, 1993

The Joint Legislative Committee on Economic Recovery reports favorably Senate Bill No. 1821.

This bill permits corporations to use the federal modified accelerated cost recovery system for depreciation of property under the New Jersey corporation business tax, recoupling the rates of depreciation used under the corporation business tax to the rates used under the federal corporate income tax. The provisions of this bill apply to property placed into service in taxpayer fiscal or calendar accounting years that begin on or after the effective date of this act.

FISCAL IMPACT:

The Office of Legislative Services estimates that this legislation will have no fiscal impact in FY 1994, while for FY 1995, a \$1 million reduction in revenue is projected, based on the estimated purchase of depreciable assets in the first year. The estimated revenue loss will increase to \$17 million in FY 1996 and to \$35 million in FY 1997. These costs will eventually level off as all of the depreciable property in use comes under these new depreciation schedules.

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 273 and 1870

STATE OF NEW JERSEY

ADOPTED JUNE 3, 1993

Sponsored by Assemblymen PENN, KAVANAUGH  
and Assemblywoman DERMAN

1 AN ACT concerning the taxation of certain corporations, the  
2 shareholders of those corporations, and tax information  
3 reporting, amending and supplementing P.L.1945, c.162, and  
4 Title 54A of the New Jersey Statutes.

5

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

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

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

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

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

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

21 (d) "Net worth" shall mean the aggregate of the values  
22 disclosed by the books of the corporation for (1) issued and  
23 outstanding capital stock, (2) paid-in or capital surplus, (3) earned  
24 surplus and undivided profits, and (4) surplus reserves which can  
25 reasonably be expected to accrue to holders or owners of  
26 equitable shares, not including reasonable valuation reserves,  
27 such as reserves for depreciation or obsolescence or depletion.  
28 Notwithstanding the foregoing, net worth shall not include any  
29 deduction for the amount of the excess depreciation described in  
30 paragraph (2)(F) of subsection (k) of this section. The foregoing  
31 aggregate of values shall be reduced by 50% of the amount  
32 disclosed by the books of the corporation for investment in the  
33 capital stock of one or more subsidiaries, which investment is  
34 defined as ownership (1) of at least 80% of the total combined  
35 voting power of all classes of stock of the subsidiary entitled to  
36 vote and (2) of at least 80% of the total number of shares of all  
37 other classes of stock except nonvoting stock which is limited and  
38 preferred as to dividends. In the case of investment in an entity  
39 organized under the laws of a foreign country, the foregoing  
40 requisite degree of ownership shall effect a like reduction of such  
41 investment from net worth of the taxpayer, if the foreign entity  
42 is considered a corporation for any purpose under the United

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

Matter underlined thus is new matter.

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2

1 States federal income tax laws, such as (but not by way of sole  
2 examples) for the purpose of supplying deemed paid foreign tax  
3 credits or for the purpose of status as a controlled foreign  
4 corporation. In calculating the net worth of a taxpayer entitled  
5 to reduction for investment in subsidiaries, the amount of  
6 liabilities of the taxpayer shall be reduced by such proportion of  
7 the liabilities as corresponds to the ratio which the excluded  
8 portion of the subsidiary values bears to the total assets of the  
9 taxpayer.

10 In the case of banking corporations which have international  
11 banking facilities as defined in subsection (n), the foregoing  
12 aggregate of values shall also be reduced by retained earnings of  
13 the international banking facility. Retained earnings means the  
14 earnings accumulated over the life of such facility and shall not  
15 include the distributive share of dividends paid and federal  
16 income taxes paid or payable during the tax year.

17 If in the opinion of the commissioner, the corporation's books  
18 do not disclose fair valuations the commissioner may make a  
19 reasonable determination of the net worth which, in his opinion,  
20 would reflect the fair value of the assets, exclusive of subsidiary  
21 investments as defined aforesaid, carried on the books of the  
22 corporation, in accordance with sound accounting principles, and  
23 such determination shall be used as net worth for the purpose of  
24 this act.

25 (e) "Indebtedness owing directly or indirectly" shall include,  
26 without limitation thereto, all indebtedness owing to any  
27 stockholder or shareholder and to members of his immediate  
28 family where a stockholder and members of his immediate family  
29 together or in the aggregate own 10% or more of the aggregate  
30 outstanding shares of the taxpayer's capital stock of all classes.

31 (f) "Investment company" shall mean any corporation whose  
32 business during the period covered by its report consisted, to the  
33 extent of at least 90% thereof of holding, investing and  
34 reinvesting in stocks, bonds, notes, mortgages, debentures,  
35 patents, patent rights and other securities for its own account,  
36 but this shall not include any corporation which: (1) is a merchant  
37 or a dealer of stocks, bonds and other securities, regularly  
38 engaged in buying the same and selling the same to customers; or  
39 (2) had less than 90% of its average gross assets in New Jersey, at  
40 cost, invested in stocks, bonds, debentures, mortgages, notes,  
41 patents, patent rights or other securities or consisting of cash on  
42 deposit during the period covered by its report; or (3) is a banking  
43 corporation or a financial business corporation as defined in the  
44 Corporation Business Tax Act.

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

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

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

54 (j) Except as herein provided, "privilege period" shall mean the

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3

1 calendar or fiscal accounting period for which a tax is payable  
2 under this act.

3 (k) "Entire net income" shall mean total net income from all  
4 sources, whether within or without the United States, and shall  
5 include the gain derived from the employment of capital or labor,  
6 or from both combined, as well as profit gained through a sale or  
7 conversion of capital assets. For the purpose of this act, the  
8 amount of a taxpayer's entire net income shall be deemed prima  
9 facie to be equal in amount to the taxable income, before net  
10 operating loss deduction and special deductions, which the  
11 taxpayer is required to report to the United States Treasury  
12 Department for the purpose of computing its federal income tax;  
13 provided, however, that in the determination of such entire net  
14 income,

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

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

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

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

31 (C) Taxes paid or accrued to the United States, a possession or  
32 territory of the United States, a state, a political subdivision  
33 thereof, or the District of Columbia on or measured by profits or  
34 income, or business presence or business activity, or the tax  
35 imposed by this act, or any tax paid or accrued with respect to  
36 subsidiary dividends excluded from entire net income as provided  
37 in paragraph (5) of subsection (k) of this section;

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

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

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

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

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

53 (iv) In full to the extent that it relates to financing of motor  
54 vehicle inventory held for sale to customers; provided said

1 indebtedness is owed to a taxpayer customarily and routinely  
2 providing this type of financing;

3 (v) In full to the extent it relates to debt of a banking  
4 corporation to a bank holding company, of which the banking  
5 corporation is a subsidiary, or to a debt of a banking corporation  
6 to another banking corporation with respect to federal funds  
7 transactions governed by section 23A of the Federal Reserve Act  
8 (12 U.S.C. §371c.) when both banking corporations are  
9 subsidiaries of the same bank holding company, as defined in 12  
10 U.S.C. §1841.

11 (F)(i) The amount by which depreciation reported to the United  
12 States Treasury Department for property placed in service on and  
13 after January 1, 1981, for purposes of computing federal taxable  
14 income in accordance with section 168 of the Internal Revenue  
15 Code in effect after December 31, 1980, exceeds the amount of  
16 depreciation determined in accordance with the Internal Revenue  
17 Code provisions in effect prior to January 1, 1981, but only with  
18 respect to a taxpayer's accounting period ending after December  
19 31, 1981; provided, however, that where a taxpayer's accounting  
20 period begins in 1981 and ends in 1982, no modification shall be  
21 required with respect to this paragraph (F) for the report filed for  
22 such period with respect to property placed in service during that  
23 part of the accounting period which occurs in 1981.

24 (ii) For the periods set forth in subparagraph (F)(i) of this  
25 subsection, any amount, except with respect to qualified mass  
26 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
27 Internal Revenue Code as in effect immediately prior to January  
28 1, 1984, which the taxpayer claimed as a deduction in computing  
29 federal income tax pursuant to a qualified lease agreement under  
30 paragraph (8) of that section.

31 The director shall promulgate rules and regulations necessary  
32 to carry out the provisions of this section, which rules shall  
33 provide, among others, the manner in which the remaining life of  
34 property shall be reported.

35 (G) (1) The amount of any civil, civil administrative, or  
36 criminal penalty or fine, including a penalty or fine under an  
37 administrative consent order, assessed and collected for a  
38 violation of a State or federal environmental law, an  
39 administrative consent order, or an environmental ordinance or  
40 resolution of a local governmental entity, and any interest earned  
41 on the penalty or fine, and any economic benefits having accrued  
42 to the violator as a result of a violation, which benefits are  
43 assessed and recovered in a civil, civil administrative, or criminal  
44 action, or pursuant to an administrative consent order. The  
45 provisions of this paragraph shall not apply to a penalty or fine  
46 assessed or collected for a violation of a State or federal  
47 environmental law, or local environmental ordinance or  
48 resolution, if the penalty or fine was for a violation that resulted  
49 from fire, riot, sabotage, flood, storm event, natural cause, or  
50 other act of God beyond the reasonable control of the violator, or  
51 caused by an act or omission of a person who was outside the  
52 reasonable control of the violator.

53 (2) The amount of treble damages paid to the Department of  
54 Environmental Protection pursuant to subsection a. of section 7

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1 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the  
2 department in removing, or arranging for the removal of, an  
3 unauthorized discharge upon failure of the discharger to comply  
4 with a directive from the department to remove, or arrange for  
5 the removal of, the discharge.

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

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

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

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

21 (i) Making, arranging for, placing or carrying loans to foreign  
22 persons, provided, however, that in the case of a foreign person  
23 which is an individual, or which is a foreign branch of a domestic  
24 corporation (other than a bank), or which is a foreign corporation  
25 or foreign partnership which is controlled by one or more  
26 domestic corporations (other than banks), domestic partnerships  
27 or resident individuals, all the proceeds of the loan are for use  
28 outside of the United States;

29 (ii) Making or placing deposits with foreign persons which are  
30 banks or foreign branches of banks (including foreign subsidiaries)  
31 or foreign branches of the taxpayers or with other international  
32 banking facilities; or

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

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

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

41 (5) Entire net income shall exclude 100% of dividends which  
42 were included in computing such taxable income for federal  
43 income tax purposes, paid to the taxpayer by one or more  
44 subsidiaries owned by the taxpayer to the extent of the 80% or  
45 more ownership of investment described in subsection (d) of this  
46 section. With respect to other dividends, entire net income shall  
47 not include 50% of the total included in computing such taxable  
48 income for federal income tax purposes.

49 (6)(A) Net operating loss deduction. There shall be allowed as a  
50 deduction for the taxable year the net operating loss carryover to  
51 that year.

52 (B) Net operating loss carryover. A net operating loss for any  
53 taxable year ending after June 30, 1984 shall be a net operating  
54 loss carryover to each of the seven years following the year of

1 the loss. The entire amount of the net operating loss for any  
2 taxable year (the "loss year") shall be carried to the earliest of  
3 the taxable years to which the loss may be carried. The portion  
4 of the loss which shall be carried to each of the other taxable  
5 years shall be the excess, if any, of the amount of the loss over  
6 the sum of the entire net income, computed without the  
7 exclusions permitted in paragraphs (4) and (5) of this subsection  
8 or the net operating loss deduction provided by subparagraph (A)  
9 of this paragraph, for each of the prior taxable years to which the  
10 loss may be carried.

11 (C) Net operating loss. For purposes of this paragraph the term  
12 "net operating loss" means the excess of the deductions over the  
13 gross income used in computing entire net income without the net  
14 operating loss deduction provided for in subparagraph (A) of this  
15 paragraph and the exclusions in paragraphs (4) and (5) of this  
16 subsection.

17 (D) Change in ownership. Where there is a change in 50% or  
18 more of the ownership of a corporation because of redemption or  
19 sale of stock and the corporation changes the trade or business  
20 giving rise to the loss, no net operating loss sustained before the  
21 changes may be carried over to be deducted from income earned  
22 after such changes. In addition where the facts support the  
23 premise that the corporation was acquired under any  
24 circumstances for the primary purpose of the use of its net  
25 operating loss carryover, the director may disallow the carryover.

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

29 (m) "Financial business corporation" shall mean any corporate  
30 enterprise which is (1) in substantial competition with the  
31 business of national banks and which (2) employs moneyed capital  
32 with the object of making profit by its use as money, through  
33 discounting and negotiating promissory notes, drafts, bills of  
34 exchange and other evidences of debt; buying and selling  
35 exchange; making of or dealing in secured or unsecured loans and  
36 discounts; dealing in securities and shares of corporate stock by  
37 purchasing and selling such securities and stock without recourse,  
38 solely upon the order and for the account of customers; or  
39 investing and reinvesting in marketable obligations evidencing  
40 indebtedness of any person, copartnership, association or  
41 corporation in the form of bonds, notes or debentures commonly  
42 known as investment securities; or dealing in or underwriting  
43 obligations of the United States, any state or any political  
44 subdivision thereof, or of a corporate instrumentality of any of  
45 them. This shall include, without limitation of the foregoing,  
46 business commonly known as industrial banks, dealers in  
47 commercial paper and acceptances, sales finance, personal  
48 finance, small loan and mortgage financing businesses, as well as  
49 any other enterprise employing moneyed capital coming into  
50 competition with the business of national banks; provided that the  
51 holding of bonds, notes, or other evidences of indebtedness by  
52 individual persons not employed or engaged in the banking or  
53 investment business and representing merely personal  
54 investments not made in competition with the business of

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1 national banks, shall not be deemed financial business. Nor shall  
2 "financial business" include national banks, production credit  
3 associations organized under the Farm Credit Act of 1933 or the  
4 Farm Credit Act of 1971, Pub.L. 92-181 (12 U.S.C. § 2091 et  
5 seq.), stock and mutual insurance companies duly authorized to  
6 transact business in this State, security brokers or dealers or  
7 investment companies or bankers not employing moneyed capital  
8 coming into competition with the business of national banks, real  
9 estate investment trusts, or any of the following entities  
10 organized under the laws of this State: credit unions, savings  
11 banks, savings and loan and building and loan associations,  
12 pawnbrokers, and State banks and trust companies.

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

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

34 (p) "New Jersey S corporation" means a corporation that is an  
35 S corporation; which has made a valid election pursuant to  
36 section 3 of P.L. , c. (C. ) (now pending before the  
37 Legislature as this bill); and which has been an S corporation  
38 continuously since the effective date of the valid election made  
39 pursuant to section 3 of P.L. , c. (C. ).  
40 (cf: P.L.1990, c.79, s.2)

41 2. Section 5 of P.L.1945, c.162 (C. 54:10A-5) is amended to  
42 read as follows:

43 5. The franchise tax to be annually assessed to and paid by  
44 each taxpayer shall be the sum of the amount computed under  
45 subsection (a) hereof, or in the alternative to the amount  
46 computed under subsection (a) hereof, the amount computed  
47 under subsection (f) hereof, and the amount computed under  
48 subsection (c) hereof:

49 (a) That portion of its entire net worth as may be allocable to  
50 this State as provided in section 6, multiplied by the following  
51 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated  
52 net worth; 4/10 of a mill per dollar on the second  
53 \$100,000,000.00; 3/10 of a mill per dollar on the third  
54 \$100,000,000.00; and 2/10 of a mill per dollar on all amounts of

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1 allocated net worth in excess of \$300,000,000.00; provided,  
 2 however, that with respect to reports covering accounting or  
 3 privilege periods set forth below, the rate shall be that  
 4 percentage of the rate set forth in this subsection for the  
 5 appropriate year:

| Accounting or Privilege<br>Periods Beginning on or<br>After: | The Percentage of the Rate<br>to be Imposed Shall Be: |
|--------------------------------------------------------------|-------------------------------------------------------|
| April 1, 1983                                                | 75%                                                   |
| July 1, 1984                                                 | 50%                                                   |
| July 1, 1985                                                 | 25%                                                   |
| July 1, 1986                                                 | 0                                                     |

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

15 (c) (1) For a taxpayer that is not a New Jersey S corporation,  
 16 3% of its entire net income or such portion thereof as may be  
 17 allocable to this State as provided in section 6 of P.L.1945, c.162  
 18 (C.54:10A-6); provided, however, that with respect to reports  
 19 covering accounting or privilege periods or parts thereof ending  
 20 after December 31, 1967, the rate shall be 4%; and that with  
 21 respect to reports covering accounting or privilege periods or  
 22 parts thereof ending after December 31, 1971, the rate shall be  
 23 5%; and that with respect to reports covering accounting or  
 24 privilege periods or parts thereof ending after December 31,  
 25 1974, the rate shall be 7%; and that with respect to reports  
 26 covering accounting or privilege periods or parts thereof ending  
 27 after December 31, 1979, the rate shall be 9%.

28 (2) For a taxpayer that is a New Jersey S corporation, the rate  
 29 determined by subtracting the maximum tax bracket rate  
 30 provided under N.J.S.54A:2-1 for the taxable period from the tax  
 31 rate provided under paragraph (1) of this subsection for the  
 32 taxable period multiplied by its entire net income that is not  
 33 subject to federal income taxation or such portion thereof as may  
 34 be allocable to this State pursuant to sections 6 through 10 of  
 35 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10); plus

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

42 (d) Provided, however, that the franchise tax to be annually  
 43 assessed to and paid by any investment company or real estate  
 44 investment trust, which has elected to report as such and has  
 45 filed its return in the form and within the time provided in this  
 46 act and the rules and regulations promulgated in connection  
 47 therewith, shall, in the case of an investment company, be  
 48 measured by 25% of its entire net income and 25% of its entire  
 49 net worth, and in the case of a real estate investment trust, by  
 50 4% of its entire net income and 15% of its entire net worth, at  
 51 the rates hereinbefore set forth for the computation of tax on net  
 52 income and net worth, respectively, but in no case less than  
 53 \$250.00, and further provided, however, that the franchise tax to  
 54 be annually assessed to and paid by a regulated investment

company which for a period covered by its report satisfies the requirements of Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal Revenue Code shall be \$250.00.

(e) The tax assessed to any taxpayer pursuant to this section shall not be less than \$25.00 in the case of a domestic corporation, \$50.00 in the case of a foreign corporation, or \$250.00 in the case of an investment company or regulated investment company.

Provided however, that for accounting or privilege periods beginning in calendar year 1994 and thereafter the minimum taxes for taxpayers other than an investment company or a regulated investment company shall be as provided in the following schedule:

| <u>Period Beginning<br/>In Calendar Year</u> | <u>Domestic<br/>Corporation<br/>Minimum Tax</u> | <u>Foreign<br/>Corporation<br/>Minimum Tax</u> |
|----------------------------------------------|-------------------------------------------------|------------------------------------------------|
| 1994                                         | \$50                                            | \$100                                          |
| 1995                                         | \$100                                           | \$200                                          |
| 1996                                         | \$150                                           | \$200                                          |
| 1997                                         | \$200                                           | \$200                                          |

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

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

(cf: P.L.1983, c.75, s.1)

3. (New section) a. A corporation may elect, in accordance with the provisions of this section, to be a New Jersey S corporation. In order for an election to be valid, the corporation and each of its shareholders on the day on which the election is made (hereinafter "initial shareholders") must consent to such election and the jurisdictional requirements of becoming a New Jersey S corporation. The form of the election and consent to jurisdictional requirements and the place for filing shall be as prescribed by the Director of the Division of Taxation.

b. Each initial shareholder and the corporation shall consent to the following jurisdictional requirements:

(1) That this State shall have the right and jurisdiction to tax and collect the tax on each shareholder's S corporation income as defined pursuant to section 12 of P.L. , c. (C. ) (now pending before the Legislature as this bill);

(2) That New Jersey's right and jurisdiction to tax the income

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1 as set forth in paragraph (1) of this subsection shall not be  
2 affected by a change of a shareholder's residency, except as  
3 provided by the "New Jersey Gross Income Tax Act,"  
4 N.J.S.54A:1-1 et seq.; and

5 (3) If shareholders that are not initial shareholders of the  
6 corporation, while the corporation is a New Jersey S corporation,  
7 fail to consent to New Jersey's jurisdiction to tax S corporation  
8 income to such shareholders, this State shall have the right and  
9 jurisdiction to collect a payment of tax each year directly from  
10 the corporation equal to the S corporation income allocated to  
11 this State, as defined pursuant to section 12 of P.L. , c.  
12 (C. ) (now pending before the Legislature as this bill), of the  
13 nonconsenting shareholders for the accounting or privilege period  
14 multiplied by the maximum tax bracket rate provided under  
15 N.J.S.54A:2-1 for the accounting or privilege period. In such  
16 case, the corporation shall have the right, but not the obligation,  
17 to recover payments made by the corporation pursuant to this  
18 paragraph from each nonconsenting shareholder.

19 c. A corporation may make an election to become a New  
20 Jersey S corporation with respect to an accounting or privilege  
21 period for which the corporation is or will be an S corporation.  
22 The election for an accounting or privilege period, along with the  
23 consents to jurisdictional requirements, shall be filed within one  
24 calendar month of the time at which a federal S corporation  
25 election would be required if such accounting or privilege period  
26 were a "taxable year" for which a federal S corporation election  
27 were to be made pursuant to section 1362 of the federal Internal  
28 Revenue Code of 1986, 26 U.S.C. §1362. Such elections may only  
29 be revoked pursuant to subsection d. of this section. Such  
30 election shall terminate immediately upon the corporation's  
31 failure to satisfy the definition of a New Jersey S corporation  
32 pursuant to paragraph (p) of section 4 of P.L.1945, c.162  
33 (C.54:10A-4).

34 d. A corporation may revoke an election pursuant to this  
35 section on or before the last day of the first accounting or  
36 privilege period to which the election would otherwise apply.

37 4. (New section) a. With respect to each of its shareholders  
38 that is not an initial shareholder, a New Jersey S corporation  
39 shall satisfy the requirements of either paragraph b. or c. of this  
40 section.

41 b. Deliver a consent to the jurisdictional requirements as set  
42 forth in subsection b. of section 3 of P.L. , c. (C. ) (now  
43 pending before the Legislature as this bill).

44 c. Make payments to the Director of the Division of Taxation  
45 on behalf of each nonconsenting shareholder in an amount equal  
46 to the shareholder's pro rata share of S corporation income  
47 allocated to this State, as defined pursuant to section 12 of  
48 P.L. , c. (C. )(now pending before the Legislature as this  
49 bill), reflected on the corporation's return for the accounting or  
50 privilege period, multiplied by the maximum tax bracket rate  
51 provided under N.J.S.54A:2-1 in effect at the end of the  
52 accounting or privilege period. The payments shall be made no  
53 later than the time for filing of the return for the accounting or  
54 privilege period. The director may, by regulation, require that

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1 amounts estimated to be equal to the liability expected to be due  
2 pursuant to this subsection be withheld from any distribution  
3 made to a nonconsenting shareholder.

4 d. If a shareholder that is not an initial shareholder of a New  
5 Jersey S corporation fails to deliver a consent to the  
6 jurisdictional requirements set forth in subsection b. of section 3  
7 of P.L. , c. (C. ) (now pending before the Legislature as this  
8 bill), and objects to New Jersey's jurisdiction to withhold  
9 payments pursuant to subsection c. of this section, then this State  
10 shall have the right and jurisdiction to collect a tax each year  
11 directly from the corporation equal to the pro rata share of the S  
12 corporation income allocated to this State, as defined pursuant to  
13 section 12 of P.L. , c. (C. ) (now pending before the  
14 Legislature as this bill), of the nonconsenting shareholder times  
15 the maximum tax bracket rate provided under N.J.S.54A:2-1 for  
16 the appropriate accounting or privilege period. In such case, the  
17 corporation shall have the right, but not the obligation, to  
18 recover payments made by the corporation pursuant to this  
19 paragraph from each nonconsenting shareholder.

20 5. (New section) a. "Operational income" subject to allocation  
21 to New Jersey means income from tangible and intangible  
22 property if the acquisition, management, and disposition of the  
23 property constitute integral parts of the taxpayer's regular trade  
24 or business operations and includes investment income serving an  
25 operational function. Income that a taxpayer demonstrates with  
26 clear and cogent evidence is not operational income is classified  
27 as nonoperational income, and the nonoperational income of  
28 taxpayers, other than those that have their principal place from  
29 which the trade or business of the taxpayer is directed or  
30 managed in this State, is not subject to allocation.

31 b. Corporate expenses related to nonoperational income are  
32 not deductible in determining entire net income.  
33 Notwithstanding the provisions of R.S.54:49-6 or any other law to  
34 the contrary:

35 (1) if in prior privilege periods property had been classified  
36 as operational property, and later is demonstrated to have been  
37 nonoperational property and is subsequently disposed of, all  
38 expenses, without limitation, deducted for prior privilege periods  
39 related to such nonoperational property shall be added back and  
40 recaptured as income in the period of disposition of such property;

41 (2) if in prior privilege periods income had been classified as  
42 serving an operational function, and later is demonstrated not to  
43 have been serving an operational function, all expenses, without  
44 limitation, deducted in prior privilege periods related to such  
45 income not serving an operational function shall be added back  
46 and recaptured as income; and

47 (3) the denominators of the fractions used to determine the  
48 allocation factor pursuant to section 6 of P.L.1945, c.162  
49 (C.54:10A-6), for privilege periods for which redeterminations  
50 are required pursuant to paragraphs (1) and (2) of this subsection  
51 shall be redetermined to exclude the amounts, if any, relating to  
52 the nonoperational property or the nonoperational income.

53 c. The Director of the Division of Taxation shall prescribe  
54 such forms for administration and adopt such administrative rules

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1 as the director deems necessary for the implementation of this  
2 section.

3 6. Section 18 of P.L.1945, c.162 (C.54:10A-18) is amended to  
4 read as follows:

5 18. a. The commissioner shall design a form of return and  
6 forms for such additional statements or schedules as he may  
7 require to be filed therewith. Such forms shall provide for the  
8 setting forth of such facts as the commissioner may deem  
9 necessary for the proper enforcement of this act. He shall cause  
10 a supply thereof to be printed and shall furnish appropriate blank  
11 forms to each taxpayer upon application or otherwise as he may  
12 deem necessary. Failure to receive a form shall not relieve any  
13 taxpayer from the obligation to file a return under the provisions  
14 of this act. Each such return shall have annexed thereto a  
15 certification by the president, vice-president, comptroller,  
16 secretary, treasurer, assistant treasurer, accounting officer of  
17 the taxpayer or any other officer of the taxpayer duly authorized  
18 so to act to the effect that the statements contained therein are  
19 true. The fact that an individual's name is signed on a  
20 certification of the report shall be prima facie evidence that such  
21 individual is authorized to sign and certify the report on behalf of  
22 the corporation. In the case of a corporation in liquidation or in  
23 the hands of a receiver or trustee, certification shall be made by  
24 the person responsible for the conduct of the affairs of such  
25 corporation.

26 b. The return of an S corporation shall, in addition to any  
27 information set forth pursuant to subsection a. of this section, set  
28 forth with respect to each shareholder: the shareholder's name,  
29 address and federal taxpayer identification number (social  
30 security number or employer identification number); whether the  
31 shareholder is a resident of this State; whether the shareholder  
32 has filed a consent to jurisdictional requirements pursuant to  
33 section 3 or section 4 of P.L. , c. (C. ) (now pending before  
34 the Legislature as this bill); the allocation factor determined  
35 pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6  
36 through 54:10A-10); the amount of any distribution made to the  
37 shareholder, including any amount paid on behalf of the  
38 shareholder pursuant to subsections c. or d. of section 4 of P.L.  
39 , c. (C. )(now pending before the Legislature as this bill); the  
40 balance of the accumulated earnings and profits account; the  
41 balance of the accumulated adjustments account described in  
42 section 16 of P.L. , c. (C. )(now pending before the  
43 Legislature as this bill), which account the corporation shall  
44 maintain; and such other information as the director may  
45 prescribe by regulation. The S corporation shall, on or before the  
46 day on which such return is required to be filed, furnish to each  
47 person who was a shareholder during the accounting or privilege  
48 period a copy of such information shown on the return as the  
49 director may by regulation prescribe.

50 (cf: P.L.1958, c.63, s.10)

51 7. N.J.S.54A:4-1 is amended to read as follows:

52 54A:4-1. Resident credit for tax of another state. (a) A  
53 resident taxpayer shall be allowed a credit against the tax  
54 otherwise due under this act for the amount of any income tax or

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1 wage tax imposed for the taxable year by another state of the  
2 United States or political subdivision of such state, or by the  
3 District of Columbia, with respect to income which is also  
4 subject to tax under this act, except as provided by subsections  
5 (c) and (d) of this section.

6 (b) The credit provided under this section shall not exceed the  
7 proportion of the tax otherwise due under this act that the  
8 amount of the taxpayer's income subject to tax by the other  
9 jurisdiction bears to his entire New Jersey income.

10 (c) No credit shall be allowed against the tax otherwise due  
11 under this act for the amount of any income tax or wage tax  
12 imposed for the taxable year on S corporation income allocated  
13 to this State.

14 (d) No credit shall be allowed for the amount of any taxes paid  
15 or accrued for the taxable year on or measured by profits or  
16 income imposed on or paid on behalf of a person other than the  
17 taxpayer, whether or not the taxpayer may be held liable for the  
18 tax.

19 (e) Readjustment of the tax of another state or political  
20 subdivision thereof--if the taxpayer is allowed credit under this  
21 section for more or less of the tax of another state or political  
22 subdivision thereof than he is finally required to pay, the  
23 taxpayer shall send notice of the difference to the director who  
24 shall redetermine the tax for any years affected regardless of any  
25 otherwise applicable statute of limitations.

26 (cf: N.J.S.54A:4-1)

27 8. N.J.S.54A:4-2 is amended to read as follows:

28 54A:4-2. Credit for taxes withheld [on wages]. a. Any amount  
29 of tax actually deducted and withheld by an employer under this  
30 act in any calendar year shall be deemed to have been paid to the  
31 director on behalf of the person from whom withheld, and such  
32 person shall be credited with having paid that amount of tax for  
33 the taxable year beginning in such calendar year. For a taxable  
34 year of less than 12 months, the credit shall be made under  
35 regulations of the director.

36 b. An amount of tax actually paid to the director by an S  
37 corporation pursuant to subsections c. of section 4 of P.L. \_\_,  
38 c. \_\_ (C. \_\_)(now pending before the Legislature as this bill),  
39 shall be credited to the shareholder of the S corporation on whose  
40 behalf the payment was made as of the date of its receipt by the  
41 director, except as otherwise provided by N.J.S.54A:9-11, and the  
42 shareholder shall be credited with having paid that amount of tax  
43 for the taxable year in which the S corporation's accounting or  
44 privilege period ends.

45 (cf: N.J.S.54A:4-2)

46 9. N.J.S.54A:5-1 is amended to read as follows:

47 54A:5-1. New Jersey Gross Income Defined. New Jersey gross  
48 income shall consist of the following categories of income:

49 a. Salaries, wages, tips, fees, commissions, bonuses, and other  
50 remuneration received for services rendered whether in cash or in  
51 property.

52 b. Net profits from business. The net income from the  
53 operation of a business, profession or other activity after  
54 provision for all costs and expenses incurred in the conduct

1 thereof, determined either on a cash or accrual basis in  
2 accordance with the method of accounting allowed for federal  
3 income tax purposes but without deduction of the amount of:

4 (1) taxes based on income;

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

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

30 c. Net gains or income from disposition of property. Net gains  
31 or net income, less net losses, derived from the sale, exchange or  
32 other disposition of property, including real or personal, whether  
33 tangible or intangible as determined in accordance with the  
34 method of accounting allowed for federal income tax purposes.  
35 For the purpose of determining gain or loss, the basis of property  
36 shall be the adjusted basis used for federal income tax purposes,  
37 except as expressly provided for under this act, but without a  
38 deduction for penalties, fines, or economic benefits excepted  
39 pursuant to paragraph (2), or for treble damages excepted  
40 pursuant to paragraph (3) of subsection b. of this section.

41 A taxpayer's net gain or loss on the sale, exchange or other  
42 disposition of a share of an S corporation shall be calculated by  
43 increasing the adjusted basis of the share by an amount equal to  
44 the shareholder's net losses and deductions in respect of the  
45 share allowed and deducted from income for federal income tax  
46 purposes, not including any personal net operating loss  
47 deductions, to the extent that such net losses were not offset by  
48 the taxpayer's pro rata share of S corporation income otherwise  
49 subject to taxation pursuant to subsection p. of this section in  
50 respect of another S corporation, subject to rules of priority and  
51 assignment determined by the director.

52 For the tax year 1976, any taxpayer with a tax liability under  
53 this subsection, or under the "Tax on Capital Gains and Other  
54 Unearned Income Act" (P.L.1975, c.172), shall not be subject to

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1 payment of an amount greater than the amount he would have  
2 paid if either return had covered all capital transactions during  
3 the full tax year 1976; provided, however, that the rate which  
4 shall apply to any capital gain shall be that in effect on the date  
5 of the transaction. To the extent that any loss is used to offset  
6 any gain under P.L.1975, c.172, it shall not be used to offset any  
7 gain under the "New Jersey Gross Income Tax Act" (P.L.1976,  
8 c.47).

9 The term "net gains or income" shall not include gains or  
10 income derived from obligations which are referred to in clause  
11 (1) or (2) of section 54A:6-14 of this act or from securities which  
12 evidence ownership in a qualified investment fund as defined in  
13 section 2 of P.L.1987, c.310 (C.54A:6-14.1). The term "net gains  
14 or net income" shall not include gains or income from  
15 transactions to the extent to which nonrecognition is allowed for  
16 federal income tax purposes. The term "sale, exchange or other  
17 disposition" shall not include the exchange of stock or securities  
18 in a corporation a party to a reorganization in pursuance of a plan  
19 of reorganization, solely for stock or securities in such  
20 corporation or in another corporation a party to the  
21 reorganization and the transfer of property to a corporation by  
22 one or more persons solely in exchange for stock or securities in  
23 such corporation if immediately after the exchange such person  
24 or persons are in control of the corporation. For purposes of this  
25 clause, stock or securities issued for services shall not be  
26 considered as issued in return for property.

27 For purposes of this clause, the term "reorganization" means--

28 (i) A statutory merger or consolidation;

29 (ii) The acquisition by one corporation, in exchange solely for  
30 all or part of its voting stock (or in exchange solely for all or a  
31 part of the voting stock of a corporation which is in control of  
32 the acquiring corporation) of stock of another corporation if,  
33 immediately after the acquisition, the acquiring corporation has  
34 control of such other corporation (whether or not such acquiring  
35 corporation had control immediately before the acquisition);

36 (iii) The acquisition by one corporation, in exchange solely for  
37 all or part of its voting stock (or in exchange solely for all or a  
38 part of the voting stock of a corporation which is in control of  
39 the acquiring corporation), of substantially all of the properties  
40 of another corporation, but in determining whether the exchange  
41 is solely for stock the assumption by the acquiring corporation of  
42 a liability of the other, or the fact that property acquired is  
43 subject to a liability, shall be disregarded;

44 (iv) A transfer by a corporation of all or a part of its assets to  
45 another corporation if immediately after the transfer the  
46 transferor, or one or more of its shareholders (including persons  
47 who were shareholders immediately before the transfer), or any  
48 combination thereof, is in control of the corporation to which the  
49 assets are transferred;

50 (v) A recapitalization;

51 (vi) A mere change in identity, form, or place of organization  
52 however effected; or

53 (vii) The acquisition by one corporation, in exchange for stock  
54 of a corporation (referred to in this subclause as "controlling

1 corporation") which is in control of the acquiring corporation, of  
2 substantially all of the properties of another corporation which in  
3 the transaction is merged into the acquiring corporation shall not  
4 disqualify a transaction under subclause (i) if such transaction  
5 would have qualified under subclause (i) if the merger had been  
6 into the controlling corporation, and no stock of the acquiring  
7 corporation is used in the transaction;

8 (viii) A transaction otherwise qualifying under subclause (i)  
9 shall not be disqualified by reason of the fact that stock of a  
10 corporation (referred to in this subclause as the "controlling  
11 corporation") which before the merger was in control of the  
12 merged corporation is used in the transaction, if after the  
13 transaction, the corporation surviving the merger holds  
14 substantially all of its properties and of the properties of the  
15 merged corporation (other than stock of the controlling  
16 corporation distributed in the transaction); and in the transaction,  
17 former shareholders of the surviving corporation exchanged, for  
18 an amount of voting stock of the controlling corporation, an  
19 amount of stock in the surviving corporation which constitutes  
20 control of such corporation.

21 For purposes of this clause, the term "control" means the  
22 ownership of stock possessing at least 80% of the total combined  
23 voting power of all classes of stock entitled to vote and at least  
24 80% of total number of shares of all other classes of stock of the  
25 corporation.

26 For purposes of this clause, the term "a party to a  
27 reorganization" includes a corporation resulting from a  
28 reorganization, and both corporations, in the case of a  
29 reorganization resulting from the acquisition by one corporation  
30 of stock or properties of another. In the case of a reorganization  
31 qualifying under subclause (i) by reason of subclause (vii) the term  
32 "a party to a reorganization" includes the controlling corporation  
33 referred to in such subclause (vii).

34 Notwithstanding any provisions hereof, upon every such  
35 exchange or conversion, the taxpayer's basis for the stock or  
36 securities received shall be the same as the taxpayer's actual or  
37 attributed basis for the stock, securities or property surrendered  
38 in exchange therefor.

39 d. Net gains or net income derived from or in the form of  
40 rents, royalties, patents, and copyrights.

41 e. Interest, except interest referred to in clause (1) or (2) of  
42 N.J.S.54A:6-14, or distributions paid by a qualified investment  
43 fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to  
44 the extent provided in that section.

45 f. Dividends. "Dividends" means any distribution in cash or  
46 property made by a corporation, association or business trust that  
47 is not an S corporation, (1) out of accumulated earnings and  
48 profits, or (2) out of earnings and profits of the year in which  
49 such dividend is paid and any distribution in cash or property  
50 made by an S corporation, as specifically determined pursuant to  
51 section 16 of P.L. , c. (C. ) (now pending before the  
52 Legislature as this bill).

53 The term "dividends" shall not include distributions paid by a  
54 qualified investment fund as defined in section 2 of P.L.1987,

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- 1 c.310 (C.54A:6-14.1), to the extent provided in that section.
- 2 g. Gambling winnings.
- 3 h. Net gains or income derived through estates or trusts.
- 4 i. Income in respect of a decedent.
- 5 j. Amounts distributed or withdrawn from an employee trust
- 6 attributable to contributions to the trust which were excluded
- 7 from gross income under the provisions of chapter 6 of Title 54A
- 8 of the New Jersey Statutes and pensions and annuities except to
- 9 the extent of exclusions in section 54A:6-10 hereunder,
- 10 notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973,
- 11 c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53),
- 12 P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45
- 13 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22),
- 14 P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32
- 15 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60),
- 16 R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44,
- 17 and P.L.1943, c.189, s.5 (C.43:13-37.5).
- 18 k. Distributive share of partnership income.
- 19 l. Amounts received as prizes and awards, except as provided
- 20 in sections 54A:6-8 and 54A:6-11 hereunder.
- 21 m. Rental value of a residence furnished by an employer or a
- 22 rental allowance paid by an employer to provide a home.
- 23 n. Alimony and separate maintenance payments to the extent
- 24 that such payments are required to be made under a decree of
- 25 divorce or separate maintenance but not including payments for
- 26 support of minor children.
- 27 o. Income, gain or profit derived from acts or omissions
- 28 defined as crimes or offenses under the laws of this State or any
- 29 other jurisdiction.
- 30 p. Net pro rata share of S corporation income.
- 31 (cf: P.L.1990, c.79, s.1)
- 32 10. N.J.S.54A:5-8 is amended to read as follows:
- 33 54A:5-8. Income from sources within this State for a
- 34 nonresident individual, estate or trust means the same as
- 35 compensation, net profits, gains, dividends, interest or income
- 36 enumerated and classified under chapter 5 of this act to the
- 37 extent that it is earned, received or acquired from sources within
- 38 this State:
- 39 (1) By reason of ownership or disposition of any interest in real
- 40 or tangible personal property in this State; or
- 41 (2) In connection with a trade, profession, occupation carried
- 42 on in this State or for the rendition of personal services
- 43 performed in this State; or
- 44 (3) As a distributive share of the income of an unincorporated
- 45 business, profession, enterprise, undertaking or other activity as
- 46 the result of work done, services rendered or other business
- 47 activities conducted in this State except as allocated to another
- 48 state pursuant to regulations promulgated by the director under
- 49 this act; or
- 50 (4) From intangible personal property employed in a trade,
- 51 profession, occupation or business carried on in this State; or
- 52 (5) As S corporation income allocated to this State of a New
- 53 Jersey S corporation.
- 54 Income from sources within this State for a nonresident
- 55 individual shall not include income from pensions and annuities as

1 set forth in subsection j. of N.J.S.54A:5-1.  
2 (cf: P.L.1989, c.219, s.2)

3 11. (New section) An S corporation as such shall not be subject  
4 to the tax imposed by the "New Jersey Gross Income Tax Act,"  
5 N.J.S.54A:1-1 et seq., but the S corporation income, dividends  
6 and gain of a shareholder of an S corporation shall be subject to  
7 the tax, and the tax shall be imposed on the shareholder's pro  
8 rata share, whether or not distributed, of the S corporation  
9 income for its taxable year ending within or with the  
10 shareholder's taxable year.

11 12. (New section) For the purposes of the "New Jersey Gross  
12 Income Tax Act," N.J.S.54A:1-1 et seq.:

13 "New Jersey S corporation" means a corporation that is an S  
14 corporation; which has made a valid election pursuant to section  
15 3 of P.L. , c. (C. ) (now pending before the Legislature as  
16 this bill); and which has been an S corporation continuously since  
17 the effective date of the valid election made pursuant to section  
18 3 of P.L. , c. (C. ).

19 "Pro rata share" means the portion of any items attributable to  
20 an S corporation shareholder for a taxable year determined in the  
21 manner provided in, and subject to any election made under  
22 subsection (a) of section 1377 or subsection (e) of section 1362 of  
23 the federal Internal Revenue Code of 1986, 26 U.S.C. §1377 and  
24 §1362.

25 "Pro rata share of S corporation income" means the sum of the  
26 shareholder's proportionate share of:

27 For a New Jersey S corporation, the S corporation income  
28 allocated to this State of all New Jersey S corporations; and  
29 the S corporation income not allocated to this State.

30 "S corporation" means a corporation included in the definition  
31 of an "S corporation" pursuant to section 1361 of the federal  
32 Internal Revenue Code of 1986, 26 U.S.C. §1361.

33 "S corporation income" means the net of an S corporation's  
34 items of income, loss or deduction taken into account by the  
35 shareholder in the manner provided in section 1366 of the federal  
36 Internal Revenue Code of 1986, 26 U.S.C. §1366; provided  
37 however that:

38 a. S corporation income shall be determined without the  
39 exclusion, deduction or credit of:

40 (1) any dividend exclusion or deduction otherwise allowed  
41 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,  
42 c.162 (C.54:10A-4);

43 (2) taxes paid or accrued to the United States, a possession  
44 or territory of the United States, a state including this State, a  
45 political subdivision thereof, or the District of Columbia on or  
46 measured by profits or income, or business presence or business  
47 activity, of the corporation;

48 (3) any income taxes paid or accrued to the United States, a  
49 possession or territory of the United States, a state including this  
50 State, a political subdivision thereof, or the District of Columbia  
51 paid or accrued by the S corporation on behalf of, or in  
52 satisfaction of the liabilities of, shareholders of the corporation;

53 (4) interest income on obligations of any state other than  
54 this State, or of a political subdivision thereof, or of the federal

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1 government, except as deducted pursuant to paragraph (2) of  
2 subsection b. of this section; or

3 (5) interest on indebtedness incurred or continued, expenses  
4 paid and incurred to purchase, carry, manage or conserve, and  
5 expenses of collection of the income or gain from obligations the  
6 income or gain from which is deductible pursuant to subsection b.  
7 of this definition; and

8 b. S corporation income shall be determined after deduction of  
9 any gains or income derived from obligations which are referred  
10 to in N.J.S.54A:6-14 or from securities which evidence ownership  
11 in a qualified investment fund as defined in section 2 of P.L.1987,  
12 c.310 (C.54A:6-14.1), and any interest excluded from gross  
13 income pursuant to N.J.S.54A:6-14, or distributions excluded  
14 from income pursuant to section 2 of P.L.1987, c.310  
15 (C.54A:6-14.1); and

16 c. The character of any S corporation item taken into account  
17 by a shareholder of an S corporation shall be determined as if  
18 such items were received or incurred by the S corporation and not  
19 its shareholder.

20 "S corporation income allocated to this State" means that  
21 portion of the S corporation income that is allocated to this State  
22 by the allocation factor of the corporation for the fiscal or  
23 calendar accounting period pursuant to sections 6 through 10 of  
24 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10), reduced by any  
25 tax imposed pursuant to paragraph (3) of subsection (c) of section  
26 5 of P.L.1945, c.162 (C. 54:10A-5).

27 "S corporation income not allocated to this State" means S  
28 corporation income less S corporation income allocated to this  
29 State.

30 13. (New section) a. A resident shareholder of S corporation  
31 stock held by the shareholder on the first day of the first taxable  
32 year following enactment of this section shall have an initial  
33 basis in the stock of that S corporation and any indebtedness of  
34 the S corporation equal to the basis of the stock determined as  
35 though the stock was stock of a corporation not an S corporation  
36 plus any indebtedness of the S corporation to the shareholder and  
37 shall be determined as of the first day of the first taxable year  
38 following enactment of this section

39 b. A resident shareholder of S corporation stock to which  
40 subsection a. of this section does not apply shall have an initial  
41 basis in the stock of the S corporation and any indebtedness of  
42 the S corporation as determined pursuant to the federal Internal  
43 Revenue Code of 1986, determined as of the date that is the  
44 latest to occur of: the date on which the shareholder last became  
45 a resident of this State; the date on which the shareholder  
46 acquired the stock of the corporation; or the effective date of  
47 the corporation's most recent S election under the federal  
48 Internal Revenue Code of 1986.

49 c. The initial basis of a resident shareholder in the stock and  
50 indebtedness of an S corporation shall be adjusted after the date  
51 specified in subsections a. or b. of this section in the manner  
52 required by section 1011 of the federal Internal Revenue Code of  
53 1986, 26 U.S.C. §1011, except that such adjustments shall be  
54 limited to that portion of S corporation income allocated to this

1 State and S corporation income not allocated to this State that is  
2 included in the shareholder's pro rata share of S corporation  
3 income and except that, with respect to any taxable period during  
4 which the shareholder is a resident of this State:

5 (1) any modification made pursuant to the definition of S  
6 corporation income pursuant to section 12 of P.L. , c.  
7 (C. )(now pending before the Legislature as this bill) other than  
8 those for income exempt from taxation by this State pursuant to  
9 paragraph (5) of subsection a. and subsection b. of that definition  
10 shall be taken into account; and

11 (2) any adjustments made pursuant to section 1367 of the  
12 federal Internal Revenue Code of 1986, 26 U.S.C. §1367, for a  
13 taxable period during which this State did not measure the  
14 income of a shareholder of an S corporation by reference to the S  
15 corporation's income shall not be taken into account.

16 d. A nonresident shareholder of S corporation stock shall have  
17 an initial basis in the stock of the S corporation and any  
18 indebtedness of the S corporation of zero as of the date that is  
19 the latest to occur of: the date on which the shareholder last  
20 became a nonresident of this State; the date on which the  
21 shareholder acquired the stock of the corporation; the effective  
22 date of the corporation's most recent S election under the  
23 federal Internal Revenue Code of 1986; or the effective date of  
24 the corporation's most recent election pursuant to section 3 of  
25 P.L. , c. (C. )(now pending before the Legislature as this  
26 bill).

27 e. The initial basis of a nonresident shareholder in the stock  
28 and indebtedness of an S corporation shall be adjusted after the  
29 date specified in subsection d. of this section as provided in  
30 section 1367 of the of the federal Internal Revenue Code of 1986,  
31 26 U.S.C. §1367, except that such adjustments shall be limited to  
32 that portion of S corporation income allocated to this State that  
33 is included in the shareholder's pro rata share of S corporation  
34 income. In computing S corporation income allocated to this  
35 State any modification made pursuant to the definition of S  
36 corporation income pursuant to section 12 of P.L. , c.  
37 (C. )(now pending before the Legislature as this bill) for income  
38 exempt from taxation by this State pursuant to paragraph (5) of  
39 subsection a. and subsection b. of that definition shall not be  
40 taken into account.

41 f. The basis in the hands of a resident shareholder of an S  
42 corporation in stock of the S corporation shall be reduced by the  
43 amount of any cash distribution which is not taxable to the  
44 shareholder as a result of the application of section 16 of P.L. ,  
45 c. (C. )(now pending before the Legislature as this bill).

46 g. For purposes of this section, any person acquiring stock or  
47 indebtedness of an S corporation by gift shall be considered to  
48 have acquired the stock or indebtedness at the time the donor  
49 acquired the stock or indebtedness.

50 14. (New section) a. The aggregate amount of losses or  
51 deductions of an S corporation taken into account by a  
52 shareholder of the S corporation for a taxable period pursuant to  
53 section 11 of P.L. , c. (C. )(now pending before the  
54 Legislature as this bill), shall not exceed the shareholder's

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1 combined adjusted basis, determined in accordance with section  
2 13 of P.L. , c. (C. )(now pending before the Legislature as  
3 this bill), in the stock of the S corporation and any indebtedness  
4 of the S corporation to the shareholder.

5 b. Any loss or deduction of an S corporation which is  
6 disallowed for a taxable period pursuant to subsection a. of this  
7 section shall not be treated as incurred by the corporation in any  
8 succeeding taxable period with respect to that shareholder.

9 15. (New section) For purposes of this act, if a shareholder of  
10 an S corporation is both a resident and a nonresident of this State  
11 during any taxable year, the shareholder's pro rata share of the S  
12 corporation income allocated to this State and S corporation  
13 income not allocated to this State for the taxable period shall be  
14 further prorated between the shareholder's periods of residence  
15 and nonresidence during the taxable period, in accordance with  
16 the number of days in each period.

17 16. (New section) a. Subject to subsection c. of this section, a  
18 distribution made by an S corporation with respect to its stock to  
19 a resident shareholder shall be taken into account by the  
20 shareholder for purposes of the "New Jersey Gross Income Tax  
21 Act," N.J.S.54A:1-1 et seq., to the extent that the distribution is  
22 treated as a dividend or as gain from the sale or exchange of  
23 property in the manner provided by section 1368 of the federal  
24 Internal Revenue Code of 1986, 26 U.S.C. §1368.

25 b. Subject to subsection c. of this section, a distribution of  
26 money made by a corporation with respect to its stock to a  
27 resident shareholder during a post-termination transition period  
28 shall not be taken into account by the shareholder for purposes of  
29 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.,  
30 to the extent the distribution is applied against and reduces the  
31 adjusted basis of the stock of the shareholder in the manner  
32 provided by section 1371(e) of the federal Internal Revenue Code  
33 of 1986, 26 U.S.C. §1371.

34 c. In applying sections 1368 and 1371(e) of the federal Internal  
35 Revenue Code of 1986, 26 U.S.C. §§1368 and 1371, to any  
36 distribution referred to in subsection a. or b. of this section:

37 (1) the term "adjusted basis of the stock" means the  
38 shareholder's adjusted basis in the stock of the S corporation, as  
39 determined under section 13 of P.L. , c. (C. )(now pending  
40 before the Legislature as this bill); and

41 (2) the term "accumulated adjustments account" means a  
42 amount that is equal to, and adjusted in the same manner as, the  
43 S corporation's accumulated adjustments account defined in  
44 section 1368(e)(1)(A) of the federal Internal Revenue Code of  
45 1986, 26 U.S.C. §1368, except that any modifications required to  
46 be made pursuant to the definition of S corporation income shall  
47 be taken into account.

48 17. Section 3 of P.L.1977, c.273 (C.54A:6-15) is amended to  
49 read as follows:

50 3. Other retirement income. a. Gross income shall not  
51 include income of up to \$10,000.00 for a married couple filing  
52 jointly, \$5,000.00 for a married person filing separately, or  
53 \$7,500.00 for an individual filing as a single taxpayer or an  
54 individual determining tax pursuant to subsection a. of

1 N.J.S.54A:2-1, when received in any tax year by a person aged 62  
2 years or older who received no income in excess of \$3,000.00  
3 from one or more of the sources enumerated in subsections a., b.  
4 [and] , k. and p. of N.J.S.54A:5-1, provided, however, that the  
5 total exclusion under this subsection and that allowable under  
6 N.J.S.54A:6-10 shall not exceed the amounts of the exclusions set  
7 forth in this subsection.

8 b. In addition to the exclusion provided under N.J.S.54A:6-10  
9 and subsection a. of this section, gross income shall not include  
10 income of up to \$6,000.00 for a married couple filing jointly or an  
11 individual determining tax pursuant to subsection a. of  
12 N.J.S.54A:2-1, or \$3,000.00 for a single person or a married  
13 person filing separately, who is not covered under N.J.S.54A:6-2  
14 or N.J.S.54A:6-3, but who would be eligible in any year to receive  
15 payments under either section if he or she were covered thereby.  
16 (cf: P.L.1990, c.61, s.17)

17 18. N.J.S.54A:8-6 is amended to read as follows:

18 54A:8-6. Requirements concerning returns, notices, records  
19 and statements. (a) General. The director may prescribe  
20 regulations as to the keeping of records, the content and form of  
21 returns and statements, and the filing of copies of federal income  
22 tax returns and determinations. The director may require any  
23 person, by regulation or notice served upon such person, to make  
24 such returns, render such statements, or keep such records, as the  
25 director may deem sufficient to show whether or not such person  
26 is liable under this act for tax or for collection of tax.

27 (b) Partnerships. Every partnership having a resident partner  
28 or having any income derived from New Jersey sources, shall  
29 make a return for the taxable year setting forth all items of  
30 income, gain, loss and deduction and such other pertinent  
31 information as the director may by regulations and instructions  
32 prescribe. The director shall prescribe a State return form that,  
33 at a minimum, includes the name, principal residence address if  
34 applicable and telephone number of each partner of the  
35 partnership for taxable years ending after December 15, 1993.  
36 Such return shall be filed on or before the fifteenth day of the  
37 fourth month following the close of each taxable year. For the  
38 purposes of this subsection, "taxable year" means a year or  
39 period which would be a taxable year of the partnership if it were  
40 subject to tax under this act.

41 (c) Information at source. The director may prescribe  
42 regulations and instructions requiring returns of information to be  
43 made and filed on or before February 15 of each year as to the  
44 payment or crediting in any calendar year of amounts of \$100.00  
45 or more to any taxpayer under this act. Such returns may be  
46 required of any person, including lessees or mortgagors of real or  
47 personal property, fiduciaries, employers, and all officers and  
48 employees of this State, or of any municipal corporation or  
49 political subdivision of this State, having the control, receipt,  
50 custody, disposal or payment of interest, rents, salaries, wages,  
51 premiums, annuities, compensations, remunerations, emoluments  
52 or other fixed or determinable gains, profits or income, except  
53 interest coupons payable to bearer. A duplicate of the statement  
54 as to tax withheld on wages, required to be furnished by an

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1 employer to an employee, shall constitute the return of  
2 information required to be made under this section with respect  
3 to such wages.

4 (d) Notice of qualification as receiver, et cetera. Every  
5 receiver, trustee in bankruptcy, assignee for benefit of creditors,  
6 or other like fiduciary shall give notice of his qualification as  
7 such to the director, as may be required by regulation.

8 (cf: N.J.S.54A:8-6)

9 19. This act shall take effect immediately and sections 1  
10 through 6 shall apply to fiscal or calendar accounting years  
11 beginning after enactment and sections 7 through 17 shall apply  
12 to taxable years beginning after enactment.

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17 Provides reduced corporation business tax for electing S  
18 corporations, gross income taxation of shareholders, phased  
19 increase in minimum corporation business tax and partnership  
20 informational return filing; disallows deduction of certain costs  
21 of generating nontaxable income.

JOINT LEGISLATIVE COMMITTEE  
ON ECONOMIC RECOVERY

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 273 and 1870

STATE OF NEW JERSEY

DATED: JUNE 2, 1993

The Joint Legislative Committee on Economic Recovery reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 273 and 1870.

This substitute bill provides for a special corporation business tax rate on certain closely held corporations. Under subchapter S of the federal Internal Revenue Code, business corporations with 35 or fewer shareholders (who must each be U.S. resident individuals, estates or certain trusts) may elect special tax treatment, including the exemption of most of their corporate income from taxation at the corporate level (the shareholders of those corporations pay personal income taxes on the income they receive or are deemed to have received).

Generally, S corporations are not taxed at the corporate level for federal tax purposes. Instead, the income "flows through" to the individual shareholders who are then taxed on the income under the personal income tax. Thus, the federal S corporation tax treatment eliminates the double taxation of income for most income earned by S corporations. The majority of states have adopted similar provisions for S corporations.

Historically, New Jersey has not recognized the S corporation concept for corporations operating in New Jersey which has added greater complexity for the taxation of those corporations because of the need to handle tax planning in one manner for federal tax purposes and in a different manner for New Jersey tax purposes. Frequently, that tax planning reflects and poses difficulties for the corporation.

The bill differs from the federal S corporation treatment for two significant reasons. First, New Jersey is one of two states that uses a "gross income" measure for determining personal income tax liability rather than the more common "net income" measure. Thus, net losses from S corporations are not utilized against other income. Second, the extreme revenue impact of eliminating all corporate level taxes for S corporations makes that elimination impractical. Accordingly, a corporate level tax is retained which is similar to the treatment provided by New York State.

This substitute provides a special corporation business tax rate for the federally exempt income of corporations that have made a valid federal subchapter S election and that elect similar special treatment for New Jersey tax purposes. That tax rate is equal to the difference between the corporation business tax rate (currently 9%) and the highest marginal rate under the New Jersey gross income tax (currently 7%), or 2%. A surtax is imposed under the corporation business tax (currently 0.375%); that surtax would still apply to electing subchapter S corporations. Under current tax rates, this substitute reduces the total corporate business tax rate on an electing subchapter S corporation from 9.375% to 2.375%. In

order to qualify for the reduced corporate level tax rate, each corporation will be required to make a New Jersey S corporation election. To the extent that federal tax laws impose a corporate level tax on certain S corporation income, the New Jersey tax will "piggyback" upon the federal provisions so as to impose the full 9.375% New Jersey corporate level tax.

Currently, individuals are taxed under the gross income tax only at the time of the payment of dividends by the corporations. This substitute also provides for the more effective taxation of the shareholders of S corporations on the income they receive or are deemed to have received. This substitute changes the time of the taxation of shareholders from the current system of taxing distributions at the time they are distributed to a system like the federal system, which taxes the shareholders of electing corporations on their New Jersey source income at the time the S corporation earns income, whether the income is distributed or not.

Taxation of dividends of S corporations will now be eliminated under this substitute in all cases other than:

1. dividend payments attributable to years prior to the effective date of this legislation; and
2. dividends attributable to corporate income allocable to New Jersey earned by federal S corporations which do not elect to be New Jersey S corporations.

Non-residents of New Jersey are taxed under this substitute upon their pro rata share of S corporation income from New Jersey S corporations allocable to New Jersey.

New Jersey residents will generally be taxed on all of their S corporation income regardless of its source. All of the items of income, loss and deduction of S corporations are passed through to shareholders and netted in a single New Jersey gross income tax category.

Under this substitute, it is intended that the tax basis of the stock will be adjusted in a manner consistent with the federal tax law, taking into account:

1. that a corporation might not be a New Jersey S corporation for all of the time that it is a federal S corporation; and
2. that S corporation shareholders will receive no tax benefit for their share of new pro rata S corporation losses.

This substitute also makes adjustment under the corporation business tax for certain expenses of generating income that are not subject to taxation by New Jersey. First, the bill disallows the deduction of the taxes of other United States taxing jurisdictions in calculating the "entire net income" of a corporation that is allocated to New Jersey for corporation business tax purposes. New Jersey uses a formula to determine the percentage of the total income of a corporation that is fairly related to the corporation's activity in New Jersey. Only that part of the total of a corporation's income that is related to activities in New Jersey is subject to tax; effectively, the rest of the corporation's income is exempt from New Jersey tax. If the deduction of the taxes of other jurisdictions is allowed, corporations which do business in several states pay a lower effective rate of tax on their New Jersey activities than do corporations which only do business in New Jersey. This substitute ends that tax rate discrimination.

Second, the United States Supreme Court recently determined in

the Allied-Signal, Inc. case that a corporation may have certain types of corporate income that have no relationship with the corporation's activities in a particular state and which therefore may not be included in the income that is subject to allocation and taxation by that state. This substitute makes technical changes to the determination of the allocation of entire net income to make certain that the expenses of generating income that cannot be taxed by New Jersey are not deducted from the income that is taxable by New Jersey and to fairly allocate the income of a corporation that New Jersey may tax.

This substitute phases in over four years an increase in the minimum corporation business tax liability of corporations to \$200 for each fiscal or calendar privilege period, and provides for an adjustment for inflation each five years thereafter. Currently, the minimum tax is \$25 for a domestic corporation or \$50 for a foreign corporation for each privilege period or part thereof, one of the lowest minimum taxes in the region.

This substitute also makes various technical changes to the New Jersey gross income tax to provide for the taxation of S corporation shareholders, to codify certain portions of the Tax Court's holding in the Walsh case, 10 N.J. Tax 447, and to clarify the information to be contained in partnership information returns.

FISCAL IMPACT:

This substitute provides a reduced corporation business tax rate which, if elected by all qualifying corporations, would reduce corporation business tax revenue by an amount estimated by the Division of Taxation to be approximately \$111 million annually. The Division of Taxation has estimated that improved taxpayer compliance under the gross income tax with an S election that includes shareholder consent to taxation will increase gross income tax revenues by approximately \$41 million annually. Disallowing the deduction of taxes paid to other jurisdictions and the expense of generating tax exempt income have been estimated by the division to increase corporation business tax revenues respectively by \$25 million annually and \$25 million annually. When fully phased in, the increase in the minimum corporation business tax will increase revenue under that tax by approximately \$22 million annually. Improved partnership information reporting will allow improved gross income tax auditing with revenue increases that have not yet been determined.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 273 and 1870

STATE OF NEW JERSEY

DATED: June 3, 1993

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 273 and 1870 (Acs).

Assembly Bill Nos. 273 and 1870 (Acs) provides for a special corporation business tax rate on certain closely held corporations. Under subchapter S of the federal Internal Revenue Code, business corporations with 35 or fewer shareholders (who must each be U.S. resident individuals, estates or certain trusts) may elect special tax treatment, including the exemption of most of their corporate income from taxation at the corporate level (the shareholders of those corporations pay personal income taxes on the income they receive or are deemed to have received).

Generally, S corporations are not taxed at the corporate level for federal tax purposes. Instead, the income "flows through" to the individual shareholders who are then taxed on the income under the personal income tax. Thus, the federal S corporation tax treatment eliminates the double taxation of income for most income earned by S corporations. The majority of states have adopted similar provisions for S corporations.

Historically, New Jersey has not recognized the S corporation concept for corporations operating in New Jersey which has added greater complexity for the taxation of those corporations because of the need to handle tax planning in one manner for federal tax purposes and in a different manner for New Jersey tax purposes. Frequently, that tax planning reflects and poses difficulties for the corporation.

The bill differs from the federal S corporation treatment for two significant reasons. First, New Jersey is one of two states that uses a "gross income" measure for determining personal income tax liability rather than the more common "net income" measure. Thus, net losses from S corporations are not utilized against other income. Second, the extreme revenue impact of eliminating all corporate level taxes for S corporations makes that elimination impractical. Accordingly, a corporate level tax is retained which is similar to the treatment provided by New York State.

This bill provides a special corporation business tax rate for the federally exempt income of corporations that have made a valid federal subchapter S election and that elect similar special treatment for New Jersey tax purposes. That tax rate is equal to the difference between the corporation business tax rate (currently 9%) and the highest marginal rate under the New Jersey gross income tax (currently 7%), or 2%. A surtax is imposed under the corporation business tax (currently 0.375%); that surtax would still apply to electing subchapter S corporations. Under current tax rates, this bill reduces the total corporate business tax rate on an electing subchapter S corporation from 9.375% to 2.375%. In order

to qualify for the reduced corporate level tax rate, each corporation will be required to make a New Jersey S corporation election. To the extent that federal tax laws impose a corporate level tax on certain S corporation income, the New Jersey tax will "piggyback" upon the federal provisions so as to impose the full 9.375% New Jersey corporate level tax.

Currently, individuals are taxed under the gross income tax only at the time of the payment of dividends by the corporations. This bill also provides for the more effective taxation of the shareholders of S corporations on the income they receive or are deemed to have received. This bill changes the time of the taxation of shareholders from the current system of taxing distributions at the time they are distributed to a system like the federal system, which taxes the shareholders of electing corporations on their New Jersey source income at the time the S corporation earns income, whether the income is distributed or not.

Taxation of "dividends" of S corporations will now be eliminated under this bill in all cases other than:

1. dividend payments attributable to years prior to the effective date of this legislation; and
2. dividends attributable to corporate income allocable to New Jersey earned by federal S corporations which do not elect to be New Jersey S corporations.

Non-residents of New Jersey are taxed under this bill upon their pro rata share of S corporation income from New Jersey S corporations allocable to New Jersey.

New Jersey residents will generally be taxed on all of their S corporation income regardless of its source. All of the items of income, loss and deduction of S corporations are passed through to shareholders and netted in a single New Jersey gross income tax category.

Under this bill, it is intended that the tax basis of the stock will be adjusted in a manner consistent with the federal tax law, taking into account:

1. that a corporation might not be a New Jersey S corporation for all of the time that it is a federal S corporation; and
2. that S corporation shareholders will receive no tax benefit for their share of new pro rata S corporation losses.

This bill also makes adjustment under the corporation business tax for certain expenses of generating income that are not subject to taxation by New Jersey. First, the bill disallows the deduction of the taxes of other United States taxing jurisdictions in calculating the "entire net income" of a corporation that is allocated to New Jersey for corporation business tax purposes. New Jersey uses a formula to determine the percentage of the total income of a corporation that is fairly related to the corporation's activity in New Jersey. Only that part of the total of a corporation's income that is related to activities in New Jersey is subject to tax; effectively, the rest of the corporation's income is exempt from New Jersey tax. If the deduction of the taxes of other jurisdictions is allowed, corporations which do business in several states pay a lower effective rate of tax on their New Jersey activities than do corporations which only do business in New Jersey. This bill ends that tax rate discrimination.

Second, the United States Supreme Court recently determined in the Allied-Signal, Inc. case that a corporation may have certain types of corporate income that have no relationship with the corporation's activities in a particular state and which therefore may not be included in the income that is subject to allocation and taxation by that state. This bill makes technical changes to the determination of the allocation of entire net income to make certain that the expenses of generating income that cannot be taxed by New Jersey are not deducted from the income that is taxable by New Jersey and to fairly allocate the income of a corporation that New Jersey may tax.

This bill phases in over four years an increase in the minimum corporation business tax liability of corporations to \$200 for each fiscal or calendar privilege period, and provides for an adjustment for inflation each five years thereafter. Currently, the minimum tax is \$25 for a domestic corporation or \$50 for a foreign corporation for each privilege period or part thereof, one of the lowest minimum taxes in the region.

This bill also makes various technical changes to the New Jersey gross income tax to provide for the taxation of S corporation shareholders, to codify certain portions of the Tax Court's holding in the Walsh case, 10 N.J.Tax 447, and to clarify the information to be contained in partnership information returns.

#### FISCAL IMPACT:

This bill provides a reduced corporation business tax rate which, if elected by all qualifying corporations, would reduce corporation business tax revenue by an amount estimated by the Division of Taxation to be approximately \$111 million annually. The Division of Taxation has estimated that improved taxpayer compliance under the gross income tax with an S election that includes shareholder consent to taxation will increase gross income tax revenues by approximately \$41 million annually. Disallowing the deduction of taxes paid to other jurisdictions and disallowing the expense of generating tax exempt income have been estimated by the division to increase corporation business tax revenues respectively by \$25 million annually and \$25 million annually. When fully phased in, the increase in the minimum corporation business tax will increase revenue under that tax by approximately \$22 million annually. Improved partnership information reporting will allow improved gross income tax auditing with revenue increases that have not yet been determined.

SENATE, No. 1824

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1993

By Senators INVERSO and ADLER

1 AN ACT concerning the corporation business tax rate of certain  
2 closely held corporations, amending P.L.1945, c.162.

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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1 credits or for the purpose of status as a controlled foreign  
2 corporation. In calculating the net worth of a taxpayer entitled  
3 to reduction for investment in subsidiaries, the amount of  
4 liabilities of the taxpayer shall be reduced by such proportion of  
5 the liabilities as corresponds to the ratio which the excluded  
6 portion of the subsidiary values bears to the total assets of the  
7 taxpayer.

8 In the case of banking corporations which have international  
9 banking facilities as defined in subsection (n), the foregoing  
10 aggregate of values shall also be reduced by retained earnings of  
11 the international banking facility. Retained earnings means the  
12 earnings accumulated over the life of such facility and shall not  
13 include the pro rata share of dividends paid and federal income  
14 taxes paid or payable during the tax year.

15 If in the opinion of the commissioner, the corporation's books  
16 do not disclose fair valuations the commissioner may make a  
17 reasonable determination of the net worth which, in his opinion,  
18 would reflect the fair value of the assets, exclusive of subsidiary  
19 investments as defined aforesaid, carried on the books of the  
20 corporation, in accordance with sound accounting principles, and  
21 such determination shall be used as net worth for the purpose of  
22 this act.

23 (e) "Indebtedness owing directly or indirectly" shall include,  
24 without limitation thereto, all indebtedness owing to any  
25 stockholder or shareholder and to members of his immediate  
26 family where a stockholder and members of his immediate family  
27 together or in the aggregate own 10% or more of the aggregate  
28 outstanding shares of the taxpayer's capital stock of all classes.

29 (f) "Investment company" shall mean any corporation whose  
30 business during the period covered by its report consisted, to the  
31 extent of at least 90% thereof of holding, investing and  
32 reinvesting in stocks, bonds, notes, mortgages, debentures,  
33 patents, patent rights and other securities for its own account,  
34 but this shall not include any corporation which: (1) is a merchant  
35 or a dealer of stocks, bonds and other securities, regularly  
36 engaged in buying the same and selling the same to customers; or  
37 (2) had less than 90% of its average gross assets in New Jersey, at  
38 cost, invested in stocks, bonds, debentures, mortgages, notes,  
39 patents, patent rights or other securities or consisting of cash on  
40 deposit during the period covered by its report; or (3) is a banking  
41 corporation or a financial business corporation as defined in the  
42 Corporation Business Tax Act.

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

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

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

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

1 (k) "Entire net income" shall mean total net income from all  
2 sources, whether within or without the United States, and shall  
3 include the gain derived from the employment of capital or labor,  
4 or from both combined, as well as profit gained through a sale or  
5 conversion of capital assets. For the purpose of this act, the  
6 amount of a taxpayer's entire net income shall be deemed prima  
7 facie to be equal in amount to the taxable income, before net  
8 operating loss deduction and special deductions, which the  
9 taxpayer is required to report to the United States Treasury  
10 Department for the purpose of computing its federal income tax,  
11 or in the case of an S corporation, which the taxpayer would have  
12 been required to report to the United States Treasury  
13 Department if an election under subsection (a) of section 1362 of  
14 the federal Internal Revenue Code of 1986, 26 U.S.C. §1362, were  
15 not in effect; provided, however, that in the determination of  
16 such entire net income,

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

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

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

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

33 (C) Taxes paid or accrued to the United States on or measured  
34 by profits or income, or the tax imposed by this act, or any tax  
35 paid or accrued with respect to subsidiary dividends excluded  
36 from entire net income as provided in paragraph (5) of subsection  
37 (k) of this section;

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

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

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

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

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

53 (iv) In full to the extent that it relates to financing of motor  
54 vehicle inventory held for sale to customers; provided said

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1 indebtedness is owed to a taxpayer customarily and routinely  
2 providing this type of financing;

3 (v) In full to the extent it relates to debt of a banking  
4 corporation to a bank holding company, of which the banking  
5 corporation is a subsidiary, or to a debt of a banking corporation  
6 to another banking corporation with respect to federal funds  
7 transactions governed by section 23A of the Federal Reserve Act  
8 (12 U.S.C. § 371c.) when both banking corporations are  
9 subsidiaries of the same bank holding company, as defined in 12  
10 U.S.C. § 1841.

11 (F)(i) The amount by which depreciation reported to the United  
12 States Treasury Department for property placed in service on and  
13 after January 1, 1981, for purposes of computing federal taxable  
14 income in accordance with section 168 of the Internal Revenue  
15 Code in effect after December 31, 1980, exceeds the amount of  
16 depreciation determined in accordance with the Internal Revenue  
17 Code provisions in effect prior to January 1, 1981, but only with  
18 respect to a taxpayer's accounting period ending after December  
19 31, 1981; provided, however, that where a taxpayer's accounting  
20 period begins in 1981 and ends in 1982, no modification shall be  
21 required with respect to this paragraph (F) for the report filed for  
22 such period with respect to property placed in service during that  
23 part of the accounting period which occurs in 1981.

24 (ii) For the periods set forth in subparagraph (F)(i) of this  
25 subsection, any amount, except with respect to qualified mass  
26 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
27 Internal Revenue Code as in effect immediately prior to January  
28 1, 1984, which the taxpayer claimed as a deduction in computing  
29 federal income tax pursuant to a qualified lease agreement under  
30 paragraph (8) of that section.

31 The director shall promulgate rules and regulations necessary  
32 to carry out the provisions of this section, which rules shall  
33 provide, among others, the manner in which the remaining life of  
34 property shall be reported.

35 (G) (1) The amount of any civil, civil administrative, or  
36 criminal penalty or fine, including a penalty or fine under an  
37 administrative consent order, assessed and collected for a  
38 violation of a State or federal environmental law, an  
39 administrative consent order, or an environmental ordinance or  
40 resolution of a local governmental entity, and any interest earned  
41 on the penalty or fine, and any economic benefits having accrued  
42 to the violator as a result of a violation, which benefits are  
43 assessed and recovered in a civil, civil administrative, or criminal  
44 action, or pursuant to an administrative consent order. The  
45 provisions of this paragraph shall not apply to a penalty or fine  
46 assessed or collected for a violation of a State or federal  
47 environmental law, or local environmental ordinance or  
48 resolution, if the penalty or fine was for a violation that resulted  
49 from fire, riot, sabotage, flood, storm event, natural cause, or  
50 other act of God beyond the reasonable control of the violator, or  
51 caused by an act or omission of a person who was outside the  
52 reasonable control of the violator.

53 (2) The amount of treble damages paid to the Department of  
54 Environmental Protection pursuant to subsection a. of section 7

1 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the  
2 department in removing, or arranging for the removal of, an  
3 unauthorized discharge upon failure of the discharger to comply  
4 with a directive from the department to remove, or arrange for  
5 the removal of, the discharge.

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

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

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

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

21 (i) Making, arranging for, placing or carrying loans to foreign  
22 persons, provided, however, that in the case of a foreign person  
23 which is an individual, or which is a foreign branch of a domestic  
24 corporation (other than a bank), or which is a foreign corporation  
25 or foreign partnership which is controlled by one or more  
26 domestic corporations (other than banks), domestic partnerships  
27 or resident individuals, all the proceeds of the loan are for use  
28 outside of the United States;

29 (ii) Making or placing deposits with foreign persons which are  
30 banks or foreign branches of banks (including foreign subsidiaries)  
31 or foreign branches of the taxpayers or with other international  
32 banking facilities; or

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

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

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

41 (5) Entire net income shall exclude 100% of dividends which  
42 were included in computing such taxable income for federal  
43 income tax purposes, paid to the taxpayer by one or more  
44 subsidiaries owned by the taxpayer to the extent of the 80% or  
45 more ownership of investment described in subsection (d) of this  
46 section. With respect to other dividends, entire net income shall  
47 not include 50% of the total included in computing such taxable  
48 income for federal income tax purposes.

49 (6)(A) Net operating loss deduction. There shall be allowed as a  
50 deduction for the taxable year the net operating loss carryover to  
51 that year.

52 (B) Net operating loss carryover. A net operating loss for any  
53 taxable year ending after June 30, 1984 shall be a net operating  
54 loss carryover to each of the seven years following the year of

1 the loss. The entire amount of the net operating loss for any  
2 taxable year (the "loss year") shall be carried to the earliest of  
3 the taxable years to which the loss may be carried. The portion  
4 of the loss which shall be carried to each of the other taxable  
5 years shall be the excess, if any, of the amount of the loss over  
6 the sum of the entire net income, computed without the  
7 exclusions permitted in paragraphs (4) and (5) of this subsection  
8 or the net operating loss deduction provided by subparagraph (A)  
9 of this paragraph, for each of the prior taxable years to which the  
10 loss may be carried.

11 (C) Net operating loss. For purposes of this paragraph the term  
12 "net operating loss" means the excess of the deductions over the  
13 gross income used in computing entire net income without the net  
14 operating loss deduction provided for in subparagraph (A) of this  
15 paragraph and the exclusions in paragraphs (4) and (5) of this  
16 subsection.

17 (D) Change in ownership. Where there is a change in 50% or  
18 more of the ownership of a corporation because of redemption or  
19 sale of stock and the corporation changes the trade or business  
20 giving rise to the loss, no net operating loss sustained before the  
21 changes may be carried over to be deducted from income earned  
22 after such changes. In addition where the facts support the  
23 premise that the corporation was acquired under any  
24 circumstances for the primary purpose of the use of its net  
25 operating loss carryover, the director may disallow the carryover.

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

29 (m) "Financial business corporation" shall mean any corporate  
30 enterprise which is (1) in substantial competition with the  
31 business of national banks and which (2) employs moneyed capital  
32 with the object of making profit by its use as money, through  
33 discounting and negotiating promissory notes, drafts, bills of  
34 exchange and other evidences of debt; buying and selling  
35 exchange; making of or dealing in secured or unsecured loans and  
36 discounts; dealing in securities and shares of corporate stock by  
37 purchasing and selling such securities and stock without recourse,  
38 solely upon the order and for the account of customers; or  
39 investing and reinvesting in marketable obligations evidencing  
40 indebtedness of any person, copartnership, association or  
41 corporation in the form of bonds, notes or debentures commonly  
42 known as investment securities; or dealing in or underwriting  
43 obligations of the United States, any state or any political  
44 subdivision thereof, or of a corporate instrumentality of any of  
45 them. This shall include, without limitation of the foregoing,  
46 business commonly known as industrial banks, dealers in  
47 commercial paper and acceptances, sales finance, personal  
48 finance, small loan and mortgage financing businesses, as well as  
49 any other enterprise employing moneyed capital coming into  
50 competition with the business of national banks; provided that the  
51 holding of bonds, notes, or other evidences of indebtedness by  
52 individual persons not employed or engaged in the banking or  
53 investment business and representing merely personal  
54 investments not made in competition with the business of

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1 national banks, shall not be deemed financial business. Nor shall  
2 "financial business" include national banks, production credit  
3 associations organized under the Farm Credit Act of 1933 or the  
4 Farm Credit Act of 1971, Pub.L. 92-181 (12 U.S.C. § 2091 et  
5 seq.), stock and mutual insurance companies duly authorized to  
6 transact business in this State, security brokers or dealers or  
7 investment companies or bankers not employing moneyed capital  
8 coming into competition with the business of national banks, real  
9 estate investment trusts, or any of the following entities  
10 organized under the laws of this State: credit unions, savings  
11 banks, savings and loan and building and loan associations,  
12 pawnbrokers, and State banks and trust companies.

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

31 (o) "S corporation" means a corporation for which a valid  
32 election under subsection (a) of section 1362 of the federal  
33 Internal Revenue Code of 1986, 26 U.S.C. §1362, is in effect.  
34 (cf: P.L.1990, c.79, s.2)

35 2. Section 5 of P.L.1945, c.162 (54:10A-5) is amended to read  
36 as follows:

37 5. The franchise tax to be annually assessed to and paid by  
38 each taxpayer shall be the sum of the amount computed under  
39 subsection (a) hereof, or in the alternative to the amount  
40 computed under subsection (a) hereof, the amount computed  
41 under subsection (f) hereof, and the amount computed under  
42 subsection (c) hereof:

43 (a) That portion of its entire net worth as may be allocable to  
44 this State as provided in section 6, multiplied by the following  
45 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated  
46 net worth; 4/10 of a mill per dollar on the second  
47 \$100,000,000.00; 3/10 of a mill per dollar on the third  
48 \$100,000,000.00; and 2/10 of a mill per dollar on all amounts of  
49 allocated net worth in excess of \$300,000,000.00; provided,  
50 however, that with respect to reports covering accounting or  
51 privilege periods set forth below, the rate shall be that  
52 percentage of the rate set forth in this subsection for the  
53 appropriate year:

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| Accounting or Privilege<br>Periods Beginning on or<br>After: | The Percentage of the Rate<br>to be Imposed Shall Be: |
|--------------------------------------------------------------|-------------------------------------------------------|
| April 1, 1983                                                | 75%                                                   |
| July 1, 1984                                                 | 50%                                                   |
| July 1, 1985                                                 | 25%                                                   |
| July 1, 1986                                                 | 0                                                     |

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

(c) (1) for taxpayers that are not S corporations, 3 1/4 % of its entire net income or such portion thereof as may be allocable to this State as provided in section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1967, the rate shall be 4 1/4 %; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 5 1/2 %; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 7 1/2 %; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1979, the rate shall be 9%.

(2) for taxpayers that are S corporations, the percentage of its entire net income or such portion thereof as may be allocable to this State as provided in section 6 of P.L.1945, c.162 (C.54:10A-6), that is determined by subtracting the maximum rate provided under N.J.S.54A:2-1 for the taxable period from the maximum rate provided under paragraph (1) of this subsection for the taxable period.

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

(e) The tax assessed to any taxpayer pursuant to this section shall not be less than \$25.00 in the case of a domestic corporation, \$50.00 in the case of a foreign corporation, or \$250.00 in the case of an investment company or regulated investment company.

(f) In lieu of the portion of the tax based on net worth and to be computed under subsection (a) of this section, any taxpayer, the value of whose total assets everywhere, less reasonable reserves for depreciation, as of the close of the period covered by its report, amounts to less than \$150,000.00, may elect to pay the

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1 tax shown in a table which shall be promulgated by the director.  
2 (cf: P.L.1983, c.75, s.1)  
3 3. This act shall take effect immediately and apply to fiscal or  
4 calendar accounting years beginning after enactment.  
5  
6

7 STATEMENT  
8

9 This bill provides for a special corporation business tax rate on  
10 certain closely held corporations. Under subchapter S of the  
11 federal Internal Revenue Code, business corporations with 35 or  
12 fewer shareholders (who must each be U.S. resident individuals,  
13 estates or certain trusts) may elect special tax treatment,  
14 including the exemption of most of their corporate income from  
15 taxation at the corporate level (the shareholders of those  
16 corporations pay personal income taxes on the income they  
17 receive or are deemed to have received).

18 This bill provides a special corporation business tax rate for  
19 corporations that have made a valid federal subchapter S  
20 election. That tax rate is equal to the difference between the  
21 corporation business tax rate (currently 9%) and the highest  
22 marginal rate under the New Jersey gross income tax (currently  
23 7%), or 2%. A surtax is imposed under the corporation business  
24 tax (currently 0.375%); that surtax would still apply to electing  
25 subchapter S corporations. Under current tax rates, this bill  
26 reduces the total corporate business tax rate on an electing  
27 subchapter S corporation from 9.375% to 2.375%.

28

29

30

31

32 Provides special corporation business tax rate for electing  
33 subchapter S corporations.

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, Nos. 19 and 1824  
STATE OF NEW JERSEY

ADOPTED JUNE 10, 1993

Sponsored by Senators HAINES, INVERSO and ADLER.

1 AN ACT concerning the taxation of certain corporations, the  
2 shareholders of those corporations, and tax information  
3 reporting, amending and supplementing P.L.1945, c.162, and  
4 Title 54A of the New Jersey Statutes.

5

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

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

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

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

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

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

21 (d) "Net worth" shall mean the aggregate of the values  
22 disclosed by the books of the corporation for (1) issued and  
23 outstanding capital stock, (2) paid-in or capital surplus, (3) earned  
24 surplus and undivided profits, and (4) surplus reserves which can  
25 reasonably be expected to accrue to holders or owners of  
26 equitable shares, not including reasonable valuation reserves,  
27 such as reserves for depreciation or obsolescence or depletion.  
28 Notwithstanding the foregoing, net worth shall not include any  
29 deduction for the amount of the excess depreciation described in  
30 paragraph (2)(F) of subsection (k) of this section. The foregoing  
31 aggregate of values shall be reduced by 50% of the amount  
32 disclosed by the books of the corporation for investment in the  
33 capital stock of one or more subsidiaries, which investment is  
34 defined as ownership (1) of at least 80% of the total combined  
35 voting power of all classes of stock of the subsidiary entitled to  
36 vote and (2) of at least 80% of the total number of shares of all  
37 other classes of stock except nonvoting stock which is limited and  
38 preferred as to dividends. In the case of investment in an entity  
39 organized under the laws of a foreign country, the foregoing  
40 requisite degree of ownership shall effect a like reduction of such  
41 investment from net worth of the taxpayer, if the foreign entity  
42 is considered a corporation for any purpose under the United  
43 States federal income tax laws, such as (but not by way of sole

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

Matter underlined thus is new matter.

1 examples) for the purpose of supplying deemed paid foreign tax  
2 credits or for the purpose of status as a controlled foreign  
3 corporation. In calculating the net worth of a taxpayer entitled  
4 to reduction for investment in subsidiaries, the amount of  
5 liabilities of the taxpayer shall be reduced by such proportion of  
6 the liabilities as corresponds to the ratio which the excluded  
7 portion of the subsidiary values bears to the total assets of the  
8 taxpayer.

9 In the case of banking corporations which have international  
10 banking facilities as defined in subsection (n), the foregoing  
11 aggregate of values shall also be reduced by retained earnings of  
12 the international banking facility. Retained earnings means the  
13 earnings accumulated over the life of such facility and shall not  
14 include the distributive share of dividends paid and federal  
15 income taxes paid or payable during the tax year.

16 If in the opinion of the commissioner, the corporation's books  
17 do not disclose fair valuations the commissioner may make a  
18 reasonable determination of the net worth which, in his opinion,  
19 would reflect the fair value of the assets, exclusive of subsidiary  
20 investments as defined aforesaid, carried on the books of the  
21 corporation, in accordance with sound accounting principles, and  
22 such determination shall be used as net worth for the purpose of  
23 this act.

24 (e) "Indebtedness owing directly or indirectly" shall include,  
25 without limitation thereto, all indebtedness owing to any  
26 stockholder or shareholder and to members of his immediate  
27 family where a stockholder and members of his immediate family  
28 together or in the aggregate own 10% or more of the aggregate  
29 outstanding shares of the taxpayer's capital stock of all classes.

30 (f) "Investment company" shall mean any corporation whose  
31 business during the period covered by its report consisted, to the  
32 extent of at least 90% thereof of holding, investing and  
33 reinvesting in stocks, bonds, notes, mortgages, debentures,  
34 patents, patent rights and other securities for its own account,  
35 but this shall not include any corporation which: (1) is a merchant  
36 or a dealer of stocks, bonds and other securities, regularly  
37 engaged in buying the same and selling the same to customers; or  
38 (2) had less than 90% of its average gross assets in New Jersey, at  
39 cost, invested in stocks, bonds, debentures, mortgages, notes,  
40 patents, patent rights or other securities or consisting of cash on  
41 deposit during the period covered by its report; or (3) is a banking  
42 corporation or a financial business corporation as defined in the  
43 Corporation Business Tax Act.

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

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

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

53 (j) Except as herein provided, "privilege period" shall mean the  
54 calendar or fiscal accounting period for which a tax is payable

1 under this act.

2 (k) "Entire net income" shall mean total net income from all  
3 sources, whether within or without the United States, and shall  
4 include the gain derived from the employment of capital or labor,  
5 or from both combined, as well as profit gained through a sale or  
6 conversion of capital assets. For the purpose of this act, the  
7 amount of a taxpayer's entire net income shall be deemed prima  
8 facie to be equal in amount to the taxable income, before net  
9 operating loss deduction and special deductions, which the  
10 taxpayer is required to report to the United States Treasury  
11 Department for the purpose of computing its federal income tax;  
12 provided, however, that in the determination of such entire net  
13 income,

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

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

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

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

30 (C) Taxes paid or accrued to the United States, a possession or  
31 territory of the United States, a state, a political subdivision  
32 thereof, or the District of Columbia on or measured by profits or  
33 income, or business presence or business activity, or the tax  
34 imposed by this act, or any tax paid or accrued with respect to  
35 subsidiary dividends excluded from entire net income as provided  
36 in paragraph (5) of subsection (k) of this section;

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

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

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

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

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

52 (iv) In full to the extent that it relates to financing of motor  
53 vehicle inventory held for sale to customers; provided said  
54 indebtedness is owed to a taxpayer customarily and routinely

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1 providing this type of financing;

2 (v) In full to the extent it relates to debt of a banking  
3 corporation to a bank holding company, of which the banking  
4 corporation is a subsidiary, or to a debt of a banking corporation  
5 to another banking corporation with respect to federal funds  
6 transactions governed by section 23A of the Federal Reserve Act  
7 (12 U.S.C. §371c.) when both banking corporations are  
8 subsidiaries of the same bank holding company, as defined in 12  
9 U.S.C. §1841.

10 (F)(i) The amount by which depreciation reported to the United  
11 States Treasury Department for property placed in service on and  
12 after January 1, 1981, for purposes of computing federal taxable  
13 income in accordance with section 168 of the Internal Revenue  
14 Code in effect after December 31, 1980, exceeds the amount of  
15 depreciation determined in accordance with the Internal Revenue  
16 Code provisions in effect prior to January 1, 1981, but only with  
17 respect to a taxpayer's accounting period ending after December  
18 31, 1981; provided, however, that where a taxpayer's accounting  
19 period begins in 1981 and ends in 1982, no modification shall be  
20 required with respect to this paragraph (F) for the report filed for  
21 such period with respect to property placed in service during that  
22 part of the accounting period which occurs in 1981.

23 (ii) For the periods set forth in subparagraph (F)(i) of this  
24 subsection, any amount, except with respect to qualified mass  
25 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
26 Internal Revenue Code as in effect immediately prior to January  
27 1, 1984, which the taxpayer claimed as a deduction in computing  
28 federal income tax pursuant to a qualified lease agreement under  
29 paragraph (8) of that section.

30 The director shall promulgate rules and regulations necessary  
31 to carry out the provisions of this section, which rules shall  
32 provide, among others, the manner in which the remaining life of  
33 property shall be reported.

34 (G) (1) The amount of any civil, civil administrative, or  
35 criminal penalty or fine, including a penalty or fine under an  
36 administrative consent order, assessed and collected for a  
37 violation of a State or federal environmental law, an  
38 administrative consent order, or an environmental ordinance or  
39 resolution of a local governmental entity, and any interest earned  
40 on the penalty or fine, and any economic benefits having accrued  
41 to the violator as a result of a violation, which benefits are  
42 assessed and recovered in a civil, civil administrative, or criminal  
43 action, or pursuant to an administrative consent order. The  
44 provisions of this paragraph shall not apply to a penalty or fine  
45 assessed or collected for a violation of a State or federal  
46 environmental law, or local environmental ordinance or  
47 resolution, if the penalty or fine was for a violation that resulted  
48 from fire, riot, sabotage, flood, storm event, natural cause, or  
49 other act of God beyond the reasonable control of the violator, or  
50 caused by an act or omission of a person who was outside the  
51 reasonable control of the violator.

52 (2) The amount of treble damages paid to the Department of  
53 Environmental Protection pursuant to subsection a. of section 7  
54 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the

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1 department in removing, or arranging for the removal of, an  
2 unauthorized discharge upon failure of the discharger to comply  
3 with a directive from the department to remove, or arrange for  
4 the removal of, the discharge.

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

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

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

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

20 (i) Making, arranging for, placing or carrying loans to foreign  
21 persons, provided, however, that in the case of a foreign person  
22 which is an individual, or which is a foreign branch of a domestic  
23 corporation (other than a bank), or which is a foreign corporation  
24 or foreign partnership which is controlled by one or more  
25 domestic corporations (other than banks), domestic partnerships  
26 or resident individuals, all the proceeds of the loan are for use  
27 outside of the United States;

28 (ii) Making or placing deposits with foreign persons which are  
29 banks or foreign branches of banks (including foreign subsidiaries)  
30 or foreign branches of the taxpayers or with other international  
31 banking facilities; or

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

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

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

40 (5) Entire net income shall exclude 100% of dividends which  
41 were included in computing such taxable income for federal  
42 income tax purposes, paid to the taxpayer by one or more  
43 subsidiaries owned by the taxpayer to the extent of the 80% or  
44 more ownership of investment described in subsection (d) of this  
45 section. With respect to other dividends, entire net income shall  
46 not include 50% of the total included in computing such taxable  
47 income for federal income tax purposes.

48 (6)(A) Net operating loss deduction. There shall be allowed as a  
49 deduction for the taxable year the net operating loss carryover to  
50 that year.

51 (B) Net operating loss carryover. A net operating loss for any  
52 taxable year ending after June 30, 1984 shall be a net operating  
53 loss carryover to each of the seven years following the year of  
54 the loss. The entire amount of the net operating loss for any

1 taxable year (the "loss year") shall be carried to the earliest of  
2 the taxable years to which the loss may be carried. The portion  
3 of the loss which shall be carried to each of the other taxable  
4 years shall be the excess, if any, of the amount of the loss over  
5 the sum of the entire net income, computed without the  
6 exclusions permitted in paragraphs (4) and (5) of this subsection  
7 or the net operating loss deduction provided by subparagraph (A)  
8 of this paragraph, for each of the prior taxable years to which the  
9 loss may be carried.

10 (C) Net operating loss. For purposes of this paragraph the term  
11 "net operating loss" means the excess of the deductions over the  
12 gross income used in computing entire net income without the net  
13 operating loss deduction provided for in subparagraph (A) of this  
14 paragraph and the exclusions in paragraphs (4) and (5) of this  
15 subsection.

16 (D) Change in ownership. Where there is a change in 50% or  
17 more of the ownership of a corporation because of redemption or  
18 sale of stock and the corporation changes the trade or business  
19 giving rise to the loss, no net operating loss sustained before the  
20 changes may be carried over to be deducted from income earned  
21 after such changes. In addition where the facts support the  
22 premise that the corporation was acquired under any  
23 circumstances for the primary purpose of the use of its net  
24 operating loss carryover, the director may disallow the carryover.

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

28 (m) "Financial business corporation" shall mean any corporate  
29 enterprise which is (1) in substantial competition with the  
30 business of national banks and which (2) employs moneyed capital  
31 with the object of making profit by its use as money, through  
32 discounting and negotiating promissory notes, drafts, bills of  
33 exchange and other evidences of debt; buying and selling  
34 exchange; making of or dealing in secured or unsecured loans and  
35 discounts; dealing in securities and shares of corporate stock by  
36 purchasing and selling such securities and stock without recourse,  
37 solely upon the order and for the account of customers; or  
38 investing and reinvesting in marketable obligations evidencing  
39 indebtedness of any person, copartnership, association or  
40 corporation in the form of bonds, notes or debentures commonly  
41 known as investment securities; or dealing in or underwriting  
42 obligations of the United States, any state or any political  
43 subdivision thereof, or of a corporate instrumentality of any of  
44 them. This shall include, without limitation of the foregoing,  
45 business commonly known as industrial banks, dealers in  
46 commercial paper and acceptances, sales finance, personal  
47 finance, small loan and mortgage financing businesses, as well as  
48 any other enterprise employing moneyed capital coming into  
49 competition with the business of national banks; provided that the  
50 holding of bonds, notes, or other evidences of indebtedness by  
51 individual persons not employed or engaged in the banking or  
52 investment business and representing merely personal  
53 investments not made in competition with the business of  
54 national banks, shall not be deemed financial business. Nor shall

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1 "financial business" include national banks, production credit  
2 associations organized under the Farm Credit Act of 1933 or the  
3 Farm Credit Act of 1971, Pub.L. 92-181 (12 U.S.C. § 2091 et  
4 seq.), stock and mutual insurance companies duly authorized to  
5 transact business in this State, security brokers or dealers or  
6 investment companies or bankers not employing moneyed capital  
7 coming into competition with the business of national banks, real  
8 estate investment trusts, or any of the following entities  
9 organized under the laws of this State: credit unions, savings  
10 banks, savings and loan and building and loan associations,  
11 pawnbrokers, and State banks and trust companies.

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

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

33 (p) "New Jersey S corporation" means a corporation that is an  
34 S corporation; which has made a valid election pursuant to  
35 section 3 of P.L. , c. (C. ) (now pending before the  
36 Legislature as this bill); and which has been an S corporation  
37 continuously since the effective date of the valid election made  
38 pursuant to section 3 of P.L. , c. (C. ).

39 (cf: P.L.1990, c.79, s.2)

40 2. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to  
41 read as follows:

42 5. The franchise tax to be annually assessed to and paid by  
43 each taxpayer shall be the sum of the amount computed under  
44 subsection (a) hereof, or in the alternative to the amount  
45 computed under subsection (a) hereof, the amount computed  
46 under subsection (f) hereof, and the amount computed under  
47 subsection (c) hereof:

48 (a) That portion of its entire net worth as may be allocable to  
49 this State as provided in section 6, multiplied by the following  
50 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated  
51 net worth; 4/10 of a mill per dollar on the second  
52 \$100,000,000.00; 3/10 of a mill per dollar on the third  
53 \$100,000,000.00; and 2/10 of a mill per dollar on all amounts of  
54 allocated net worth in excess of \$300,000,000.00; provided,

1 however, that with respect to reports covering accounting or  
 2 privilege periods set forth below, the rate shall be that  
 3 percentage of the rate set forth in this subsection for the  
 4 appropriate year:

| Accounting or Privilege<br>Periods Beginning on or<br>After: | The Percentage of the Rate<br>to be Imposed Shall Be: |
|--------------------------------------------------------------|-------------------------------------------------------|
| April 1, 1983                                                | 75%                                                   |
| July 1, 1984                                                 | 50%                                                   |
| July 1, 1985                                                 | 25%                                                   |
| July 1, 1986                                                 | 0                                                     |

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

14 (c) (1) For a taxpayer that is not a New Jersey S corporation,  
 15 3%% of its entire net income or such portion thereof as may be  
 16 allocable to this State as provided in section 6 of P.L.1945, c.162  
 17 (C.54:10A-6); provided, however, that with respect to reports  
 18 covering accounting or privilege periods or parts thereof ending  
 19 after December 31, 1967, the rate shall be 4%%; and that with  
 20 respect to reports covering accounting or privilege periods or  
 21 parts thereof ending after December 31, 1971, the rate shall be  
 22 5%%; and that with respect to reports covering accounting or  
 23 privilege periods or parts thereof ending after December 31,  
 24 1974, the rate shall be 7%%; and that with respect to reports  
 25 covering accounting or privilege periods or parts thereof ending  
 26 after December 31, 1979, the rate shall be 9%.

27 (2) For a taxpayer that is a New Jersey S corporation, the rate  
 28 determined by subtracting the maximum tax bracket rate  
 29 provided under N.J.S.54A:2-1 for the taxable period from the tax  
 30 rate provided under paragraph (1) of this subsection for the  
 31 taxable period multiplied by its entire net income that is not  
 32 subject to federal income taxation or such portion thereof as may  
 33 be allocable to this State pursuant to sections 6 through 10 of  
 34 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10); plus

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

41 (d) Provided, however, that the franchise tax to be annually  
 42 assessed to and paid by any investment company or real estate  
 43 investment trust, which has elected to report as such and has  
 44 filed its return in the form and within the time provided in this  
 45 act and the rules and regulations promulgated in connection  
 46 therewith, shall, in the case of an investment company, be  
 47 measured by 25% of its entire net income and 25% of its entire  
 48 net worth, and in the case of a real estate investment trust, by  
 49 4% of its entire net income and 15% of its entire net worth, at  
 50 the rates hereinbefore set forth for the computation of tax on net  
 51 income and net worth, respectively, but in no case less than  
 52 \$250.00, and further provided, however, that the franchise tax to  
 53 be annually assessed to and paid by a regulated investment  
 54 company which for a period covered by its report satisfies the

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1 requirements of Chapter 1, Subchapter M, Part I, Section 852(a)  
2 of the federal Internal Revenue Code shall be \$250.00.

3 (e) The tax assessed to any taxpayer pursuant to this section  
4 shall not be less than \$25.00 in the case of a domestic  
5 corporation, \$50.00 in the case of a foreign corporation, or  
6 \$250.00 in the case of an investment company or regulated  
7 investment company.

8 Provided however, that for accounting or privilege periods  
9 beginning in calendar year 1994 and thereafter the minimum  
10 taxes for taxpayers other than an investment company or a  
11 regulated investment company shall be as provided in the  
12 following schedule:

| <u>Period Beginning</u><br><u>In Calendar Year</u> | <u>Domestic</u><br><u>Corporation</u><br><u>Minimum Tax</u> | <u>Foreign</u><br><u>Corporation</u><br><u>Minimum Tax</u> |
|----------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------|
| 1994                                               | \$50                                                        | \$100                                                      |
| 1995                                               | \$100                                                       | \$200                                                      |
| 1996                                               | \$150                                                       | \$200                                                      |
| 1997                                               | \$200                                                       | \$200                                                      |

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

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

37 (cf: P.L.1983, c.75, s.1)

38 3. (New section) a. A corporation may elect, in accordance  
39 with the provisions of this section, to be a New Jersey S  
40 corporation. In order for an election to be valid, the corporation  
41 and each of its shareholders on the day on which the election is  
42 made (hereinafter "initial shareholders") must consent to such  
43 election and the jurisdictional requirements of becoming a New  
44 Jersey S corporation. The form of the election and consent to  
45 jurisdictional requirements and the place for filing shall be as  
46 prescribed by the Director of the Division of Taxation.

47 b. Each initial shareholder and the corporation shall consent to  
48 the following jurisdictional requirements:

49 (1) That this State shall have the right and jurisdiction to tax  
50 and collect the tax on each shareholder's S corporation income as  
51 defined pursuant to section 12 of P.L. , c. (C. ) (now  
52 pending before the Legislature as this bill);

53 (2) That New Jersey's right and jurisdiction to tax the income  
54 as set forth in paragraph (1) of this subsection shall not be

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1 affected by a change of a shareholder's residency, except as  
2 provided by the "New Jersey Gross Income Tax Act,"  
3 N.J.S.54A:1-1 et seq.; and

4 (3) If shareholders that are not initial shareholders of the  
5 corporation, while the corporation is a New Jersey S corporation,  
6 fail to consent to New Jersey's jurisdiction to tax S corporation  
7 income to such shareholders, this State shall have the right and  
8 jurisdiction to collect a payment of tax each year directly from  
9 the corporation equal to the S corporation income allocated to  
10 this State, as defined pursuant to section 12 of P.L. , c.  
11 (C. ) (now pending before the Legislature as this bill), of the  
12 nonconsenting shareholders for the accounting or privilege period  
13 multiplied by the maximum tax bracket rate provided under  
14 N.J.S.54A:2-1 for the accounting or privilege period. In such  
15 case, the corporation shall have the right, but not the obligation,  
16 to recover payments made by the corporation pursuant to this  
17 paragraph from each nonconsenting shareholder.

18 c. A corporation may make an election to become a New  
19 Jersey S corporation with respect to an accounting or privilege  
20 period for which the corporation is or will be an S corporation.  
21 The election for an accounting or privilege period, along with the  
22 consents to jurisdictional requirements, shall be filed within one  
23 calendar month of the time at which a federal S corporation  
24 election would be required if such accounting or privilege period  
25 were a "taxable year" for which a federal S corporation election  
26 were to be made pursuant to section 1362 of the federal Internal  
27 Revenue Code of 1986, 26 U.S.C. §1362. Such elections may only  
28 be revoked pursuant to subsection d. of this section. Such  
29 election shall terminate immediately upon the corporation's  
30 failure to satisfy the definition of a New Jersey S corporation  
31 pursuant to paragraph (p) of section 4 of P.L.1945, c.162  
32 (C.54:10A-4).

33 d. A corporation may revoke an election pursuant to this  
34 section on or before the last day of the first accounting or  
35 privilege period to which the election would otherwise apply.

36 4. (New section) a. With respect to each of its shareholders  
37 that is not an initial shareholder, a New Jersey S corporation  
38 shall satisfy the requirements of either paragraph b. or c. of this  
39 section.

40 b. Deliver a consent to the jurisdictional requirements as set  
41 forth in subsection b. of section 3 of P.L. , c. (C. ) (now  
42 pending before the Legislature as this bill).

43 c. Make payments to the Director of the Division of Taxation  
44 on behalf of each nonconsenting shareholder in an amount equal  
45 to the shareholder's pro rata share of S corporation income  
46 allocated to this State, as defined pursuant to section 12 of  
47 P.L. , c. (C. )(now pending before the Legislature as this  
48 bill), reflected on the corporation's return for the accounting or  
49 privilege period, multiplied by the maximum tax bracket rate  
50 provided under N.J.S.54A:2-1 in effect at the end of the  
51 accounting or privilege period. The payments shall be made no  
52 later than the time for filing of the return for the accounting or  
53 privilege period. The director may, by regulation, require that  
54 amounts estimated to be equal to the liability expected to be due

1 pursuant to this subsection be withheld from any distribution  
2 made to a nonconsenting shareholder.

3 d. If a shareholder that is not an initial shareholder of a New  
4 Jersey S corporation fails to deliver a consent to the  
5 jurisdictional requirements set forth in subsection b. of section 3  
6 of P.L. , c. (C. ) (now pending before the Legislature as this  
7 bill), and objects to New Jersey's jurisdiction to withhold  
8 payments pursuant to subsection c. of this section, then this State  
9 shall have the right and jurisdiction to collect a tax each year  
10 directly from the corporation equal to the pro rata share of the S  
11 corporation income allocated to this State, as defined pursuant to  
12 section 12 of P.L. , c. (C. ) (now pending before the  
13 Legislature as this bill), of the nonconsenting shareholder times  
14 the maximum tax bracket rate provided under N.J.S.54A:2-1 for  
15 the appropriate accounting or privilege period. In such case, the  
16 corporation shall have the right, but not the obligation, to  
17 recover payments made by the corporation pursuant to this  
18 paragraph from each nonconsenting shareholder.

19 5. (New section) a. "Operational income" subject to allocation  
20 to New Jersey means income from tangible and intangible  
21 property if the acquisition, management, and disposition of the  
22 property constitute integral parts of the taxpayer's regular trade  
23 or business operations and includes investment income serving an  
24 operational function. Income that a taxpayer demonstrates with  
25 clear and cogent evidence is not operational income is classified  
26 as nonoperational income, and the nonoperational income of  
27 taxpayers, other than those that have their principal place from  
28 which the trade or business of the taxpayer is directed or  
29 managed in this State, is not subject to allocation.

30 b. Corporate expenses related to nonoperational income are  
31 not deductible in determining entire net income.  
32 Notwithstanding the provisions of R.S.54:49-6 or any other law to  
33 the contrary:

34 (1) if in prior privilege periods property had been classified  
35 as operational property, and later is demonstrated to have been  
36 nonoperational property and is subsequently disposed of, all  
37 expenses, without limitation, deducted for prior privilege periods  
38 related to such nonoperational property shall be added back and  
39 recaptured as income in the period of disposition of such property;

40 (2) if in prior privilege periods income had been classified as  
41 serving an operational function, and later is demonstrated not to  
42 have been serving an operational function, all expenses, without  
43 limitation, deducted in prior privilege periods related to such  
44 income not serving an operational function shall be added back  
45 and recaptured as income; and

46 (3) the denominators of the fractions used to determine the  
47 allocation factor pursuant to section 6 of P.L.1945, c.162  
48 (C.54:10A-6), for privilege periods for which redeterminations  
49 are required pursuant to paragraphs (1) and (2) of this subsection  
50 shall be redetermined to exclude the amounts, if any, relating to  
51 the nonoperational property or the nonoperational income.

52 c. The Director of the Division of Taxation shall prescribe  
53 such forms for administration and adopt such administrative rules  
54 as the director deems necessary for the implementation of this

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1 section.

2 6. Section 18 of P.L.1945, c.162 (C.54:10A-18) is amended to  
3 read as follows:

4 18. a. The commissioner shall design a form of return and  
5 forms for such additional statements or schedules as he may  
6 require to be filed therewith. Such forms shall provide for the  
7 setting forth of such facts as the commissioner may deem  
8 necessary for the proper enforcement of this act. He shall cause  
9 a supply thereof to be printed and shall furnish appropriate blank  
10 forms to each taxpayer upon application or otherwise as he may  
11 deem necessary. Failure to receive a form shall not relieve any  
12 taxpayer from the obligation to file a return under the provisions  
13 of this act. Each such return shall have annexed thereto a  
14 certification by the president, vice-president, comptroller,  
15 secretary, treasurer, assistant treasurer, accounting officer of  
16 the taxpayer or any other officer of the taxpayer duly authorized  
17 so to act to the effect that the statements contained therein are  
18 true. The fact that an individual's name is signed on a  
19 certification of the report shall be prima facie evidence that such  
20 individual is authorized to sign and certify the report on behalf of  
21 the corporation. In the case of a corporation in liquidation or in  
22 the hands of a receiver or trustee, certification shall be made by  
23 the person responsible for the conduct of the affairs of such  
24 corporation.

25 b. The return of an S corporation shall, in addition to any  
26 information set forth pursuant to subsection a. of this section, set  
27 forth with respect to each shareholder: the shareholder's name,  
28 address and federal taxpayer identification number (social  
29 security number or employer identification number); whether the  
30 shareholder is a resident of this State; whether the shareholder  
31 has filed a consent to jurisdictional requirements pursuant to  
32 section 3 or section 4 of P.L. , c. (C. ) (now pending before  
33 the Legislature as this bill); the allocation factor determined  
34 pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6  
35 through 54:10A-10); the amount of any distribution made to the  
36 shareholder, including any amount paid on behalf of the  
37 shareholder pursuant to subsections c. or d. of section 4 of P.L.  
38 , c. (C. ) (now pending before the Legislature as this bill); the  
39 balance of the accumulated earnings and profits account; the  
40 balance of the accumulated adjustments account described in  
41 section 16 of P.L. , c. (C. ) (now pending before the  
42 Legislature as this bill), which account the corporation shall  
43 maintain; and such other information as the director may  
44 prescribe by regulation. The S corporation shall, on or before the  
45 day on which such return is required to be filed, furnish to each  
46 person who was a shareholder during the accounting or privilege  
47 period a copy of such information shown on the return as the  
48 director may by regulation prescribe.

49 (cf: P.L.1958, c.63, s.10)

50 7. N.J.S.54A:4-1 is amended to read as follows:

51 54A:4-1. Resident credit for tax of another state. (a) A  
52 resident taxpayer shall be allowed a credit against the tax  
53 otherwise due under this act for the amount of any income tax or  
54 wage tax imposed for the taxable year by another state of the

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1 United States or political subdivision of such state, or by the  
2 District of Columbia, with respect to income which is also  
3 subject to tax under this act, except as provided by subsections  
4 (c) and (d) of this section.

5 (b) The credit provided under this section shall not exceed the  
6 proportion of the tax otherwise due under this act that the  
7 amount of the taxpayer's income subject to tax by the other  
8 jurisdiction bears to his entire New Jersey income.

9 (c) No credit shall be allowed against the tax otherwise due  
10 under this act for the amount of any income tax or wage tax  
11 imposed for the taxable year on S corporation income allocated  
12 to this State.

13 (d) No credit shall be allowed for the amount of any taxes paid  
14 or accrued for the taxable year on or measured by profits or  
15 income imposed on or paid on behalf of a person other than the  
16 taxpayer, whether or not the taxpayer may be held liable for the  
17 tax.

18 (e) Readjustment of the tax of another state or political  
19 subdivision thereof--if the taxpayer is allowed credit under this  
20 section for more or less of the tax of another state or political  
21 subdivision thereof than he is finally required to pay, the  
22 taxpayer shall send notice of the difference to the director who  
23 shall redetermine the tax for any years affected regardless of any  
24 otherwise applicable statute of limitations.

25 (cf: N.J.S.54A:4-1)

26 8. N.J.S.54A:4-2 is amended to read as follows:

27 54A:4-2. Credit for taxes withheld [on wages]. a. Any amount  
28 of tax actually deducted and withheld by an employer under this  
29 act in any calendar year shall be deemed to have been paid to the  
30 director on behalf of the person from whom withheld, and such  
31 person shall be credited with having paid that amount of tax for  
32 the taxable year beginning in such calendar year. For a taxable  
33 year of less than 12 months, the credit shall be made under  
34 regulations of the director.

35 b. An amount of tax actually paid to the director by an S  
36 corporation pursuant to subsections c. of section 4 of P.L. ,  
37 c. (C. ) (now pending before the Legislature as this bill),  
38 shall be credited to the shareholder of the S corporation on whose  
39 behalf the payment was made as of the date of its receipt by the  
40 director, except as otherwise provided by N.J.S.54A:9-11, and the  
41 shareholder shall be credited with having paid that amount of tax  
42 for the taxable year in which the S corporation's accounting or  
43 privilege period ends.

44 (cf: N.J.S.54A:4-2)

45 9. N.J.S.54A:5-1 is amended to read as follows:

46 54A:5-1. New Jersey Gross Income Defined. New Jersey gross  
47 income shall consist of the following categories of income:

48 a. Salaries, wages, tips, fees, commissions, bonuses, and other  
49 remuneration received for services rendered whether in cash or in  
50 property.

51 b. Net profits from business. The net income from the  
52 operation of a business, profession or other activity after  
53 provision for all costs and expenses incurred in the conduct  
54 thereof, determined either on a cash or accrual basis in

1 accordance with the method of accounting allowed for federal  
2 income tax purposes but without deduction of the amount of:

3 (1) taxes based on income;

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

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

29 c. Net gains or income from disposition of property. Net gains  
30 or net income, less net losses, derived from the sale, exchange or  
31 other disposition of property, including real or personal, whether  
32 tangible or intangible as determined in accordance with the  
33 method of accounting allowed for federal income tax purposes.  
34 For the purpose of determining gain or loss, the basis of property  
35 shall be the adjusted basis used for federal income tax purposes,  
36 except as expressly provided for under this act, but without a  
37 deduction for penalties, fines, or economic benefits excepted  
38 pursuant to paragraph (2), or for treble damages excepted  
39 pursuant to paragraph (3) of subsection b. of this section.

40 A taxpayer's net gain or loss on the sale, exchange or other  
41 disposition of a share of an S corporation shall be calculated by  
42 increasing the adjusted basis of the share by an amount equal to  
43 the shareholder's net losses and deductions in respect of the  
44 share allowed and deducted from income for federal income tax  
45 purposes, not including any personal net operating loss  
46 deductions, to the extent that such net losses were not offset by  
47 the taxpayer's pro rata share of S corporation income otherwise  
48 subject to taxation pursuant to subsection p. of this section in  
49 respect of another S corporation, subject to rules of priority and  
50 assignment determined by the director.

51 For the tax year 1976, any taxpayer with a tax liability under  
52 this subsection, or under the "Tax on Capital Gains and Other  
53 Unearned Income Act" (P.L.1975, c.172), shall not be subject to  
54 payment of an amount greater than the amount he would have

1 paid if either return had covered all capital transactions during  
2 the full tax year 1976; provided, however, that the rate which  
3 shall apply to any capital gain shall be that in effect on the date  
4 of the transaction. To the extent that any loss is used to offset  
5 any gain under P.L.1975, c.172, it shall not be used to offset any  
6 gain under the "New Jersey Gross Income Tax Act" (P.L.1976,  
7 c.47).

8 The term "net gains or income" shall not include gains or  
9 income derived from obligations which are referred to in clause  
10 (1) or (2) of section 54A:6-14 of this act or from securities which  
11 evidence ownership in a qualified investment fund as defined in  
12 section 2 of P.L.1987, c.310 (C.54A:6-14.1). The term "net gains  
13 or net income" shall not include gains or income from  
14 transactions to the extent to which nonrecognition is allowed for  
15 federal income tax purposes. The term "sale, exchange or other  
16 disposition" shall not include the exchange of stock or securities  
17 in a corporation a party to a reorganization in pursuance of a plan  
18 of reorganization, solely for stock or securities in such  
19 corporation or in another corporation a party to the  
20 reorganization and the transfer of property to a corporation by  
21 one or more persons solely in exchange for stock or securities in  
22 such corporation if immediately after the exchange such person  
23 or persons are in control of the corporation. For purposes of this  
24 clause, stock or securities issued for services shall not be  
25 considered as issued in return for property.

26 For purposes of this clause, the term "reorganization" means--

27 (i) A statutory merger or consolidation;

28 (ii) The acquisition by one corporation, in exchange solely for  
29 all or part of its voting stock (or in exchange solely for all or a  
30 part of the voting stock of a corporation which is in control of  
31 the acquiring corporation) of stock of another corporation if,  
32 immediately after the acquisition, the acquiring corporation has  
33 control of such other corporation (whether or not such acquiring  
34 corporation had control immediately before the acquisition);

35 (iii) The acquisition by one corporation, in exchange solely for  
36 all or part of its voting stock (or in exchange solely for all or a  
37 part of the voting stock of a corporation which is in control of  
38 the acquiring corporation), of substantially all of the properties  
39 of another corporation, but in determining whether the exchange  
40 is solely for stock the assumption by the acquiring corporation of  
41 a liability of the other, or the fact that property acquired is  
42 subject to a liability, shall be disregarded;

43 (iv) A transfer by a corporation of all or a part of its assets to  
44 another corporation if immediately after the transfer the  
45 transferor, or one or more of its shareholders (including persons  
46 who were shareholders immediately before the transfer), or any  
47 combination thereof, is in control of the corporation to which the  
48 assets are transferred;

49 (v) A recapitalization;

50 (vi) A mere change in identity, form, or place of organization  
51 however effected; or

52 (vii) The acquisition by one corporation, in exchange for stock  
53 of a corporation (referred to in this subclause as "controlling  
54 corporation") which is in control of the acquiring corporation, of

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1 substantially all of the properties of another corporation which in  
2 the transaction is merged into the acquiring corporation shall not  
3 disqualify a transaction under subclause (i) if such transaction  
4 would have qualified under subclause (i) if the merger had been  
5 into the controlling corporation, and no stock of the acquiring  
6 corporation is used in the transaction;

7 (viii) A transaction otherwise qualifying under subclause (i)  
8 shall not be disqualified by reason of the fact that stock of a  
9 corporation (referred to in this subclause as the "controlling  
10 corporation") which before the merger was in control of the  
11 merged corporation is used in the transaction, if after the  
12 transaction, the corporation surviving the merger holds  
13 substantially all of its properties and of the properties of the  
14 merged corporation (other than stock of the controlling  
15 corporation distributed in the transaction); and in the transaction,  
16 former shareholders of the surviving corporation exchanged, for  
17 an amount of voting stock of the controlling corporation, an  
18 amount of stock in the surviving corporation which constitutes  
19 control of such corporation.

20 For purposes of this clause, the term "control" means the  
21 ownership of stock possessing at least 80% of the total combined  
22 voting power of all classes of stock entitled to vote and at least  
23 80% of total number of shares of all other classes of stock of the  
24 corporation.

25 For purposes of this clause, the term "a party to a  
26 reorganization" includes a corporation resulting from a  
27 reorganization, and both corporations, in the case of a  
28 reorganization resulting from the acquisition by one corporation  
29 of stock or properties of another. In the case of a reorganization  
30 qualifying under subclause (i) by reason of subclause (vii) the term  
31 "a party to a reorganization" includes the controlling corporation  
32 referred to in such subclause (vii).

33 Notwithstanding any provisions hereof, upon every such  
34 exchange or conversion, the taxpayer's basis for the stock or  
35 securities received shall be the same as the taxpayer's actual or  
36 attributed basis for the stock, securities or property surrendered  
37 in exchange therefor.

38 d. Net gains or net income derived from or in the form of  
39 rents, royalties, patents, and copyrights.

40 e. Interest, except interest referred to in clause (1) or (2) of  
41 N.J.S.54A:6-14, or distributions paid by a qualified investment  
42 fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to  
43 the extent provided in that section.

44 f. Dividends. "Dividends" means any distribution in cash or  
45 property made by a corporation, association or business trust that  
46 is not an S corporation, (1) out of accumulated earnings and  
47 profits, or (2) out of earnings and profits of the year in which  
48 such dividend is paid and any distribution in cash or property  
49 made by an S corporation, as specifically determined pursuant to  
50 section 16 of P.L. , c. (C. ) (now pending before the  
51 Legislature as this bill).

52 The term "dividends" shall not include distributions paid by a  
53 qualified investment fund as defined in section 2 of P.L.1987,  
54 c.310 (C.54A:6-14.1), to the extent provided in that section.

- 1 g. Gambling winnings.
- 2 h. Net gains or income derived through estates or trusts.
- 3 i. Income in respect of a decedent.
- 4 j. Amounts distributed or withdrawn from an employee trust
- 5 attributable to contributions to the trust which were excluded
- 6 from gross income under the provisions of chapter 6 of Title 54A
- 7 of the New Jersey Statutes and pensions and annuities except to
- 8 the extent of exclusions in section 54A:6-10 hereunder,
- 9 notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973,
- 10 c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53),
- 11 P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45
- 12 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22),
- 13 P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32
- 14 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60),
- 15 R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44,
- 16 and P.L.1943, c.189, s.5 (C.43:13-37.5).
- 17 k. Distributive share of partnership income.
- 18 l. Amounts received as prizes and awards, except as provided
- 19 in sections 54A:6-8 and 54A:6-11 hereunder.
- 20 m. Rental value of a residence furnished by an employer or a
- 21 rental allowance paid by an employer to provide a home.
- 22 n. Alimony and separate maintenance payments to the extent
- 23 that such payments are required to be made under a decree of
- 24 divorce or separate maintenance but not including payments for
- 25 support of minor children.
- 26 o. Income, gain or profit derived from acts or omissions
- 27 defined as crimes or offenses under the laws of this State or any
- 28 other jurisdiction.
- 29 p. Net pro rata share of S corporation income.
- 30 (cf: P.L.1990, c.79, s.1)
- 31 10. N.J.S.54A:5-8 is amended to read as follows:
- 32 54A:5-8. Income from sources within this State for a
- 33 nonresident individual, estate or trust means the same as
- 34 compensation, net profits, gains, dividends, interest or income
- 35 enumerated and classified under chapter 5 of this act to the
- 36 extent that it is earned, received or acquired from sources within
- 37 this State:
- 38 (1) By reason of ownership or disposition of any interest in real
- 39 or tangible personal property in this State; or
- 40 (2) In connection with a trade, profession, occupation carried
- 41 on in this State or for the rendition of personal services
- 42 performed in this State; or
- 43 (3) As a distributive share of the income of an unincorporated
- 44 business, profession, enterprise, undertaking or other activity as
- 45 the result of work done, services rendered or other business
- 46 activities conducted in this State except as allocated to another
- 47 state pursuant to regulations promulgated by the director under
- 48 this act; or
- 49 (4) From intangible personal property employed in a trade,
- 50 profession, occupation or business carried on in this State; or
- 51 (5) As S corporation income allocated to this State of a New
- 52 Jersey S corporation.
- 53 Income from sources within this State for a nonresident
- 54 individual shall not include income from pensions and annuities as

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1 set forth in subsection j. of N.J.S.54A:5-1.

2 (cf: P.L.1989, c.219, s.2)

3 11. (New section) An S corporation as such shall not be subject  
4 to the tax imposed by the "New Jersey Gross Income Tax Act,"  
5 N.J.S.54A:1-1 et seq., but the S corporation income, dividends  
6 and gain of a shareholder of an S corporation shall be subject to  
7 the tax, and the tax shall be imposed on the shareholder's pro  
8 rata share, whether or not distributed, of the S corporation  
9 income for its taxable year ending within or with the  
10 shareholder's taxable year.

11 12. (New section) For the purposes of the "New Jersey Gross  
12 Income Tax Act," N.J.S.54A:1-1 et seq.:

13 "New Jersey S corporation" means a corporation that is an S  
14 corporation; which has made a valid election pursuant to section  
15 3 of P.L. , c. (C. ) (now pending before the Legislature as  
16 this bill); and which has been an S corporation continuously since  
17 the effective date of the valid election made pursuant to section  
18 3 of P.L. , c. (C. ).

19 "Pro rata share" means the portion of any items attributable to  
20 an S corporation shareholder for a taxable year determined in the  
21 manner provided in, and subject to any election made under  
22 subsection (a) of section 1377 or subsection (e) of section 1362 of  
23 the federal Internal Revenue Code of 1986, 26 U.S.C. §1377 and  
24 §1362.

25 "Pro rata share of S corporation income" means the sum of the  
26 shareholder's proportionate share of:

27 For a New Jersey S corporation, the S corporation income  
28 allocated to this State of all New Jersey S corporations; and  
29 the S corporation income not allocated to this State.

30 "S corporation" means a corporation included in the definition  
31 of an "S corporation" pursuant to section 1361 of the federal  
32 Internal Revenue Code of 1986, 26 U.S.C. §1361.

33 "S corporation income" means the net of an S corporation's  
34 items of income, loss or deduction taken into account by the  
35 shareholder in the manner provided in section 1366 of the federal  
36 Internal Revenue Code of 1986, 26 U.S.C. §1366; provided  
37 however that:

38 a. S corporation income shall be determined without the  
39 exclusion, deduction or credit of:

40 (1) any dividend exclusion or deduction otherwise allowed  
41 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,  
42 c.162 (C.54:10A-4);

43 (2) taxes paid or accrued to the United States, a possession  
44 or territory of the United States, a state including this State, a  
45 political subdivision thereof, or the District of Columbia on or  
46 measured by profits or income, or business presence or business  
47 activity, of the corporation;

48 (3) any income taxes paid or accrued to the United States, a  
49 possession or territory of the United States, a state including this  
50 State, a political subdivision thereof, or the District of Columbia  
51 paid or accrued by the S corporation on behalf of, or in  
52 satisfaction of the liabilities of, shareholders of the corporation;

53 (4) interest income on obligations of any state other than  
54 this State, or of a political subdivision thereof, or of the federal

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1 government, except as deducted pursuant to paragraph (2) of  
2 subsection b. of this section; or

3 (5) interest on indebtedness incurred or continued, expenses  
4 paid and incurred to purchase, carry, manage or conserve, and  
5 expenses of collection of the income or gain from obligations the  
6 income or gain from which is deductible pursuant to subsection b.  
7 of this definition; and

8 b. S corporation income shall be determined after deduction of  
9 any gains or income derived from obligations which are referred  
10 to in N.J.S.54A:6-14 or from securities which evidence ownership  
11 in a qualified investment fund as defined in section 2 of P.L.1987,  
12 c.310 (C.54A:6-14.1), and any interest excluded from gross  
13 income pursuant to N.J.S.54A:6-14, or distributions excluded  
14 from income pursuant to section 2 of P.L.1987, c.310  
15 (C.54A:6-14.1); and

16 c. The character of any S corporation item taken into account  
17 by a shareholder of an S corporation shall be determined as if  
18 such items were received or incurred by the S corporation and not  
19 its shareholder.

20 "S corporation income allocated to this State" means that  
21 portion of the S corporation income that is allocated to this State  
22 by the allocation factor of the corporation for the fiscal or  
23 calendar accounting period pursuant to sections 6 through 10 of  
24 P.L.1945, c.162 (C.54:10A-6 through 54:10A-10), reduced by any  
25 tax imposed pursuant to paragraph (3) of subsection (c) of section  
26 5 of P.L.1945, c.162 (C. 54:10A-5).

27 "S corporation income not allocated to this State" means S  
28 corporation income less S corporation income allocated to this  
29 State.

30 13. (New section) a. A resident shareholder of S corporation  
31 stock held by the shareholder on the first day of the first taxable  
32 year following enactment of this section shall have an initial  
33 basis in the stock of that S corporation and any indebtedness of  
34 the S corporation equal to the basis of the stock determined as  
35 though the stock was stock of a corporation not an S corporation  
36 plus any indebtedness of the S corporation to the shareholder and  
37 shall be determined as of the first day of the first taxable year  
38 following enactment of this section

39 b. A resident shareholder of S corporation stock to which  
40 subsection a. of this section does not apply shall have an initial  
41 basis in the stock of the S corporation and any indebtedness of  
42 the S corporation as determined pursuant to the federal Internal  
43 Revenue Code of 1986, determined as of the date that is the  
44 latest to occur of: the date on which the shareholder last became  
45 a resident of this State; the date on which the shareholder  
46 acquired the stock of the corporation; or the effective date of  
47 the corporation's most recent S election under the federal  
48 Internal Revenue Code of 1986.

49 c. The initial basis of a resident shareholder in the stock and  
50 indebtedness of an S corporation shall be adjusted after the date  
51 specified in subsections a. or b. of this section in the manner  
52 required by section 1011 of the federal Internal Revenue Code of  
53 1986, 26 U.S.C. §1011, except that such adjustments shall be  
54 limited to that portion of S corporation income allocated to this

1 State and S corporation income not allocated to this State that is  
2 included in the shareholder's pro rata share of S corporation  
3 income and except that, with respect to any taxable period during  
4 which the shareholder is a resident of this State:

5 (1) any modification made pursuant to the definition of S  
6 corporation income pursuant to section 12 of P.L. , c. (C. )  
7 (now pending before the Legislature as this bill) other than those  
8 for income exempt from taxation by this State pursuant to  
9 paragraph (5) of subsection a. and subsection b. of that definition  
10 shall be taken into account; and

11 (2) any adjustments made pursuant to section 1367 of the  
12 federal Internal Revenue Code of 1986, 26 U.S.C. §1367, for a  
13 taxable period during which this State did not measure the  
14 income of a shareholder of an S corporation by reference to the S  
15 corporation's income shall not be taken into account.

16 d. A nonresident shareholder of S corporation stock shall have  
17 an initial basis in the stock of the S corporation and any  
18 indebtedness of the S corporation of zero as of the date that is  
19 the latest to occur of: the date on which the shareholder last  
20 became a nonresident of this State; the date on which the  
21 shareholder acquired the stock of the corporation; the effective  
22 date of the corporation's most recent S election under the  
23 federal Internal Revenue Code of 1986; or the effective date of  
24 the corporation's most recent election pursuant to section 3 of  
25 P.L. , c. (C. ) (now pending before the Legislature as this  
26 bill).

27 e. The initial basis of a nonresident shareholder in the stock  
28 and indebtedness of an S corporation shall be adjusted after the  
29 date specified in subsection d. of this section as provided in  
30 section 1367 of the of the federal Internal Revenue Code of 1986,  
31 26 U.S.C. §1367, except that such adjustments shall be limited to  
32 that portion of S corporation income allocated to this State that  
33 is included in the shareholder's pro rata share of S corporation  
34 income. In computing S corporation income allocated to this  
35 State any modification made pursuant to the definition of S  
36 corporation income pursuant to section 12 of P.L. , c.  
37 (C. )(now pending before the Legislature as this bill) for income  
38 exempt from taxation by this State pursuant to paragraph (5) of  
39 subsection a. and subsection b. of that definition shall not be  
40 taken into account.

41 f. The basis in the hands of a resident shareholder of an S  
42 corporation in stock of the S corporation shall be reduced by the  
43 amount of any cash distribution which is not taxable to the  
44 shareholder as a result of the application of section 16 of P.L. ,  
45 c. (C. )(now pending before the Legislature as this bill).

46 g. For purposes of this section, any person acquiring stock or  
47 indebtedness of an S corporation by gift shall be considered to  
48 have acquired the stock or indebtedness at the time the donor  
49 acquired the stock or indebtedness.

50 14. (New section) a. The aggregate amount of losses or  
51 deductions of an S corporation taken into account by a  
52 shareholder of the S corporation for a taxable period pursuant to  
53 section 11 of P.L. , c. (C. ) (now pending before the  
54 Legislature as this bill), shall not exceed the shareholder's

1 combined adjusted basis, determined in accordance with section  
2 13 of P.L. , c. (C. ) (now pending before the Legislature as  
3 this bill), in the stock of the S corporation and any indebtedness  
4 of the S corporation to the shareholder.

5 b. Any loss or deduction of an S corporation which is  
6 disallowed for a taxable period pursuant to subsection a. of this  
7 section shall not be treated as incurred by the corporation in any  
8 succeeding taxable period with respect to that shareholder.

9 15. (New section) For purposes of this act, if a shareholder of  
10 an S corporation is both a resident and a nonresident of this State  
11 during any taxable year, the shareholder's pro rata share of the S  
12 corporation income allocated to this State and S corporation  
13 income not allocated to this State for the taxable period shall be  
14 further prorated between the shareholder's periods of residence  
15 and nonresidence during the taxable period, in accordance with  
16 the number of days in each period.

17 16. (New section) a. Subject to subsection c. of this section, a  
18 distribution made by an S corporation with respect to its stock to  
19 a resident shareholder shall be taken into account by the  
20 shareholder for purposes of the "New Jersey Gross Income Tax  
21 Act," N.J.S.54A:1-1 et seq., to the extent that the distribution is  
22 treated as a dividend or as gain from the sale or exchange of  
23 property in the manner provided by section 1368 of the federal  
24 Internal Revenue Code of 1986, 26 U.S.C. §1368.

25 b. Subject to subsection c. of this section, a distribution of  
26 money made by a corporation with respect to its stock to a  
27 resident shareholder during a post-termination transition period  
28 shall not be taken into account by the shareholder for purposes of  
29 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.,  
30 to the extent the distribution is applied against and reduces the  
31 adjusted basis of the stock of the shareholder in the manner  
32 provided by section 1371(e) of the federal Internal Revenue Code  
33 of 1986, 26 U.S.C. §1371.

34 c. In applying sections 1368 and 1371(e) of the federal Internal  
35 Revenue Code of 1986, 26 U.S.C. §§1368 and 1371, to any  
36 distribution referred to in subsection a. or b. of this section:

37 (1) the term "adjusted basis of the stock" means the  
38 shareholder's adjusted basis in the stock of the S corporation, as  
39 determined under section 13 of P.L. , c. (C. )(now pending  
40 before the Legislature as this bill); and

41 (2) the term "accumulated adjustments account" means an  
42 amount that is equal to, and adjusted in the same manner as, the  
43 S corporation's accumulated adjustments account defined in  
44 section 1368(e)(1)(A) of the federal Internal Revenue Code of  
45 1986, 26 U.S.C. §1368, except that any modifications required to  
46 be made pursuant to the definition of S corporation income shall  
47 be taken into account.

48 17. Section 3 of P.L.1977, c.273 (C.54A:6-15) is amended to  
49 read as follows:

50 3. Other retirement income. a. Gross income shall not  
51 include income of up to \$10,000.00 for a married couple filing  
52 jointly, \$5,000.00 for a married person filing separately, or  
53 \$7,500.00 for an individual filing as a single taxpayer or an  
54 individual determining tax pursuant to subsection a. of

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22

1 N.J.S.54A:2-1, when received in any tax year by a person aged 62  
2 years or older who received no income in excess of \$3,000.00  
3 from one or more of the sources enumerated in subsections a., b.  
4 [and] 1 k. and p. of N.J.S.54A:5-1, provided, however, that the  
5 total exclusion under this subsection and that allowable under  
6 N.J.S.54A:6-10 shall not exceed the amounts of the exclusions set  
7 forth in this subsection.

8 b. In addition to the exclusion provided under N.J.S.54A:6-10  
9 and subsection a. of this section, gross income shall not include  
10 income of up to \$6,000.00 for a married couple filing jointly or an  
11 individual determining tax pursuant to subsection a. of  
12 N.J.S.54A:2-1, or \$3,000.00 for a single person or a married  
13 person filing separately, who is not covered under N.J.S.54A:6-2  
14 or N.J.S.54A:6-3, but who would be eligible in any year to receive  
15 payments under either section if he or she were covered thereby.  
16 (cf: P.L.1990, c.61, s.17)

17 18. N.J.S.54A:8-6 is amended to read as follows:

18 54A:8-6. Requirements concerning returns, notices, records  
19 and statements. (a) General. The director may prescribe  
20 regulations as to the keeping of records, the content and form of  
21 returns and statements, and the filing of copies of federal income  
22 tax returns and determinations. The director may require any  
23 person, by regulation or notice served upon such person, to make  
24 such returns, render such statements, or keep such records, as the  
25 director may deem sufficient to show whether or not such person  
26 is liable under this act for tax or for collection of tax.

27 (b) Partnerships. Every partnership having a resident partner  
28 or having any income derived from New Jersey sources, shall  
29 make a return for the taxable year setting forth all items of  
30 income, gain, loss and deduction and such other pertinent  
31 information as the director may by regulations and instructions  
32 prescribe. The director shall prescribe a State return form that,  
33 at a minimum, includes the name, principal residence address if  
34 applicable and telephone number of each partner of the  
35 partnership for taxable years ending after December 15, 1993.  
36 Such return shall be filed on or before the fifteenth day of the  
37 fourth month following the close of each taxable year. For the  
38 purposes of this subsection, "taxable year" means a year or  
39 period which would be a taxable year of the partnership if it were  
40 subject to tax under this act.

41 (c) Information at source. The director may prescribe  
42 regulations and instructions requiring returns of information to be  
43 made and filed on or before February 15 of each year as to the  
44 payment or crediting in any calendar year of amounts of \$100.00  
45 or more to any taxpayer under this act. Such returns may be  
46 required of any person, including lessees or mortgagors of real or  
47 personal property, fiduciaries, employers, and all officers and  
48 employees of this State, or of any municipal corporation or  
49 political subdivision of this State, having the control, receipt,  
50 custody, disposal or payment of interest, rents, salaries, wages,  
51 premiums, annuities, compensations, remunerations, emoluments  
52 or other fixed or determinable gains, profits or income, except  
53 interest coupons payable to bearer. A duplicate of the statement  
54 as to tax withheld on wages, required to be furnished by an

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23

1 employer to an employee, shall constitute the return of  
2 information required to be made under this section with respect  
3 to such wages.

4 (d) Notice of qualification as receiver, et cetera. Every  
5 receiver, trustee in bankruptcy, assignee for benefit of creditors,  
6 or other like fiduciary shall give notice of his qualification as  
7 such to the director, as may be required by regulation.

8 (cf: N.J.S.54A:8-6)

9 19. This act shall take effect immediately and sections 1  
10 through 6 shall apply to fiscal or calendar accounting years  
11 beginning after enactment and sections 7 through 17 shall apply  
12 to taxable years beginning after enactment.

13

14

15

16

17 Provides reduced corporation business tax for electing S  
18 corporations.

JOINT LEGISLATIVE COMMITTEE  
ON ECONOMIC RECOVERY

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 19 and 1824

STATE OF NEW JERSEY

DATED: JUNE 2, 1993

The Joint Legislative Committee on Economic Recovery reports favorably a Senate Committee Substitute for Senate Bill Nos. 19 and 1824.

This substitute bill provides for a special corporation business tax rate on certain closely held corporations. Under subchapter S of the federal Internal Revenue Code, business corporations with 35 or fewer shareholders (who must each be U.S. resident individuals, estates or certain trusts) may elect special tax treatment, including the exemption of most of their corporate income from taxation at the corporate level (the shareholders of those corporations pay personal income taxes on the income they receive or are deemed to have received).

Generally, S corporations are not taxed at the corporate level for federal tax purposes. Instead, the income "flows through" to the individual shareholders who are then taxed on the income under the personal income tax. Thus, the federal S corporation tax treatment eliminates the double taxation of income for most income earned by S corporations. The majority of states have adopted similar provisions for S corporations.

Historically, New Jersey has not recognized the S corporation concept for corporations operating in New Jersey which has added greater complexity for the taxation of those corporations because of the need to handle tax planning in one manner for federal tax purposes and in a different manner for New Jersey tax purposes. Frequently, that tax planning reflects and poses difficulties for the corporation.

The bill differs from the federal S corporation treatment for two significant reasons. First, New Jersey is one of two states that uses a "gross income" measure for determining personal income tax liability rather than the more common "net income" measure. Thus, net losses from S corporations are not utilized against other income. Second, the extreme revenue impact of eliminating all corporate level taxes for S corporations makes that elimination impractical. Accordingly, a corporate level tax is retained which is similar to the treatment provided by New York State.

This substitute provides a special corporation business tax rate for the federally exempt income of corporations that have made a valid federal subchapter S election and that elect similar special treatment for New Jersey tax purposes. That tax rate is equal to the difference between the corporation business tax rate (currently 9%) and the highest marginal rate under the New Jersey gross

income tax (currently 7%), or 2%. A surtax is imposed under the corporation business tax (currently 0.375%); that surtax would still apply to electing subchapter S corporations. Under current tax rates, this substitute reduces the total corporate business tax rate on an electing subchapter S corporation from 9.375% to 2.375%. In order to qualify for the reduced corporate level tax rate, each corporation will be required to make a New Jersey S corporation election. To the extent that federal tax laws impose a corporate level tax on certain S corporation income, the New Jersey tax will "piggyback" upon the federal provisions so as to impose the full 9.375% New Jersey corporate level tax.

Currently, individuals are taxed under the gross income tax only at the time of the payment of dividends by the corporations. This substitute also provides for the more effective taxation of the shareholders of S corporations on the income they receive or are deemed to have received. This substitute changes the time of the taxation of shareholders from the current system of taxing distributions at the time they are distributed to a system like the federal system, which taxes the shareholders of electing corporations on their New Jersey source income at the time the S corporation earns income, whether the income is distributed or not.

Taxation of dividends of S corporations will now be eliminated under this substitute in all cases other than:

1. dividend payments attributable to years prior to the effective date of this legislation; and
2. dividends attributable to corporate income allocable to New Jersey earned by federal S corporations which do not elect to be New Jersey S corporations.

Non-residents of New Jersey are taxed under this substitute upon their pro rata share of S corporation income from New Jersey S corporations allocable to New Jersey.

New Jersey residents will generally be taxed on all of their S corporation income regardless of its source. All of the items of income, loss and deduction of S corporations are passed through to shareholders and netted in a single New Jersey gross income tax category.

Under this substitute, it is intended that the tax basis of the stock will be adjusted in a manner consistent with the federal tax law, taking into account:

1. that a corporation might not be a New Jersey S corporation for all of the time that it is a federal S corporation; and
2. that S corporation shareholders will receive no tax benefit for their share of new pro rata S corporation losses.

This substitute also makes adjustment under the corporation business tax for certain expenses of generating income that are not subject to taxation by New Jersey. First, the bill disallows the deduction of the taxes of other United States taxing jurisdictions in calculating the "entire net income" of a corporation that is allocated to New Jersey for corporation business tax purposes. New Jersey uses a formula to determine the percentage of the total income of a corporation that is fairly related to the corporation's activity in New Jersey. Only that part of the total of a corporation's income that is related to activities in New Jersey is subject to tax; effectively, the rest of the corporation's income is

exempt from New Jersey tax. If the deduction of the taxes of other jurisdictions is allowed, corporations which do business in several states pay a lower effective rate of tax on their New Jersey activities than do corporations which only do business in New Jersey. This substitute ends that tax rate discrimination.

Second, the United States Supreme Court recently determined in the Allied-Signal, Inc. case that a corporation may have certain types of corporate income that have no relationship with the corporation's activities in a particular state and which therefore may not be included in the income that is subject to allocation and taxation by that state. This substitute makes technical changes to the determination of the allocation of entire net income to make certain that the expenses of generating income that cannot be taxed by New Jersey are not deducted from the income that is taxable by New Jersey and to fairly allocate the income of a corporation that New Jersey may tax.

This substitute phases in over four years an increase in the minimum corporation business tax liability of corporations to \$200 for each fiscal or calendar privilege period, and provides for an adjustment for inflation each five years thereafter. Currently, the minimum tax is \$25 for a domestic corporation or \$50 for a foreign corporation for each privilege period or part thereof, one of the lowest minimum taxes in the region.

This substitute also makes various technical changes to the New Jersey gross income tax to provide for the taxation of S corporation shareholders, to codify certain portions of the Tax Court's holding in the Walsh case, 10 N.J.Tax 447, and to clarify the information to be contained in partnership information returns.

#### FISCAL IMPACT:

This substitute provides a reduced corporation business tax rate which, if elected by all qualifying corporations, would reduce corporation business tax revenue by an amount estimated by the Division of Taxation to be approximately \$111 million annually. The Division of Taxation has estimated that improved taxpayer compliance under the gross income tax with an S election that includes shareholder consent to taxation will increase gross income tax revenues by approximately \$41 million annually. Disallowing the deduction of taxes paid to other jurisdictions and the expense of generating tax exempt income have been estimated by the division to increase corporation business tax revenues respectively by \$25 million annually and \$25 million annually. When fully phased in, the increase in the minimum corporation business tax will increase revenue under that tax by approximately \$22 million annually. Improved partnership information reporting will allow improved gross income tax auditing with revenue increases that have not yet been determined.

SENATE, No. 19

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Senator HAINES

1 AN ACT concerning the taxation of certain corporations and the  
2 shareholders of those corporations, amending, P.L.1945, c.162  
3 and supplementing Title 54A of the New Jersey Statutes.  
4

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

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

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

11 (a) Corporations subject to a tax under the provisions of  
12 article 2 of chapter 13 of Title 54 of the Revised Statutes, or to  
13 a tax assessed upon the basis of gross receipts [other than the  
14 Retail Gross Receipts Tax Act,] or insurance premiums  
15 collected;

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

21 (c) Railroad, canal corporations, savings banks, production  
22 credit associations organized under the Farm Credit Act of 1933  
23 or the Farm Credit Act of 1971, Pub.L.92-181 (12 U.S.C. §2091  
24 et seq.), agricultural cooperative associations incorporated or  
25 domesticated under or subject to chapter 13 of Title 4 of the  
26 Revised Statutes and exempt under Subtitle A, Chapter 1 F,  
27 Part III, Section 521 of the federal Internal Revenue Code, or  
28 building and loan or savings and loan associations;

29 (d) Cementery corporations not conducted for pecuniary  
30 profit or any private shareholder or individual;

31 (e) Nonprofit corporations, associations or organizations  
32 established, organized or chartered, without capital stock, under  
33 the provisions of Titles 15, 16 or 17 of the Revised Statutes or  
34 Title 15A of the New Jersey Statutes, or under a special charter  
35 or under any similar general or special law of this or any other  
36 State, and not conducted for pecuniary profit of any private  
37 shareholders or individual;

38 (f) Corporations subject to a tax under the provisions of  
39 P.L.1940, c.4 (C.54:30A-16 et seq.), or P.L.1940, c.5  
40 (C.54:30A-49 et seq.), or any statute or law imposing a similar  
41 tax or taxes;

42 (g) Nonstock corporations organized under the laws of this

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

Matter underlined thus is new matter.

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

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

21 (i) Corporations having the status of a small business  
22 corporation for which an election is in effect under section 1362  
23 of subchapter S of the federal Internal Revenue Code of 1986,  
24 Pub.L.99-514 (26 U.S.C. §1361 et seq.), as amended and  
25 supplemented, except as otherwise provided in this subsection.  
26 Such a corporation, for the purposes of the application of the  
27 Corporation Business Tax Act (1945), shall be treated in the  
28 same manner as under the provisions of sections 1363, 1368 and  
29 1371 to 1375 of the federal Internal Revenue Code of 1956,  
30 Pub.L.99-514 (26 U.S.C. §1363, 1368 and 1371 to 1375) where  
31 applicable, except that the tax rate imposed shall be pursuant to  
32 the Corporation Business Tax Act (1945).

33 (cf: P.L.1975, c.170, s.1)

34 2. (New section) A corporation having the status of a small  
35 business corporation for which an election is in effect under  
36 section 1362 of subchapter S of the federal Internal Revenue  
37 Code of 1986, Pub.L.99-514 (26 U.S.C. §1361 et seq.), as a  
38 corporation, shall not be subject to the New Jersey gross income  
39 tax. Individuals who are shareholders in such a corporation shall  
40 be liable for the New Jersey gross income tax only in their  
41 separate or individual capacities as provided in section 3 of this  
42 1988 amendatory and supplementary act.

43 3. (New section) Notwithstanding the provisions of the "New  
44 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., the  
45 determination of New Jersey taxable income of a taxpayer,  
46 attributable to his status as a shareholder of a small business  
47 corporation for which an election is in effect under section 1362  
48 of subchapter S of the federal Internal Revenue Code of 1986,  
49 Pub.L.99-514 (26 U.S.C. §1362), shall be made for the  
50 shareholder's taxable year in which the taxable year of the  
51 corporation ends, and shall be made pursuant to the provisions of  
52 sections 1366 to 1368 of the federal Internal Revenue Code of  
53 1986 (26 U.S.C. §§1366 to 1368).

54 4. (New section) The Director of the Division of Taxation

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3

1 shall promulgate, pursuant to the "Administrative Procedure  
2 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations,  
3 and propose such forms, as may be necessary to carry out the  
4 provisions of this act.

5 5. This act shall take effect immediately and apply to  
6 distributions of income received on or after January 1, 1988.

7  
8 STATEMENT  
9

10 This bill modifies the treatment of S corporations (formerly  
11 called small business or Subchapter S corporations) under the  
12 New Jersey gross income and corporation business taxes to make  
13 that treatment conform to federal tax treatment. The bill will  
14 result in an undetermined but significant loss of corporation  
15 business tax revenues, and an increase in gross income tax  
16 revenues which will offset a portion of the corporation business  
17 tax loss.

18 S corporations are small business corporations with no more  
19 than 35 shareholders and one class of stock; shareholders must  
20 be individuals, estates or certain trusts, and may not be  
21 nonresident aliens. Under federal law, such corporations are not  
22 subject to the corporate tax except in certain circumstances;  
23 instead, the pro rata share of income is passed through to the  
24 individual shareholders who are taxed as individuals. Under  
25 current State law, S corporation status is not recognized; such  
26 corporations are taxed as ordinary corporations and distributions  
27 to shareholders are taxed as dividends.

28 This bill conforms New Jersey law as closely as possible to  
29 federal law in this area: S corporations are exempted from the  
30 corporation business tax except in certain circumstances, and  
31 shareholders are taxed under the gross income tax on their pro  
32 rata share of the corporation's income.

33  
34  
35  
36 Adopts certain federal income tax treatment of subchapter S  
37 corporations under the corporation business tax, and of their  
38 shareholders under the gross income tax.

[FIRST REPRINT]  
ASSEMBLY, No. 1015  
STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1992

By Assemblymen CATANIA and ZECKER

1 AN ACT to repeal P.L.1966, c.136 (C.54:11A-1 et seq.), P.L.1977,  
2 c.4 (C.54:11A-3.1), P.L.1978, c.151 (C.54:11A-3.2 et seq.),  
3 section 7 of P.L.1989, c.2 (C.54:11A-6.1) and section 5 of  
4 P.L.1975, c.170 (C.54:11A-21).  
5

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

- 8 1. The following acts and sections are repealed:  
9 a. P.L.1966, c.136 (C.54:11A-1. et seq.);  
10 b. P.L.1977, c.4 (C.54:11A-3.1);  
11 c. P.L.1978, c.151 (C.54:11A-3.2 et seq.);  
12 d. Section 5 of P.L.1975, c.170 (C.54:11A-21); and  
13 e. Section 7 of P.L.1989, c.2 (C.54:11A-6.1).  
14 2. The repeal of the acts and sections pursuant to subsections  
15 a., c. d. e. of section 1 of this act shall not affect the obligation,  
16 lien, or duty to pay taxes, interest, or penalties which shall have  
17 accrued or may accrue by virtue of any assessment made or which  
18 may be made with respect to taxes levied <sup>1</sup>[for any taxable year  
19 ending on or before December 31, 1992] upon personal property  
20 used in business on or before October 1, 1993<sup>1</sup>, and all taxes and  
21 returns which would have been due and payable under the  
22 provisions of those acts and sections on February 15 and  
23 September 15, <sup>1</sup>[1993] 1994<sup>1</sup>, shall be due and payable on those  
24 dates as if the acts and sections were in effect. This act shall not  
25 affect any proceedings for the enforcement of any provision of the  
26 repealed acts or sections, nor shall this act affect the legal  
27 authority to assess and collect the taxes which may be, or may  
28 have been due and payable under the provisions of those acts or  
29 sections, together with interest or penalties which may have, or  
30 may accrue thereon.  
31 3. This act shall take effect <sup>1</sup>[on December 31, 1992]  
32 immediately, and section 1 shall apply to personal property used in  
33 business after October 1, 1993<sup>1</sup>.  
34  
35  
36  
37

38 Repeals the "Business Personal Property Tax Act."

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> JCER committee amendments adopted June 3, 1993.

JOINT LEGISLATIVE COMMITTEE  
ON ECONOMIC RECOVERY

STATEMENT TO

ASSEMBLY, No. 1015

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 2, 1993

The Joint Legislative Committee on Economic Recovery reports favorably Assembly Bill No. 1015 with committee amendments.

This bill, as amended by the committee, repeals the "Business Personal Property Tax Act."

The amended bill provides that payments which would be due in 1994 on the basis of business property owned on or before October 1, 1993 shall be due and payable on the appropriate dates in 1994. After the 1994 payments are made, a firm's liability for business personal property taxes will cease.

FISCAL IMPACT:

The Office of Legislative Services estimates that this legislation, as amended, will have no fiscal impact in FY 1994, while for FY 1995, a \$3.5 to \$4 million reduction in revenue is projected, based on the elimination of the February 1995 payment under this tax. For FY 1996, the elimination of the tax for a full fiscal year is expected to result in a \$6 to \$8 million reduction in revenues.

COMMITTEE AMENDMENTS:

The committee adopted amendments to clarify that taxes payable in 1994 only apply to personal property used in business on or before October 1, 1993. The committee also completed amendments to update the bill's operative dates.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 1015

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 3, 1993

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1015 (Aca), with committee amendments.

Assembly Bill No. 1015 (Aca), as amended, repeals the "Business Personal Property Tax Act."

This bill provides that payments which would be due in 1994 on the basis of business property owned on or before October 1, 1993 shall be due and payable on the appropriate dates in 1994. After the 1994 payments are made, a firm's liability for business personal property taxes will cease. This bill, as amended by this committee, is identical to Senate Bill No. 219 (Sca).

FISCAL IMPACT:

The Office of Legislative Services estimates that this legislation, as amended, will have no fiscal impact in FY 1994, while for FY 1995, a \$3.5 to \$4 million reduction in revenue is projected, based on the elimination of the February 1995 payment under this tax. For FY 1996, the elimination of the tax for a full fiscal year is expected to result in a \$6 to \$8 million reduction in revenues.

COMMITTEE AMENDMENTS:

When the "Business Retention Act," P.L.1992, c.24 (C.54:4-1.13 et al.), was enacted in June of 1992, its provisions relating to the definition of personal and real property used in business were made applicable to "all tax appeals pending at the time of enactment regardless of the tax year in question." These committee amendments make clear that if there has been a court proceeding adjudicating liability under the "Business Personal Property Tax Act," subsequent provisions of the "Business Retention Act" will not affect those proceedings with respect to the liability which has accrued prior to the date of enactment of the "Business Retention Act."

[SECOND REPRINT]

ASSEMBLY, No. 1015

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1992

By Assemblymen CATANIA and ZECKER

1 AN ACT to repeal P.L.1966, c.136 (C.54:11A-1 et seq.), P.L.1977,  
2 c.4 (C.54:11A-3.1), P.L.1978, c.151 (C.54:11A-3.2 et seq.),  
3 section 7 of P.L.1989, c.2 (C.54:11A-6.1) and section 5 of  
4 P.L.1975, c.170 (C.54:11A-21).

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

8 1. The following acts and sections are repealed:

- 9 a. P.L.1966, c.136 (C.54:11A-1. et seq.);  
10 b. P.L.1977, c.4 (C.54:11A-3.1);  
11 c. P.L.1978, c.151 (C.54:11A-3.2 et seq.);  
12 d. Section 5 of P.L.1975, c.170 (C.54:11A-21); and  
13 e. Section 7 of P.L.1989, c.2 (C.54:11A-6.1).

14 2. The repeal of the acts and sections pursuant to subsections  
15 a., c. d. e. of section 1 of this act shall not affect the obligation,  
16 lien, or duty to pay taxes, interest, or penalties which shall have  
17 accrued or may accrue by virtue of any assessment made or which  
18 may be made with respect to taxes levied <sup>1</sup>[for any taxable year  
19 ending on or before December 31, 1992] upon personal property  
20 used in business on or before October 1, 1993<sup>1</sup>, and all taxes and  
21 returns which would have been due and payable under the  
22 provisions of those acts and sections on February 15 and  
23 September 15, <sup>1</sup>[1993] 1994<sup>1</sup>, shall be due and payable on those  
24 dates as if the acts and sections were in effect. <sup>2</sup>[This]  
25 Notwithstanding any provisions of section 7 of P.L.1992, c.24 to  
26 the contrary, this<sup>2</sup> act shall not affect any proceedings for the  
27 enforcement of any provision of the repealed acts or sections <sup>2</sup>or  
28 any provisions of section 7 of P.L.1992, c.24 for liability accruing  
29 after June 29, 1992<sup>2</sup>, nor shall this act affect the legal authority  
30 to assess and collect the taxes which may be, or may have been  
31 due and payable under the provisions of those acts or sections,  
32 together with interest or penalties which may have, or may accrue  
33 thereon.

34 3. This act shall take effect <sup>1</sup>[on December 31, 1992]  
35 immediately, and section 1 shall apply to personal property used in  
36 business after October 1, 1993<sup>1</sup>.

37  
38  
39  
40  
41 Repeals the "Business Personal Property Tax Act."

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> JCER committee amendments adopted June 3, 1993.

<sup>2</sup> Assembly AAP committee amendments adopted June 3, 1993.

SENATE, No. 219

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Senator LITTELL

1 AN ACT to repeal P.L. 1966, c. 136 (C. 54:11A-1 et seq.), P.L.  
2 1977, c. 4 (C. 54:11A-3.1), P.L. 1978, c. 151 (C. 54:11A-3.2 et  
3 seq.), and section 5 of P.L. 1975, c. 170 (C. 54:11A-21).  
4

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

- 7 1. The following acts and sections are repealed:  
8 a. P.L. 1966, c. 136 (C. 54:11A-1. et seq.);  
9 b. P.L. 1977, c. 4 (C. 54:11A-3.1);  
10 c. P.L. 1978, c. 151 (C. 54:11A-3.2 et seq.); and  
11 d. Section 5 of P.L. 1975, c. 170 (C. 54:11A-21).  
12 2. The repeal of the acts and sections pursuant to subsections  
13 a., c. and d. of section 1 of this act shall not affect the  
14 obligation, lien, or duty to pay taxes, interest, or penalties which  
15 shall have accrued or may accrue by virtue of any assessment  
16 made or which may be made with respect to taxes levied for any  
17 taxable year ending on or before December 31, 1986, and all  
18 taxes and returns which would have been due and payable under  
19 the provisions of those acts and sections on February 15 and  
20 September 15, 1987, shall be due and payable on those dates as if  
21 the acts and sections were in effect. This act shall not affect  
22 any proceedings for the enforcement of any provision of the  
23 repealed acts or sections, nor shall this act affect the legal  
24 authority to assess and collect the taxes which may be, or may  
25 have been due and payable under the provisions of those acts or  
26 sections, together with interest or penalties which may have, or  
27 may accrue thereon.  
28 3. This act shall take effect on December 31, 1986.  
29

30 STATEMENT  
31

32 The purpose of this bill is to repeal the "Business Personal  
33 Property Tax Act."

34 This bill provides that payments which would have been due in  
35 1987 on the basis of business property owned on October 1, 1986  
36 shall be due and payable on the appropriate dates in 1987. After  
37 the 1987 payments are made, a firm's liability for business  
38 personal property taxes will cease.  
39  
40  
41  
42

43 Repeals the "Business Personal Property Tax Act."

JOINT LEGISLATIVE COMMITTEE  
ON ECONOMIC RECOVERY

STATEMENT TO

SENATE, No. 219

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 2, 1993

The Joint Legislative Committee on Economic Recovery reports favorably Senate Bill No. 219 with committee amendments.

This bill, as amended by the committee, repeals the "Business Personal Property Tax Act."

The amended bill provides that payments which would be due in 1994 on the basis of business property owned on or before October 1, 1993 shall be due and payable on the appropriate dates in 1994. After the 1994 payments are made, a firm's liability for business personal property taxes will cease.

FISCAL IMPACT:

The Office of Legislative Services estimates that this legislation, as amended, will have no fiscal impact in FY 1994, while for FY 1995, a \$3.5 to \$4 million reduction in revenue is projected, based on the elimination of the February 1995 payment under this tax. For FY 1996, the elimination of the tax for a full fiscal year is expected to result in a \$6 to \$8 million reduction in revenues.

COMMITTEE AMENDMENTS:

The committee amendments clarify that taxes payable in 1994 only apply to personal property used in business on or before October 1, 1993. In addition, the committee completed amendments to include a repealer and to update the bill's operative dates.

When the "Business Retention Act," P.L.1992, c.24 (C.54:4-1.13 et al.), was enacted in June 1992, the provisions relating to the definition of personal and real property used in business were made applicable to "all tax appeals pending at the time of enactment regardless of the tax year in question." These amendments also clarify that where there has been a court proceeding adjudicating liability under the Business Personal Property Tax Act, subsequent provision of the Business Retention Act will not affect those proceedings with respect to any liability accrued prior to the date of enactment of the Business Retention Act.

Technical review was performed on this prefiled bill, as required under Joint Rule 18A of the Senate and General Assembly.

[FIRST REPRINT]

SENATE, No. 219

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Senators LITTELL, Kyrillos and Adler

1 AN ACT to repeal P.L.1966, c.136 (C.54:11A-1 et seq.), P.L.1977,  
2 c.4 (C.54:11A-3.1), P.L.1978, c.151 (C.54:11A-3.2 et seq.),  
3 <sup>1</sup>section 7 of P.L.1989, c.2 (C.54:11A-6.1)<sup>1</sup> and section 5 of  
4 P.L.1975, c.170 (C.54:11A-21).  
5

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

8 1. The following acts and sections are repealed:

- 9 a. P.L.1966, c.136 (C.54:11A-1. et seq.);  
10 b. P.L.1977, c.4 (C.54:11A-3.1);  
11 c. P.L.1978, c.151 (C.54:11A-3.2 et seq.); <sup>1</sup>[and]<sup>1</sup>  
12 d. Section 5 of P.L.1975, c.170 (C.54:11A-21)<sup>1</sup>[.]; and  
13 e. Section 7 of P.L.1989, c.2 (C.54:11A-6.1).<sup>1</sup>

14 2. The repeal of the acts and sections pursuant to subsections  
15 a., c. <sup>1</sup>[and]<sup>1</sup>, d. <sup>1</sup>and e.<sup>1</sup> of section 1 of this act shall not affect  
16 the obligation, lien, or duty to pay taxes, interest, or penalties  
17 which shall have accrued or may accrue by virtue of any  
18 assessment made or which may be made with respect to taxes  
19 levied <sup>1</sup>[for any taxable year ending on or before December 31,  
20 1986] upon personal property used in business on or before  
21 October 1, 1993<sup>1</sup>, and all taxes and returns which would have  
22 been due and payable under the provisions of those acts and  
23 sections on February 15 and September 15, <sup>1</sup>[1987] 1994<sup>1</sup>, shall be  
24 due and payable on those dates as if the acts and sections were in  
25 effect. <sup>1</sup>[This] Notwithstanding any provisions of section 7 of  
26 P.L.1992, c.24 to the contrary, this<sup>1</sup> act shall not affect any  
27 proceedings for the enforcement of any provision of the repealed  
28 acts or sections <sup>1</sup>or any provisions of section 7 of P.L.1992, c.24  
29 for liability accruing after June 29, 1992<sup>1</sup>, nor shall this act  
30 affect the legal authority to assess and collect the taxes which  
31 may be, or may have been due and payable under the provisions of  
32 those acts or sections, together with interest or penalties which  
33 may have, or may accrue thereon.

34 3. This act shall take effect <sup>1</sup>[on December 31, 1986]  
35 immediately, and section 1 shall apply to personal property used  
36 in business after October 1, 1993<sup>1</sup>.  
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EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> JCER committee amendments adopted June 10, 1993.

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attachment, submitted by  
William G. Dressel, Jr.  
Assistant Executive Director  
New Jersey State League  
of Municipalities

22x

mjz: 1-57

\* \* \* \* \*

**SENATOR JACK SINAGRA (Chairman):** Good morning. This morning we're going to hear testimony on a package of bills that will hopefully revitalize segments of our business base and do something to stimulate the economy.

With that, the first person I would like to testify is Commissioner McConnell. Commissioner, we're going to take all the bills at once, as far as testimony. If you want to comment on each one, or anyone in particular, that would be fine.

**COMMISSIONER BARBARA MCCONNELL:** All right, thank you. Good morning. I'm really pleased to have the opportunity to appear before this Committee and to voice support for these important business tax incentives which are before you today.

For the past three years, this administration and this Legislature have put in place some really outstanding initiatives which have put New Jersey in the forefront of growth and development. But just as the national and world economies continue to change, so must we continue to evaluate and assess our business environment and our future, and recommend new policies and initiatives that will keep our competitive edge razor sharp.

Therefore, not only is it appropriate, but it is smart policy that we continue to examine where we are economically, why we're here, and determine how we can best achieve our full potential for economic growth, business expansion, and job creation.

As all of you know, New Jersey has been through one of the worst recessions in memory. While technically we are on the road to recovery, we are experiencing a slower job growth rate than in the recessions of the past. That is due in large part to a weak regional economy, cutbacks in research and development within the private sector, and overexpansion in the 80s, particularly in the service and financial sectors.

In addition, corporate downsizing in the high concentration of Fortune 500 companies located in our State has been severe, as have reductions in defense contracts. Changing world markets, stringent environmental regulations, high labor costs, and aging facilities have all contributed to New Jersey's job losses and slow recovery across all sectors of our economy.

If we are to effectively address the needs of our businesses and foster the creation of new manufacturing jobs in the technologies of tomorrow, government initiatives must emphasize job creation, employee training, and investment in facilities and equipment, and those initiatives must be coupled with incentives that encourage private investment in those areas.

I don't have to tell you that New Jersey is a good place to do business. It has many advantages and opportunities to offer business, and we have already taken steps to improve New Jersey's competitive edge and create new jobs by: playing to our strengths; nurturing the growth of existing companies and helping new ones get started; investing in education and worker training; building and maintaining our infrastructure; and providing sound incentives and financial assistance for business expansion and business attraction, both foreign and domestic.

In spite of our job losses in manufacturing, New Jersey still remains an important and vital manufacturing State. Nearly 530,000 New Jersey workers are employed by over 18,000 small- and medium-sized manufacturing firms, many of which employ fewer than 200 people.

More than half of the State's manufacturing jobs -- 275,000 positions at 7800 firms -- are concentrated in five industries: metal working, machinery, plastics fabrication, electronics, textile/apparel, and food processing.

We're taking the lead in defense conversion; we're supporting technology transfer to convert our intellectual and technological strength into the commercialization of products; and we're targeting emerging industries for growth and expansion -- industries such as computers, biotechnology, genetic engineering, fiber optics, laser, and environmental and energy technology.

Through all of this, a new spirit of cooperation has emerged between government and business, and we have clearly demonstrated, I think, our firm commitment to business growth and development in our State. That is evident in so many programs and initiatives that this Legislature and this administration have put forward.

Today as we review our strategy for economic recovery and job growth, it is very clear to me, and I'm certain to you, that neither our short-term nor long-term economic goals can realize their full potential for creating opportunity and generating jobs unless we're willing to incorporate, along with the advantages and initiatives that I've spoken of earlier, changes in our tax code that will encourage investment in our people, the products that we manufacture, and our facilities and infrastructure.

The bills before you today, I think, offer that kind of opportunity.

A new jobs investment tax credit could serve to strengthen our programs for attracting new businesses to the Garden State, particularly high-technology companies that offer new, high-wage jobs in the growth industries of tomorrow. A manufacturing investment tax credit could fit well into our strategy to maintain our manufacturing base, modernize facilities, and reinvigorate that important industry segment.

The adoption of a subchapter S provision in our corporate tax code is also important to consider as part of our economic strategy, because it could help small business gain

equal footing with companies in other states, and because it would give a new boost of energy to the most important sector of our economy -- a sector that generates eight out of every ten jobs in New Jersey.

The repeal of the business personal property tax is also important to our efforts, because it will enable manufacturing companies, in particular, to compete on a level playing field. We need to join with Delaware, Pennsylvania, and New York, which do not include such property in either state or local property tax assessments.

As a package, these legislative proposals would complement, energize, and strengthen our economic recovery program -- a program that seeks: to revitalize our manufacturing industry and set it on a course for growth and expansion; to support small business development; to help create new private sector jobs and compete in newly emerging and vastly changing world markets; to adapt to changes in our domestic economy; to foster growth in the technologies of tomorrow in research and development and in manufacturing; and to help New Jersey realize its full economic potential.

These are tough fiscal times -- you know that as well as I do -- not only for business, but for government as well. Our challenge today is to offer these kinds of incentives and still balance the State budget, maintain vital services for the people of New Jersey, and invest in our future.

I'm certain that working together, this Legislature and this administration can meet that challenge. So I want to add my support to these initiatives and to say to you that I would be happy to work with this Committee to achieve that balance and those goals that we all strive for.

I want to thank you once again for giving me this opportunity to express my general support of this package of bills. Thank you.

SENATOR SINAGRA: Does anyone have any questions? (no response) Thank you, Commissioner.

The next speaker will be Robert Healey.

R O B E R T H E A L E Y: My name is Bob Healey. I am the Chief Executive Officer of the Viking Yacht Company in New Gretna, New Jersey. I am the head of the New Jersey Boat Builders' Association, and I am the Chairman of the National Coalition to Save Jobs in Boating, which is a national organization to repeal the luxury tax in Washington.

First, I would like to-- I'm a little surprised you invited me back, as the last time in Marlboro I got a little carried away. But the first thing I would like to do is thank you, because as someone from the manufacturing sector, we have gotten-- The boat builders have gotten a complete -- I don't know how to say it -- really a very friendly acceptance here in Trenton by all of you, and we want you to know we appreciate it.

We are now in the process of completing a survey on bringing back our industry which, as you know, has been devastated, and that survey should be in your hands within a week to 10 days.

Again, I'd like to go to the legislation first, which I have reviewed. I'm not a technical guy. I've read it and I've looked at it, and I think it's excellent. I think what you're really doing-- The big thing that you're doing is you're sending out a great message to the business community. That message is that you people want to help the business community, and create and retain the business community in New Jersey.

I think that-- You know, we have a plant in Florida that we shut down and we consolidated our operations in New Jersey. We were one of the few that went North instead of South. We have 210,000 square feet down there that's in the red. I'll be there tomorrow, and I will be meeting with the Florida Economic Development Executive Officer about the

rental of our plant. He is trying to woo me to come back to Florida, but I'm here in New Jersey and we're here to stay in New Jersey.

I would like to say to you that the greatest fear I see-- Incidentally, going back to these bills, subchapter S was always a very sensitive thing to the boatbuilders. We are all small companies, and we are always irritated by it. I think that's a big factor. I think that going with the Federal -- the depreciation schedules is another factor. All that, to me-- I don't know how much money that raised, but it was a sentiment of hostility. You know, the Feds were always the big tax guys. They'll do this, but gee, the State of New Jersey, they won't even do that, you know. So that's why I say all this appears to be very business-friendly to me.

The thing that scares me about New Jersey -- as a guy that lives here, was born and raised here, and I plan to die here -- the thing that worries me and scares me is that it is not only the economics, but the environmental side of it that comes in. I don't want to get off track here -- I'm a guy, I guess, who gets off track -- but I 've got a wild story to tell you. It's just a little sentiment that you can take with you.

We have a very modern facility, a manufacturing facility on the Bass River -- 410,000 square feet -- and through the National Marine Manufacturers' Association we were in contact with the Department of Environmental Protection in New Jersey with regard to storm water runoffs and that kind of thing. They wanted to see a plant in New Jersey and our National Association directed them to me, and I brought them into our plant. These people came in. They were very good. They wanted to see what the New Jersey boat guys did and how they could work with them. Now, that was the Dr. Jekyll of my story.

Simultaneously, while this was going on -- and I'm sure Macy's hasn't talked to Gimbels -- but in came five New

Jersey State Marine Police into our plant one day. They came up and said, "We suspect you of contaminating the Bass River, and we are going to put dye in all your systems -- all your sanitary systems -- and see if our suspicions are correct." They came in with another 10 people. They didn't ask us if they could come in; they came in and said they were going to do it.

They just went on their own through our plant and put this dye in, and of course, then we never heard anything from them -- never heard another response. This cop, this New Jersey State policeman -- Marine Police -- was very arrogant and he said, "This is what you're going to do. We don't want your people with us. We'll go out and do it ourselves." We never heard from them, and the next thing we knew was-- I was very irritated about it. I felt like, you know, really like getting the guns out and writing to The New York Times and telling them the story.

But I live in New Jersey and I believe in New Jersey. I then asked-- I wrote a letter to the Department of Environmental Protection and asked them for a report on what took place. They wrote back and said we were not contaminating the Bass River. Now, we have a very modern plant, and we have a sanitary sewer system on our levels, but it's way up above the Bass River. We kept it away when we originally designed it. But the problem is -- the problem is -- if you had an industry coming into this State and they heard that story, you could do all this economics until the cows came home, and they'd stay the hell out of New Jersey. Okay? The big problem is to keep in New Jersey the people who are here, and this type of thing is scary.

Now, why, you know-- On one side, if we were polluting the Bass River -- we didn't know it -- we would probably have gotten fined and would have gotten a lot of bad press. On the other side, you know, if we were not polluting

the Bass River, why did we have to be handled like it was a crack raid? Okay? Why doesn't the Department of Environmental Protection call us on the phone and say, "Gee, guys, we think you might be polluting the Bass River"? Then come down and say, "How can we help you solve the problem?" -- instead of coming in there with guns.

So I just tell you that. These are the scary things that get to me as a businessman, and these are the types of things, if some big manufacturer heard of it he'd-- You know, one of the things that's going on-- Every state in the Union, or every manufacturing state is coming with low income, low loans, an EDA program. All are competing on that level. What we have to do is maintain our existing manufacturers.

You know what you really need? Barbara McConnell's got a business attitude without any muscle. You know, what you need is a Bob Hughey type of czar that maybe works from the Governor's Office. Barbara McConnell can't do it because they're locked into commerce. The guy with the hot line-- If you're in New Jersey and you're a businessman and you've got a problem, you pick up that hot line and you say, "You know, the Labor Department is giving me a lot of smoke about something," or the DEPE. That guy ought to go over and go to the head of DEPE and say, "Look, let's go sit down and go talk to those guys and see if we can solve the problem." We don't want a lowering of the standards -- the environmental standards. We live here. We breathe the air here. But we need somebody to do that.

You know, I'm meeting with the guys in our industry, and one guy said he gets a call every three or four months from some guy in the State who says, "Hey, can we help you in any way in your business? What can we do for you?"

You know, one of the problems that scares me is for every job you create, how many jobs are you going to lose? The greatest message that you will be able to send to the business

community around the world which might come into New Jersey, is how well you're dealing with the business community that's here. If you're dealing well with that, you know, that's what's going to sell somebody on coming into New Jersey. You need all of what you're doing, and I think it's good, but you've got to get the message out and you've got to get the PR out there that we are a business-friendly State. "If you're here and you have problem, then we'll help you with it. We won't beat you over the head with it." Okay? That's the message that we've got to get out, and that's what I wanted to talk to you about today.

The only other thing I want to say is, you've got to be a lot of great people to put up with guys like me. Thank you.

SENATOR SINAGRA: Thank you.

Bob Woodford.

**R O B E R T   A .   W O O D F O R D :** Good morning, and I think it is a very good morning when we're sitting here speaking about a package of incentives of the kind before you today.

I'm Bob Woodford, First Vice President of New Jersey Business and Industry Association. I was impressed with Robert Healey's remarks, because I think rather than a divergence from the issue, a discussion of related issues of business development are, in fact, really a part of today's discussion, because the array of problems that are affecting employment levels in New Jersey in investment and disinvestment -- the 300,000 lost manufacturing jobs since 1979 -- are more nontax problems than tax problems. But taxes are one of those vehicles available to the State to make a difference in the message it sends and to reduce the cost of investment.

We are very pleased with the package of bills before you. I'll comment particularly on a few of those, understanding that the array of problems, most particularly environmental -- the cost of permits, the delays, the attitude

that businesses perceive in dealing with the environmental bureaucracy in New Jersey -- has to be addressed at the same time. A real effort to reach out with the message in New Jersey that change is occurring must follow these actions today, and other actions such as the ECRA reform, which is moving and which we're very pleased with.

These bills -- tax measures -- address some outstanding problems or deficiencies in New Jersey's tax laws. The S corporations in this State have been among corporations in seven or eight states which have not had either a full exemption from corporation tax or, as in the case of New York or California, a preferential tax rate related only to the difference between the highest personal income and corporate income tax rates.

So we applaud the effort. We have long sought to give New Jersey S corporations a relief equivalent to that in other states, and this is really a major step forward. The investment tax credit measures, particularly S-1820 and the Senate equivalent dealing with the manufacturing sector, are of very great interest to us. They do two things: First, they send the kind of message -- the economic message -- that we will save you dollars, to those who reinvest the current base in New Jersey. That must be the source of most future manufacturing. Jobs in New Jersey can be lost if we focus only on bringing new businesses into the State, as I think Mr. Healey indicated. You can be losing 10 jobs while you are trying to attract a new job.

So the idea of providing to manufacturers a credit based upon their reinvestment, which is essentially a decision to commit dollars, create jobs, and provide activity in New Jersey for future periods, is very important. We would have liked to have seen that. But understandably, the State is faced with major budgeting problems. We know the financial figures. We would have liked to have seen a figure closer to

that of New York, with its 5 percent investment tax credit. You are probably aware that Massachusetts, which had a 1 percent investment tax credit, increased its credit to 3 percent this year. But this is a good beginning, and it is a beginning aimed where it should be, at the retention of those who have committed resources and provided jobs in New Jersey.

The other element of that bill, to reward those who have increased their employment levels, really provides a tool for the Department of Commerce and for others who are trying to sell businesses on investment in New Jersey, to attract the new operations, or the expansions, because there is a considerable reward to the business that opens a totally new operation or expands its operation, when you consider that they can earn 6 percent of the value of the machinery and equipment investment in the two subsequent tax years, if their employment levels have increased sufficiently. So in combination, while we would like to see more of the investment tax credit, a higher percentage, this is a very good beginning.

The measures including S-1784, the new jobs credit, we think is a much narrower bill. It will be useful primarily for large expansions -- considerable expansion of an operation, or the moving from out of State, where it rewards any kind of business for relocating in New Jersey, or expanding operations. But it must be realized that the conditions placed on enjoying that credit really limit it to major new investment, major expansions or relocations. But it does provide, we think, a useful tool in the State's promotional efforts and its efforts to attract businesses across State lines.

Senate Bill No. 1821 and companion bills in the Assembly address an irritant and a cost that has long been of concern to the Association. We fought the action in New Jersey to part company with the Federal law on depreciation in 1982, and unfortunately, we lost that battle. In 1984, we were at

the forefront of an effort to recouple with Federal depreciation law, which passed the Senate unanimously. But unfortunately, for reasons unrelated to that bill, it was not listed in the Assembly.

So we have now moved into the 11th year in which New Jersey requires corporations to use pre-1981 Federal depreciation. We are several times removed from that Federal law, and the New Jersey law requires a corporation to recalculate its depreciation on assets purchased anywhere in the country in order to comply with the provision of New Jersey law. The accounting cost of compliance is significant. There are also disadvantages, particularly in machinery and equipment purchases in terms of the rate at which you recover the capital investment under New Jersey's tax law.

So we are very pleased to see this effort to link New Jersey to Federal depreciation law for new asset acquisitions. There is no reason to recalculate the old. That is another accounting cost. But it will certainly simplify matters for businesses to be able to use Federal depreciation in the future on their acquisitions.

Finally, the last step in repeal of business personal property taxes in New Jersey. Senate Bill No. 219 and Assembly Bill No. 1015 represent the end of a long trail. I remember coming to the Association in 1963. The issue on the boards at the time was what to do with business personal property tax -- how to assess it at the local level. Our organization took the position that we ought not to assess it at all at the local level. We ought to replace it.

Governor Hughes, in 1964, in a measure that postponed for yet another year the implementation of a nonsolution that had been devised to assess the machinery at a certain percentage of book value and inventory at another, and leave it all at the local level, moved to create a committee to come up with a solution that would remove personal property taxation

from the local base. In 1966, legislation passed which accomplished that. Part of the replacement revenue came from the State business personal property tax, and a uniform rate statewide -- uniform assessment base. It was far superior to the local tax on business personal property, but it still provided New Jersey with a disadvantage compared with New York, Pennsylvania, and Delaware, which could say to any business, "We have no state or local tax on business personal property."

So in 1976, New Jersey acted to begin the phaseout of the State business personal property tax by eliminating that tax on new acquisitions -- acquisitions made after 1976. Today you have before you the final chapter, which takes those assets on the rolls prior to 1977 and says, "Now finally we will close the chapter on business personal property taxation in New Jersey."

We are very supportive of this package. There are elements of it that will be of concern. We have heard from some of our members on the revenue sections of the S corporation bill, but overall in terms of the impact of this package, in viewing it in its entirety, we believe it will be a major step forward in New Jersey. It will begin to address the question of how we will retain the existing half a million manufacturing jobs in New Jersey and create added incentives for businesses in other sectors.

I should also mention, though, one bill that I understand will be contained in the overall package, which is Assembly Bill No. 1033, which is a research and development credit. This is extremely important. It will be taken up tomorrow in the Assembly Appropriations Committee, because its sponsorship is Assemblyman Doria and Assemblyman Haytaian. It will provide New Jersey an incentive for growth in a strong sector of the manufacturing base, and this is all to the good

in addressing the long-term problem of manufacturing job loss in New Jersey.

With that added to the package, we are pleased to endorse it, and we congratulate those who have sponsored it.

Are there any questions? (no response)

SENATOR SINAGRA: Thank you.

Bill Healey isn't out there, is he? (no response) I didn't see him.

**C H A R L E S   M .   C O S T E N B A D E R ,   E S Q . :** Mr. Chairman, my name is Charles Costenbader. I am the Chairman of the Cost of Government Committee of the New Jersey State Chamber of Commerce, which are fancy words for their Taxation Committee. I am here to speak on behalf of the bills before the Committee.

As a general matter, I want to advise the Committee of the Chamber's general support for these bills, which we think will go a long way towards dispelling whatever image the State may have of being antibusiness.

The Chamber does have some concerns about the bills, particularly the tax credit bills. The Chamber's position is similar to Mr. Woodford's. It is that the major economic problem facing New Jersey is the loss of manufacturing jobs -- not all types of jobs, manufacturing jobs -- for the reasons set forth in the Assembly Majority Report. Manufacturing jobs are relatively high paying. They also spin off related employment.

The tax credit bills address, or at least the Chairman's bill addresses the question of investment in manufacturing and production jobs. Let's face it, a major portion of the credits under the Chairman's bill is related to increases in employment. It is that feature which we feel may not produce the result the Committee is attempting to obtain with these tax credits.

Businessmen make investments on certainties or predictability. If an investment will not produce a tax credit, for whatever other reasons unrelated to that investment, such as economic conditions-- Frankly, we are now going through a period when investment does not automatically produce jobs. Employers are laying off. That uncertainty, I believe, will discount the benefits of the tax credits as far as any decision-making process to make that investment is concerned.

So it is our recommendation that any tax credits not be tied directly to any increase in jobs. The investment itself, hopefully, will produce that result, but to take away the credit if the -- call it numerical head counting does not obtain any increase, we believe, may be -- well, a disincentive as far as a businessman relying upon the credit as an incentive is concerned. Frankly, it is only the relocation of a business from outside the State. We have an automatic increase in jobs, regardless of what is occurring, which may be attracted by this credit -- related to that.

Another feature of credit related to employment is that it does not take into account job retention from reinvestment or reequipping plants. So it is our recommendation that the Committee reexamine the whole policy behind these credits.

Without indicating our negative response to-- Again, the policy behind the credits we endorse to simply nullify or remove this image of antibusiness that, unfortunately, New Jersey may have acquired over the last few years.

The escort bills the Chamber endorses. We have a specific objection to the source of revenue, or one of the sources of revenue to make up the revenue loss. The bill, in section 3 of the draft that I saw, contains a disallowance of an existing deduction for taxes paid to other states. The allowance of that deduction has been in the law since the

corporation business tax included an income feature, which was back in 1958. The companies that will pay additional taxes under that provision are the large, multistate companies that are presently based in New Jersey.

It is the Chamber's position that the Legislature should not provide a tax benefit to one segment of business taxpayers by increasing the taxes on another segment. In that regard, we oppose this section -- section 3 of Assembly Bill No. 1870. I have attached to my written testimony a list of the companies present here in New Jersey that have authorized me to advise the Committee that they oppose this provision. Incidentally, one company called me late last night, after the list had been typed. You can add Chevron Corporation to that list. Other companies' tax representatives have also advised me that they oppose it. However, for whatever public relations reasons, they were not presently authorized to state the names of their companies publicly.

Assembly Bill No. 1870 also contains a second so-called revenue raiser related to the taxation of so-called nonunitary income and the related expense disallowance to that nonunitary income. I have been in contact with Mr. Liloia of Legislative Services, and also Mr. Levine of the Division of Taxation, advising them of some problems I saw in those sections. I believe they are being worked out.

The remaining bills relate to the allowance under the corporation business tax of depreciation and the return of it to the Federal method. Mr. Woodford testified to all the problems that the present, existing uncoupled method has produced. I personally have had clients who operate in a multistate arena, who have any number of depreciation records, depending on the states. New Jersey is one of the states that has its own methods. Ironically, when we followed the so-called herd approach to automatically uncouple from the existing ACRS method back in 1982, we did not follow the herd

of states which returned to the Federal method within two or three years, because they felt the revenue implications were not worth the administrative costs for both the states involved, and also the companies.

Now I see personally where audits of multistate companies-- The main issue being raised is the verification process, which is extremely costly to the company itself. The Chamber supports wholeheartedly the provision in Senate Bill No. 1621 which would recouple New Jersey's depreciation to the Federal method.

The Chamber also supports repeal of the business personal property tax, again, for the same reasons. Mr. Woodford has lived through that tax, going back to the early property tax days. Incidentally, both the recoupling of depreciation and also repeal of the business personal property tax were recommended by the SLERP Commission, of which I was a member. For those reasons, the Chamber wholeheartedly endorses the action by the Committee.

I would be happy to answer any questions.

ASSEMBLYWOMAN DERMAN: Mr. Costenbader?

MR. COSTENBADER: Yes?

ASSEMBLYWOMAN DERMAN: I have a question with respect to your disapproval of the denial of deductions for out-of-state taxes for multistate corporations. It seems to me that we have New Jersey corporations that only do business in this State that are effectively paying a higher rate of taxation than those companies, for instance, listed at the back of your statement. That seems to be inherently unfair.

MR. COSTENBADER: Well, there are certain companies that if they do not operate outside New Jersey would pay a higher effective rate of tax. Unfortunately, the repeal of the existing deduction would hit hardest the multistate companies which have the biggest physical presence in New Jersey. So you are not talking about the companies that have, maybe perhaps, a

small payroll, a small property, maybe a 1 percent allocation factor. It is the headquarters companies that will pay the largest part of the additional tax related to this deduction.

So as the lesser of two evils, I believe this disallowance-- It is the Chamber's position that this disallowance should not be approved, because in order to, let's say, make it more fair for a company operating completely in New Jersey, you are raising the largest amount of tax from the companies which operate both in New Jersey and elsewhere, but the largest piece of their operations in any one state is in New Jersey. It is those companies which will pay this tax -- the large ones. That is the reason--

ASSEMBLYWOMAN DERMAN: Do other states generally allow for the deduction of out-of-state taxes?

MR. COSTENBADER: No, they do not. All I can say is, New Jersey has done it since 1958.

ASSEMBLYWOMAN WRIGHT: I just have a technical question, Mr. Chairman, on the testimony Mr. Costenbader presented.

Under the Federal Depreciation Act, I think we are talking about Senate Bill No. 1821. I think in your testimony it is 1621. Since we are being recorded, I think we want to be sure that is--

MR. COSTENBADER: It is 1821, yes.

ASSEMBLYWOMAN WRIGHT: Okay, thank you. I wanted to clarify that. Thank you, Mr. Chairman.

MR. COSTENBADER: There was a typographical error in my written testimony. It is 1821.

SENATOR SINAGRA: Thank you.

Donald Scarry.

**D O N A L D M. S C A R R Y, Ph.D.:** Good morning, Mr. Chairman and members of the Committee. My name is Don Scarry. I am a principal in New Jersey Economics, a South Jersey consulting firm. I am delighted to have been invited to appear

before you today to comment on the package of bills you are considering. Up front, I want to urge you to take positive action on each of them.

My recommendation for positive action does not stem from the potency of the financial effects the bills may or may not have, but from the "announcement" effects they certainly will create that New Jersey may be beginning to mean business for business in attracting and, even more important, in retaining businesses.

I know I am going to echo sentiments that other witnesses have given you. There are many in the room with much more expertise on the individual subject matter than I. Therefore, I would like to limit my comments to the effect of the package as a totality, and the effects it may have on the State of New Jersey.

We are well-aware that New Jersey is not participating in the employment aspects of the economic recovery that is taking place nationally. In August 1992, our unemployment rate was 9.2 percent. After a few months of decline, the rate began to rise again, and it is now 9.1 percent, the highest in the nation.

Our failure to thrive in the current, admittedly less-than-robust economic climate is the single, most crucial and most pressing issue before State government. There are some things, however, that we should realize. We cannot solve this problem by merely attracting business from other states and countries. Sure, that is important and a hard competitive task. But even if we were able to attract one 1000-employee business each week for the next two years, we would only cut our unemployment rate down to the national average. That is a daunting task.

Second, while tax relief is important, we will eventually have to deal with our regulatory climate. As we begin to clear up the matters before you, we will also reveal a

regulatory nightmare that may undo in an instant all that you are putting together today.

We have to pay attention to the businesses we already have and make sure our economic, tax, and especially our regulatory climate foster growth and development right here in New Jersey with the businesses we already have. This package of bills represents a first step along the long, arduous path to correcting the economic situation in New Jersey.

This package will have two distinct sets of effects: the direct financial effect of the stimulus provided and, what will be even more important and even larger, the indirect effect -- the subtextual message, if you will -- of letting the nation's business community know that New Jersey acknowledges it has economic problems, has had them for decades, and is willing to undertake at least these steps to correct them.

This package could begin to show the nation and the world that there is bipartisan concern over the status and direction of our manufacturing sector and that New Jersey means business in getting this thing corrected. For far too long, New Jersey has been viewed as hostile to business. For far too long, we have pursued a passive style of economic development, taking on all comers, but rarely being aggressive about it.

In addition, we have spent too much time in New Jersey arguing that our hostility to business is more myth than reality. While this debate has been taking place, successive industries have acted on at least the perception of hostility and have shifted base load manufacturing out of New Jersey. We can insist, even to the very last manufacturer leaving the State, that the perception of hostility is mere myth, or we can choose to do something about that perception. This package of bills may be the first small step in that direction.

I have some comments in my testimony on the bills, but you have heard people who are much more excellent than I, so let me conclude even more briefly.

It is important that the business community in New Jersey and the business community nationally know that the Governor and the Legislature share concerns about business. Just recently, at the Governor's Economic Summit in Princeton, he stressed an interest in a revived manufacturing sector. The Governor's prepared remarks were as follows: "We know that New Jersey's real economic strength, now and in the future, must come from manufacturing and the service industries that support it." To this statement, the Governor added, by way of ad lib, something like: "...and New Jersey must continue to be what we once were, a manufacturing powerhouse." Perhaps the Governor is even more convinced of his message than his speech writers.

What is it that New Jersey should do to recreate a strong manufacturing sector? Well, the Governor talking up manufacturing is a good step, but there has to be more. The package of bills before you today is another good step, but again, there has to be more.

First, we need to pay attention to our education system. In some parts of New Jersey it is really in bad shape. To have the workers of the future, New Jersey must have the best education system in the nation, from kindergarten through vocational and technical schools, right on up to graduate work. Money spent on education is not thrown at a problem; it is a real investment in our social future.

The second thing we ought to do -- and I think this echoes some of my testimony at the Rowan Forum -- is to identify those manufacturing industries that are high-value-added operations and go after them as hard as our competitors. The Governor of Kansas makes personal phone calls to prospective businesses, not just the megagiants, but even the small- and mid-sized ones. The calls really don't change much, but they are impressive to the businesses thinking about Kansas. I don't think we ought to keep Jim Florio on the phone

all day -- some of you may disagree -- but we need to imbue all of State government with a sound understanding of the importance of manufacturing to New Jersey. I mean at the bureaucratic level, not at the Cabinet level and not at the Governor's level. I know they share these feelings. It is deep down in the dark bureaucracy where hostility emerges. This way we can get things rolling again.

We need to look our regulatory climate. We need to look it right in the eye and begin to clean up that mess.

Last, but not by way of an afterthought, I think each of these bills should carry a detailed supplemental appropriation for the Department of Commerce, directing the Department to get the word out that these changes are being made. Otherwise I think you may be taking action in a vacuum.

Thank you for your time and indulgence.

SENATOR SINAGRA: Does anyone have a question?

ASSEMBLYWOMAN WRIGHT: May I ask a technical question?

SENATOR SINAGRA: Sure.

DR. SCARBY: A technical question?

ASSEMBLYWOMAN WRIGHT: Since we have an expert here talking about the unemployment rate, can you--

DR. SCARBY: I'm looking for him. (laughter)

ASSEMBLYWOMAN SOSA: Me, too.

ASSEMBLYWOMAN WRIGHT: Can you tell me -- through you, Mr. Chairman -- is 9.1 percent the highest in the nation, or in the industrialized states?

DR. SCARBY: The 9.1 percent is reputed to be the highest in the nation. It was 9.2 percent last summer. It began a period of substantial decline, and then began to recover, and is now at 9.1 percent. Our national recovery is not a very robust national recovery. You can see that consumer confidence goes up and down, so I am not attempting to predict what will happen in New Jersey. But the message from this is that while New Jersey may be participating in the national

recovery in terms of output, we certainly are not doing it in terms of employment. This has special significance, by the way, for our urban centers.

ASSEMBLYWOMAN WRIGHT: Thank you, Mr. Chairman.

SENATOR SINAGRA: Thank you, Don.

ASSEMBLYMAN SOSA: A question, Mr. Chairman. Thank you.

Don, in your comments, you talked about the announcement effects--

DR. SCARRY: Yes?

ASSEMBLYMAN SOSA: --the professional effects of what these bills are going to mean.

DR. SCARRY: I hope those-- I think, rather, that those will be the stronger effects.

ASSEMBLYMAN SOSA: Well, that is what I wanted to touch on. At one of our earlier meetings, we had someone come in and talk about the lack, or at least the perceived lack of initiative on the part of State government in New Jersey to attract businesses to the State for a variety of reasons. What is it you think we need to do to, not only promote this package of bills and the resultant effects of these bills, but also to, on a continuous and a proactive basis, attract business to the State?

DR. SCARRY: New Jersey has had 300 years of good fortune. For a long period of time, New Jersey was the industrial heart of the United States. Clearly in Colonial times it was that. We had a labor advantage; we had a transportation advantage. In fact, without too much of a stretch of the imagination, between the Port of Philadelphia and the Port of New York, we were also the manufacturing center of the world. This has led -- without trying to be too harsh -- to a lackadaisical, or a passive attitude with regard to economic development. It is an attitude of 10, 20 years, even longer than that.

We need to do a few things: First, we need to identify those businesses that can exist in New Jersey and that we want. A business to exist in New Jersey-- This is a very high-cost State. You are very close to the market in New York. You get significant advantages from operating here. For example, if we were to joint venture a bakery to make rolls for restaurants or linen for hotels, we certainly could not do that in Emporia, Kansas. So there are some very good reasons for being here.

We have to help the business community to see those reasons. We have to find out who we want. There is no reason for us to lower even one environmental standard, but what we have to do is make sure that the bureaucracy buys into the message that New Jersey wants business and does what is necessary. The guy who operated the boat thing yesterday having five police come unannounced-- This is a message that goes out across the entire nation that New Jersey is hostile to business.

As I said -- and I do not mean any ill intention to any of the sponsors of this legislation -- I think the effect of this legislation, in its announcement, should be stronger. We have to get out to the media that New Jersey is taking some steps. We can call them major steps in public, even if in private some of the experts say they are not major steps. We have to couple this with a changed attitude towards business in the State of New Jersey.

That is why I suggested -- and I know this is not the Committee to suggest it to -- an appropriation for the Department of Commerce to put together a four- or five-part package for them to do mailings that: "New Jersey now wants your business, and here is what we have done. We have removed this obstacle, and we have removed that obstacle." I think the two of them together probably would take what I think is a smaller financial effect and a strong announcement effect, and

turn your actions today into a very potent package, and a bipartisan package. I think that is also exceedingly important. To convince the broader business community, it has to be a bipartisan package.

SENATOR SINAGRA: Thank you. Is there anything else?  
(no response) Thank you.

DR. SCARRY: Thank you.

SENATOR SINAGRA: Joseph Kaye.

J O S E P H K A Y E: Mr. Chairman, members of the Committee: I am very pleased to be here to talk to you on a very vital situation.

The first thing I want to talk about is, as a manufacturer -- a small manufacturer in New Jersey growing and being in the export field for over 20 years -- the potential in New Jersey is fantastic. The potential here is so great that we are avoiding it for some reason. We have here one of the best climates for exporting and for increasing our base.

One of the things that I would like to talk about is not adding costs to the State of New Jersey, but having the human resources of New Jersey put to work at a base that can produce not only more manufacturing, but more sales and more tax revenues.

One of the things that probably we are not paying attention to: First, as a small manufacturing company in New Jersey, as an engineer in developing products, we make a line of static products for the computer industry, things that people don't pay attention to, except women who wear rayon dresses that cling to them, or clothes when you put them in a drier. You take that same static and you put it into a computer board, and you have just ruined a \$1000 board.

So our products are very unique. We just patented a new paint. A very simple thing that all of you have seen is paint, but we developed a static paint; a paint that is so highly conductive that right now we are working with the Olen

(phonetic spelling) Company. There's is a small company in Hackensack, New Jersey, unknown, unheard-of, unadvertised practically, small in size. Olen Company could not make a paint to stop hydrozine, a highly toxic alkaline chemical that is used in all of our rockets today.

Now, whether you gentlemen know it or not -- and ladies, too, of the Committee -- all the missiles have been removed from the silos and are now standing in Chandler, Arizona. The first project that our company was assigned was to design a paint to paint all the tents so that the static that is created in Chandler, Arizona due to the desert heat, would not set any of these missiles off. That is very interesting right here in our own country; not in Cuba, right here.

The second problem that came to them was that they wanted us to develop a floor paint to prevent the hydrozine, when it fumes or leaks and hits the floor -- to prevent it from being able to destroy the floor. At the same time, they wanted it to be conductive enough so it could set off an alarm, so that this could be done.

Right now, our product is only two years old, even though our company is 12 years old, and it is being sold worldwide. We just shipped to Israel a \$1000 order; Malaysia, Hong Kong, Singapore, Indonesia, Japan, Korea. Our paints are going there today.

That is only our company. Let's talk about New Jersey and why I am here, and I am very pleased to be here. I feel like Abe Lincoln. I wrote all of my notes while I was listening to everyone else.

First of all, we need a tax credit for manufacturers, for employees. Why do we need a tax credit? Well, the first thing is, when I read the newspaper -- and I hope everyone in this room does -- manufacturers are having an awful lot of overtime instead of hiring. One of the reasons they are not

hiring is that they feel health benefits and fringe benefits are cheaper to pay somebody on overtime than to put a man on full-time. That means there are an awful lot of jobs going begging and lost; good, skilled people who will never be employed. I think something should be addressed in a tax credit whereby instead of overtime, people could be put to work. This work could be fruitful and long lasting. I think that is extremely important.

The second thing is, I teach exporting. I teach exporting the way I run my business. I have taught one of the finest courses in America at the Port of New York Authority for over six years. We went from three weeks, to six weeks, to twelve weeks. Now I teach at Montclair State College. These people who come to these schools pay their own way. They pay their own way. They want to go into business; they want to export. When they walk out of my class, they can be gainfully employed in any company in the United States at the level -- not entry level, but at an actual managerial level of exporting.

It is one of the things that is available, and it is not being used. They are having a hard time finding employment. I suggest that here is an avenue where a person pays their own bill, goes to school, learns a good occupation, and that through the export credit, or through the investment credit, they could be put alongside of New Jersey manufacturers and encourage them to export. Think about it.

Now, let me give you some statistics about students who just graduated from my class which are amazing. We have one student who is an American-Taiwanese who just got an order through my class and through his course of \$350,000 from Beijing for sports -- of all the videos of the Olympics from 1986 to 1992.

We have another student who just got an award of \$1.2 million from Saudi Arabia for Lorstan (phonetic spelling),

setting up in the desert a way of finding your way through using the Lorstan system.

We have another student, Patrick Fon, a Jamaican who came here who is naturalized. He is just working on a \$17 million order from a company in France for Jordan for tractors, setting up a new agricultural program.

Now, these are not isolated situations. These are situations that we see from our classroom of what I do, because everything we teach is hands-on; it is ready to go. We don't want you to just learn theory. You must learn day-by-day work. Now, this is only once a week. They come two and a half hours after a day's work. They are in my class. I am one of the few instructors who enjoy 100 percent attendance, because I demand it. Now, that is pretty good.

Let's take 300 of those students and put them in 300 manufacturing plants in New Jersey. Suppose they could increase each manufacturing base at \$100,000 a year. What would that represent? An awful lot of money; an awful lot of money.

I feel that manufacturers in New Jersey are afraid to manufacture. I think if you are going to look at hiring, new manufacturing, and bringing in companies, nothing is going to move. You have to do with what you have now. You have to take an established base. You have to take what is here now. You can't go and start putting in new things. You have to take the ingredients that exist, same as my company exists. It is now. When we want to make a paint, we enlarge. We'll do something on its own premises. Manufacturers are afraid to move. They are afraid of the red tape. They are afraid of all of the things that come down the line and that inhibit rather than aid them.

I think that if a program is established where you can reduce red tape, make it easier for the manufacturer to understand what the legislative body wants to do to them--

Also, be able to take these human resources that are available, and not only these students will learn exporting, but there are other things that are available that can be put into the entire system.

I feel this is important today. I think that if manufacturers-- Of course, Florio and the New Jersey Department of Commerce have asked about exporting. Exporting creates an awful lot of jobs if you look at what exporting will do for your own community of the State of New Jersey, which has marvelous ports running down the entire Atlantic Coast. Every time an export order starts, you have to realize that 15 people are involved in that order. Every time there is one single export order, there are 15 outside people who have to work to get that order going. That includes: the freight forwarders, the insurance company, the shipping, the air freight -- all those people. Now visualize that each time, if you took the manufacturing base of New Jersey and you were only able to increase it by 10 percent, what that would do in instant revenues.

We get in an average of 400 leads a week from overseas. You gentlemen should look at the things that are coming across the computer today for products that are wanted. Do you know, ladies and gentlemen, that less than 1 percent of those leads are answered by U.S. companies? Do you know that these leads go begging? Yet, if you look at the quality, if you look at the products, if you look at what is needed in services, they are right here in New Jersey. You do not have to go outside the State. We have these facilities. We do very little about it. These are the things that I feel are important.

I feel that the State of New Jersey, this body, should incorporate a body to be able to put these people somehow into the work mechanism of the manufacturers. I think the tax credit would encourage manufacturers to say, "Okay, if we are

going to pay someone 'X' dollars and we can get it down to this, we will try it for one year to see how it works." I feel that this is something that all of you should look at.

Thank you very much for allowing me to come to talk to you.

SENATOR SINAGRA: Thank you. Are there any questions from anyone?

ASSEMBLYWOMAN WRIGHT: May I just ask Mr. Kaye where he teaches? Do you teach in New Jersey?

MR. KAYE: I teach at Montclair State College, and I also teach at the Port Authority of New York.

ASSEMBLYWOMAN WRIGHT: Thank you.

SENATOR SINAGRA: Thank you.

Philip Tumminia.

**P H I L I P T U M M I N I A:** I appreciate being invited to speak to the Joint Legislative Committee on Economic Recovery today. The bills you have introduced and indicated for discussion are very important to the economic growth and job creation opportunities available to the State of New Jersey.

I am the Vice President for Institutional Advancement at Rowan College, and the Executive Director of the Rowan College Foundation. I want to thank this Committee for holding a meeting at our College after the adjournment of our first Rowan College Forum on May 19. The response to our meeting entitled, "The Role of Manufacturing in South Jersey," was quite favorable. Our goal was to bring together business, government, and educational leaders to discuss manufacturing in New Jersey, and we certainly met our goal.

The Forum also brought together: Commissioner Barbara McConnell; the Chairman of the Board of Atlantic Electric, Jerry Jacobs; Bill Ryan, Chairman of South Jersey Industries; and Henry M. Rowan, Chairman of Inductotherm Industries, to the campus to discuss economic development. We were also fortunate

to have with us Assemblyman Jack Collins, Assemblyman George Geist, Assemblyman John Rocco, Senator Bill Haines, and Senator Walter Rand.

As part of the day's discussion, which applied to the kinds of things you are dealing with today, there were three panels. Keith Campbell, Executive Vice President of Mannington Mills, chaired the panel on, "How Manufacturing Can Cope With Regulation." Steve Batzer spoke on where the manufacturers would get workers. Jack Collins chaired a panel on transportation development. I was fortunate enough to chair a panel with Senator Sinagra, and also Treasurer Sam Crane, which attempted to identify the steps that needed to be taken.

Throughout the day, there was much agreement on the definition of the problem and the need for taxpayers and other options to encourage economic development. What we tried to do, and did, was to bring together a group of people who both understood the importance of economic development in the State, and people who are leaders in the private sector who implement decisions on the purchasing and expansion of companies and the types of factors upon which these decisions are based.

Being an educator, I knew that economic development was important to the State's economy, and that there was quite a bit of discussion in the private sector regarding obstacles to economic development. President James, of Rowan College, has made economic development one of the major goals of his administration.

After speaking with a significant number of business leaders throughout the State, particularly those participating in the Rowan College Forum, I learned that the State of New Jersey has what has been discussed here today -- an antibusiness image. Whether this perception is a reality or simply someone's fabrication is really not important. In fact, I hope -- as I think Don Scarry mentioned -- that we do not spend a lot of time worrying about whether or not the

perception -- who started the perception. Really, the need for this Committee, and for our government, is to change that perception.

I applaud this Committee in its attempt to design legislation -- legislative programs to stimulate economic growth and provide additional employment opportunities in the State. However, while enacting a program to meet the aforementioned goals, it is extremely important that the image of the State toward business, both within and outside the State, be seen as positive by leaders of the private sector. Based on my experience, this is absolutely not the case at present.

You asked that we respond to the specific legislative agenda identified. Based on the discussions at the Rowan College Forum, which involved various groups, it was very apparent that the legislation which you are considering regarding corporate tax credits or property tax offsets for investments leading to the creation of jobs would be supported. It was also discussed extensively that there was a need for the current tax on business machinery and equipment to be phased out.

Another point that came forward at our discussion was that legislation is needed to permit corporations to use Federal modified accelerated depreciation guidelines for property. They also agreed and discussed the question of the subchapter S filing status and, lastly, the repeal of the business property tax. These bills, which were listed in your announcement, all would be supported based on the discussions at the Forum.

However, I would also like to suggest for your consideration some additional points of legislation based on what was discussed by the Forum.

First, there needs to be a broadening of the sales tax and use tax exemption for all materials used in manufacturing

operations. A number of the corporate leaders indicated that this was a detriment to business expansion.

There also appears to be a lack of a formal adopted manufacturing policy for the State. Since this does not exist, this would be one important document which would encourage individuals to consider New Jersey for expansion and/or a new business location.

The business leaders I met with and those who participated in the Forum all live in New Jersey. They have families that breathe the air and drink the water. They are not antienvironment; however, they all stressed that there needs to be a balance between environmental concerns and economic development. The word that was stressed over and over again in our deliberations was the word, "balance." The two -- economic development and environmental concerns -- are not, and should not be mutually exclusive. This is one area that seems to be an extremely large obstacle to economic development, because it has such a negative impact on the image of the State.

Another point on which there was a very lively discussion was the question about the approval process at DEPE and the fact that it needs to be speeded up. There was also discussion, and a recommendation, that the fines and penalties levied by DEPE should be directly deposited to the State Treasury, and not used by the DEPE to fund its operations.

Another point that came up when we talked about transportation was the question of the Department of Transportation having DEPE staff assigned to them to expedite their work. This would eliminate the intragovernment conflicts, and also the delays when meeting the goals of both Departments.

Another point -- another recommendation -- that came forward from the Forum was that tax incentives should be available for the creation of new jobs, and also the continuation of existing jobs in threatened industries.

There was also strong support for tax credits for an increase in R&D. The legislators, Cabinet officers, businessmen, and educators who attended our conference all agreed that action was needed. They also all agreed on the need for tax relief, speeding up permits, and the need for a pro-business image of the State. The type of options that would be used to meet this goal were debated.

There was also a tremendous amount of discussion about the bureaucracy that seems to be impeding the change and the need for that to be under control.

This Committee has a unique opportunity to ignore past mistakes and build upon the current opportunities in New Jersey. I wish you well in your endeavor.

Thank you.

SENATOR SINAGRA: Thank you.

ASSEMBLYWOMAN DERMAN: Thank you very much.

SENATOR SINAGRA: We are going to ask Kenneth Thompson and Michael Lefanto to come up. But while you are sitting there, we are going to play a tape, a voice you probably will recognize.

ASSEMBLYWOMAN DERMAN: Okay.

SENATOR SINAGRA: You may come up to testify, but--

ASSEMBLYWOMAN DERMAN: Do you gentlemen want to come up -- you and your colleague?

SENATOR SINAGRA: And here is a voice that I imagine you will recognize. (Chairman plays cassette tape at this point of Mr. Davidoff speaking)

**E. M A R T I N D A V I D O F F:** Good morning. I am E. Martin Davidoff, and I am testifying today as a concerned citizen.

"Welcome to New Jersey, the Small Business Capital of the Nation." This is one of the headlines that will appear if you adopt the Committee substitute presented before you for Assembly Bill Nos. 1870 and 273 and Senate Bill Nos. 19 and

1824. This Committee substitute will enact S corporation legislation in the State of New Jersey. An S corporation is a corporation formed under the laws of any state in a manner identical to the formation of any other corporation. However, if the corporation has also made an election under subchapter S of the Internal Revenue Code to receive special tax treatment, generally the effect of this election is to exempt the corporation from Federal taxation and treat the income earned by the corporation as if it had been earned by the stockholders of the corporation. The concept is similar to that accorded to partnerships under the Internal Revenue Code.

The States of New York and Pennsylvania recognize S corporation status for state income tax purposes. However, the State of New Jersey has not done so up until now. Accordingly, S corporations in New Jersey are required to keep two sets of books. In addition, what may be advantageous for Federal tax purposes may not be advantageous for State income tax purposes, and vice versa due to the different modes of taxation.

The Tax Reform Act of 1986 provided numerous incentives for regular C corporations to elect S corporation status. Accordingly, New Jersey's refusal to follow the S corporation status is causing new businesses to look elsewhere in forming their small business corporations.

With the adoption of the proposed legislation before you, we will be in a position to offer new and existing businesses a healthier, simpler tax environment in New Jersey.

The Committee substitute before you has been a multipartisan effort. Not only have the Democrats and Republicans cooperated with each other, but a variety of business and professional groups have also been consulted for their input. The enclosed bill reflects that input and is generally revenue neutral.

Revenue is raised in part by requiring nonresident shareholders of S corporations to pay income taxes to New

Jersey on their S corporation income applicable to New Jersey. In addition, this bill will raise revenue by requiring the filing of partnership returns on a New Jersey partnership form by all partnerships doing business in New Jersey. Other states, such as Massachusetts, have started aggressive programs wherein they contact nonresident partners or partnerships to claim their state's share of taxes from those individuals. New Jersey will now be in a better position to do this as a result of this bill.

I come to you as a representative of many different constituencies, as well as being a concerned citizen. I have served as a delegate to the 1986 White House Conference on Small Business and the 1988 Governor's Conference on Small Business. I am also active in both the CPA and the legal professions. I advise individuals like you and me, who are working hard to provide their progeny with a good life.

S corporation election is one big step toward making New Jersey a better place to do business. That, coupled with other incentives currently being considered, and streamlining the regulatory bottleneck, will allow the headlines to say, "Welcome to New Jersey, the Small Business Locomotive for the Nation."

SENATOR SINAGRA: Thank you, Marty, wherever you are.

ASSEMBLYWOMAN DERMAN: What about this offshore meeting? (laughter)

SENATOR INVERSO: Wish I were there.

SENATOR SINAGRA: That's our next Committee meeting.

SENATOR INVERSO: Besides these gentlemen here, I think I am the only CPA in New Jersey today. They're all in Puerto Rico.

M I C H A E L C. L E F A N T O, CPA: Oh, there are plenty of us who didn't go to Puerto Rico.

SENATOR SINAGRA: Gentlemen?

K E N N E T H   T H O M P S O N,   C P A:   I'm Ken Thompson. I am a CPA in Morristown, New Jersey. I am head of the S Corporation Subcommittee of the New Jersey Society of CPAs' State Tax Committee. I want to address the S corporation bill specifically.

The CPA Society strongly believes that this is a very important step to make the New Jersey business environment much more attractive to small businesses. We believe small businesses have been the engine of growth for over a decade in this country. New Jersey has been out of step with the rest of the nation in this area of taxation by imposing double taxation on the corporation and the distributions to shareholders. By adopting the S corporation method of taxation, we will be competitive with the rest of the country, and we will enhance the New Jersey environment for job creation.

The CPA Society has worked quite actively in developing the bill here. We would like to say that our resources are available for any further technical considerations, as may be needed. I think this would be a great thing for the State of New Jersey, and we would like to see it move forward.

I will ask Mike Lefanto to speak on the other bills.

MR. LEFANTO: To continue, perhaps, with A-1870, the S corporation legislation, I think ideally the election to be or not to be an S corporation should be dependent on the individual business, and should not necessarily be attached to the Federal election whether they are or they are not an S corporation. However, the way the bill is drafted, at least it now gives the Jersey corporation, at least in year one, the out if they wrongfully elect S corporation status in New Jersey.

I think one of the primary motivators in that respect would be, in New Jersey at least we still allow the nonoperating loss carryforwards. Unfortunately, in this economic environment we have been operating in for the past

couple or three years, many businesses, especially the small businesses that our firm has as clients, are not operating in a profitable environment.

That then leads me to the tax credit bills -- S-1784 and S-1820. First and foremost, I think both of these bills are discriminatory, in that they only provide tax credits to a business operating as a corporation. They do not provide tax credits for a sole proprietorship and/or a partnership that may be a manufacturing organization. Neither do they provide for S corporation tax credits if the S corporation legislation is passed.

In addition, a tax credit is only beneficial if there are profits. I think what we first have to do here in the State of New Jersey is get our businesses profitable before we address the tax credit issue. Perhaps the resources that these bills will withdraw from the economy may be better spent in stimulating other areas. For example, New Jersey, right now, ranks, I think, the third highest State in the Union as far as personal income tax goes. I believe the whole gross income tax situation we face here in the State of New Jersey should be addressed, not necessarily with this legislation, but since this Committee is involved with economic recovery, I think that is an avenue that must be explored.

We practitioners, and through the Society, all favor recoupling the depreciation to the Federal MACRS rules, in that, as some of my fellow speakers have pointed out, it requires another method of accounting for depreciation for New Jersey corporations that you do not necessarily have in other states.

We also favor repeal of this nuisance tax, the business personal property tax. For many small businesses it has become a thorn in their sides.

I thank you for allowing Kenneth and I to comment on this legislation today. Are there any questions perhaps?

SENATOR SINAGRA: Are there any questions from anyone?

ASSEMBLYWOMAN WRIGHT: Is it appropriate, Mr. Chairman, to hear any more discussion of the earlier testimony about the impact on the multistate businesses, or is the Committee comfortable with that issue?

ASSEMBLYWOMAN DERMAN: I, for one, am satisfied.

SENATOR SINAGRA: I'm comfortable with it.

SENATOR INVERSO: Harriet, we can't hear you over here.

ASSEMBLYWOMAN DERMAN: I am satisfied.

SENATOR INVERSO: You are so soft-spoken, typically.

ASSEMBLYWOMAN DERMAN: That is not what my husband says. (laughter)

UNIDENTIFIED MEMBER OF COMMITTEE: Nor her children.

SENATOR INVERSO: He told me the same thing, but I can't hear you.

ASSEMBLYWOMAN DERMAN: Nor Jeff Warsh and Jack Sinagra.

SENATOR SINAGRA: Who run with her.

Thank you, gentlemen.

MR. THOMPSON: Thank you.

SENATOR SINAGRA: James Evans.

**J A M E S   B.   E V A N S,   JR., CPA, ESQ.:** Thank you, Mr. Chairman.

Members of the Committee: I am a member of the New Jersey Society of CPAs and a member of the bar. I have just some basic comments. Technical comments we have provided to the staff. Mr. Liloia was kind enough to receive them.

One issue I would like to address which is of concern -- and I think we can learn from some of our neighboring states as we adopt the S provision, or if we adopt the S provision -- is the election requirements. Presently, in order to-- As the bill is presently drafted, in order to secure the benefits of an S election, a separate New Jersey election must be filed. This election is targeted primarily at small businesses,

particularly perhaps new businesses, not necessarily sophisticated with the taxing rules of the State.

In New York and in Pennsylvania, those states have had experiences where taxpayers have made a Federal S selection, believing that sufficient to secure the state S corporation benefits, and have filed in the states consistent with what they believed to be their valid state election.

It is important, I believe, to grant to the Director discretionary relief for any failure to file the required elections and consents by shareholders, in order to permit the closely held business, which may inadvertently fail to meet the election requirements imposed by the bill. There has been a long discussion as to the requirements, or the necessity of those elections, and I think it has been decided that there should be a separate election. But with that separate election, I think, require some relief from the Division if the taxpayers have consistently treated themselves and their shareholders as an S corporation. Let the Director be given the ability to extend, if you will, the period for filing elections and required consents, so that the relief we are seeking to provide small business corporations is, in fact, obtained.

I think the issue of credits and the equity afforded the various entities that are doing business in this State -- again, extending the credits not only to corporations, but to S corporations, partnerships, proprietorships, and limited liability companies perhaps, if they are on the legislative menu upcoming.

Finally, there is a similarity between S corporations and a number of other Federal and State entities. There is a developing line of authorities in the State tax law, which I do not think should be upset by any legislation we adopt from an S corporation standpoint. What I mean by that is, to the extent that there is existing precedent or developing precedent on

ancillary or analogous issues, like partnership treatment of certain partnership items, for instance, unless expressly addressed by the legislation, I think it is important that the Legislature indicate that it does not intend to change that treatment by any analogous treatment that may be allowed in the S corporation bill. Again, whether that is done through legislative history, I don't know, but I think it is important to indicate that you are not trying to address collaterally some of the other tax issues that are out there.

Again, I would like to thank all of you for your consideration of the bills, and my comments. Are there any questions?

SENATOR SINAGRA: Are there any questions from anyone? (no response) Thank you.

MR. EVANS: Thank you.

UNIDENTIFIED SPEAKER FROM AUDIENCE: I think these gentlemen covered everything I had to say.

SENATOR SINAGRA: Okay. I just wanted to take all of the CPAs together.

ASSEMBLYWOMAN DERMAN: Excuse me, Mr. Chairman, if I may-- I have been told that the S bill is on the Appropriation List of the Assembly tomorrow.

MR. LEFANTO: (speaking from audience) It is not on the schedule. The Appropriations Committee meeting is not on the "Legislative Calendar."

ASSEMBLYWOMAN DERMAN: Oh, I thought you meant the bill wasn't on the--

MR. LEFANTO: That is my problem. I don't know where or when.

ASSEMBLYWOMAN DERMAN: It is meeting tomorrow, and these bills are on its agenda.

SENATOR SINAGRA: Well, you figure that out.

MR. BERRY (Committee Aide): The Appropriations Committee is meeting tomorrow at 10:00 a.m. in Room 11 in the Legislative Office Building.

SENATOR SINAGRA: Ms. Michelle Davis? Is she here?  
(no response) Okay. Robert Bonelli? (no response) We're  
going right down the list. Mr. Lee LaPoint? Mr. LaPoint,  
would you like to come up?

**L E E L a P O I N T:** Good morning. My name is Lee LaPoint.  
I am President of the Greater Eatontown Area Chamber of  
Commerce. I am also a small business person, so I am happy to  
be here wearing two hats today.

As President of the Chamber, we are concerned not only  
about small business, but about the Fort closure at Fort  
Monmouth and other issues that pertain to business in Monmouth  
County.

I think that a lot of the things that were discussed  
today have a lot of merit as far as small business is  
concerned. I know myself that a lot of these things would be  
very beneficial to the profitability of my business.

I was impressed by one thing, and that was the  
statement that was just made a little while ago about  
investment tax credits and all the advantages, and that if we  
do not improve profitability in the businesses in New Jersey  
today, it all seems to be kind of a waste of time.

I know getting started in my own business, one of the  
big issues I had was financing. I hope that sometime in the  
future the State will address releasing funds for small  
business to give them an opportunity to flourish and grow, so  
we can take advantage of the tax credits.

Again, I would like to thank the Committee for  
inviting me. I applaud your efforts towards small business. I  
would like to thank the previous speakers for their comments.  
They certainly brought out a lot of issues that I was unaware  
of. I hope to be invited back again.

Thank you.

SENATOR SINAGRA: Thank you very much.

Wayne Slappy.

W A Y N E S L A P P Y: Like everyone else before me, I would like to thank you for the opportunity, and for your invitation to speak with you this morning. I myself have also learned quite a bit by being here. I have a great deal of appreciation for anyone who can sit for hours and listen to people.

I would like to first begin with a poem, if I may. I don't know how often you get those, but it sets up everything I am about to speak on afterward:

Whether painted with a brush  
Finger on the ivories  
Sung from a sax or soul  
Art makes us whole.  
Whether written on a page  
Noted on stage  
Penned on a scale  
Or etched in an actor's look  
It makes us whole.  
If you have ever stroked a bow  
Slid a trombone  
Or struck a tune alone in the shower  
Or listened to music hour after hour  
You know art makes us whole.  
Dancers and sculptors, musicians and scribes  
In tights or tutus, kneading clay  
Molding sound or reflecting the day  
Drumming life's rhythms or strumming its cords  
Tooting a horn, being reborn  
All renaissance begins with the vision of an artist  
Who despite payless toil, thankless pain  
Refuses to let his people perish  
Making clear wishes for brighter tomorrows  
Canceling today's sorrows  
Art soothes our souls and whittles our reason  
Any time, any season  
Art makes us whole. Amen and amen.

I am a playwright, poet, director, and a producer. I was born in Newark in 1952. I was raised in a housing project. Fortunately, I no longer live there. I was able to buy a home in Plainsfield. Instead of sending my son to public school in Newark, where I was educated -- at that time it was very good, now it is abysmal -- I was able to send my son to the Hun School, which is in Princeton, and he was able to do other things besides play basketball. He is on the rowing team that is State champion and number three in the nation. They just won a prize medal last weekend in Delaware. I am very proud of the State of New Jersey for allowing opportunities for people like me.

I am a member of Leadership New Jersey. I formed an organization called Harambee Productions, where I write, produce, and direct plays. I about to produce my first movie. We will begin preproduction in the fall. I submitted to the Committee, through Mr. Berry, my resume and a letter from a gentleman named John Avildsen. John Avildsen is a director who won an Oscar for a movie called, "Rocky," which I am sure you have all seen. He also directed, "Karate Kid" -- all the "Karate Kid" movies -- and he directed a movie called, "Lean On Me" a few years ago, which was produced by Warner Bros. in Paterson, New Jersey. That is when I had the good fortune of meeting him and working with him.

I just want to say, writers-- They do not build machines, but they also contribute to our society in a lot of ways. One writer who inspired me was a woman named Lorraine Hansberry. Her work not only has provided employment, fed families of actors and actresses, technicians, producers, also people who have done film, but also provided a wholeness to humans, because a work like "Raisin in the Sun," although entertaining at points, also had some degree of social consciousness-raising, and did not require people to stand with

picket signs and guns, or riot to get points across, which I think are very important for our society.

I think I will move to the points I would like to offer to you, and some suggestions that the State of New Jersey might consider to aid people who want to write and contribute to society in that way.

As you are well-aware, a few years ago the State of New Jersey chose to slice the money to the Arts Council, somewhere in the vicinity of about 47 percent. That sent a frightening message to all artists in the State who had come to a State that Governor Kean had promised would be second to none in the arts.

In the City of Newark we are about to erect a state-of-the-art center which will be second to none other than possibly Lincoln Center in New York and Kennedy Center in Washington, D.C. Well, unless we do something to help to spawn new creative works within the State of New Jersey, all of those works will be coming from other states. They will just be coming to use New Jersey as a showcase point stop along their journey, and that is it.

I think this Committee would do well to consider providing some tax incentives to philanthropists, who are generally the people who donate to people like myself to help them get started and to support them along the way; as well as venture capitalists, many of whom have left the State, who also would be willing to help develop new projects.

Also, there are several states around the country -- I'll name a few: Florida, Georgia, North Carolina, and Illinois -- that have provided some tax incentives, as well as moneys to film companies to come to those states and produce films. I don't know if we have moneys to provide, but if we could provide some type of tax incentives to encourage filmmaking to be done within the State of New Jersey, that would help to boost our economy.

I remember specifically one of my roles on the film "Lean On Me" was to hire 4000 young people and supervise 7000 during the course of the film. Sometimes from 5:00 at night until 5:00 in the morning I had to supervise 2000 young people, and those young people had to be fed. So we would call local stores, such as McDonald's, or whatever, and we would provide food for these people. These types of ripple effects from bringing film companies in, and so forth, definitely aid our economy. Also, the ripple effect of producing plays and, as you know, having cultural centers, allow people not only to make money, but to spend money within the State of New Jersey; whereas, when they go out to see a play, they will go to a restaurant to eat and spend money, and will help to provide employment for those people who work there, etc. I need not go any further.

I would like to again thank you all for having me come to voice my seemingly solitary opinion on how the artists also need some support. We don't make machines, but we do make the people feel better who build those machines.

Thank you again.

SENATOR SINAGRA: Does anyone have any questions? (no response)

MR. SLAPPY: Are there any questions? (no response)

SENATOR SINAGRA: Thank you very much.

If it is okay with the Committee, I would like to take each bill individually. There will be amendments probably. We will work through the agenda. Actually, it should work out perfectly. So on S-1784--

MR. BERRY: For the Committee, Senate Bill No. 1784 is an amendment that would allow the Department of Labor to release certain information to the Division of Taxation in order to qualify the credits under this, the investment tax credits -- which is Senate Bill No. 1784.

SENATOR BENNETT: Do you want it moved as amended, or do you want to move the amendments?

MR. BERRY: No, no, move the amendments first, and then the entire bill.

SENATOR BENNETT: Move the amendments.

SENATOR ADLER: Second.

MR. BERRY: On the amendments to Senate Bill No. 1784: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

MR. BERRY: On the bill as amended -- Senate Bill No. 1784: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

MR. BERRY: On the vote of concurrence with the Senate action: Assemblyman Sosa votes in the affirmative. Assemblywoman Wright?

ASSEMBLYWOMAN WRIGHT: Yes.

MR. BERRY: Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: Yes.

SENATOR SINAGRA: Do you want to do just within the Senate, and then do the Assembly?

MR. BERRY: No, I will do the Assembly version of the same bill.

SENATOR SINAGRA: Right now?

MR. BERRY: Yes. On Assembly Bill No. 2475-- It is for the Assembly Committee Substitute, which would make the bill identical to Senate Bill No. 1784 as amended -- as the Committee just amended it. On Assembly Committee Substitute for Assembly Bill No. 2475: Assemblywoman Wright?

ASSEMBLYWOMAN WRIGHT: Yes.

MR. BERRY: Assemblyman Sosa votes in the affirmative. Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: Yes.

MR. BERRY: And to concur with the Assembly vote and with the Assembly Committee Substitute: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

MR. BERRY: The next bill before the Committee is Senate Bill No. 1820, the Manufacturing Equipment and Employment Investment Tax Credit Act. There are amendments before the Committee which would render the credit a perpetual credit, not a two-year credit as in the initial draft of the bill. There are also some technical amendments to the bill to clean up language.

On the amendments to Senate Bill No. 1820: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

MR. BERRY: On Senate Bill No. 1820 as amended:  
Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

MR. BERRY: On the vote to concur with the Senate  
action on Senate Bill No. 1820: Assemblyman Sosa votes in the  
affirmative. Assemblywoman Wright?

ASSEMBLYWOMAN WRIGHT: Yes.

MR. BERRY: Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: Yes.

MR. BERRY: On Assembly Bill No. 2675, a bill that is  
identical to Senate Bill No. 1820, the amendments before the  
Committee to A-2675 are the identical ones that were just  
adopted for the Senate version. On the amendments:  
Assemblyman Sosa votes in the affirmative. Assemblywoman  
Derman?

ASSEMBLYWOMAN DERMAN: Yes.

MR. BERRY: Assemblywoman Wright?

ASSEMBLYWOMAN WRIGHT: Yes.

MR. BERRY: On the bill as amended: Assemblyman Sosa  
votes in the affirmative. Assemblywoman Wright?

ASSEMBLYWOMAN WRIGHT: Yes.

MR. BERRY: Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: Yes.

MR. BERRY: To concur with the Assembly action on  
Assembly Bill No. 2675: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

MR. BERRY: We have just gotten through one page, and we have one more page to do. But this will go fast, I promise.

SENATOR BENNETT: Don't make promises you can't keep.

MR. BERRY: Senate Bill No. 1821, permits corporations to use Federal modified accelerated depreciation for certain property under the corporation business tax. This bill is before the Committee with no amendments.

SENATOR BENNETT: That is because I did it right first.

SENATOR SINAGRA: Would you like to explain the bill to us, Senator?

SENATOR BENNETT: Sure, if you would like. I have a 10-minute presentation

SENATOR SINAGRA: No, that's okay. We'll dispense with it.

SENATOR INVERSO: Would you tell me the difference between makers and acres, Senator?

ASSEMBLYWOMAN DERMAN: Only if you do it iambic pentameter.

SENATOR BENNETT: Certainly. See me after this meeting and we will have another nice meeting.

I would like to move this bill, which doesn't need to be amended, because it was done correctly the first time.

SENATOR SINAGRA: As opposed to the other bills?

SENATOR BENNETT: I mean, the next time you need some help, just let me know.

MR. BERRY: Second?

SENATOR INVERSO: I'll second that.

SENATOR BENNETT: It may not get out of Committee.

SENATOR SINAGRA: I am actually not going to vote for the bill any longer.

SENATOR BENNETT: It is so unique with me that I have never seen it before.

MR. BERRY: On Senate Bill No. 1821: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Okay -- yes.

MR. BERRY: And to concur with the Senate action: Assemblyman Sosa votes in the affirmative. Assemblywoman Wright?

ASSEMBLYWOMAN WRIGHT: Yes.

MR. BERRY: Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: Yes.

MR. BERRY: The next bill before the Committee is Assembly Committee Substitute for Assembly Bill No. 1870 and Assembly Bill No. 273. The Substitute provides for a special corporation business tax rate on certain corporations. The main difference in the Substitute-- There are a number of differences from the original bill as drafted. The period of time in which the minimum tax paid under the corporation business tax would be a four-year period in which the minimum rate would rise from \$21 to \$200. The Substitute reduces the total corporate business tax rate on an electing subchapter S corporation from 9.375 percent to 2.375 percent.

On the Assembly Committee Substitute: Assemblyman Sosa votes in the affirmative. Assemblywoman Wright?

ASSEMBLYWOMAN WRIGHT: Yes.

MR. BERRY: Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: Yes.

MR. BERRY: On the vote to concur with the Assembly's  
action: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

MR. BERRY: Before the Committee is a Senate Committee Substitute identical to the Assembly Committee Substitute just voted. This Substitute is for Senate Bill No. 1824 and Senate Bill No. 19. On the Senate Committee Substitute: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

Just one thing after the S corporation status has passed this Committee: I want to thank the members of this Committee, the CPA Society, and all the different business groups and associations. I have never seen a bill more worked on by a more diverse population, and bipartisan. Certainly, Senator Adler, Assemblywoman Derman, and Senator Inverso have played key roles in getting this passed. I think we all owe them a lot, including the CPA Society, which has put a lot of effort and work into getting this through finally. Eleven years, is it? How many years has this been kicking around? (no response)

With that, we are up to our last -- almost--

MR. BERRY: We are just waiting for an amendment to come through momentarily. (members of Committee all speaking to one another at the same time; indiscernible to transcriber)

ASSEMBLYWOMAN WRIGHT: Mr. Chairman, in the moment, may I read you something?

SENATOR SINAGRA: You may read anything you like, Assemblywoman.

ASSEMBLYWOMAN WRIGHT: In response to the arts -- the artist, I just happen to have in my bag-- In 1970, there were nurses involved in Detroit in the riots -- in the care -- and a nurse wrote a book called, "9226 Kerchival: The Storefront That Didn't Burn." It is just an example of how the patterns of the arts do not change over time. In the epilogue to her book, she said:

"Health is wholeness unfolding. It is pink skin covering a wound. It is a book in the hand of the ghetto dweller, and soul music on the lips of the suburbanite. It is the preschooler's first whip in day care. It is knowing not only I and you, but we. Health is wholeness unfolding. It is present only when we continue to seek in ourselves, in our institutions, together with others, a sharing which is significant in the possibilities of man, a growing self-awareness of self, and the feeling of self-worth which is the result."

I think that underscores the testimony that was presented here today. Isn't that wild? I have had that in my bag.

SENATOR INVERSO: Mr. Chairman, while we have a lull here, I think there is a need for us to examine the inclusion of the S corporation as an entity under the tax credits. I think it is an omission that-- It should not be omitted. It seems to me that what we are doing-- These are all small, positive steps in the right direction, but to say that because you are an S corporation you cannot avail yourself of the

investment in employment incentives that other corporations can is a mistake, and an omission that we ought to correct at some point.

ASSEMBLYWOMAN DERMAN: Excuse me, Mr. Chairman.

SENATOR SINAGRA: Surely.

ASSEMBLYWOMAN DERMAN: An inquiry as to whether there would be additional--

SENATOR INVERSO: I can't hear you. I'm sorry.

ASSEMBLYWOMAN DERMAN: I'm sorry. The additional revenue cost -- what it would be?

SENATOR INVERSO: We have to take a look at that. I mean, the same would apply to partnerships and individuals. You know, I don't know whether the breadth of investment by, say, a proprietor would be as great perhaps as a corporation. Therefore, we are talking about a smaller base to concern ourselves with. But it ought to be from an equity standpoint, it seems to me, a job is a job is a job, no matter what form of entity it is created under. Therefore, it seems to me that we should really be addressing that at some point.

I wanted to raise it, but I did not want to, perhaps, change anything along with today's process. If it goes to Appropriations next, it ought to be considered at some point, or later on as an amendment is billed. I just wanted to raise that. I think they were very valid points that were raised.

SENATOR SINAGRA: Thank you. That killed two minutes.

Senator Adler, can you--

SENATOR ADLER: I was in "Guys and Dolls" in high school, if you would like me to sing something for you?

SENATOR INVERSO: Which doll were you?

SENATOR ADLER: I was Sky Masterson. (laughter) It was a coed school.

SENATOR BENNETT: Mr. Chairman, do you want to read into the record that we got a letter from Cary Edwards that

urges us to take this action today. He is most appreciative that we are moving along in the direction that he has pointed us.

ASSEMBLYWOMAN DERMAN: Senator Bennett, before you arrived on the scene, we read into the record the whole economic blueprint of what Christie Todd Whitman had on her mind.

SENATOR SINAGRA: Before you got here. In fact, she was here and testified before you got here.

SENATOR BENNETT: That's fine.

SENATOR INVERSO: I have never seen a meeting break down as quickly as this.

SENATOR BENNETT: We are certainly killing time.

ASSEMBLYWOMAN DERMAN: Mr. Chairman, I urge you, I have to leave.

SENATOR SINAGRA: Are we going to do the Assembly's--

ASSEMBLYWOMAN DERMAN: Yes.

SENATOR INVERSO: Well, I started off with a serious comment. You guys--

SENATOR BENNETT: Well, I was very serious.

MR. BERRY: Before the Committee is Assembly Bill No. 1015, a bill that would repeal the "Business Personal Property Tax Act." There are proposed amendments -- proposed amendments -- that would clarify that taxes payable in 1994 only apply to personal property used in business on or before October 1, 1993. There are also amendments that update the bills' operative dates -- effective dates.

On the amendment: Assemblywoman Wright?

ASSEMBLYWOMAN WRIGHT: No.

MR. BERRY: These are the original amendments. These are not the ones--

ASSEMBLYWOMAN WRIGHT: Oh, okay.

ASSEMBLYWOMAN DERMAN: Oh, these are the original amendments?

MR. BERRY: Yes.

ASSEMBLYWOMAN DERMAN: Okay, all right. Just for the record, we have new amendments. I have not been able to clear them with the sponsor. That is why we are not making other amendments. The first amendments are these agreed--

ASSEMBLYWOMAN WRIGHT: All right, the amendments we have. Okay, I will vote yes.

MR. BERRY: Assemblyman Sosa votes in the affirmative. Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: Yes.

MR. BERRY: On the bill: Assemblywoman Wright?

ASSEMBLYWOMAN WRIGHT: Yes.

MR. BERRY: Assemblyman Sosa votes in the affirmative. Assemblywoman Derman?

ASSEMBLYWOMAN DERMAN: Yes.

MR. BERRY: To concur with the vote of the Assembly on Assembly Bill No. 1015: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

The amendments are on their way down. That was the phone call, so we just have to stall for another-- Let's see, who hasn't embarrassed himself?

SENATOR SINAGRA: Actually, they may be here. You never know. Here they are. We will actually let you see them before you vote on them. (discussion at this point among members of Committee)

MR. BERRY: Senate Bill No. 219, there are amendments before the Committee. On the amendments: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

MR. BERRY: On the bill: Senator Adler?

SENATOR ADLER: Yes.

MR. BERRY: Senator Bennett?

SENATOR BENNETT: Yes.

MR. BERRY: Senator Inverso?

SENATOR INVERSO: Yes.

MR. BERRY: Senator Sinagra?

SENATOR SINAGRA: Yes.

We are finished. Thank you.

**(MEETING CONCLUDED)**

**APPENDIX**

TESTIMONY BEFORE THE  
JOINT LEGISLATIVE COMMITTEE ON ECONOMIC RECOVERY

PRESENTED BY  
COMMISSIONER BARBARA McCONNELL  
NEW JERSEY DEPARTMENT OF COMMERCE  
AND ECONOMIC DEVELOPMENT

Good morning. I am pleased to have the opportunity to appear before this committee and to voice support for these important business tax incentives which are before you today.

For the past three years, this administration and this legislature have put in place some outstanding initiatives which have put New Jersey on the forefront of growth and development. But just as the national and world economies continue to change, so must we continue to evaluate and assess our business environment and our future -- and recommend new policies and initiatives that will keep our competitive edge razor sharp.

Therefore, not only is it appropriate -- it's smart economic policy that we continue to examine where we are economically, how we got here, and determine how we can best achieve our full potential for economic growth, business expansion, and job creation.

New Jersey has been through one of the worst recessions in memory. While technically we are on the road to recovery, we are experiencing a slower job growth rate than in the recessions of the past. That is due in large part to a weak regional economy, cutbacks in research and development within the private sector, and over expansion in the 1980s, -- particularly in the service and financial sectors.

In addition, corporate downsizing in the high concentration of Fortune 500 companies located in our state has been severe, as have reductions in defense contracts, and changing world markets, stringent environmental regulations, high labor costs and aging facilities all have contributed to New Jersey's job losses and slow recovery across all sectors of our economy.

If we are to effectively address the needs of those businesses and foster the creation of new manufacturing jobs in the technologies of tomorrow, government initiatives must emphasize job creation, employee training, and investment in facilities and equipment -- and those initiatives must be coupled with incentives that encourage private investment in these areas.

New Jersey is a good place to do business. It has many advantages and opportunities to offer to business and we've already taken steps to improve New Jersey's competitive edge and create new jobs by playing to our strengths; nurturing the growth of existing

companies and helping new ones get started; investing in education and worker training; building and maintaining our infrastructure; and by providing sound incentives and financial assistance for business expansion and attraction, both foreign and domestic.

In spite of our job losses in manufacturing, New Jersey remains an important and vital manufacturing state.

Nearly 530,000 New Jersey workers are employed by over 18,000 small and medium-size manufacturing firms -- many of which employ fewer than 200 people.

More than half the State's manufacturing jobs -- 275,000 positions at 78-hundred firms -- are concentrated in five industries -- metal working and machinery, plastics fabrication, electronics, textile-apparel and food processing.

We're taking the lead in defense conversion; we're supporting technology transfer to convert our intellectual and technological strength into the commercialization of products; and we're targeting emerging industries for growth and expansion -- industries such as computers, biotechnology, genetic engineering, fiber optics, and laser, environmental and energy technology.

Through all of this, a new spirit of partnership has emerged between business and government, and we have clearly demonstrated

our firm commitment to business growth and development.

That spirit is evident in the billions of dollars in loans we have invested in our small and medium size companies made possible through the New Jersey Economic Development Authority -- through programs such as the Economic Recovery Fund -- in our commitment to streamlining New Jersey's regulatory process -- and in our efforts to repeal and revisit regulations like ECRA -- that have put a strangle hold on business.

It is evident in our commitment to providing resources for job training through the new Job Skills Partnership -- and it is evident in our commitment to small business growth, international trade and Research & Development activities.

For the third consecutive year, we've seen the number of companies relocating to New Jersey increase -- from 93 in 1990 -- to 103 in 1991 -- to 109 in 1992 -- a sign that new businesses are willing to invest their future in ours.

Today, as we review our strategy for economic recovery and job growth, it is clear that neither our short-term or long-term economic goals can realize their full potential for creating opportunity and generating jobs -- unless we are willing to incorporate -- along with the advantages and initiatives I spoke of a moment ago -- changes in our tax code that will encourage

investment in our people, the products we manufacture, and our facilities and infrastructure.

The bills before you today offer that kind of opportunity.

A New Jobs Investment Tax Credit could serve to strengthen our programs for attracting new businesses to the Garden State, particularly high technology companies that offer new, high-wage jobs in the growth industries of tomorrow.

A Manufacturing Investment Tax Credit could fit well into our strategy to maintain our manufacturing base, modernize facilities, and reinvigorate that important industry segment

The adoption of a Sub Chapter S provision in our corporate tax code is also important to consider as part of our economic strategy, because it could help small business gain equal footing with companies in other states -- and because it would give a new boost of energy to the most important sector of our economy -- a sector that generates eight out of every ten new jobs in our state.

The repeal of the Business Personal Property Tax is also important to our efforts, because it will enable manufacturing companies in particular to compete on a level playing field. We need to join with Delaware, Pennsylvania, and New York which do not include such property in either state or local property tax

assessments.

As a package, these legislative proposals would complement, energize, and strengthen our economic recovery program -- a program that seeks to revitalize our manufacturing industry and set it on a course for growth and expansion; to support small business and help them create new private sector jobs and compete in newly emerging and vastly changing world markets; to adapt to changes in our domestic economy; to foster growth in the technologies of tomorrow, in R&D and in manufacturing; and to help New Jersey realize its full economic potential.

These are tough fiscal times -- not only for business -- but for government as well. Our challenge today is to offer these kinds of incentives and still balance the State budget, maintain vital services for the people of New Jersey, and invest in our future.

I am certain that, working together, this legislature and this administration can meet that challenge, and so I want to add my support to these initiatives and to the work of this committee, and I want to thank you once again for this opportunity to appear before you.

Thank you.

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**TAX CREDITS**

S-1784  
A-2475  
S-1820  
A-2675

**FEDERAL DEPRECIATION**

S-1821

**S CORPS.**

A-1824  
S-19  
A-127  
A-1870

**BUSINESS PERSONAL PROPERTY TAX**

A-1015  
S-219

Testimony Submitted to the  
Joint Legislative Committee on Economic Recovery

June 2, 1992

By: Charles M. Costenbader  
Chairman, Cost of Government Committee  
N.J. State Chamber of Commerce

c/o Stryker, Tams & Dill  
Two Penn Plaza East  
Newark, NJ 07105

As Chairman of the Cost of Government Committee of the New Jersey State Chamber of Commerce, I wish to express the Chamber's support, in general, of the proposed Bills to provide tax incentives for business investment in New Jersey.

#### TAX CREDITS

However, the Chamber is concerned that the tax credit bills may not accomplish their purpose of attracting business investment in New Jersey:

- S-1784 "New Jobs Investment Tax Credit";
- A-2475 "Small Business Investment and Jobs Expansion Corporation Business Tax Credit";
- A-1820 and A-2675 "Manufacturing Equipment and Employment Investment Tax Credit Act".

As recognized by the Assembly majority study, one of the largest problems facing the New Jersey economy has been the loss of manufacturing jobs. Only S-1820 and A-2675 target an investment tax credit to investment in manufacturing and production machinery and equipment. Further, the entire tax credits under S-1784 and A-2475 and 6% of the credits under S-1820 and A-2675 are limited to increases in New Jersey employment. Tax credits can be a factor in a business decision to make an investment where the credit mechanisms are uncomplicated and are not subject to the vagaries of general economic conditions. If a tax credit is limited to specific increases in employment, it is unlikely to play a significant role in the decision to invest

except where an initial relocation to New Jersey is involved. In any event the new jobs criteria does not address at all the issue of job retention through plant reinvestment.

S CORP.

The Chamber supports S-1824, S-29, A-273 and A-1870 which follow the federal tax treatment of S Corps. similar to that of the surrounding states of New York and Pennsylvania.

Assembly Bill 1870 also provides for two new unrelated revenue measures to partially offset the revenue loss from recognizing federal S Corp. status. The Chamber opposes Section 3 of A-1870 which will disallow the deduction for income taxes paid to other states. The deduction of income taxes paid to other states has been permitted since enactment of the income tax in 1958. The effect of this disallowance will be the funding of a tax benefit for small businesses by an increase in taxes for multistate businesses which will be borne mostly by the headquarters companies and those multistate companies having a substantial investment in New Jersey. For these reasons the Chamber opposes this disallowance. A list of the affected companies which oppose this provision in A-1870 and have permitted use of their names is attached. I have been contacted by a number of representatives of other companies who also oppose this provision.

The second revenue measure involved the disallowance of expenses related to nonoperational income.

Sec. 5 of A-1870. The first paragraph of Bill Section 5 appears to be grammatically incorrect and it also is not clear that the nonoperational income of a domiciliary or headquarters company is subject to allocation (apportionment) in New Jersey. The second paragraph of Section 5 disallows expenses related to the nonoperational income regardless of the expiration of the statute of limitations. This paragraph should permit the reciprocal offset of reported nonoperational income also barred by the statute of limitations. The second paragraph is not clear to what extent a revision of the apportionment factors in prior years is utilized in making the expense disallowance in the year of disposition of the nonoperational investment.

#### FEDERAL DEPRECIATION

S-1621 recouples the CBT tax base to federal allowable depreciation.

#### BUSINESS PERSONAL PROPERTY TAX

A-1015 and S-219 repeals the Business Personal Property Tax for property owned on October 1, 1995.

The Chamber supports recoupling CBT depreciation to the federal allowable methods and the repeal of the Business Personal Property Tax. These legislative proposals were recommended by the State and Local Expenditure and Revenue Commission.

Companies Opposed To Disallowance Of Deduction For Income  
Taxes Paid To Other States

American Cyanamid Co.

BASF Corp.

The BOC Group

Dow Jones & Company, Inc.

First Fidelity Bancorporation

General Motors Corporation

Loews Corporation

Nabisco, Inc.

The New York Times Company

R.J. Reynolds Tobacco Company

Russ Berrie and Company, Inc.

Sandoz Pharmaceuticals Corp.

Subaru of America, Inc.

Sunshine Biscuits, Inc.

Union Camp Corporation

Warner-Lambert Co.

W. R. Grace & Co.

# New Jersey

## ECONOMICS

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Testimony before the  
Joint Legislative Committee on Economic Recovery

Donald M. Scarry, Ph.D.  
*New Jersey Economics*

June 2, 1993

Trenton, NJ

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12X

Good morning Mr. Chairman and members of the Committee. My name is Donald Scarry. I am a Principal in *New Jersey Economics*, a policy oriented consulting firm based in south Jersey; we've spent the last year studying the manufacturing sector in New Jersey for a variety of clients. I am delighted to have been invited to appear before you today to comment on the package of bills you're considering. I urge you to take positive action on each of them.

My recommendation for positive action stems not from the potency of the financial effects the bills may have, but from the "announcement" effects they certainly will create - New Jersey may be beginning to mean business in attracting and, more important, retaining, business.

There are many in the room with much more expertise on the individual subject matter of each bill than I. Therefore, I'd like to limit our comments to the effect the package, as a totality, may have on the State of New Jersey. Our comments are based on studies the firm has recently completed that examine the status of New Jersey manufacturing sector.<sup>1</sup>

We are all aware that New Jersey is not participating in the employment aspects of the economic recovery that's taking place in the nation. In August 1992 our unemployment rate was 9.2%. After a few months of decline, the rate began to rise again; now it is 9.1%, the highest in the nation. Our failure to thrive in the current, admittedly less-than-robust economic climate is the single, most crucial and most pressing issue before state government. There are some things we should realize. We cannot solve this problem by merely attracting business from other states and countries. Sure, that's important and a hard competitive task. But, even if we were able to attract one one-thousand employee business each week for the next two years, we'd only cut our unemployment rate down to the national average. That's a daunting task. Second, while tax relief is important, we will eventually have to deal with our regulatory climate. As we begin to

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<sup>1</sup> *The Decline of Manufacturing in New Jersey: The Death Throes of an Industrial Giant*, *New Jersey Economics*, 1992 and *A Workbook for a Preliminary Review of Manufacturing in New Jersey, 1972 - 1991*, 1993. Both of these studies have been distributed to all members of the Legislature; additional copies are available.

clear up the matters before you, we'll also reveal a regulatory nightmare that may undo in an instant all that you are putting together today.

We have to pay attention to the businesses we already have and make sure our economic, tax, and especially or regulatory climate fosters growth and development - right here in New Jersey, with the businesses we already have. This package of bills represents a first step along the long, arduous path to correcting the economic situation in New Jersey.

This package will have two distinct sets of effects - the direct financial effect of the stimulus provided and, what will be even more important and even larger, the indirect effect - the subtextual message if you will, of letting the nation's business community know that New Jersey acknowledges it has economic problems, has had them for decades, and is willing to undertake at least these steps to correct them.

This package could begin to show the nation and the world that there is bipartisan concern over the status and direction of our manufacturing sector and that New Jersey means business in getting things corrected. For far too long, New Jersey has been viewed as hostile to business. For far too long we've pursued a passive style of economic development, taking on all comers, rarely being aggressive about it. In addition, we've spent too much time in New Jersey arguing that our hostility to business is more myth than reality. While this debate has been taking place, successive industries have acted on the perception of hostility and shifted base load manufacturing production out of our State. We can insist - even to the very last manufacturer leaving the state, that the perception of hostility is mere myth, or we can choose to do something about that perception. This package of bills may be the first, small step in that direction.

S-1784, Senate President DiFrancesco's bill, would benefit, for the most part, companies moving an operation to New Jersey or those undertaking a major expansion here. In reality, the latter category is much more important for our progress. We could never begin to address our

unemployment problems through companies moving into New Jersey. We have to make sure we stem the tide of companies shifting base load production to other places. S-1784 will be a helpful tool to do just that. I caution you not to overestimate its financial impact but to concentrate on its "announcement" effect. Let's tell the world New Jersey means business.

Your own bill, Mr. Chairman (S-1820) should have an additional "announcement" effect. Tax credits for substantial long-term investments with additional credits for job creation will tell our existing business community that we want them to stay here, expand here, employ people here, and profit from their locations. Again, the "announcement" effect may be even stronger than the direct financial incentives built into the bill.

Senator Bennett's S-1821 will also have as strong a public relations effect as its direct financial effect. Recoupling our depreciation rate to the federal schedules is long overdue. This was merely a revenue device that raised more anger than funds. Besides revenue production, there never was a good technical reason for New Jersey's departure from the federal standards. We do too much of that in this State!

Senators' Inverso and Adler's S-1824, which creates a preferential tax rate for Sub-S corporations should be a lowcost stimulus to new business formation, small business growth and, again, should be accompanied by a new realization that New Jersey means business in wanting business.

S-219 (Littell) completes a process begun more than fifteen years ago - the repeal of the Business Personal Property Tax. The purchase of new machinery and equipment has been exempt since 1977. Removal of this minuscule and vestigial revenue source should again carry the message that New Jersey means business in attracting and retaining business.

It's important that the business community know that the Governor and the Legislature share the concern about business. Just recently, at the Governor's Economic Summit in

Princeton, he stressed an interest in a revived manufacturing sector. The Governor's prepared remarks were as follows " . . . we know that New Jersey's real economic strength, now and in the future, must come from manufacturing and the service industries that support it." To this statement, the Governor added, by way of *ad lib*, something like " . . . and New Jersey must continue to be what we once were, a manufacturing powerhouse!" Perhaps the Governor is even more convinced of his message than his speech writers.

What is it that New Jersey should do to recreate a strong manufacturing sector? Well, the Governor's talking up manufacturing is a good step, but there's got to be more. The package of bills before you today is another good step, but, again, there's got to be more.

First, we need to pay attention to our education system. In some parts of New Jersey it's in really bad shape. To have the workers of the future New Jersey must have the best education system in the nation - from kindergarten, through vocational and technical schools right on up to graduate work. Money spent on education is not " . . . thrown at a problem," it's a real investment in our economic and social future.

The second thing we ought to do is identify those manufacturing industries that are high-value added operations and go after them as hard as our competitors. The Governor of Kansas makes personal phone calls to prospective businesses, not just the megagiants, even the small and mid-sized ones. The calls really don't change much, but they are impressive to the businesses thinking about Kansas. I don't think we ought to keep Jim Florio on the phone all day but we need to imbue all of state government with a sound understanding of the importance of manufacturing to New Jersey. This way we can get things rolling again.

We need to look our regulatory climate right in the eye and begin to clean that mess up. Last, but not by way of an afterthought, I think each of these bills should carry a detailed supplemental appropriation for the Department of Commerce directing the Department to get

the word out that these changes are being made.

Thank you for you time and indulgence. If you have any questions about my comments,  
I'd be delighted to try to answer them.

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**TESTIMONY OF E. MARTIN DAVIDOFF  
BEFORE THE JOINT LEGISLATIVE COMMITTEE ON ECONOMIC RECOVERY  
NEW JERSEY STATE LEGISLATURE  
JUNE 2, 1992**

**WELCOME TO NEW JERSEY - THE SMALL BUSINESS CAPITAL OF THE NATION!**

This is one of the headlines which will appear if you adopt the committee substitute presented before you today for Assembly Bill Nos. 1870 and 273 and Senate Bill Nos. 19 and 1824.

**WHAT ARE S CORPORATIONS?**

An S Corporation is a corporation formed under the laws of any state, in a manner identical to the formation of any other corporation, which has also made an election under subchapter S of the Internal Revenue Code to receive special tax treatment. Generally, the effect of this election is to exempt the corporation from federal taxation and treat the income earned by the corporation as if it had been earned by the stockholders of the corporation. The concept is similar to that accorded to partnerships under the Internal Revenue Code.

**IMPACT ON SMALL BUSINESS**

The states of New York and Pennsylvania recognize S Corporation status for state income tax purposes. However, the State of New Jersey has not done so up until now. Accordingly, S Corporations in New Jersey are required to keep two sets of books. In addition, what may be advantageous for federal tax purposes may not be advantageous for state income tax purposes and vice versa due to the differing modes of taxation.

The Tax Reform Act of 1986 provided numerous incentives for regular C Corporations to elect S Corporation status. Accordingly, New Jersey's refusal to follow the S Corporation status is causing new businesses to look elsewhere in forming their Small Business Corporations.

With the adoption of the proposed legislation before you, we will be in a position to offer new and existing businesses a healthier, simpler tax environment in New Jersey.

TESTIMONY OF E. MARTIN DAVIDOFF  
BEFORE THE JOINT LEGISLATIVE COMMITTEE ON ECONOMIC RECOVERY  
NEW JERSEY STATE LEGISLATURE  
JUNE 2, 1992  
Page 2

REVENUE NEUTRALITY

The Committee Substitute before you has been a multi-partisan effort. Not only have the Democrats and Republicans cooperated with each other, a variety of business and professional groups have also been consulted for their input. The enclosed bill reflects that input and is generally revenue neutral.

Revenue is raised, in part, by requiring non-resident shareholders of S Corporations to pay income taxes to New Jersey on their S Corporation income allocable to New Jersey. In addition, this Bill will raise revenue by requiring the filing of partnership returns on a New Jersey partnership form by all partnerships doing business in New Jersey. Other states, such as Massachusetts, have started aggressive programs wherein they contact non-resident partners or partnerships to claim their states share of taxes from those individuals. New Jersey will now be in a better position to do this as a result of this bill.

CONCLUSION

I come to you as a representative of many different constituencies. I have served as a Delegate to the 1986 White House Conference on Small Business and the 1988 Governor's Conference on Small Business. I am also active in both the CPA and legal professions. I advise individuals like you and me who are working hard to provide their progeny with a good life.

S Corporation election is one big step toward making New Jersey a better place to do business. That, coupled with other incentives currently being considered and streamlining the regulatory bottlenecks, will allow the headlines to say:

WELCOME TO NEW JERSEY. THE SMALL BUSINESS LOCOMOTIVE FOR THE  
NATION!

BIO

WAYNE SLAPPY (PLAYWRIGHT/PRODUCER/DIRECTOR) has taught high school in Newark, New Jersey since 1974 and has been an Artist-in-Residence at the Newark Community School of the Arts since 1985. Wayne has written, directed and/or produced over fifteen plays, including "PUPPY LOVE", "COME OUT OF THE CAVE", "IMAGES IN BLACK", "BOULDER IN THE SUN", "IN DEFENSE OF SELF" and "FOOTPRINTS IN TIME". In October of 1992, "CAN YOU HANDLE IT", his play about a teenage pregnancy and abortion was simulcast live to three states from the Joseph Papp Theater in New York over radio station WBAI. He is the Founder and Executive Director of HARAMBEE PRODUCTIONS, a three-tiered entertainment company whose focus is to enhance the quality of life via theatrical and cinematic productions that the entire family can enjoy. Every production showcases the artistic and/or technical talents of children and young adults from municipalities throughout the metropolitan Newark area. He was hired as a production liaison by Warner Brothers for the filming of "LEAN ON ME" which was directed by Oscar winner director John Avildsen. A natural bond was established between them which has grown into mutual respect and led to their willingness to collaborate on Wayne's most important project to date: the feature film production of his screenplay, "FREEDOM", adapted from an original stage play he wrote and produced in the OFF BROADWAY ON BROAD STREET series at Newark's Symphony Hall in 1986. John Avildsen will direct this film during which a slave escapes and fights for the Union Army in the American Civil War. Along with noted producer and former NBA star, Chet Walker, Wayne will serve as one of the executive producers on the project. Proceeds from the project will be used to establish the HARAMBEE FOUNDATION OF NEW JERSEY, a philanthropic organization designed to assist non-profit organizations that assist in the positive development of young people -- Wayne's passion.

NEW JERSEY



**NFIB**

National Federation of  
Independent Business

May 28, 1993

TO: MEMBERS OF THE NEW JERSEY JOINT LEGISLATIVE COMMITTEE ON  
ECONOMIC RECOVERY

FROM: JAMES S. BUENTE, EASTERN REGIONAL DIRECTOR, STATE AFFAIRS

RE: PENDING SUB CHAPTER S LEGISLATION

On behalf of the 10,000 members of the National Federation of Independent Business in New Jersey, we want to congratulate your committee for considering a number of bills that would provide various forms of Sub Chapter S tax treatment for New Jersey small corporations. We believe permitting Sub S for state tax purposes to be a potential boon for the New Jersey economy.

As you may know, the majority of new jobs are created by small businesses. Further, the major source of capital for small businesses is their retained earnings. The more funds New Jersey small corporations can keep, the more their businesses will grow.

Of the 40 states that have a corporate net income tax, only 6 including New Jersey do not recognize Sub chapter S tax status. We believe New Jersey should move forward to help small companies grow by adopting Sub S.

We appreciate consideration of our views.

21X

## Legislative Viewpoint



JOHN E. TRAFFORD, Executive Director  
WILLIAM G. DRESSEL, JR., Asst. Executive Director  
JON R. MORAN, Senior Legislative Analyst  
CHRISTOPHER CAREW, Legislative Analyst  
HELEN YELDELL, Legislative Analyst

June 2, 1993

Re: Assembly 1015

Dear Senator Sinagra:

The League Legislative Committee opposes the provisions of A-1015 which repeals the Business Personal Property Tax Act.

It is unconscionable that during these difficult economic times when municipalities are hard-pressed to provide an acceptable level of service to its residents, a bill such as this is introduced.

Assembly 1015 poses an economic threat to all municipalities as it constitutes an erosion of a reliable revenue source. This bill will most assuredly cause property taxes to increase which will lead to many compounded problems.

We have attached herewith a copy of a memo from L. Mason Neely Finance Director, East Brunswick which amplifies further on our specific concerns.

Hence, the League Legislative Committee urges you to vote against passage of A-1015 when it comes up for consideration.

Very truly yours,

William G. Dressel, Jr.  
Assistant Executive Director

WGD:jg

M E M O R A N D U M

June 2, 1993

TO: William Dressel, N.J. State League of Municipalities  
FROM: L. Mason Neely, Chief Finance Officer *LMN*  
RE: Assembly 1015 - Business Personal Property Tax

The Business Personal Property Tax used to be only a local tax. Because different Assessors placed different values on Business Personal Property, there was a question of equity among the municipalities. An early amendment to the problem was to have a uniform Statewide personal property tax rate. This again caused problems because some local assessors were not as diligent as others in identifying personal property. In the early 60's, Legislation changed the method of taxation to a State uniform tax and the State collected the revenue and distributed back to municipalities. In the early 70's, the State had problems with this method and they again addressed the issue of Business Personal Property Taxes. As part of the amendment to the statute, they guaranteed municipalities a hold from harm provision which is found under N.J.S.A. 54:11D.1 et seq. The amount guaranteed for distribution from Business Personal Property Replacement Tax to municipalities was \$158,703,834. Because N.J.S.A. 54:11A-1 et seq. froze the taxation of Business Personal Property on machines and equipment as of January 1, 1977, the proceeds from the tax have continued to decline. If Assembly 1015 were adopted, it would repeal in total the provisions of Business Personal Property Tax found under N.J.S.A. 54:11A-1 et seq. A question that must be addressed is what impact will that have on the Save from Harm provisions found in 54:11D-1 et seq which guarantees certain distribution to municipalities? The State has shrunk the municipal tax base by taking Business Personal Property away from local governments and they diminished local government's ability to raise revenues. Will the State continue to hold local governments free from harm?

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cc: File