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.

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 DiFrancesco	Allows corporation business tax credit or property tax offset for certain investments that create new jobs in this State.
A-2475 Corodemus/ Derman	Allows corporation business tax for small business investment in new or expanded business facilities that create new jobs in this State.
S-1820 Sinagra A-2675 Warsh/Haines	Manufacturing Equipment and 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)

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

THE GREAT SEAL OF THE STATE OF NEW JERSEY
LIBERTY AND PROSPERITY
1776

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

S-1821 Bennett	Permits corporations to use federal modified accelerated depreciation for certain property under the corporation business tax.
A-273 Penn/Kavanaugh (Proposed ACS)	Exempts subchapter S corporations from the corporation business tax
A-1870 Derman (Proposed ACS)	Provides special corporation business tax rate for electing subchapter S corporations.
S-1824 Inverso/ Adler (Proposed SCS)	Provides special corporation business tax rate for electing subchapter S corporations.
S-19 Haines (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 Catania/Zecker	Repeals the "Business Personal Property Tax Act."
S-219 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

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

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

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

2. As used in this act:

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

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

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

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

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

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

"New business facility" means a business facility which:

a. is employed by a taxpayer in the conduct of a business which is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.). Such facility shall not be considered a new business facility in the hands of a taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person;

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

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

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

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

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

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

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

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

As used in this definition: "full-time" means employment for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is applicable to the business and "permanent basis" does not include employment that is temporary or seasonal and therefore the compensation paid to temporary or seasonal employees will not be considered for purposes of sections 4 and 6 of this act; and "part-time" means customarily performing such duties at least 20 hours per week for at least six months during the tax year. In no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed the total increase in the taxpayer's average employment in this State for the tax year over the average employment in this State for the previous tax year and in no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed one half of the average employment in this State for the tax year; and provided, that the director may require that the net increase in the taxpayer's employment in this State be determined and certified for the taxpayer's controlled group.

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

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

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

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

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

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

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

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

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

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

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

(2) Airplanes;

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

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

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

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

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

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

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

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

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

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

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

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

"Related person" means:

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

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

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

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

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

"Small business taxpayer" means a taxpayer that has an annual payroll of $2,000,000 or less and annual gross receipts of not more than $6,000,000 for the tax year in which property purchased for business relocation or expansion is placed in service or use by the taxpayer; provided that beginning with tax years commencing on and after January 1 next following the operative date of this act the director shall prescribe the amount of annual payroll and annual gross receipts which shall apply by increasing each such amount hereinabove by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins. The annual payroll of a taxpayer shall include the employees of its domestic and foreign affiliates, whether employed on a full-time, part-time, temporary, or other basis, during the preceding 12 months. If a taxpayer has not been in existence for 12 months, the payroll of the taxpayer shall be divided by the number of weeks, including fractions of a week, that it has been in business, and the result multiplied by 52. That amount shall then be added to the 12 month payrolls of its domestic and foreign affiliates to determine the annual payroll of the taxpayer for purposes of this definition. The annual gross receipts of a taxpayer shall include the annual gross receipts of its foreign and domestic affiliates. The annual gross receipts of a taxpayer which has been in business for three or more complete tax years means the average of the annual gross receipts of the business for the last three tax years. For purposes of this definition, the gross receipts of the taxpayer includes receipts from sales of tangible personal property and services, interests, rents, royalties, fees, commissions and receipts from any other source, but less returns and allowances, sales of fixed assets, interaffiliated transactions between a business and its domestic and foreign affiliates, and taxes collected for remittance to a third party, as shown on its books for federal income tax purposes. The annual receipts of a taxpayer that has been in business for less than three complete tax years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. "Affiliates" includes all concerns that are affiliates of each other when either directly or indirectly one concern controls the other or a third party or parties controls both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, the director shall consider all appropriate factors, including common ownership, common management and contractual relationships. "Concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity), having a place of business located in this State, and which makes a contribution to the economy of this State through payment of taxes, or the sale or use in this State of tangible personal property, or the procurement or providing of services in this State, or the hiring of employees who work in this State. "Concern" includes but is not limited to any person as defined in R.S.1:1-2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If property has a:	The applicable percentage is:
3 year recovery period	35%
5 year recovery period	70%
7 year or more recovery period	100%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

compensation required by section 3 of this act.

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

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

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

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

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

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

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

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

then the unused portion of the credit allowed for such property shall be forfeited for the tax year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed under section 5 of this act, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this State in the new or expanded business facility of the taxpayer. The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs and pay any additional tax owed due to reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Tax Uniform Procedure Act, R.S.54:48-1 et seq.

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

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

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

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

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

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

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

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

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

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

(1) its identity;

(2) its actual or reasonably determined cost;

(3) its straight-line depreciation life;

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

(5) the amount of credit taken; and

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

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

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

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

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

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

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

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

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

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

STATEMENT

This 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," which is now pending before the Legislature as Senate, No. or Assembly, No. , 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.

Allows corporation business tax credit or property tax offset for 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

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

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

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

2. As used in this act:

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

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

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

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

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

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

"New business facility" means a business facility which:

a. is employed by a taxpayer in the conduct of a business which is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.). Such facility shall not be considered a new business facility in the hands of a taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person;

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

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

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

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

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

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

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

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

As used in this definition: "full-time" means employment for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is applicable to the business and "permanent basis" does not include employment that is temporary or seasonal and therefore the compensation paid to temporary or seasonal employees will not be considered for purposes of sections 4 and 6 of this act; and "part-time" means customarily performing such duties at least 20 hours per week for at least six months during the tax year. In no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed the total increase in the taxpayer's average employment in this State for the tax year over the average employment in this State for the previous tax year and in no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed one half of the average employment in this State for the tax year; and provided, that the director may require that the net increase in the taxpayer's employment in this State be determined and certified for the taxpayer's controlled group.

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

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

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

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

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

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

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

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

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

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

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

(2) Airplanes;

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

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

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

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

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

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

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

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

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

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

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

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

"Related person" means:

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

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

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

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

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

"Small business taxpayer" means a taxpayer that has an annual payroll, as calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), of $2,000,000 or less and annual gross receipts, as calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), of not more than $6,000,000 for the tax year in which property purchased for business relocation or expansion is placed in service or use by the taxpayer; provided that beginning with tax years commencing on and after January 1 next following the operative date of this act the director shall prescribe the amount of annual payroll and annual gross receipts which shall apply by increasing each such amount hereinabove by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins. The annual payroll of a taxpayer shall include the employees of its domestic and foreign affiliates, whether employed on a full-time, part-time, temporary, or other basis, during the preceding 12 months. If a taxpayer has not been in existence for 12 months, the payroll of the taxpayer shall be divided by the number of weeks, including fractions of a week, that it has been in business, and the result multiplied by 52. That amount shall then be added to the 12 month payrolls of its domestic and foreign affiliates to determine the annual payroll of the taxpayer for purposes of this definition. The annual gross receipts of a taxpayer shall include the annual gross receipts of its foreign and domestic affiliates. The annual gross receipts of a taxpayer which has been in business for three or more complete tax years means the average of the annual gross receipts of the business for the last three tax years. For purposes of this definition, the gross receipts of the taxpayer includes receipts from sales of tangible personal property and services, interests, rents, royalties, fees, commissions and receipts from any other source, but less returns and allowances, sales of fixed assets, interaffiliated transactions between a business and its domestic and foreign affiliates, and taxes collected for remittance to a third party, as shown on its books for federal income tax purposes. The annual receipts of a taxpayer that has been in business for less than three complete tax years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. "Affiliates" includes all concerns that are affiliates of each other when either directly or indirectly one concern controls the other or a third party or parties controls both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, the director shall consider all appropriate factors, including common ownership, common management and contractual relationships. "Concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity), having a place of business located in this State, and which makes a contribution to the economy of this State through payment of taxes, or the sale or use in this State of tangible personal property, or the procurement or providing of services in this State, or the hiring of employees who work in this State. "Concern" includes but is not limited to any person as defined in R.S.1:1-2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If property has a:	The applicable percentage is:
3 year recovery period	35%
5 year recovery period	70%
7 year or more recovery period	100%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) its identity;

(2) its actual or reasonably determined cost;

(3) its straight-line depreciation life;

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

(5) the amount of credit taken; and

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

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

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

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

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

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

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

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

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

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

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

Allows corporation business tax credit or property tax offset for 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

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

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

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

2. For the purposes of this act:

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

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

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

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

"Investment credit base" means the cost of qualified equipment. The cost of qualified equipment shall not include the value of equipment given in trade or exchange for the equipment purchased for business relocation or expansion. If equipment is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the cost of replacement equipment shall not include any insurance proceeds received in compensation for the loss. In the case of self-constructed equipment, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law. The cost of equipment acquired by written lease is the minimum amount required by the agreement, agreements, contract or contracts to be paid over the term of the lease, provided however, that the minimum amount shall not include any amount required to be paid, as determined by the director, after the expiration of the useful life of the equipment.

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

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

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

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

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

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

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

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

"Qualified equipment" means machinery, apparatus or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining, having a useful life of four or more years, placed in service in this State during the first or second tax year commencing in the first or second calendar year following the enactment of P.L. , c. (C.)(now pending before the legislature as this bill). Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use.

"Related person" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) its identity;

(2) its actual or reasonably determined cost;

(3) its useful depreciation life;

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

(5) the amount of credit taken; and

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

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

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

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

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

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

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

8. This act shall take effect immediately.

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.

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

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

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

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

2. For the purposes of this act:

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

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

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

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

"Investment credit base" means the cost of qualified equipment. The cost of qualified equipment shall not include the 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:
[1] JCER committee amendments adopted June 3, 1993.

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

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

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

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

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

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

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

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

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

"Qualified equipment" means machinery, apparatus or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining, [1]as defined pursuant to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),[1] having a useful life of four or more years, placed in service in this State [1][during the first or second tax year commencing in the first or second calendar year following the enactment of P.L. , c. (C.)(now pending before the legislature as this bill)][1]. Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use.

"Related person" means:

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

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

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

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

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

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

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

c. The amount of tax year credit otherwise allowable under subsection a. of this section which cannot be applied for the tax year due to the limitations of subsection b. of this section may be carried over, if necessary, to the seven [1][accounting] tax[1] years following a credit's tax year. Provided however, that a taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation; provided further, however, that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. "Acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

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

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

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

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

c. The amount of tax year credit otherwise allowable under subsection a. of this section which cannot be applied for the tax year due to the limitations of subsection b. of this section may be carried over, if necessary, to the seven [1][accounting] tax[1] years following a credit's tax year. Provided however, that a taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation; provided further, however, that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. "Acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

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

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

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

(1) its identity;

(2) its actual or reasonably determined cost;

(3) its useful depreciation life;

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

(5) the amount of credit taken; and

(6) the date it was disposed of or otherwise ceased to be

qualified equipment.

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

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

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

6. The Director of the Division of Taxation shall prepare and transmit to the Governor, the Legislature, and the State Revenue Forecasting Advisory Commission on or before the September 1 next following the [1][first calendar year during which equipment placed in service may be qualified equipment] January 1 next following enactment of this section and annually on or before each September 1 thereafter[1], a report concerning the revenue cost and distributional impact of this act in such a manner as to facilitate an evaluation of its costs in State tax revenue foregone and its benefits in new job creation. To facilitate an understanding of the gross amount and percentage of credits claimed in relation to the size, number and income of corporations and the number of new employees, the report shall include statistical analyses of the number and value of credits granted and anticipated to be granted, and the number of new employees. To facilitate an understanding of the distinction between the number of new employees resulting from the availability of the credits and the number of new employees not resulting from availability of the credits, the report shall include statistics concerning the mean cost, in State tax revenue forgone, of providing the credits resulting in employment of a single full-time employee in specific industries, the relative rate of increase in the number of new employees between corporations using the credit and those not using the credit, and increases in employment in the State and the region. The director shall include in the report such further observations and recommendations about the use or administration of the credit as the director deems appropriate.

The State Revenue Forecasting Advisory Commission shall prepare and transmit to the Governor and Legislature, on or before the November 1 next following the [1][first calendar year during which equipment placed in service may be qualified equipment] January 1 next following the enactment of this section and biennially on or before each second November 1 thereafter[1], a report providing a cost-benefit analysis of the credits provided under this act and the retention and stimulation of employment in the manufacturing sector, together with its recommendations as to whether the credits provided under this act should [1][be extended to equipment placed in service after the second tax year following the enactment of this act or whether the credits provided under this act should be made] remain[1] permanent.

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

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

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

Manufacturing Equipment and Employment Investment Tax 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(cf: P.L.1990, c.79, s.2)

2. This act shall take effect immediately.

STATEMENT

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.

Permits corporations to use federal modified accelerated depreciation for certain property under the corporation business 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

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

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

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

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

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

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

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

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2)(F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from net worth of the taxpayer, if the foreign entity 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 <u>thus</u> is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(cf: P.L.1990, c.79, s.2)

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

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

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

Accounting or Privilege Periods Beginning on or After:	The Percentage of the Rate 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 a taxpayer that is not a New Jersey S corporation, 3¼% 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 4¼%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 5½%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 7½%; 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 a taxpayer that is a New Jersey S corporation, the rate determined by subtracting the maximum tax bracket rate provided under N.J.S.54A:2-1 for the taxable period from the tax rate provided under paragraph (1) of this subsection for the taxable period multiplied by its entire net income that is not subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10); plus

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

(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.

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:

Period Beginning In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. The Director of the Division of Taxation shall prescribe such forms for administration and adopt such administrative rules as the director deems necessary for the implementation of this section.

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

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

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

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

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

54A:4-1. Resident credit for tax of another state. (a) A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this act, except as provided by subsections (c) and (d) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

b. Net profits from business. The net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the method of accounting allowed for federal income tax purposes but without deduction of the amount of:

(1) taxes based on income;

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

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

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

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

For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the "Tax on Capital Gains and Other Unearned Income Act" (P.L.1975, c.172), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under P.L.1975, c.172, it shall not be used to offset any gain under the "New Jersey Gross Income Tax Act" (P.L.1976, c.47).

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

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

(i) A statutory merger or consolidation;

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

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

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

(v) A recapitalization;

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

(vii) The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (i) if such transaction would have qualified under subclause (i) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction;

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

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

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

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

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

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

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

The term "dividends" shall not include distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

g. Gambling winnings.

h. Net gains or income derived through estates or trusts.

i. Income in respect of a decedent.

j. Amounts distributed or withdrawn from an employee trust attributable to contributions to the trust which were excluded from gross income under the provisions of chapter 6 of Title 54A of the New Jersey Statutes and pensions and annuities except to the extent of exclusions in section 54A:6-10 hereunder, notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

k. Distributive share of partnership income.

l. Amounts received as prizes and awards, except as provided in sections 54A:6-8 and 54A:6-11 hereunder.

m. Rental value of a residence furnished by an employer or a rental allowance paid by an employer to provide a home.

n. Alimony and separate maintenance payments to the extent that such payments are required to be made under a decree of divorce or separate maintenance but not including payments for support of minor children.

o. Income, gain or profit derived from acts or omissions defined as crimes or offenses under the laws of this State or any other jurisdiction.

p. Net pro rata share of S corporation income.

(cf: P.L.1990, c.79, s.1)

10. N.J.S.54A:5-8 is amended to read as follows:

54A:5-8. Income from sources within this State for a nonresident individual, estate or trust means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under chapter 5 of this act to the extent that it is earned, received or acquired from sources within this State:

(1) By reason of ownership or disposition of any interest in real or tangible personal property in this State; or

(2) In connection with a trade, profession, occupation carried on in this State or for the rendition of personal services performed in this State; or

(3) As a distributive share of the income of an unincorporated business, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this State except as allocated to another state pursuant to regulations promulgated by the director under this act; or

(4) From intangible personal property employed in a trade, profession, occupation or business carried on in this State; or

(5) As S corporation income allocated to this State of a New Jersey S corporation.

Income from sources within this State for a nonresident individual shall not include income from pensions and annuities as set forth in subsection j. of N.J.S.54A:5-1.

(cf: P.L.1989, c.219, s.2)

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

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

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

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

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

For a New Jersey S corporation, the S corporation income allocated to this State of all New Jersey S corporations; and

the S corporation income not allocated to this State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. In addition to the exclusion provided under N.J.S.54A:6-10 and subsection a. of this section, gross income shall not include income of up to $6,000.00 for a married couple filing jointly or an individual determining tax pursuant to subsection a. of N.J.S.54A:2-1, or $3,000.00 for a single person or a married person filing separately, who is not covered under N.J.S.54A:6-2 or N.J.S.54A:6-3, but who would be eligible in any year to receive payments under either section if he or she were covered thereby.

(cf: P.L.1990, c.61, s.17)

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

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

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

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

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

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

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

Provides reduced corporation business tax for electing S corporations, gross income taxation of shareholders, phased increase in minimum corporation business tax and partnership informational return filing; disallows deduction of certain costs 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>(o) "S corporation" means a corporation for which a valid election under subsection (a) of section 1362 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1362, is in effect.</u>

(cf: P.L.1990, c.79, s.2)

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

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

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

Accounting or Privilege Periods Beginning on or After:	The Percentage of the Rate 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

tax shown in a table which shall be promulgated by the director.
(cf: P.L.1983, c.75, s.1)

3. This act shall take effect immediately and apply to fiscal or calendar accounting years beginning after enactment.

STATEMENT

This 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).

This bill provides a special corporation business tax rate for corporations that have made a valid federal subchapter S election. 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%.

Provides special corporation business tax rate for electing 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The amount of treble damages paid to the Department of Environmental Protection pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the

department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, the discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) "Financial business corporation" shall mean any corporate enterprise which is (1) in substantial competition with the business of national banks and which (2) employs moneyed capital with the object of making profit by its use as money, through discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or any political subdivision thereof, or of a corporate instrumentality of any of them. This shall include, without limitation of the foregoing, business commonly known as industrial banks, dealers in commercial paper and acceptances, sales finance, personal finance, small loan and mortgage financing businesses, as well as any other enterprise employing moneyed capital coming into competition with the business of national banks; provided that the holding of bonds, notes, or other evidences of indebtedness by individual persons not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the business of national banks, shall not be deemed financial business. Nor shall "financial business" include national banks, production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub.L. 92-181 (12 U.S.C.§ 2091 et seq.), stock and mutual insurance companies duly authorized to transact business in this State, security brokers or dealers or investment companies or bankers not employing moneyed capital coming into competition with the business of national banks, real estate investment trusts, or any of the following entities organized under the laws of this State: credit unions, savings banks, savings and loan and building and loan associations, pawnbrokers, and State banks and trust companies.

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

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

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

(cf: P.L.1990, c.79, s.2)

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

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

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

Accounting or Privilege Periods Beginning on or After:	The Percentage of the Rate 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 a taxpayer that is not a New Jersey S corporation, 3¼% 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 4¼%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 5½%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 7¼%; 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 a taxpayer that is a New Jersey S corporation, the rate determined by subtracting the maximum tax bracket rate provided under N.J.S.54A:2-1 for the taxable period from the tax rate provided under paragraph (1) of this subsection for the taxable period multiplied by its entire net income that is not subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10); plus

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

(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.

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:

Period Beginning In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
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 as set forth in paragraph (1) of this subsection shall not be

affected by a change of a shareholder's residency, except as provided by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and

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

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

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

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

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

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

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

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

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

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

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

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

c. The Director of the Division of Taxation shall prescribe such forms for administration and adopt such administrative rules as the director deems necessary for the implementation of this section.

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

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

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

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

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

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

United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this act, except as provided by subsections (c) and (d) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

b. Net profits from business. The net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the method of accounting allowed for federal income tax purposes but without deduction of the amount of:

(1) taxes based on income;

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

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

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

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

For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the "Tax on Capital Gains and Other Unearned Income Act" (P.L.1975, c.172), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under P.L.1975, c.172, it shall not be used to offset any gain under the "New Jersey Gross Income Tax Act" (P.L.1976, c.47).

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

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

(i) A statutory merger or consolidation;

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

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

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

(v) A recapitalization;

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

(vii) The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (i) if such transaction would have qualified under subclause (i) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction;

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

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

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

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

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

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

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

The term "dividends" shall not include distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

g. Gambling winnings.

h. Net gains or income derived through estates or trusts.

i. Income in respect of a decedent.

j. Amounts distributed or withdrawn from an employee trust attributable to contributions to the trust which were excluded from gross income under the provisions of chapter 6 of Title 54A of the New Jersey Statutes and pensions and annuities except to the extent of exclusions in section 54A:6-10 hereunder, notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

k. Distributive share of partnership income.

l. Amounts received as prizes and awards, except as provided in sections 54A:6-8 and 54A:6-11 hereunder.

m. Rental value of a residence furnished by an employer or a rental allowance paid by an employer to provide a home.

n. Alimony and separate maintenance payments to the extent that such payments are required to be made under a decree of divorce or separate maintenance but not including payments for support of minor children.

o. Income, gain or profit derived from acts or omissions defined as crimes or offenses under the laws of this State or any other jurisdiction.

p. Net pro rata share of S corporation income.

(cf: P.L.1990, c.79, s.1)

10. N.J.S.54A:5-8 is amended to read as follows:

54A:5-8. Income from sources within this State for a nonresident individual, estate or trust means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under chapter 5 of this act to the extent that it is earned, received or acquired from sources within this State:

(1) By reason of ownership or disposition of any interest in real or tangible personal property in this State; or

(2) In connection with a trade, profession, occupation carried on in this State or for the rendition of personal services performed in this State; or

(3) As a distributive share of the income of an unincorporated business, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this State except as allocated to another state pursuant to regulations promulgated by the director under this act; or

(4) From intangible personal property employed in a trade, profession, occupation or business carried on in this State; or

(5) As S corporation income allocated to this State of a New Jersey S corporation.

Income from sources within this State for a nonresident individual shall not include income from pensions and annuities as

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

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

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

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

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

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

For a New Jersey S corporation, the S corporation income allocated to this State of all New Jersey S corporations; and

the S corporation income not allocated to this State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. In addition to the exclusion provided under N.J.S.54A:6-10 and subsection a. of this section, gross income shall not include income of up to $6,000.00 for a married couple filing jointly or an individual determining tax pursuant to subsection a. of N.J.S.54A:2-1, or $3,000.00 for a single person or a married person filing separately, who is not covered under N.J.S.54A:6-2 or N.J.S.54A:6-3, but who would be eligible in any year to receive payments under either section if he or she were covered thereby.

(cf: P.L.1990, c.61, s.17)

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

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

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

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

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

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

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

Provides reduced corporation business tax for electing S 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

AN ACT concerning the taxation of certain corporations and the shareholders of those corporations, amending, P.L.1945, c.162 and supplementing Title 54A of the New Jersey Statutes.

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

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

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

(a) Corporations subject to a tax under the provisions of article 2 of chapter 13 of Title 54 of the Revised Statutes, or to a tax assessed upon the basis of gross receipts [other than the Retail Gross Receipts Tax Act,] or insurance premiums collected;

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

(c) Railroad, canal corporations, savings banks, production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub.L.92-181 (12 U.S.C. §2091 et seq.), agricultural cooperative associations incorporated or domesticated under or subject to chapter 13 of Title 4 of the Revised Statutes and exempt under Subtitle A, Chapter 1 F, Part III, Section 521 of the federal Internal Revenue Code, or building and loan or savings and loan associations;

(d) Cementery corporations not conducted for pecuniary profit or any private shareholder or individual;

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

(f) Corporations subject to a tax under the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.), or P.L.1940, c.5 (C.54:30A-49 et seq.), or any statute or law imposing a similar tax or taxes;

(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.

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

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

(i) Corporations having the status of a small business corporation for which an election is in effect under section 1362 of subchapter S of the federal Internal Revenue Code of 1986, Pub.L.99-514 (26 U.S.C. §1361 et seq.), as amended and supplemented, except as otherwise provided in this subsection. Such a corporation, for the purposes of the application of the Corporation Business Tax Act (1945), shall be treated in the same manner as under the provisions of sections 1363, 1368 and 1371 to 1375 of the federal Internal Revenue Code of 1956, Pub.L.99-514 (26 U.S.C. §1363, 1368 and 1371 to 1375) where applicable, except that the tax **rate** imposed shall be pursuant to the Corporation Business Tax Act (1945).

(cf: P.L.1975, c.170, s.1)

2. (New section) A corporation having the status of a small business corporation for which an election is in effect under section 1362 of subchapter S of the federal Internal Revenue Code of 1986, Pub.L.99-514 (26 U.S.C. §1361 et seq.), as a corporation, shall not be subject to the New Jersey gross income tax. Individuals who are shareholders in such a corporation shall be liable for the New Jersey gross income tax only in their separate or individual capacities as provided in section 3 of this 1988 amendatory and supplementary act.

3. (New section) Notwithstanding the provisions of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., the determination of New Jersey taxable income of a taxpayer, attributable to his status as a shareholder of a small business corporation for which an election is in effect under section 1362 of subchapter S of the federal Internal Revenue Code of 1986, Pub.L.99-514 (26 U.S.C. §1362), shall be made for the shareholder's taxable year in which the taxable year of the corporation ends, and shall be made pursuant to the provisions of sections 1366 to 1368 of the federal Internal Revenue Code of 1986 (26 U.S.C. §§1366 to 1368).

4. (New section) The Director of the Division of Taxation

shall promulgate, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations, and propose such forms, as may be necessary to carry out the provisions of this act.

5. This act shall take effect immediately and apply to distributions of income received on or after January 1, 1988.

STATEMENT

This bill modifies the treatment of S corporations (formerly called small business or Subchapter S corporations) under the New Jersey gross income and corporation business taxes to make that treatment conform to federal tax treatment. The bill will result in an undetermined but significant loss of corporation business tax revenues, and an increase in gross income tax revenues which will offset a portion of the corporation business tax loss.

S corporations are small business corporations with no more than 35 shareholders and one class of stock; shareholders must be individuals, estates or certain trusts, and may not be nonresident aliens. Under federal law, such corporations are not subject to the corporate tax except in certain circumstances; instead, the pro rata share of income is passed through to the individual shareholders who are taxed as individuals. Under current State law, S corporation status is not recognized; such corporations are taxed as ordinary corporations and distributions to shareholders are taxed as dividends.

This bill conforms New Jersey law as closely as possible to federal law in this area: S corporations are exempted from the corporation business tax except in certain circumstances, and shareholders are taxed under the gross income tax on their pro rata share of the corporation's income.

Adopts certain federal income tax treatment of subchapter S corporations under the corporation business tax, and of their shareholders under the gross income tax.

[FIRST REPRINT]

ASSEMBLY, No. 1015

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1992

By Assemblymen CATANIA and ZECKER

AN ACT to repeal P.L.1966, c.136 (C.54:11A-1 et seq.), P.L.1977, c.4 (C.54:11A-3.1), P.L.1978, c.151 (C.54:11A-3.2 et seq.), section 7 of P.L.1989, c.2 (C.54:11A-6.1) and section 5 of P.L.1975, c.170 (C.54:11A-21).

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

1. The following acts and sections are repealed:

a. P.L.1966, c.136 (C.54:11A-1. et seq.);

b. P.L.1977, c.4 (C.54:11A-3.1);

c. P.L.1978, c.151 (C.54:11A-3.2 et seq.);

d. Section 5 of P.L.1975, c.170 (C.54:11A-21); and

e. Section 7 of P.L.1989, c.2 (C.54:11A-6.1).

2. The repeal of the acts and sections pursuant to subsections a., c. d. e. of section 1 of this act shall not affect the obligation, lien, or duty to pay taxes, interest, or penalties which shall have accrued or may accrue by virtue of any assessment made or which may be made with respect to taxes levied [1][for any taxable year ending on or before December 31, 1992] upon personal property used in business on or before October 1, 1993[1], and all taxes and returns which would have been due and payable under the provisions of those acts and sections on February 15 and September 15, [1][1993] 1994[1], shall be due and payable on those dates as if the acts and sections were in effect. This act shall not affect any proceedings for the enforcement of any provision of the repealed acts or sections, nor shall this act affect the legal authority to assess and collect the taxes which may be, or may have been due and payable under the provisions of those acts or sections, together with interest or penalties which may have, or may accrue thereon.

3. This act shall take effect [1][on December 31, 1992] immediately, and section 1 shall apply to personal property used in business after October 1, 1993[1].

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:
[1] 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

AN ACT to repeal P.L.1966, c.136 (C.54:11A-1 et seq.), P.L.1977, c.4 (C.54:11A-3.1), P.L.1978, c.151 (C.54:11A-3.2 et seq.), section 7 of P.L.1989, c.2 (C.54:11A-6.1) and section 5 of P.L.1975, c.170 (C.54:11A-21).

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

1. The following acts and sections are repealed:

a. P.L.1966, c.136 (C.54:11A-1. et seq.);

b. P.L.1977, c.4 (C.54:11A-3.1);

c. P.L.1978, c.151 (C.54:11A-3.2 et seq.);

d. Section 5 of P.L.1975, c.170 (C.54:11A-21); and

e. Section 7 of P.L.1989, c.2 (C.54:11A-6.1).

2. The repeal of the acts and sections pursuant to subsections a., c. d. e. of section 1 of this act shall not affect the obligation, lien, or duty to pay taxes, interest, or penalties which shall have accrued or may accrue by virtue of any assessment made or which may be made with respect to taxes levied [1][for any taxable year ending on or before December 31, 1992] upon personal property used in business on or before October 1, 1993[1], and all taxes and returns which would have been due and payable under the provisions of those acts and sections on February 15 and September 15, [1][1993] 1994[1], shall be due and payable on those dates as if the acts and sections were in effect. [2][This] Notwithstanding any provisions of section 7 of P.L.1992, c.24 to the contrary, this[2] act shall not affect any proceedings for the enforcement of any provision of the repealed acts or sections [2]or any provisions of section 7 of P.L.1992, c.24 for liability accruing after June 29, 1992[2], nor shall this act affect the legal authority to assess and collect the taxes which may be, or may have been due and payable under the provisions of those acts or sections, together with interest or penalties which may have, or may accrue thereon.

3. This act shall take effect [1][on December 31, 1992] immediately, and section 1 shall apply to personal property used in business after October 1, 1993[1].

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:
[1] JCER committee amendments adopted June 3, 1993.
[2] 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

AN ACT to repeal P.L. 1966, c. 136 (C. 54:11A-1 et seq.), P.L. 1977, c. 4 (C. 54:11A-3.1), P.L. 1978, c. 151 (C. 54:11A-3.2 et seq.), and section 5 of P.L. 1975, c. 170 (C. 54:11A-21).

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

1. The following acts and sections are repealed:

a. P.L. 1966, c. 136 (C. 54:11A-1. et seq.);

b. P.L. 1977, c. 4 (C. 54:11A-3.1);

c. P.L. 1978, c. 151 (C. 54:11A-3.2 et seq.); and

d. Section 5 of P.L. 1975, c. 170 (C. 54:11A-21).

2. The repeal of the acts and sections pursuant to subsections a., c. and d. of section 1 of this act shall not affect the obligation, lien, or duty to pay taxes, interest, or penalties which shall have accrued or may accrue by virtue of any assessment made or which may be made with respect to taxes levied for any taxable year ending on or before December 31, 1986, and all taxes and returns which would have been due and payable under the provisions of those acts and sections on February 15 and September 15, 1987, shall be due and payable on those dates as if the acts and sections were in effect. This act shall not affect any proceedings for the enforcement of any provision of the repealed acts or sections, nor shall this act affect the legal authority to assess and collect the taxes which may be, or may have been due and payable under the provisions of those acts or sections, together with interest or penalties which may have, or may accrue thereon.

3. This act shall take effect on December 31, 1986.

STATEMENT

The purpose of this bill is to repeal the "Business Personal Property Tax Act."

This bill provides that payments which would have been due in 1987 on the basis of business property owned on October 1, 1986 shall be due and payable on the appropriate dates in 1987. After the 1987 payments are made, a firm's liability for business personal property taxes will cease.

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

AN ACT to repeal P.L.1966, c.136 (C.54:11A-1 et seq.), P.L.1977, c.4 (C.54:11A-3.1), P.L.1978, c.151 (C.54:11A-3.2 et seq.), [1]section 7 of P.L.1989, c.2 (C.54:11A-6.1)[1] and section 5 of P.L.1975, c.170 (C.54:11A-21).

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

1. The following acts and sections are repealed:

a. P.L.1966, c.136 (C.54:11A-1. et seq.);

b. P.L.1977, c.4 (C.54:11A-3.1);

c. P.L.1978, c.151 (C.54:11A-3.2 et seq.); [1][and][1]

d. Section 5 of P.L.1975, c.170 (C.54:11A-21)[1][.]; and

e. Section 7 of P.L.1989, c.2 (C.54:11A-6.1).[1]

2. The repeal of the acts and sections pursuant to subsections a., c. [1][and],[1] d. [1]and e.[1] of section 1 of this act shall not affect the obligation, lien, or duty to pay taxes, interest, or penalties which shall have accrued or may accrue by virtue of any assessment made or which may be made with respect to taxes levied [1][for any taxable year ending on or before December 31, 1986] upon personal property used in business on or before October 1, 1993[1], and all taxes and returns which would have been due and payable under the provisions of those acts and sections on February 15 and September 15, [1][1987] 1994[1], shall be due and payable on those dates as if the acts and sections were in effect. [1][This] Notwithstanding any provisions of section 7 of P.L.1992, c.24 to the contrary, this[1] act shall not affect any proceedings for the enforcement of any provision of the repealed acts or sections [1]or any provisions of section 7 of P.L.1992, c.24 for liability accruing after June 29, 1992[1], nor shall this act affect the legal authority to assess and collect the taxes which may be, or may have been due and payable under the provisions of those acts or sections, together with interest or penalties which may have, or may accrue thereon.

3. This act shall take effect [1][on December 31, 1986] immediately, and section 1 shall apply to personal property used in business after October 1, 1993[1].

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:
[1] JCER committee amendments adopted June 10, 1993.

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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 coporate 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.

ROBERT HEALEY: 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. Jekyl 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 acquitions. 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.

CHARLES M. COSTENBADER, ESQ.: 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.

DONALD M. SCARRY, 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 revivified 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. SCARRY: A technical question?

ASSEMBLYWOMAN WRIGHT: Since we have an expert here talking about the unemployment rate, can you--

DR. SCARRY: I'm looking for him. (laughter)

ASSEMBLYMAN 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. SCARRY: 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.

JOSEPH KAYE: 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.

PHILIP TUMMINIA: 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 penalites 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. MARTIN DAVIDOFF: 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.

MICHAEL C. LEFANTO, CPA: Oh, there are plenty of us who didn't go to Puerto Rico.

SENATOR SINAGRA: Gentlemen?

KENNETH THOMPSON, CPA: 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?

LEE LaPOINT: 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.

WAYNE SLAPPY: 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, kneeding 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

Testimony before the

Joint Legislative Committee on Economic Recovery

Donald M. Scarry, Ph.D.
New Jersey Economics

June 2, 1993

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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.[1]

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

[1] ***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 it's 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 revivified 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 midsized 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.

E. MARTIN DAVIDOFF

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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.

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

1943 1993

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.

156 West State Street • Trenton, New Jersey 08608 • 609-989-8777 • Fax 609-393-0781

The Guardian of Small Business for Fifty Years

Legislative Viewpoint

NEW JERSEY STATE LEAGUE OF MUNICIPALITIES
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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,

Bill

William G. Dressel, Jr.
Assistant Executive Director

WGD:jg

MEMORANDUM

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