

PUBLIC HEARING

BEFORE

ASSEMBLY COMMITTEE ON TAXATION
SUBCOMMITTEE ON BUSINESS TAX STRUCTURE

HELD:

SEPTEMBER 12, 1979
ASSEMBLY CHAMBER
STATE HOUSE
TRENTON, NEW JERSEY

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APPENDIX

Material submitted by Mr. Laurence Reich

- - Exhibit A	1a
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- - Exhibit C	43a

Mr. Robert Woodford's speech before
70th Annual Conference, National Tax Association
November 8, 1977

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A S S E M B L Y M A N M I C H A E L J. M A T T H E W S.

Good afternoon ladies and gentlemen. This is the third of a series of public hearings being conducted by the Subcommittee on Business Tax Structure, and when we are finished here today we will conduct a round table discussion next week with individuals from State agencies and the private sector who have been involved in these hearings, to go over the testimony we have gathered. Our first witness is Mr. Reich.

L A U R E N C E R E I C H.

Gentlemen. My name is Laurence Reich. I am an attorney-at-law of the State of New Jersey and a member of the law firm of Carpenter, Bennett & Morrissey, 744 Broad Street, Newark, New Jersey. I appear on behalf of the Taxation Section of the New Jersey State Bar Association. As the Chairman of its Ad Hoc Committee on the Joint Tax Policy Committee, I submitted to the Joint Tax Policy Committee of the Legislature the Report of our Committee setting forth recommendations and comments with respect to proposed changes in and a review of existing tax laws of the State of New Jersey. This Report, issued August 30, 1978, has been reproduced and submitted to the Committee and should be deemed a part of my remarks.

The views of the Taxation Section of the New Jersey State Bar Association may be summarized as follows:

First, with respect to the Gross Income Tax Act. Prior to enactment of the Gross Income Tax Act, the Taxation Section had taken the position that any individual income tax legislation be of a "piggy-back type," that is, one based on the Federal income tax system, to eliminate the expense to the State of the collection of the tax and the auditing of returns. The Taxation Section has refrained from recommending substantive amendments to the Gross Income Tax Act as enacted. However, we have proposed two technical amendments bills. One of these bills which is exhibit A to our Report, has received the approval of the Division of Taxation. I refer to our Report for the details of that proposed bill. In addition, we have prepared for submission to the Legislature a second bill (exhibit B to our Report) which would modify the Act further. This bill (which has not received the support of the Division of Taxation) includes a number of transitional rules which would, among other things, exempt gains recognized currently for Federal income tax purposes under the installment sale method of reporting, which were realized from dispositions of property prior to 1975, and would also exempt the portion of dividends from certain regulated investment companies attributable to interest which is exempt from tax under the Act.

We urge the consideration of the objectives and provisions of both of these proposed bills by the Legislature.

In addition, we recommend a study of the taxation of income of trusts and estates under the Act in a number of respects which are detailed in our Report. In general, it is our recommendation that the taxation of income of estates and trusts under the Gross Income Tax Act parallel the treatment thereof under Federal law to the end of minimizing the burden of compliance on fiduciaries and

promoting greater tax simplification.

Second, with respect to Business Taxes.

MATTHEWS. Could we stop there for a minute before you go on to that? Did you, in the first part of your statement, say that one of the bills had received approval of the Division of Taxation? What were you referring to?

REICH. Well, it is rather detailed. If you look at Exhibit A you will see the amendments that we have. For example, on page 2 of Exhibit A we have recommended a change in the wording of the "medical expenses" deduction provision to make it uniform with the comparable provision in the Internal Revenue Code, and we have recommended some technical wording to correct what we feel are inadvertent errors in connection with the resident credit for tax of another state. We have amended the definition of qualified residential tenant in several technical respects.

MATTHEWS. That's all right. We'll go over the exhibits.

REICH. These are essentially all amendments which would enable the Act to achieve what we and the Division agreed was the intent of the Legislature, but because of some inadvertence of wording the Act failed to achieve its apparent intended purpose. They are purely technical amendments, will not change any substance, and presumably, would therefore have no adverse impact upon the revenues.

To continue. Secondly with respect to Business Taxes. Bills to achieve several of the recommendations made in our Report are presently before the Legislature. I refer to Assembly Bill No. 1916 and Senate Bills Nos. 378 and 379, which would provide for carryovers of capital losses and net operating losses under the Corporation Business Tax Act and the Corporation Income Tax Act. The New Jersey State Bar Association generally supports these bills, particularly Assembly Bill No. 1916, which parallels the treatment of capital losses and net operating losses under Federal law whereas Senate Bill Nos. 378 and 379 do not directly parallel Federal law. We urge that any bill adopted by the Legislature parallel the treatment of such losses under Federal law in the interest of consistency and simplification. Adoption of such provisions would assist New Jersey in keeping and attracting corporations.

We recommend that Subchapter S corporations (corporations which have elected under Federal law to be taxed in a manner similar to partnerships) be relieved of their present taxable status under the Corporation Business Tax Act and, instead, have their income and losses taken into account directly by their individual shareholders under the Gross Income Tax Act. This would also promote simplification and uniformity between Federal and State law.

For the same reason of tax uniformity and simplification, we recommend that consideration be given to permitting affiliated corporations which file consolidated income tax returns for Federal income tax purposes to do so under the Corporation Business Tax Act.

We recommend that the Corporation Income Tax Act be repealed. This statute imposes a so-called "second-tier" tax upon corporations not subject to taxation under the Corporation Business

Tax Act. In view of the broad jurisdictional base of the Corporation Business Tax Act, it is questionable whether corporations not subject to that tax may be reached constitutionally by the Corporation Income Tax Act. Its continued presence thus serves no useful purpose.

We recommend further that the related Corporation Business Activities Reporting Act, N.J.S.A. 14A:13-14 et seq., be repealed with the Corporation Income Tax Act.

Our Report contains a number of technical recommendations with respect to the taxation of real estate investment trusts and financial institutions, and we urge consideration of these amendments upon this Committee.

Third, with respect to the Sales Tax Act. We have not directed our attention to specific changes in the Sales Tax Act. However, we recommend that sales between related taxpayers, for example, a parent and its subsidiaries -- or two subsidiaries of the same parent corporation -- should be exempt from tax, and that the exemption for sales to out-of-state purchasers should be clearly defined by statute in order to promote better understanding by taxpayers and more effective collection of tax by seller.

Fourth, with respect to the New Jersey Transfer Inheritance Tax. Paragraph 1 of the recommendations made in our Report has already become law. I refer to the recommendation relating to the exemption of life insurance proceeds payable to a testamentary trust, which has been adopted in Chapter 137 of the Laws of 1979.

Because of the present high rate of the New Jersey Transfer Inheritance Tax, many elderly residents of New Jersey have established their residences in states which have either a very low inheritance or estate tax or no such tax at all -- notably the State of Florida. In such cases, New Jersey receives no inheritance taxes from the estates of those persons. We recommend that a study be undertaken to review this entire problem to determine the effect of present rates on total revenues from the New Jersey transfer inheritance tax.

We also urge upon the Committee the further specific recommendations concerning the transfer inheritance tax set forth in our Report.

Fifth, with respect to Tax Practice and Procedure. Two of the recommendations in our Report are the subject of bills presently pending before the Legislature. I refer to Senate Bill No. 30 and Assembly Bill No. 1730, which provide for the payment of interest on overpayment of taxes. Also Assembly Bill No. 1914, which would permit prepayment of estimated corporation business tax as an alternative to the present requirement of a prepayment based solely upon the prior year's tax. The New Jersey State Bar Association supports Assembly Bill No. 1914 as a necessary and useful measure.

With respect to subject of interest on overpayments, the Taxation Section has proposed a bill which is appended to our Report. The Taxation Section has been engaged in discussions with the Division of Taxation and it is anticipated that a bill on the subject, satisfactory to both the Taxation Section and the Division of Taxation, will be implemented as a result. We urge the support

of the Legislature for such a bill.

In the section of our Report dealing with tax practice and procedure, we have made a number of recommendations which we believe are important in the interest of fairness, simplification, and administrative effectiveness of the taxing system of New Jersey. In addition to these specific items, we believe most strongly, that a general study of tax procedural statutes is necessary in the interest of uniformity of administration of, and procedure under, the various taxing statutes of the State.

Sixth, with respect to Real Property Tax Procedure. As indicated in our Report, we do not recommend at this time any broad changes in assessment procedures until there has been an opportunity to analyze the results of the first few years of the operation of the Tax Court. However, we commend to this Committee, consideration of the specific areas discussed in the section of our Report dealing with real property tax procedure.

By way of Conclusion. We have not undertaken, either in our Report or in these remarks, to recommend any truly substantive changes in the taxing structure of the State. Our sole purpose and intent is to recommend technical changes in both the substantive and procedural provisions of existing law which we believe will operate to carry out the intention of the Legislature to raise revenues in a manner which is both fair and equitable to all classes of taxpayers. Some of the changes we have recommended and some of the areas we have suggested for study involve, as in the case of procedural matters, all taxpayers or large classes of taxpayers; other changes may affect only small groups of taxpayers situated in a particular industry or position. Both classes of changes, we respectfully submit, are equally important to the taxpayers involved and, we submit, to this Committee, whose goal of improving the tax structure of our State we share.

I thank you for this opportunity to present these remarks and would be happy to answer any questions the Committee may have.

STOCKMAN. Do you see any areas in the tax law of New Jersey that justifiably should be treated differently than the Federal tax law? In other words, in some of your earlier comments I gathered perhaps the Bar Association's early attitude towards what form the Income Tax in New Jersey should take was one as simple as possible so that we don't have a multiplicity of returns, I guess, to prepare, and tricky tax questions that taxpayers get bogged down in, and so on. Are there any areas, in a general sense, where you would be persuaded to probably agree the State tax law -- the tax structure -- has to part company from the Federal tax law?

REICH. Yes, of course. For example, in the area of the Corporation Business Tax, we urge some significant degree of similarity to the Federal system because of simplification and uniformity. It is easy and less expensive to Corporations, I might add, to have a return which must be prepared -- the Federal government largely dictates the form of the return for the State -- and as a practical matter in many respects, the Division of Taxation has attempted to do this. We recognize there are areas which must be different from the Federal system. But with respect to the

Gross Income Tax -- and the fact that it is a gross income tax -- means that there must be very significant differences between the Federal and the State. There is no reason, for example, to have in the Act, as the Act does provide a definition of income -- of gross income -- which is totally at variance with the Federal definition which has been followed almost entirely, and this is one provision which has hardly been amended at all.

Since 1913 everyone knows what gross income is and yet in New Jersey gross income is something different. There is no reason for that difference. That's just one example. Of course there must be differences because it is a Gross Income Tax Act and not a Net Income Tax Act as the Federal Internal Revenue Code is.

Given those necessary differences we still feel there should be as much harmony as possible with the Internal Revenue Code because that's the one we have to live with bar none, and there's no reason to have two totally different sets of determinations as to what is income.

STOCKMAN. I am a member of the State Bar Association and it is an organization which I view as one that has a public interest perspective, that is, not pro-business and not pro-anyone else. In these recommendations and discussions, have you taken into consideration the question of the tax loss that may ensue if we were to follow the recommendations and advice that you're giving to us in these areas? In some instances I'm sure that's kind of tough to do, but has that been part of the formula of your consideration as to recommendations?

REICH. Yes, from the standpoint that our recommendations are of the type that we believe will not result in any significant tax loss. They are really technical amendments in the interest of making things equitable. It is impossible for us to quantify some of these things. Certainly we don't have adequate staff and I don't know if the Division of Taxation has the staff to quantify these. For example, the ones that the Division has agreed with in the technical amendments bill, I'm sure they feel that on the whole they would have no adverse impact on the revenues. We don't believe any of ours would have a significant impact. Obviously to the extent that, for example, the one recommendation we've made in our second technical amendments bill with respect to exempting from tax, income received from regulated investment companies where the income itself emanates from exempt sources. As you know there are some Mutual Funds which invest solely in state and municipal obligations. In New York, for example, they have some of these Mutual Funds which invest solely in New York State obligations and under New York law any dividends paid by such a Mutual Fund, whether it be an open-end fund or a closed-end fund, is, as I understand it, exempt from New York State tax in addition to being exempt from Federal income tax.

In New Jersey where there is a Homestead Investment Fund, the dividends from such a fund would not be exempt from New Jersey tax even though 100 percent of the income received by the fund was from New Jersey securities. Obviously, to the extent that that income is now taxable, if it is rendered non-taxable there is some revenue loss but how much, we don't know. This is only one example, and I question whether this type of revenue loss is one which really should be disparaged

because it might stimulate, on the other hand, investment in New Jersey bonds which is, after all, the object of the general exemption of New Jersey Bond Interest from New Jersey's Gross Income Tax. This is one example. There may be others of revenue loss. We don't think the revenue loss is substantial and we think that the advantages of equity, uniformity and simplification far outweigh any detrimental impact.

STOCKMAN. Thank you, Mr. Reich.

MATTHEWS. Just a follow-up on that. This "second-tier" tax. Are you talking about the Net Worth tax?

REICH. No, not the Net Worth. There's a separate tax that was added. I think it was an outgrowth of the Cahill administration Tax Policy Committee report. It purports to tax corporations who are not taxed by the Corporation Business Tax Act. Now, the Corporation Business Tax Act on the other hand, purports to tax virtually every corporation that has any tangential relation to New Jersey, and purports to use the optimum constitutional reach of the State of New Jersey over corporations. That being the case, we really have serious questions and I think the question that we have is generally shared by people in the Division of Taxation. We question that this statute has any reach that the Corporation Business Tax Act lacks. However, it sits there as some kind of a threat and possibly a threat to impose a tax which is unconstitutional but will only be declared so after long litigation in the courts. We feel that this is not the type of statute which serves any function. I really don't think it produces any present revenues, by the way, and certainly it should not be there with its in terrorem affect. With that there's very significant hardships posed by the companion Business Activities Reporting Act which is not strictly a taxing act, but is there only to collect information for the Division to attempt to impose tax upon corporations subject to the "second-tier" tax. That's why both those acts should go. The Reporting Act goes beyond the long-standing provisions relating to qualifications to do business in New Jersey in the Business Corporation Act (Title 14A) and is quite consistent with that. We think they both should go, they serve no useful purpose.

MATTHEWS. Thank you very much. Our next witness is Mr. Henry Rowan.

H E N R Y M. R O W A N.

Good afternoon. My name is Henry M. Rowan. I am President of Inductotherm Industries and I'm here by invitation as an individual running a business in New Jersey and, therefore, affected by the tax structure of New Jersey.

There are a number of issues that come to mind in our company's operation which may be of use to the Committee and I'd like to cover some of these as I go along.

Inductotherm Industries has a number of affiliates, and in the State of New Jersey we have generated about \$114 million worth of gross revenue which comes to New Jersey and is paid out in wages. It's interesting to note that we have some 1,350 workers in New Jersey who receive wages for their work, and the total tax picture including the withholding taxes on their wages -- including

our franchise and corporate income taxes -- amounts to about \$1,360 per employee. It is interesting to recognize some of the concerns. A state seems to sense that each source of tax revenue is independent and can be applied independently, whereas when a tax on industry is applied it ends up as an increase in the cost of doing business in New Jersey and, therefore, shows up as an increase in the cost of products.

I'd like to use the example that's been bandied around, where corporations don't really pay taxes they only collect taxes, and that people pay taxes. You have all heard this in one form or another. That is demonstrated by a Utility. Public Service of New Jersey pays income taxes and property taxes and one could make a case out of the huge contribution they make to the income of New Jersey through their taxation. On the other hand the Federal government guarantees the Utility a return on investment so that effectively, they only add whatever tax the Federal government and the State of New Jersey assesses them to their individual bills and the consumers, then, pay the tax for the Utility.

The same is true on the products, for example, that are manufactured by Inductotherm. If we pay franchise taxes for the privilege of doing business in New Jersey; if we pay income taxes; if we pay sales taxes and other taxes, we add these to the price of our products, sell the products throughout the country and throughout the world, and then find ourselves to be less competitive than we would be if we didn't have these extra costs in the form of taxes. So, in other words, I'm not against taxes per se -- and I recognize the problem that New Jersey has in collecting taxes and providing income to run the State -- but I'm really against those taxes that tend to thwart business in New Jersey, make New Jersey's industries less competitive with industries in other states and other countries thereby resulting in less sales by companies in New Jersey throughout the country and the world, and therefore, less jobs. So we come back to the \$1,360 taxes per employee. The income that New Jersey gains by putting one more man to work may be far greater than the income that can be derived by taxing an industry to where it is discouraged from doing business, or find that it cannot do business because its prices become less competitive.

There are a few specific taxes that are rendered that seem to me to be extremely counter-productive, on which I would like to comment for the benefit of the Committee. For example, I found many of our legislators don't know that there's a double taxation on an attempt to cause a New Jersey subsidiary to grow. By that I mean if Inductotherm, as a company, has a subsidiary which manufactures, let's say, vacuum induction furnaces, and if that subsidiary needs funds with which to expand, Inductotherm might consider loaning it funds with which to expand. It would be a proper business arrangement if the subsidiary paid interest on that loan. So let's assume -- for purposes of illustration -- that a subsidiary in New Jersey wants to hire more people, build more buildings, spend money and generally increase its activity. And let's assume Inductotherm Industries loans this subsidiary \$1 million in New Jersey -- and let's assume the subsidiary pays 10 percent interest, and therefore \$100,000 on that loan -- Inductotherm Industries then pays a tax on that \$100,000

interest, of approximately 7-1/2 percent, or \$7,500. The subsidiary, on the other hand, has had the expense but New Jersey law says no, the subsidiary cannot take a deduction for that expense. And if it is profitable it also pays a tax on that same interest, roughly the same \$7,500 on the same income if you will, and therefore, now \$15,000 tax has been paid on that loan. In addition to that, there is a franchise tax on the loan, because it is a loan even though it's an interest-bearing note, and so another \$2,000 franchise tax is paid on it. So in total New Jersey taxes the investment in New Jersey to provide jobs and equity, a better than double taxation on attempt towards industrial growth.

MATTHEWS. What do you mean by franchise tax?

ROWAN. The franchise tax being on the original investment. For the purpose of the franchise tax the loan is considered investment, even though it's an interest-bearing loan, and the franchise tax is the 2 mill tax on the investment in a corporation in New Jersey.

MATTHEWS. Then they figure out the net worth that is not deductible.

ROWAN. This is what we're talking about. It is added to the net worth. The million dollar loan is added to the net worth because it is a loan of a parent to a subsidiary. Now the result of that, New Jersey may feel that this brings them revenue but the only alternative a company operating in New Jersey has, in order to cause its subsidiary to grow, is to cause the subsidiary to borrow money elsewhere, perhaps outside the State. So instead of promoting growth within the State and loaning money within the State, and paying taxes, the subsidiary can go to Pennsylvania for example, and borrow the money from a bank and pay the \$100,000 income to a Philadelphia bank, provide jobs in Pennsylvania and New Jersey loses the jobs, it loses the income, it loses the taxation, and the growth may be thwarted because it's harder to accomplish. So, this greater than double taxation on investment in New Jersey by one company to another is destructive to the industrial growth and should be eliminated.

I would like to comment that Senator Yates did introduce a bill, I believe it was S-1158 or some such number, that had as its intent elimination of this double taxation, and it was amended to apply only to banks and financial institutions who might make these loans -- and there's an awful lot of investor companies in the State that would like to cause their affiliated companies to grow, but they aren't banks and they aren't financial institutions and, therefore, the amendment destroyed the value of the bill and thwarted the growth of some of the industries in New Jersey. So that's a bad one and one that should be given very careful consideration and should be amended.

Similarly with the franchise tax, the reason the loan is added back to net worth may make some sense because a company could loan a subsidiary funds on which to grow and avoid investment, and avoid net worth and, therefore, avoid franchise tax. So it is understandable that loans might be added back to net worth for the purpose of franchise tax, provided they are interest-free loans. Perhaps there should be a relationship or ratio between the rate and the amount of the franchise tax, the amount that is considered capital. But an interest-bearing loan with proper (percentage)

rates certainly should not be considered net worth because there is a debt created.

One of the other annoying and destructive taxes in New Jersey is the tax on the DISC concept. As most of you are well aware, the Federal government created the Domestic International Sales Corporation Act in order to encourage the promotion of sales outside the U.S.A. The United States companies are notoriously poor at international business on the whole and they have in the past received very little assistance from the government, whereas we find our competitors overseas get huge subsidies from their government in order to promote overseas sales. We have a subsidiary, for example, in Australia and they are given direct government grants -- I don't say this is a good or bad policy -- but they are given direct government grants for their increase in activity outside of Australia. For example, in promoting sales of their products in the Far East, their grants on say a million or two million dollars worth of sales might be as high as \$50,000 to \$100,000. There has been very little of this, almost none, in the United States. However, the government did come up with a DISC concept whereby half of the profit is essentially deferred for Federal tax purposes.

New Jersey on the other hand, recognized then, that the transfer of manufactured goods from the parent company to the DISC for shipment overseas was in fact the New Jersey transaction and, therefore, should increase the income earned in New Jersey and should be taxed as New Jersey income. The result being that whereas the Federal government is trying to encourage exports and bring real money into the country, New Jersey by their tax policy discourages exports and discourages this real wealth of value coming into the country. So, DISCs should be allowed to exist in New Jersey without taxation and the transfer of goods from one corporation to its Domestic International Sales Corporation should not be considered a New Jersey transaction but should be recognized as a sale outside the country.

Recognize again, that there are two basic kinds of companies -- and all things in between -- in New Jersey. There are those who do business primarily in New Jersey and therefore distribute funds and generate jobs within New Jersey, and the money passes from one company through people in other companies and consequently circulates. The other kinds of business in New Jersey are those who send goods outside the State or outside the United States and bring funds into New Jersey which add to the State's well-being, and this kind of business should certainly be encouraged by the State and not discouraged by the counter-productive effect of taxing DISCs.

I am sure a lot has been said and debated about the personal property tax on the machinery of industry, and while this was eliminated in 1976, I don't understand why New Jersey says that if we have tools with which to produce business and jobs in New Jersey, they should be taxed as business personal property tax. That's certainly counter-productive. What New Jersey is saying is the less tools we give our workers with which to work the less tax we have to pay, or the more tools we give them the more tax we have to pay, and that simply makes New Jersey corporations less competitive than industry outside the State.

Finally, the State might consider incentives on business done outside the State, just

as the Federal government has given tax incentives on business done outside the country, so as to encourage New Jersey corporations to expand their sales efforts outside the State and bring some more real money into the State to provide jobs.

The corporate income tax is higher than in many states. It's added to the price of goods and makes New Jersey goods less competitive in both the national and world markets. A reduction of the corporate income tax wouldn't necessarily represent a reduction in income to New Jersey but might stimulate enough additional business, enough additional jobs at let's say \$1,300 income per job, that the total affect would be increased revenue. Keep in mind that the wages that are paid to New Jersey workers aren't put in the sock or stashed away in the bank but rather, they're spent, and in spending this money there's an additional 5 percent sales tax on most of the items on which workers spend their money. So again, the affect of providing additional jobs in New Jersey with the direct taxes on the income and the taxes on the spending of the money, the taxes on the re-spending of it, result in double, triple and quadruple circulation and, therefore, taxation. To look for a reduction in certain taxes being lost revenue is a misnomer because I do believe that any stimulation of business and industry and jobs results in the only real taxes that can be paid later.

STOCKMAN. Mr. Rowan. I've heard that observation made on occasion in the past and, of course, sounds very logical. It is always difficult to determine where to draw the line with that kind of reasoning, and one thing that's on my mind is the question of the present state of our economy and what are the predictions about the direction in which it is heading over the next six months to a year. Do you think that kind of suggestion is even more appropriate in the situation we find ourselves economically now, or less appropriate? Maybe you could educate me on that.

ROWAN. Let me understand the part of my remarks you're referring to.

STOCKMAN. When you said, for instance, perhaps if we cut corporate income taxes, at first glance it would seem that we would have less revenue to deal with the deep social needs in our State when in fact it may be just the reverse, namely, it would stimulate more activity, more business activity and in turn, more revenue so to speak to meet those social and governmental needs. That's a theory you talked about. What I'm asking you is -- and I gather you subscribe to that theory because you are down here talking to us in that direction -- do you think that the situation, economically, that we find ourselves in now which seems to be one of increasingly difficult times, with increased inflation, increased unemployment, recession or whatever you want to call it, makes that argument stronger, weaker, or doesn't really alter it at all?

ROWAN. I have heard talk of the recession and hard times for many months now -- perhaps a year -- but in our activity I haven't seen any sign of this recession. I agree that certain statistics demonstrate that the unemployment rate is up a quarter of one percent, and perhaps this is significant. While we have some 26 operating subsidiaries in our total group, everyone of them without exception has a record backlog, has a record number of employees, is shipping goods at a

record level and finds that their "hot prospect" list as we call it, or their sales inquiries or outstanding quotes -- however you choose to measure it -- are at record high levels. I'm not talking of the false increases due to inflation and the increase in the value of goods, but I'm talking in actual hardware, if you will. So we haven't seen this recession that people speak of. It's because of this activity that we at the moment don't sense that we're repressed by some of the tax policies of New Jersey. Therefore, as business does slow down -- and it will -- when things are going well we know they're going to slow down, and when they're slow we know they're going to get better. But as things slow down, as we try to maintain our business level and thrust our employment level, we tend to do it with soft pricing. If we are burdened with high figure taxes either on our property, our personal property if you will, on our transactions in New Jersey and to some degree income, then these things must be carried by the price of our goods or we go off business. The higher the price of our goods the less we will sell, and in a depressed market prices do soften and orders are hard to get. Layoffs are common-place and can snowball. So I think I can answer your question by saying we do see inflation, of course, but we don't see the recession. We are concerned that we can remain competitive. We are concerned that we can keep our prices attractive to where we can retain a goodly portion of our industrial activity and, therefore, retain the employment levels that we have and the jobs that we're providing in New Jersey at the present time.

STOCKMAN. Do you think, as a general proposition, that business taxes in the State of New Jersey -- that the State imposes on those doing business -- are out of line in comparison with other states, particularly those around us? Are they in line or what?

ROWAN. Unfortunately you look at the states around you and I think this is an error. We have competitors in Germany, Japan and other countries. We have competitors in Kentucky and Wisconsin and we are not concerned with the states around us as an industry. We don't care what they do in Pennsylvania or New York, or perhaps Wilmington or Maryland. We care what the average is throughout the country. When we see one of our competitors who was taxed heavily in Ohio, and you could compare New Jersey to Ohio, they moved to Kentucky. We moved a Division out of the State not because of taxation but because the total financial picture gave us a more competitive position. So any industry will move its activity to where it can do the most competitive job.

We have a plant in Camden, Magnetic Metals specifically, that makes motor and transformer lamination stampings, and they have a subsidiary in Canada. Now it so happens that the Canadian taxation picture is so attractive that we can make laminations cheaper in Canada than we can in the United States. For example, if we buy machines in Canada we get a two-year write-off, that is we get 50 percent of the cost written off our income each year so we can put a \$200,000 machine in Canada and have \$150,000 write-off each year for two years and, therefore, the cash flow picture is much much better. So, we tend to put industrial growth in Canada and tend, then, to reduce the industrial growth in Camden so we're providing more and more jobs in Canada and less in Camden -- which doesn't do my heart any good because I'm an American and I'd like to see Camden growing but if we

can't compete we can't grow in Camden. Therefore, New Jersey loses the jobs, it loses the revenue, and that's not a healthy situation for New Jersey, or the United States for that matter.

Industry will naturally migrate to where it can be most competitive and if it doesn't, it become uncompetitive and goes out of business. Either way we lose it. New Jersey's job is to not just look at the states around us and say "well, are we at about the same degree of taxation as these others?" This State has to recognize again my cliché that only people pay taxes, and let's make it attractive for people to bring industry and industrial growth into New Jersey. In that way we will provide jobs and income and keep money in circulation, and sales taxes and income for our social programs and running the State.

MATTHEWS. On these incentives outside the State. What kind of incentives are you talking about, especially when you are talking about multi-subsidiaries?

ROWAN. There is some incentive now, of course, in that the income tax is applied to income earned in New Jersey, and income earned in other states where there is a tax, but the income is apportioned. The need of any state -- of any country -- is to generate real earnings by shipping goods outside of the community and into other communities to bring income in because income is going out; we buy our fuel, our cars, our clothes from outside the State, and much of our food, so we have to send goods outside the State to bring money in to buy those things. It would be a novel tax concept for a state, I think, to generate incentives but certainly an encouragement on the apportionment concept should be enlarged on. For example, we can apportion our income. We ship goods to California and we make a profit on those goods and that income is apportioned to California because they charge us a tax on those goods. So there is some of that, but in states where we don't have offices and don't do business, New Jersey is anxious that they collect the entire income tax on the income in states where there is no other tax base. So one way would be to encourage the apportionment concept, to expand it and to instruct the revenue agents that it is to be apportioned and any income earned outside the State by some apportionment formula -- the formula New Jersey has is not a bad one -- but by the apportionment formula they should encourage the apportionment of income outside the State so that we can in theory, then, reduce our prices in states outside of New Jersey and, therefore, make more sales in competition with our competitors outside the State. That would be a type of incentive. I think a direct incentive such as the DISC would be a major revolution in tax theory in the United States, and I'm not sure New Jersey is ready to start that. We have enough problems without starting a whole new trend in taxation. I think expanding the apportionment concept would be a good one and a sound one, and one that would encourage outside sales. Thank you.

MATTHEWS. Thank you, Mr. Rowan. I now call on Mr. Thomas C. Rooney, Jr.

T H O M A S C. R O O N E Y, Jr.

My name is Thomas C. Rooney, Jr. I'm Director of Governmental Affairs for the Chamber of Commerce and Industry of Northern New Jersey. Our Chamber covers roughly the areas of Bergen and Passaic Counties, parts of Essex, Hudson and Morris Counties. We represent well over 1,000 firms of

varying types and sizes.

The reason we're down here today is because one of the committees which we have is a Taxation Committee composed primarily of CPAs and businessmen who spend a great deal of time studying the tax laws New Jersey has, and this committee has come up with a specific series of recommendations for you today. Mr. Harry Immerman who is Chairman of that committee, had intended to be here to give the presentation, however, unfortunately late this morning he told me it was totally impossible for him to be here. So the formal presentation on the bills will be given by his associate, Daniel O'Connell of Coopers & Lybrand who can discuss the technicalities. I am not a CPA. He is far more familiar with that area than I am.

I would like to make a couple of very brief comments before he begins. First, the Chamber would like to compliment this Committee for holding these hearings, for taking the time to even investigate this matter because it is one of the most urgent things that can be done for the State of New Jersey. For the last five years as a Legislative Agent for the Chamber, I have been coming down here. I've spent hundreds of hours up in the balcony in the Assembly and in the Senate; many dozens of hours in committee hearings; I've listened to debates on hundreds of different topics, and one conclusion which I unfortunately am forced to reach is that among the Legislature overall, there does not seem to be this sense of urgency, of necessity, to do something to improve the business climate in the State of New Jersey.

Businessmen complain regularly. Businesses move out regularly. Yet, no changes are made in the causes of those moves. I was wishing when I was listening to Mr. Rowan earlier, that all 120 legislators could be here to hear what he had to say instead of only two, because he spoke the truth. Three items will buttress what he said and the Chamber's position, which I think will be of some great importance to you.

The first is a quote from the bill introduced by United States Senator Harrison Williams in June. The bill would make it extremely difficult for any company to move from one place to another. It would be a highly complex procedure. If you had fifty or more employees in your firm it would become, in effect, almost impossible to move any place else. It provides penalties under certain cases, for a \$10,000 fine and five years in jail for the managers of the corporations. The important sentence is he says "In the last decade plant shutdowns have occurred with alarming frequency and there is no reason to believe this trend will decrease in the near future. An estimated 500 industrial plants in my home State of New Jersey have closed their doors since 1965. Since 1969 New Jersey has lost over 115,000 factory jobs." This from a memo to United States Senators.

Earlier this year there was a study published by Alexander Grant & Co., Certified Public Accountants of Chicago which was prepared for the Conference of State Manufacturers' Associations. This made a comparison of the 48 contiguous states (not Alaska and Hawaii, just those on the mainland) studying the business climate on a number of different factors and it rated them, and of the 48

states, New Jersey came out next to last -- the next to the worst business climate of the 48 states. One of the items that was studied was state and local tax per capita and New Jersey came out 44 out of the 48. The study also went into unemployment compensation, workmen's comp. and the other items that businessmen have been speaking to legislators about year after year after year, and those are the ones we rate among the worst. Yet for some reason the Legislature doesn't move, and one of the things the Chamber is hoping is that some action -- even if it is a little modest -- will come from the hearings that you're holding now. That it will stimulate the Legislature to take some type of action.

There was another study done earlier this year by Touche-Ross & Co. titled "What's Ahead for Business in New Jersey". Two comments they make are extremely important and most appropriate to what you are doing. They listed factors which helped New Jersey business, and factors which hindered New Jersey business. The cost of labor was the highest one hindering New Jersey business, but next to that was Aggregate Business Taxes, and the study states very bluntly that these two drew such strong responses that they were cited as factors which could force a business to relocate out of State. So Senator Williams' bill was introduced because we lost so much industry and one of the causes of that is Aggregate Business Taxes. The last sentence is particularly important for you because it says "Of the most frequently cited negative factors, only 'Aggregate Business Taxes' are deemed to be influenced by state government." So whatever the State government can do to reduce, to simplify, to modify State taxes will automatically improve -- and it's guaranteed, it has to happen -- the business climate of the State of New Jersey. While we agree with Senator Williams on the problem that we have here with the loss of firms to other locations, we disagree on the solution. We do not believe in a punitive approach to in effect punish companies who want to leave. We believe the best way is to change the conditions here that cause companies to want to leave. So, we compliment your Committee on what you're doing and we hope you are successful. We offer our help in any way we can, and at this time I would like to turn the microphone over to Mr. O'Connell who will give you the specifics on the bills that we support.

MATTHEWS. I'd like to have a copy of the Touche-Ross report.

ROONEY. I'll get a copy to you.

STOCKMAN. Mr. Rooney. I'd like to ask you a question. I wish I had with me a document dealing with the subject of whether the climate is all that bad for business in New Jersey; it seems to me I read somewhere where that's a debatable subject, or at least there was a recent study put out with an article that challenged that contention. I take it though that your personal feeling is that the climate is particularly bad in New Jersey for business because of our tax structure.

ROONEY. Yes. That's a major reason.

STOCKMAN. Is that tax structure different; does it differ appreciably from the tax structure in other states surrounding us and beyond? Are we out-of-step with other states and their business tax approach?

ROONEY. Yes, and it has to be logically a reason otherwise companies would not leave here. The law of supply and demand is in effect all the time. We're in competition with all of the other states for attracting industry and if we're not attracting at the same rate that we're losing, then naturally we're in serious trouble. All statistics -- the Department of Labor, the Bureau of Statistics, Senator Williams' statement -- all of these prove conclusively that we have been and continue to lose industry from the State of New Jersey, and as the Touche-Ross study points out, the cost of labor was the highest but the Legislature can't do anything about that. But Aggregate Business Taxes was deemed by these people to be right on the plate of the State Legislature, and you can do something about that.

STOCKMAN. I don't want to get into a debate with you. The Chairman knows I'm a novice on this Committee and on the subject of taxation. I bring very little expertise to it but I hope I bring a little common sense to this discussion. The common sense reply that I would like to make is that I'm inclined to say there could be a lot of other reasons that would explain, understandably, why New Jersey is losing out to some other states, and it strikes me that some of those reasons are reasons which we are able to reach -- and indeed might not want to reach -- in terms of conditions of employment, conditions of security for employees, fringe benefits, etc. that are available in some other states. That's why I'm pressing you a little bit, but I gather you stand by your feeling that those other considerations aren't so important.

ROONEY. No, we would not say that. There are other considerations. For example, environmental protection regulations. These are far more stringent in New Jersey, and perceived by business people to be unnecessarily stringent. Other states have more relaxed, more reasonable standards and this is a major consideration. The cost of energy per million BTU is another consideration. There are a whole list of things -- percentage change in energy cost per million BTUs. There's the viability net worth of the State Unemployment Compensation Trust Fund. The taxes were only one. Union membership -- non agricultural people as a percent of total labor. These are all considerations. New Jersey was hurt badly about a year ago when we got feedback from some of our own committee members at one of our meetings, when we had all of this adverse publicity about New Jersey being cancer alley, being the cancer capital of the United States. One engineer from a major firm went to the meeting out in Houston and when he came back he said "Everybody's talking about this, it's in the paper, it's on television. They're saying you people must be crazy. It gives anybody the impression that anybody who comes there is almost guaranteed to get cancer as the years go by." As you get into further studies of it, and to the specifics, you find out that we're not that bad at all, that there are areas of the country that are worse. This type of adverse publicity does extraordinary damage, but how you cope with that I don't know. A lot of that is the fault of the news media in their over-emphasis of something. You have to control what you have the authority to control and business taxes is one of the things that the Legislature can control. So while a reduction of business taxes is not going to suddenly stop all the exodus of business from

New Jersey (we don't make that claim at all) we're certainly not going to lure many other companies here all of a sudden. You have to make a beginning, even if it's a small beginning, and this is why we recommend these proposals though they're quite modest. I tried to get fiscal notes on them but I was told there were none at this time but the judgment of our accountants and businessmen is that they are a relatively modest package. We feel so strongly about this that even if the State of New Jersey were to lose a modest amount of revenue for a short period of time, it is still essential that these bills be passed. The reason is basically the same as that stated earlier by Mr. Rowan.

So many times last year when I had spoken to legislators about a tax bill, the one thing that they would come back with is how much money the State would lose in revenue as though that was the end of it. That's not the end of it at all. We're asking you to try to persuade them (if you become convinced yourselves) to look at the overall picture, the total picture, that a temporary loss of revenue possibly now, will generate more revenue for the State ultimately because something absolutely has to be done to improve the business climate and the questions business people have about the State of New Jersey. If that is done, in the long run we will all benefit.

MATTHEWS. Thank you Mr. Rooney. Our next speaker is Mr. O'Connell.

DANIEL O'CONNELL.

Good afternoon. My name is Daniel O'Connell. I'm a Certified Public Accountant with Coopers & Lybrand in Newark, New Jersey. I am appearing here today in place of Mr. Harry Immerman who is the Chairman of the Taxation Committee of the Chamber of Commerce and Industry of Northern New Jersey, who is, unfortunately, unable to be present. I do want to relay the specific comments of the Taxation Committee regarding several bills which have been introduced in the Assembly. We believe you should support these bills because they're a step in the right direction to improve the business climate in the State of New Jersey.

The bills I will comment upon are Assembly number 1595, and then eight Assembly bills which are consecutively numbered from 1914 through 1921. I'd like to briefly review each of those bills and state why we think they would be specific improvements.

MATTHEWS. Let me just interrupt you here for a second. If I'm not mistaken the Chamber of Commerce of Morris County gave a similar presentation in Morristown.

O'CONNELL. I think the reason we're commenting on these exact same bills is because we thought today's discussion was limited to those specific bills, but evidently we were misinformed.

MATTHEWS. Fine. Please continue.

O'CONNELL. The first bill we'd like to comment on is Assembly No. 1595. I'm sure you are aware, in the tax reform package enacted in 1976, the Sales and Use Tax Act was amended to exempt the sale or use of machinery and equipment used directly and primarily in manufacturing and production. This amendment re-instated a provision that had been in effect previously and it was designed to encourage business activity in New Jersey. It's been a good step forward, however, I

can tell you from just my own personal experience, that certain aspects of this have made it difficult for some taxpayers. Although the production equipment itself is exempt from the Sales and Use Tax, the installation charges are not and this surprises and confuses many taxpayers. We think that imposing the charge on the installation service is contrary to the spirit of the legislation and adds an unnecessary degree of complexity. We urge you to support Assembly Bill number 1595 which would remove this impediment to the purpose that the Sales Tax was amended in 1976.

The next bill we'd like to comment on is Assembly No. 1914. Under the Corporation Business Tax Act a corporation is required to make a 60 percent prepayment of the succeeding year's tax with its payment for the prior year. This provision often creates a difficult situation for many taxpayers, especially those who have a very good year and then anticipate a poor year -- or a loss year -- it requires a tax payment at the beginning of the year even though the corporation may wind up in a loss position.

We think that this bill is a step in the right direction, however, we would recommend that perhaps it should be modified and conform to Federal law. For Federal tax purposes corporations make estimated payments in four installments, in the fourth, sixth, ninth and twelfth months. If New Jersey went to a similar system its cash flow would be improved as of the third installment payment because then 75 percent of the tax would be paid in say on September 15th, whereas now the State only has 60 percent of the tax for the entire year.

MATTHEWS. That's why I said if you like these bills you'd love A-1842.

O'CONNELL. Additionally, we think there's a minor flaw because A-1914 doesn't define "estimated tax." Federal law has provisions which impose penalties for improper estimates and we think that should be added on to Assembly Bill 1914. We support the concept of A-1914 with some modifications.

The next bill we'd like to discuss is Assembly No. 1915. At present the State imposes interest on deficiencies at 9 percent. We believe that it would be more sensible to have a system similar to that of the Federal government where the interest rates fluctuate with the money markets. For example, the Federal rates will change on February 1st, 1980 and I think given the current money markets you can be pretty certain that the Federal rate will substantially exceed 9 percent. I think that this also would help to simplify the tax structure and eliminate confusion to taxpayers. So, we urge your support of Assembly Bill 1915.

I'd like to proceed now to discuss Assembly Bills 1916 and 1919 which allow carryovers of net operating losses and capital losses. The periods would be a three year carryback and a five year carryforward for capital losses, and three years back and seven years forward for net operating losses -- exactly the same as Federal. I'd just point out that only five states and the District of Columbia don't have some provision which allows for carryover of net operating losses. Again for the kind of business which is having some rough periods with income in one year and loss in the other, this would be a real help to them. It is very difficult to finally start getting in a profit-

able position and then to have to make a substantial tax payment, even though you could conceivably still have a deficit in net worth.

The next bill that I'd like to discuss is Assembly No. 1917. A problem which creates a great deal of, I think, bad feelings towards the Division of Taxation is the fact that interest is not paid on overpayments to corporate taxpayers. Assembly Bill 1917 would correct that situation and provide for interest at the rate of 6 percent. We believe that this is a step in the right direction, however, we think that the interest rate should follow the same concept as in Federal law, namely, that you should have a fluctuating interest rate to reflect the current market conditions in the economy and, again, the State should use the same rate as the Internal Revenue Service.

The next bill I'd like to discuss briefly is Assembly No. 1918. Under the Corporation Business Tax Act, the tax is broken into two pieces. The tax on net income and the tax on net worth. The net worth tax is often a very complex tax with many adjustments, as Mr. Rowan alluded to before. As an alternative, the current law provides a short-form method which sets a specific amount of tax for corporations with assets of \$150,000 or less. That provision was put in the Corporation Business Tax Act roughly twenty years ago and we think that the inflation that's occurred since then justifies an increase to \$500,000. As I said the net worth tax often is very complex with some very difficult adjustments when you have loans from parents, deductions for subsidiaries and so this short-form method is a real aid in preparing and reviewing returns, both for taxpayers and their accountants and lawyers, and the Division of Taxation.

This is the only bill on which we're able to make any estimate on the revenue impact -- we don't think it would have much impact at all. We urge you to support Assembly Bill number 1918.

MATTHEWS. May I ask you a question on that?

O'CONNELL. Sure.

MATTHEWS. I'm not familiar with the bill but I understand you to say that the current level of assets for using short-form is \$150,000 and that the level is simply raised to \$500,000.

O'CONNELL. Yes.

MATTHEWS. Now, wouldn't you as a corporation accountant have to figure it out both ways anyhow to find out which method gives the best advantage to the taxpayer?

O'CONNELL. That's true. I occasionally run into that situation. Interestingly enough some of the computer programs that the Services have don't do that, they don't compare the two.

MATTHEWS. I was curious. You thought we were only going to discuss these bills, but I'd be interested in phasing out the net worth tax. We are trying to get an estimate of the revenue loss involved. As Mr. Rowan brought out earlier, there are also a lot of other problems such as that concerning the recognition of loans as part of net worth, depending on the situation.

O'CONNELL. I think it has a great degree of complexity. There's a whole series of adjustments; debt from shareholders; taxpayers that use LIFO; taxpayers that have old assets. One of the adjustments penalizes many of our businesses in New Jersey which have been in existence for a long time because there's an adjustment to net worth for 25 percent of the cost of fully depreciated assets. So if you are using old equipment that net worth tax penalizes you. Just from my own personal viewpoint, it adds an unnecessary degree of complexity and many states do without it. States in this area tend to have some version or alternative net worth tax, but when you get away from the northeast they don't have that, they merely have a minimum tax of \$50, \$100 or \$250.

The next bill which I'd like to comment on is Assembly No. 1920. Again, this is just simply a bill which conforms the New Jersey treatment to Federal treatment regarding the statute of limitations, reducing the statute from five years to three years. Right now we have a very, I think, unfair statute of limitations because the taxpayer can only go back two years whereas the Division of Taxation can go back five years. That just violates, to me, basic concepts of fairness whereas under the Federal law either the taxpayer or the IRS can go back three years.

As mentioned in our comments, perhaps this could be improved to have a provision similar to Federal law where there is a six year statute for significant omissions of gross income. If you omit 25 percent of your income from your personal tax return the statute becomes six years rather than three for Federal purposes. Again though, in general, we just support a conforming State law to Federal law and eliminating the unfairness of the statute of limitations.

The last bill that I would like to comment on is Assembly No. 1921. This is a companion to A-1920 and gives the taxpayer a three year statute. Again, it conforms New Jersey to Federal law. There are some slight technical problems with this, especially as to how the law is phrased regarding payments. For Federal purposes a payment is considered to be made on the last day on which that payment could be made. If you don't make that correction it's conceivable that you would still only have a two year statute, for example, on the 60 percent prepayment made at the beginning of the tax year. But in general we support A-1920 and A-1921 just to provide an equitable situation for the taxpayer and the Division of Taxation.

We would be happy to discuss these comments now or at any time in the future when you request us.

STOCKMAN. I think there is a lot of sympathy with the intent of these bills and that's why we've talked about them before. I think your comments are well made.

MATTHEWS. As we have said before, the problem we're faced with is how we trade-off the cost. In other words, the question is an "unknown." The Governor agrees that there will be an increase in business but nobody can come up with a forecast -- they can only tell you how much they're going to lose, not how much they're going to gain. That is the hurdle we have to overcome. If taxes were the number one issue governing whether businesses stay in New Jersey or leave, I'm sure we would get positive action in a hurry but from what I understand, the question of taxes is

maybe about seventh on a corporation's list of factors governing their decision about locating in New Jersey. That is why I am interested in the Touche-Ross Report because they talk about such things as the Department of Environmental Protection and their restrictions. I know if North Jersey had the restrictions that we have in South Jersey you'd see some action taken. What's hurting us in South Jersey right now are things like CAFRA, the Pinelands, the Wetlands, all of which we have in abundance in New Jersey and it makes it very difficult for us to get corporations to come in and settle there.

The purpose of this Subcommittee on Business Tax Structure is to make the Assembly and the Legislature as a whole more aware, as best we can, of the problem of taxes. That is why I appreciate your coming, and the others here who have taken time out of their busy schedules to testify. I know it is frustrating to go to committee meetings and see a lot of your energy going to waste. This is very discouraging to a lot of people. I talked to a CPA group down in South Jersey and when I asked why they didn't come to the hearing in Atlantic City their reply was they have become so frustrated by the lack of results that they have lost interest. I think these hearings are a step in the right direction as we are looking at the problem of business taxes. Thank you very much.

O'CONNELL. Thank you.

MATTHEWS. Our next speaker is Mr. Robert Woodford.

R O B E R T W O O D F O R D.

Assemblyman Matthews, Assemblyman Stockman. I'd like to add my thanks to the Committee for involving itself in the question of business taxation. I am Bob Woodford, Vice President of New Jersey Business and Industry Association. My appearance here today follows a meeting of our Taxation Committee which represents 13,000 business members of our association in matters of taxation. We have been involved for a long time in the question of business tax and the need for incentives in New Jersey, and most of what I have to say -- although I agree with many of the recommendations that have just been made to you on specific bills -- will deal specifically with the question of incentives. Are there tax incentives that New Jersey should be considering, and if so, which, and on what kind of a schedule.

We are faced, I believe, with the prospect of a downturn, no-one can predict how severe but we've been through two in the last decade that have been quite severe which have affected investment in New Jersey and have greatly affected employment in New Jersey.

It's been clear that New Jersey, like so many of the northeastern states, has not been reinvesting. Compared with its value added manufacturing it has not been reinvesting at the kind of rate that has been extant in the nation, which tells us that we're in further difficulty in years to come unless there is a reversal of that trend, unless we can attract investment in those industries that can be migratory.

There is also the negative impression that was mentioned in the Alexander Grant & Co.

Study as just one indication of many throughout the country that view New Jersey as an unattractive place to invest. There is a need for New Jersey to do something to act for both its short-term and long-term economic strength, and to act now.

In the selection of tax incentives, sound criteria for that selection, which we believe must be made now as part of an overall economic development program, should identify those incentives which would have a maximum impact on investment decisions and which can be carefully timed to reduce any initial revenue loss. Ultimately investment incentives must pay for themselves by increasing economic activity which generates additional State and local tax revenue. A successful program can generate economic activity which expands tax bases. For example, it was estimated that in 1978 the attraction of new investments sufficient to provide one additional job in manufacturing -- which at that point would be about \$40,000 in investment -- would have resulted in an annual revenue gain of \$1,900 in New Jersey for the State and \$2,400 for local governments on an annualized basis, and add an additional revenue yield in the initial year of investment. That is in the appendix. It happened to be something that I worked up together with several economists cooperating with me for a speech back in 1977 before the National Tax Association and I think you will find it useful if you take a look at it to see how that \$40,000 investment breaks down into economic activity which generates taxes. By carefully selecting incentives and their timing it's possible to keep the initial revenue loss, if there is such, to a minimum and to avoid the necessity of increasing tax rates to counter-balance your incentive program. Specifically we view the suggestion that an incentive program be funded by means of an increased corporation tax as a self-defeating combination which ignores the revenue producing potential of the successful tax incentive program, and tends to generate a negative effect which then will work against our development.

New Jersey's corporation tax is now, if you include both its net worth and net income portions, one of the higher corporate taxes in the country. So we would like to see an avoidance of an increase in that tax and it can be avoided, in our opinion, by the careful selection of incentive programs and by the careful timing of those programs.

Initial incentives we would propose that we think are affordable, and which should be given fairly prompt consideration, include three particular incentives and possibly a fourth which we believe would improve the State's revenue picture in years to come. These incentives would be designed primarily to assist in the construction or rehabilitation of manufacturing facilities and facilities for research and development which are mobile, can be moved to many locations in the country, can be located almost anywhere in the world, and which themselves tend to generate economic activity in other spheres of the State economy.

The first of these areas is the Net Worth Tax. Now it has been proposed many times that the State look to the possible total elimination of the net worth tax in New Jersey. We recognize that that provides a substantial source of revenue and also a source of revenue which is not as subject to fluctuation in business cycles as is the corporation net income levy. What we

would therefore urge is that new investments for the construction, acquisition or rehabilitation of plant, or the acquisition of machinery and equipment in manufacturing, research and development and pollution control, be exempted from the net worth tax -- that is, future purchases, not the present base. This is similar to what we are doing with the State Business Personal Property Tax on which new purchases are exempt, but New Jersey has continued to enjoy a substantial tax base from existing items of equipment which gradually will be phased out over a period of time. Such an exemption we feel would be an important added incentive for the location of new, modernized or expanded facilities in New Jersey.

Manufacturing and research and development have been singled out because each activity can be carried on, as I mentioned, in numerous locales, by marketing its products worldwide. Thus, both are particularly sensitive to local cost differentials. If such an exemption took effect on January 1, 1980, it would cost several hundred-thousand-dollars in the current fiscal year and less than \$3.0 million in the 1980-1981 fiscal year. The initial year impact is terribly low because you would, by imposing a general one in 1980, have more impact on the filings of corporation tax in April of 1980 because the calendar year corporations which make up maybe 70 percent of New Jersey's corporations, would not be filing with the advantage of this net worth exemption until April of 1981. Many of the fiscal year corporations would have a relatively short portion of their fiscal year included in their first filings during the current State budget year. So it becomes an exceptionally low cost and yet very attractive incentive for new investment.

A second important area that's been given relatively little consideration is the Sales Tax Impact on Construction Materials. New Jersey Sales and Use Tax applies to all construction materials except those that are used in the construction for exempt organizations. This could add as much as 4 percent to the cost of plant construction when you consider the impact of interest charges and debt service on that additional financing required to pay the sales tax.

In order to attract new investment we recommend that a sales tax exemption be provided for materials used in the construction or rehabilitation -- and the rehabilitation portion is important as well -- of plants used in manufacturing or in research and development. The average revenue cost of this exemption, by our estimates, could range from \$10 million to \$12 million annually on average. It, of course, would be considerably lower in downward economic cycles and could be considerably higher in boom times. I would add that any program which tends to take less revenue in bad economic years and require more revenue in boom years is one that suits the State's economic revenue fluctuations very well. That revenue estimate, however, does not necessarily affect the options available to you. For example, if you were to look at that exemption and say let us exempt construction materials from the sales tax for these purposes, but let's do it effective on March 1 of 1980 so that we're really hitting firms that will be building because of the incentive, not just firms that are building despite the incentive. If you did that you'd have only three months of sales tax loss in that period for about \$2.5 million to \$3.0 million loss in the

current budget year.

MATTHEWS. May I interrupt you here just one moment? Have you given any thought in this area of investment credit on new construction?

WOODFORD. I'd planned to get to that subject a little later. The Investment Credit is important to a firm making money -- it's important, I think, to any firm -- but it is also something in which the initial price-tag would be relatively high. We would like to see the State consider an investment credit when the State's own revenue picture is improved. Again, because we do not want to see a price-tag on a package of incentives that requires a higher corporate tax, or other higher business or non-business taxes in New Jersey, we would like, instead, to see us design a program which phases-in incentives, very carefully selected incentives that can produce the additional economic activity that will provide us with dollars to be used in the next stage, and the next stage could very well be the investment credit.

We selected very carefully those items that we think have the most impact on construction decisions. Now the investment credit is one of those -- but it's the highest cost item. The lower cost items are really that sales tax exemption, the net worth tax exemption, and a third would be the exemption of pollution control equipment which, again, is required in your investment for manufacturing purposes. It's a non-productive investment in most cases because usually there is not a salable bi-product, certainly not one that offsets the cost of the investment, and it makes no sense for the State to impose a sales tax on an obligation which the State itself has imposed on the industry.

I don't have a completely up-to-date estimate on the cost of that exemption. I believe it would run somewhere in the neighborhood of \$3 million to \$4 million per year. Again, it could be phased-in by making it effective say March 1st of 1980 which would substantially decrease any impact on the current budget year.

Another area which we believe should be given some consideration is the Loss Carryover. Here, sad to say, we don't at this point have for you a revenue estimate -- I hope that we can have one shortly -- but the lack of the loss carryover provision poses an obstacle to the new business which may run a loss in its initial years. It tends to make the corporation tax inequitable for the corporation that suffers during the first five years because that corporation's long-term net income is being taxed at a higher percentage than the nominal corporation tax rate. For example, if I lose \$200,000 this year and make \$200,000 next year then the average corporation tax paid to New Jersey on a net income of zero over the two year period, cannot even be calculated -- 7-1/2 percent of \$200,000, if that's the allocated income figure -- although I have not earned anything over that period if you net out my total experience over the two years. For a firm that is consistently profitable the nominal rate is, in fact, in effect but for a firm that is being affected by the vagaries of the business cycle, for example, smaller businesses, that are suppliers to major corporations and who may have a great reduction in business during recessionary periods, there is simply no offsetting

recognition of their loss years to help them stay in business, to help them with their cash flow. What we recommend again, to keep the cost of introducing this kind of provision at all, would be to consider providing a loss carryforward from 1980 through 1982 and then introducing a loss carryback provision with a carryback not beyond the year 1983. You see, a carryback itself in the initial year would otherwise tend to permit the corporation that's been taking losses, to recalculate taxes for the last two or three years and file for refund. Now this all happens in a one year period, potentially. To stretch that out so that you're not feeling the major initial impact you can use the device that we've outlined.

Additional Incentives. I've mentioned the investment credit. We do agree with the very affective device, but one that we ought to approach when the State's potential revenue yields and potential expenditures permit consideration of this step. We do believe that the incentives that we've recommended are sufficient to generate economic activity that would provide the dollars that would be needed for the next step.

Other areas which may seem minor but are irritants both in the application of the Sales Tax law and in the economic burden imposed on those who invest in manufacturing in New Jersey, are the installation and repair charges that are taxable for the Installation and Repair of Production Machinery, Apparatus and Equipment. We urge that those service charges be exempted, along with charges for small tools which can be very inexpensive items but sometimes can be specialty items that are very expensive; and the charges that are now placed on Parts for Machinery, Apparatus and Equipment that are themselves exempt items, where those parts have a year or less life. It's a difficult provision to work with for a business to calculate -- for a supplier to work with -- whether a part is going to last a year in the hands of the purchaser, and it really makes very little sense for us to have this provision (the taxation of parts to machinery) in the law when the machinery itself is exempt. Someone, I think initially, took the view that we ought to have a line drawn somewhere between those things that are normally "expensed" and those things that are normally "capitalized" but nothing else in the law reflects the expensing or capitalization rules. So, we urge that the manufacturing exemption be broadened to this extent to include all purchases of that kind.

There are some matters of Tax Equity that we feel should be dealt with. I won't get into great detail on these because I think you probably heard some of them in past hearings -- one of course is Interest on Tax Overpayments and Refunds. One that I would like to mention, however, is a very small matter but it may have a major impact on individual concerns. Somehow, something where we tune the cracks on the manufacturer's exemption, because if a business goes out and purchases an item of machinery, it is now exempt if it's used in production. If that business goes out and buys materials for use in constructing its own machinery, and then also goes outside to buy certain services like heat treatment in the development of that product for its own use, it would be taxed on the materials; it would be taxed on the services, even though the end product is an item which if they purchased it on the market, would be tax exempt. An extension of the use tax -- what

we call a Use on Use Exemption which exists in several other states -- would be desirable, and it's our intention to provide you with some suggested language in the future on that point.

I don't intend to cover the other items that are listed here but I hope you will have an opportunity to read them some time at your leisure. Thank you.

MATTHEWS. Thank you very much Mr. Woodford. Is there anyone else who would like to testify? This public hearing is now officially adjourned.

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A P P E N D I X

STATE OF NEW JERSEY

~~INTRODUCED APRIL 28, 1977~~

By Senator GREENBERG

Referred to Committee on Revenue, Finance and Appropriations

AN ACT concerning the New Jersey Gross Income Tax and revising parts of the statutory law pertaining thereto.

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

3 1. N. J. S. 54A:1-2 is amended to read as follows:

4 54A:1-2. Definition. As used in this act, unless the context
5 clearly indicates otherwise, the following words and phrases shall
6 have the following meaning:

7 a. "Director" means the Director of the Division of Taxation
8 in the Department of the Treasury.

9 b. "Fiduciary" means a guardian, trustee, executor, admini-
10 strator, receiver, conservator, or any person acting in any fiduciary
11 capacity for any person.

12 c. "Excludable income" shall be limited to those payments set
13 forth in chapter 6 hereunder.

14 d. "Gross income" shall include that set forth in chapter 5
15 hereunder.

16 e. "Dependent" means a spouse or child or any individual re-
17 lated to the taxpayer and who is a dependent pursuant to the pro-
18 visions of the Internal Revenue Code during a taxable year.

19 f. "Disabled" means total and permanent inability to engage
20 in any substantial gainful activity by reason of any medically
21 determinable physical or mental impairment, including blindness.
22 For purposes of this subsection, "blindness" means central visual
23 acuity of 20/200 or less in the better eye with the use of a correct-
24 ing lens. An eye which is accompanied by a limitation in the fields
25 of vision such that the widest diameter of the visual field subtends
an angle no greater than 20 degrees shall be considered as having
a central visual acuity of 20/200 or less.

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

1a

EXHIBIT A

9. "Medical expenses" means nonreimbursed payments for [physicians, dental and other medical fees, hospital care, nursing care,] medicines and drugs, [prosthetic devices, X-rays and other diagnostic services conducted by or directed by a physician or dentist] or for the diagnosis, cure, mitigation, treatment or prevention of disease, for the purpose of affecting any structure or function of the body."

In addition, medical expenses may also include amounts

33 paid for transportation primarily for and essential to medical
34 care and insurance (including amounts paid as premiums under
35 Part B of Title XVIII of the Social Security Act, relating to sup-
36 plementary medical insurance for the aged) covering medical care.

37 h. Partnership and partner. The term "partnership" includes
38 a syndicate, group, pool, joint venture, or other unincorporated
39 organization, through or by means of which any business, financial
40 operation, or venture is carried on, and which is not, within the
41 meaning of this act, a trust or estate or a corporation; and the
42 term "partner" includes a member in such a syndicate, group,
43 pool, joint venture, or organization.

44 i. Blank.

45 j. [Blank.] "*Taxable income*" means gross income as defined
46 in chapter 5 minus the personal exemptions and deductions as set
47 forth in chapter 3.

48 k. "*Taxable year*" means the calendar or fiscal accounting period
49 for which a tax is payable under this act.

50 l. "*Taxpayer*" means any individual, estate or trust required
51 to report or to pay taxes, interest and penalties under this act, or
52 whose income in whole or in part is subject to the tax imposed
53 by this act.

54 m. "*Resident taxpayer*" means an individual:

55 (1) Who is domiciled in this State, unless he maintains no
56 permanent place of abode in this State, maintains a permanent
57 place of abode elsewhere, and spends in the aggregate no more
58 than 30 days of the taxable year in this State; or

59 (2) Who is not domiciled in this State but maintains a
60 permanent place of abode in this State and spends in the
61-81 aggregate more than 183 days of the taxable year in this
82 State, unless such individual is in ~~the~~ the
83 Armed Forces of the United States.

84 n. "*Nonresident taxpayer*" means a taxpayer who is not a
85 resident.

86 o. Resident estate or trust. A resident estate or trust means:

87 (1) The estate of a decedent who at his death was domiciled
88 in this State,

89 (2) A trust, or a portion of a trust, consisting of property
90 transferred by will of a decedent who at his death was domi-
91 ciled in this State, or

92 (3) A trust, or portion of a trust, consisting of the property
93 of:

94 (a) A person domiciled in this State at the time such prop-
95 erty was transferred to the trust, if such trust or portion of
96 a trust was then irrevocable, or if it was then revocable and
97 has not subsequently become irrevocable; or

98 (b) A person domiciled in this State at the time such
99-100 trust, or portion of a trust, became irrevocable, if it was
101 revocable when such property was transferred to the trust
102 but has subsequently become irrevocable.

103 For the purposes of the foregoing, a trust or portion of a
104 trust is revocable if it is subject to a power, exercisable im-
105 mediately or at any future time, to revert title in the person
106 whose property constitutes such trust or portion of a trust,
107 and a trust or portion of a trust becomes irrevocable when
108 the possibility that such power may be exercised has been
109 terminated.

110 p. Nonresident estate or trust. A nonresident estate or trust
111 means an estate or trust which is not a resident.

112 q. Unless the context in which it occurs requires otherwise,
113 the term "act" or "this act" shall mean the New Jersey Gross
114 Income Tax Act, Title 54A of the New Jersey Statutes.

1 2. N. J. S. 54A:2-1 is amended to read as follows:

2 54A:2-1. Imposition of tax. There is hereby imposed a tax for
3 each taxable year (which shall be the same as the taxable year for
4 Federal income tax purposes) on the New Jersey gross income as
5 herein defined of every individual, estate or trust (other than a
6 charitable trust or a trust forming part of a pension or profit
7 sharing plan, to the extent to which such trusts are exempt from
8 tax for Federal income tax purposes), subject to the deductions,
9 limitations and modifications hereinafter provided, determined in
10 accordance with the following table with respect to the taxpayer's
11 taxable income:

12	If the taxable income is:	The tax is:
13	Not over \$20,000.00	2% of taxable income
14	Over \$20,000.00	\$400.00 plus 2.5% of the
15		excess over \$20,000.00

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

2 54A:2-4. Minimum [taxable] gross income. Notwithstanding
3 any other provisions of this act, a taxpayer or a married couple
4 filing a joint return with a gross income of \$3,000.00 or less
5 (\$1,500.00 or less in the case of a married person filing separately)
6 shall not be subject to tax under this act. In the case of a nonresi-
7 dent, gross income shall mean gross income which such nonresident
8 would have reported if he had been a resident.

1 4. N. J. S. 54A:3-1 is amended to read as follows:

2 54A:3-1. Personal exemptions and deductions. Each taxpayer
3 shall be allowed personal exemptions and deductions against his
4 gross income as follows:

5 a. Taxpayer. Each taxpayer shall be allowed a personal exemp-
6 tion of \$1,000.00 which may be taken as a deduction from his New
7 Jersey gross income.

8 b. Additional exemptions. In addition to the personal exemp-
9 tions allowed in a., the following additional personal exemptions
10 shall be allowed as a deduction from gross income:

11 (1) For the taxpayer's spouse who does not file separately—
12 \$1,000.00.

13 (2) For each dependent who qualifies as a dependent of the tax-
14 payer during the taxable year for Federal income tax purposes—
15 \$1,000.00 plus, for each dependent child attending on a full-time
16 basis an elementary or secondary educational institution not de-
17 riving its primary support from public moneys—\$1,000.00.

18 (3) Taxpayer 65 years of age or over at the close of the taxable
19 year—\$1,000.00.

20 (4) Taxpayer's spouse 65 years of age or over at the close of
21 the taxable year—\$1,000.00.

22 (5) Blind or disabled taxpayer—\$1,000.00.

23 (6) Blind or disabled spouse—\$1,000.00.

24 c. Special rule. The personal exemptions allowed under this
25 section shall be limited to that percentage which the total number
26 of months within a taxpayer's taxable year under this act bears
27 to 12. For ~~this purpose~~ ~~For all purposes of this act, unless otherwise~~
28 ~~specified~~, 15 days or more shall constitute a month.

29 d. Nonresidents. A nonresident taxpayer shall be allowed the
30 same deduction for personal exemptions as a resident taxpayer.
31 However, if (1) the nonresident's gross income which is subject
32 to tax under this act is exceeded by (2) his gross income which he
33 would be required to report under this act if he were a resident by
34 more than \$100.00, his deduction for personal exemptions shall be
35 limited by the percentage which (1) is to (2).

36 e. Operating rules. No exemption under b.(1), b.(4), or b.(6)
37 shall be allowed for the spouse of a taxpayer if such spouse is also
38 entitled to an exemption as a taxpayer under a., b.(3), b.(5).

1 5. N. J. S. 54A:3-2 is amended to read as follows:

2 54A:3-2. Alimony and separate maintenance payments. There
3 shall be allowed as a deduction amounts [includible under section
4 54A:5-1(n) with respect to payments included as income in the
5 return of a former spouse or of a spouse receiving separate mainte-
6 nance pursuant to a court decree (or which would have otherwise
7 been includible if such payments were made to an individual sub-
8 ject to tax under this act)] paid to a spouse or former spouse of
9 a taxpayer, to the extent to which such amounts are allowable to
10 the taxpayer as deductions for alimony and separate maintenance
11 payments for Federal income tax purposes.

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

2 54A:4-1. Resident credit for tax of another state. (a) A resident
3 taxpayer shall be allowed a credit against the tax otherwise due
4 under this act for the amount of any income tax or wage tax im-
5 posed for the taxable year by another state of the United States
6 or political subdivision of such state, or by the District of Columbia,
7 with respect to income which is also subject to tax under this act.

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

15 (c) Readjustment of the tax of another state or political sub-
16 division thereof—if the taxpayer is allowed credit under this
17 section for more or less of the tax of another state or political
18 subdivision thereof than he is finally required to pay, the taxpayer
19 shall send notice of the difference to the director who shall re-
20 determine the tax for any years affected regardless of any other-
21 wise applicable statute of limitations.

1 7. N. J. S. 54A:4-3 is amended to read as follows:

2 54A:4-3. a. Homestead credit for tenant.

"a. Any qualified residential tenant or qualified shareholder in a cooperative shall be entitled to a homestead credit of \$65.00 against the tax otherwise due hereunder. Any qualified residential tenant or qualified shareholder in a cooperative shall be entitled to an additional homestead credit of \$35.00 if such [resident] tenant or shareholder is (1) permanently and totally disabled, (2) 65 years of age or over, or (3) a surviving spouse of a person qualified under (2) above who has remained unmarried since becoming a widow or widower at the age of 55 years or over. The term "qualified

residential tenant" shall mean a taxpayer who resides within this State in a dwelling which was rented by such taxpayer and used as his principal residence for a period of not less than 90 days of the tax year. Such dwelling may consist of a single unit or part of a multiple-unit dwelling or multi-purpose building and a part of the land upon which it is situate. A qualified shareholder in a cooperative is a taxpayer who resides within this State in a cooperative in which he is a shareholder for a period of not less than 90 days of the tax year."

- 23 b. Husband and wife. A married couple who [elect to] file
24 separate New Jersey returns shall each be entitled to one-half of
25 the credit otherwise allowable under subsection a.
- 26 c. Special limitations. (1) If more than one qualified resident
27 tenant, other than a husband and wife, qualify for the credit allowed
28 under this section by reason of their having occupied the same
29 rented homestead, it shall be presumed that the tenant's credit
30 otherwise allowed under this section shall be equally divided among
31 such taxpayers. A tenant, however, may claim a credit which shall
32 bear the same proportion as the rent he pays to the total rent paid
33 by all members of the unit.
- 34 (2) A taxpayer shall not be entitled to more than one homestead
35 credit in any one year. A taxpayer who claims a homestead credit
36 under this section may not claim a homestead exemption for the
37 same year under any other law.
- 38 (3) The amount of the homestead credit shall be prorated in the
39 proportion that the number of days the qualified tenant occupied
40 residential property in the year bears to 365 days.
- 41 (4) Where more than one tenant occupies a single dwelling unit
42 not more than one qualified tenant credit shall be claimed. No
43 tenant homestead credit shall be allowed for occupants of rooming
44 houses, hotels or motels unless the rooms rented to the tenant are
45 equipped with kitchen and bathroom facilities and unless such
46 person is a permanent resident thereof.
- 1 8. N. J. S. 54A:5-1 is amended to read as follows:
2 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
3 income shall consist of the following categories of income:

4 (a) Salaries, wages, tips, fees, commissions, bonuses, and other
5 remuneration received for services rendered whether in cash or in
6 property;

7 (b) Net profits from business. The net income from the opera-
8 tion of a business, profession, or other activity, after provision
9 for all costs and expenses incurred in the conduct thereof, deter-
10 mined either on a cash or accrual basis in accordance with the
11 method of accounting allowed for Federal income tax purposes
12 but without deduction of taxes based on income;

13 (c) Net gains or income from disposition of property. Net gains
14 or net income, less net losses, derived from the sale, exchange or
15 other disposition of property, including real or personal, whether
16 tangible or intangible as determined in accordance with the method
17 of accounting allowed for Federal income tax purposes. For the
18 purpose of determining gain or loss the basis of property shall be
19 the adjusted basis used for Federal income tax purposes.

20 The term "net gains or income" shall not include gains or
21 income derived from obligations which are referred to in clauses
22 (1) or (2) of section 54A:6-14 of this act. The term "net gains
23 or net income" shall not include gains or income from transactions
24 to the extent to which non-recognition is allowed for Federal
25 income tax purposes.

26 [The term "net gains or income" shall not include gains or in-
27 come derived from obligations which are referred to in clauses (1)
28 or (2) of section 54A:6-14 of this act. The term "net gains or net
29 income" shall not include gains or income from transactions to the
30 extent to which non-recognition is allowed for Federal income tax
31 purposes. The term "sale, exchange or other disposition" shall not
32 include the exchange of stock or securities in a corporation a party
33 to a reorganization in pursuance of a plan of reorganization, solely
34 for stock or securities in such corporation or in another corporation
35 a party to the reorganization and the transfer of property to a
36 corporation by one or more persons solely in exchange for stock or
37 securities in such corporation if immediately after the exchange
38 such person or persons are in control of the corporation. For
39 purposes of this clause, stock or securities issued for services shall
40 not be considered as issued in return for property.

41 For purposes of this clause, the term "reorganization" means—

42 (i) A statutory merger or consolidation;

43 (ii) The acquisition by one corporation, in exchange solely for
44 all or a part of its voting stock (or in exchange solely for all or a
45 part of the voting stock of a corporation which is in control of the

46 acquiring corporation) of stock of another corporation if, immedi-
47 ately after the acquisition, the acquiring corporation has control
48 of such other corporation (whether or not such acquiring corpora-
49 tion had control immediately before the acquisition);

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

58 (iv) A transfer by a corporation of all or a part of its assets to
59 another corporation if immediately after the transfer the trans-
60 feror, or one or more of its shareholders (including persons who
61 were shareholders immediately before the transfer), or any com-
62 bination thereof, is in control of the corporation to which the assets
63 are transferred;

64 (v) A recapitalization;

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

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

76 (viii) A transaction otherwise qualifying under subclause (i)
77 shall not be disqualified by reason of the fact that stock of a cor-
78 poration (referred to in this subclause as the "controlling corpo-
79 ration") which before the merger was in control of the merged
80 corporation is used in the transaction, if after the transaction, the
81 corporation surviving the merger holds substantially all of its
82 properties and of the properties of the merged corporation (other
83 than stock of the controlling corporation distributed in the trans-
84 action); and in the transaction, former shareholders of the sur-
85 viving corporation exchanged, for an amount of voting stock of
86 the controlling corporation, an amount of stock in the surviving
87 corporation which constitutes control of such corporation.

88 For purposes of this clause, the term "control" means the own-
89 ership of stock possessing at least 80% of the total combined voting
90 power of all classes of stock entitled to vote and at least 80% of
91 the total number of shares of all other classes of stock of the cor-
91a poration.

91b For purposes of this clause, the term "a party to a reorganiza-
91c tion" includes a corporation resulting from a reorganization, and
91d both corporations, in the case of a reorganization resulting from
92 the acquisition by one corporation of stock or properties of another.
92a In the case of a reorganization qualifying under subclause (i) by
92b reason of subclause (vii) the term "a party to a reorganization"
92c includes the controlling corporation referred to in such subclause
92d (vii).

92e Notwithstanding any provisions hereof, upon every such ex-
92f change or conversion, the taxpayer's base for the stock or securi-
93 ties received shall be the same as the taxpayer's actual or attributed
94 base for the stock, securities or property surrendered in exchange
95 therefor.】

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

98 (e) Interest, except interest referred to in clauses (1) or (2) of
99 section 54A:6-14 of this act *reduced by amounts forfeited by the*
100 *taxpayer during the tax year to a bank, mutual savings bank,*
101 *savings and loan association, building and loan association, coop-*
102 *erative bank or homestead association as a penalty of premature*
103 *withdrawal of funds from a time savings account, certificate of*
104 *deposit, or similar class of deposit.*

105 (f) Dividends. "Dividends" means any distribution in cash or
106 property made by a corporation, association or business trust,
107 (1) out of accumulated earnings and profits, or (2) out of earnings
108 and profits of the year in which such dividend is paid.

109 (g) Gambling winnings.

110 (h) Net gains or income derived through estates or trusts.

111 (i) Income in respect of a decedent.

112 (j) Pensions and annuities to the extent that the proceeds
113 exceed the contributions made by the taxpayer.

114 (k) Distributive share of partnership income.

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

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

119 (n) Alimony and separate maintenance payments to the extent
120 that such payments [are required to be made under a decree of
121 divorce or separate maintenance but not including payments for
122 support of minor children] *constitute an item or items of gross*
123 *income for Federal income tax purposes.*

1 9. N. J. S. 54A:5-2 is amended to read as follows:

2 54A:5-2. "Losses. Losses which occur within one
[category of gross income] of the subsections of
54A:5-1 may be applied against other sources of gross
income occurring within the same [category of gross
income] subsection during the taxable year. However,
a net loss in one [category of gross income] subsection
may not be applied against gross income occurring in
another [category of gross income] subsection."

1 10. N. J. S. 54A:6-9 is amended to read as follows:

2 54A:6-9. ~~Exemption~~ Exemption for Gains Derived from the Sale or Ex-
3 change of Principal Residence.

4 a. If a taxpayer realizes a gain from the sale or exchange of
5 his principal residence, the gain shall be excludable from gross
6 income if the taxpayer purchased or received in exchange another
7 principal residence to replace the residence sold, provided that such
8 new residence had been acquired either 18 months before or 18
9 months after the date of the sale of the original residence except
10 that where the taxpayer has constructed a new residence, the period
11 prior to and after the date of sale shall be 24 months. Where the
12 adjusted sales price of the residence sold exceeds the purchase
13 price of the new residence, the taxpayer shall be required to include
14 in his gross income that portion of the gain which is represented
15 by the amount that the adjusted sales price of the old residence
16 exceeds the cost of the new residence. To the extent that any gain

17 shall be excludable under this section, the basis of the new residence

18 shall be reduced.

"b. In lieu of the exemption allowed under subsection a. of this section, a taxpayer who has attained the age of 65 on or before the date of the sale

of a property which has been used by him as a principal residence for at least 5 years of the 8 years immediately preceding the date of such sale, may elect to [avail] exclude the gain from such sale by availing himself of the exemption allowed under this subsection. [If the exemption provided for in this subsection is availed of by a taxpayer in or for any taxable year, no such exemption shall be allowed with respect to such taxpayer or spouse thereof in any subsequent taxable year.] If the adjusted sales price of the property sold or exchanged exceeds \$35,000.00, this subsection shall apply to that portion of the gain which bears the same ratio to the total amount of such gain as \$35,000.00 bears to such adjusted sales price. For the purpose of this section, the word "sale" means a "sale," "exchange," "transaction," or "event" through which the taxpayer is divested of all interest in his residence. If the exemption provided for in this subsection is availed of by a taxpayer in or for any taxable year, no such exemption shall be allowed with respect to such taxpayer or spouse thereof in any subsequent taxable year.

35 c. Subsection a. shall not apply to any sale or exchange by the
36 taxpayer with respect to more than one property during any 18-
37 month period.

38 d. Subsection b. shall not apply to any sale or exchange by the
39 taxpayer with respect to more than one property.

40 e. Property used in part as a residence. In case of property
41 only a portion of which has been owned and used by the taxpayer
42 as his principal residence, this section shall apply with respect to
43 so much of the sale or exchange of such property as is determined,
44 under regulations prescribed by the director, to be attributable to
45 the portion of the property so owned and used by the taxpayer.

46 f. The provisions of this section shall also be applicable with
47 respect to qualified tenant-shareholders in cooperatives.

48 g. For purposes of this section, the destruction, theft, seizure,
49 requisition, or condemnation of property shall be treated as the
50 sale of such property. ~~B~~

1 11. N. J. S. 54A:6-13 is amended to read as follows:

2 54A:6-13. Unemployment insurance benefits. **[All]** *Gross in-*
3 *come shall not include* payments and benefits received under any
4 unemployment insurance law.

1 12. N. J. S. 54A:6-14 is amended to read as follows:

2 54A:6-14. Interest on certain obligations. Gross income shall not
3 include interest on (1) obligations **[(1)]** issued by or on behalf of
4 this State or any county, municipality, school or other district,
5 agency, authority, commission, instrumentality, public corporation
6 (including one created or existing pursuant to agreement or com-
7 pact with this or any other state), body corporate and politic or
8 political subdivision of this State, or (2) **[those]** obligations which
9 are statutorily free from State or local taxation under any other
10 act of this State or under the laws of the United States.

1 13. N. J. S. 54A:8-1 is amended to read as follows:

2 54A:8-1. Payment of tax; returns; extension of time. With re-
3 spect to each taxpayer, the tax imposed by this act shall be due and
4 payable annually, hereafter, in the manner provided in this section:

5 a. Every taxpayer shall annually pay the tax imposed by this
6 act with respect to all or any part of each of his fiscal or calendar
7 accounting years [beginning on and after July 1, 1976] occurring
8 after June 30, 1976, to be computed as in this act provided, for such
9 fiscal or calendar accounting year or part thereof, on a return
10 which shall be filed, in the case of a taxpayer reporting on a calendar
11 year basis, on or before April 15 following the close of such
12 calendar year, on, in the case of a taxpayer reporting on a fiscal
13 year basis, on or before the fifteenth day of the fourth month
14 following the close of such fiscal year, and the full amount of the
15 tax shall be due and payable on or before the date prescribed
16 herein for the filing of the return.

17 In the case of a taxable year which ends on or after July 1, 1976,
18 and prior to December 31, 1976, an income tax return for such
19 taxable year shall be filed on or before April 15, 1977.

20 b. Each return shall carry a certificate signed by the taxpayer
21 to the effect that all statements contained therein are true, under
22 the same penalties as for perjury committed. Blank forms of re-
23 turn shall be furnished on application, but failure to secure the
24 form shall not relieve any taxpayer of the obligation of making
25 any return herein required. Subject to regulations under this act
26 and in such form as may be indicated thereby, taxpayers whose
27 net income taxable under this act is or may be subject to tax under
28 a similar law of another jurisdiction may be permitted to file a
29 simple, short form return attached to a copy of his return as filed
30 or about to be filed by him in such other jurisdiction.

31 Subject to regulations under this act, reasonable extensions of
32 time for good cause shown, may be granted for not more than 6
33 months unless exceptional circumstances justify a longer period,
34 within which returns may be filed.

35 In addition, persons in active service with the Armed Forces of
36 the United States, who may be prevented by distance or injury
37 or hospitalization arising out of such service, may be allowed such
38 extension of time for the filing of returns, without interest or
39 penalty, as may be fixed by regulations under this act.

1 14. N. J. S. 54A:8-3.1 is amended to read as follows:

2 54A:8-3.1. Persons required to file.

3 a. On or before the filing date prescribed in section [1 of this
4 chapter (C. 54A:8-1)] 54A:8-1, an income tax return shall be
5 made and filed by or for every individual, estate or trust having a
6 gross income in excess of \$3,000.00 or more (\$1,500.00 or more in
7 the case of a married person filing separately).

8 b. If the income tax liability of husband and wife is determined
9 on a separate return for Federal income tax purposes, they shall
10 each also file a separate return for New Jersey income tax purposes
11 and their income tax liabilities under this act shall be separate.

12 c. If the income tax liabilities of husband and wife are determined
13 on a joint return for Federal income tax purposes, they shall also
14 file a joint return for New Jersey income tax purposes and their
15 tax liabilities under this act shall be joint and several.

16 d. If either husband or wife is a resident and the other is a
17 nonresident, ~~or if both are nonresidents but only one has income~~
18 ~~subject to tax under this act~~, they shall file separate tax returns
19 under this act on such single or separate forms as may be required
20 by the director in which event their tax liabilities shall be separate
21 unless both elect to determine their joint taxable income as if both
22 were residents, in which event their liabilities shall be joint and
23 several.

24 e. The return for any deceased individual shall be made and filed
25 by his fiduciary or other person charged with his property.

26 f. The return for an individual who is unable to make a return
27 by reason of minority or other disability shall be made and filed by
28 his fiduciary or other person charged with the care of his person
29 or property (other than a receiver in possession of only a part of
30 his property), or by his duly authorized agent.

31 g. Any tax under this act, and any increase, interest or penalty
32 thereon, shall, from the time it is due and payable, be a personal
33 debt of the person liable to pay the same, to the State of New
34 Jersey.

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

2 54A:8-4. Declaration of estimated tax.

3 a. Requirement of filing. Every resident and nonresident indi-
4 vidual shall make a declaration of his estimated New Jersey per-
5 sonal income tax for each taxable year [beginning] which ends
6 after June 30, 1976, if his estimated New Jersey personal income
7 tax for such year can reasonably be expected to be more than
8 \$100.00 in excess of any credits allowable against his tax, whether
9 or not he is required to file a Federal declaration of estimated tax
10 for such year.

11 b. Definition of estimated tax. The term "estimated tax" means,
12 the amount which an individual estimates to be his income tax
13 under this act for the taxable year, less the amount which he
14 estimates to be the sum of any credits allowable against the tax.

15 c. Joint declaration of husband and wife. A husband and wife
16 may make a joint declaration of estimated tax as if they were one
17 taxpayer, in which case the liability with respect to the estimated
18 tax shall be joint and several. No joint declaration may be made
19 if husband and wife are separated under a decree of divorce or of
20 separate maintenance, or if they have different taxable years. If
21 a joint declaration is made but husband and wife elect to determine
22 their taxes under this act separately, the estimated tax for such
23 year may be treated as the estimated tax of either husband or wife,
24 or may be divided between them, as they may elect.

25 d. Time for filing declaration. Beginning in the taxable year
26 1976 and every taxable year thereafter a declaration of estimated
27 tax of an individual other than a farmer shall be filed on or before
28 April 15 of the taxable year, except that if the requirements of
29 subsection a. are first met:

30 (1) After April 1 and before June 2 of the taxable year, the
31 declaration shall be filed on or before June 15; or

32 (2) After June 1 and before September 2 of the taxable year
33 the declaration shall be filed on or before September 15; or

34 (3) After September 1 of the taxable year, the declaration shall
35 be filed on or before January 15 of the succeeding year.

36 e. Declaration of estimated tax by a farmer. A declaration of
37 estimated tax of an individual having an estimated New Jersey
38 income from farming (including oyster farming) for the taxable
39 year which is at least two-thirds of his total estimated New Jersey
40 income for the taxable year may be filed at any time on or before
41 January 15 of the succeeding year, in lieu of the time otherwise
42 prescribed.

43 Declaration of estimated tax of \$100.00 or less. A declaration
44 of estimated tax of an individual having a total estimated tax for
45 the taxable year of \$100.00 or less may be filed at any time on or
46 before January 15 of the succeeding year under regulations of the
47 director.

48 g. Amendments of declaration. An individual may amend a
49 declaration under regulations of the director.

50 h. Return as declaration or amendment. If on or before Febru-
51 ary 15 of the succeeding taxable year an individual files his return
52 for the taxable year for which the declaration is required, and
53 pays therewith the full amount of the tax shown to be due on the
54 return:

55 (1) Such return shall be considered as his declaration if no
56 declaration was required to be filed during the taxable year, but is
57 otherwise required to be filed on or before January 15;

58 (2) Such return shall be considered as the amendment permitted
59 by subsection g. to be filed on or before January 15 if the tax shown
60 on the return is greater than the estimated tax shown in a declara-
61 tion previously made.

62 i. Fiscal year. This section shall apply to a taxable year other
63 than a calendar year by the substitution of the months of such fiscal
64 year for the corresponding months specified in this section.

65 j. Short taxable year. An individual having a taxable year of
66 less than 12 months shall make a declaration in accordance with
67 regulations of the director.

68 k. Declaration for individual under a disability. The declara-
69 tion of estimated tax for an individual who is unable to make a
70 declaration by reason of minority or other disability shall be made
71 and filed by his guardian, committee, fiduciary or other person
72 charged with the care of his person or property (other than a
73 receiver in possession of only a part of his property), or by his
74 duly authorized agent.

75 (1) In the taxable year ending in 1976, no declaration shall be
76 required until the lapse of at least one full calendar quarter fol-
77 lowing enactment of this act.

1 16. N. J. S. 54A:9-6 is amended to read as follows:

2 54A:9-6. Additions to tax and civil penalties. (a) Failure to file
3 tax return. In case of failure to file a tax return under this act on
4 or before the prescribed date (determined with regard to any
5 extension of time for filing), unless it is shown that such failure is
6 due to reasonable cause and not due to willful neglect, there shall
7 be added to the amount required to be shown as tax on such return
8 such amount as is required under the State Tax Uniform Procedure
9 Law, Subtitle 9 of Title 54 of the Revised Statutes. For this
10 purpose, the amount of tax required to be shown on the return
11 shall be reduced by the amount of any part of the tax which
12 is paid on or before the date prescribed for payment of the tax
13 and by the amount of any credit against the tax which may be
14 claimed upon the return.

15 (b) Deficiency due to negligence. If any part of a deficiency is
16 due to negligence or intentional disregard of this act or rules or
17 regulations hereunder (but without intent to defraud), there shall
18 be added to the tax an amount equal to 5% of the deficiency.

19 (c) [Failure to file declaration or underpayment of estimated tax.
20 If any taxpayer fails to file a declaration of estimated tax or fails
21 to pay all or any part of an installment of estimated tax, he shall
22 be deemed to have made an underpayment of estimated tax. There
23 shall be added to the tax for the taxable year an amount at the

24 rate of 9% per annum upon the amount of the underpayment for
25 the period of the underpayment but not beyond the fifteenth day
26 of the fourth month following the close of the taxable year. The
27 amount of underpayment shall be the excess of the amount of the
28 installment which would be required to be paid if the estimated
29 tax were equal to 80% of the tax (two-thirds of the tax for farmers
30 referred to in subsection (e) of section 54A:8-4) shown on the
31 return for the taxable year (or if no return was filed, of the tax for
32 such year) over the amount, if any, of the installment paid on or
33 before the last day prescribed for such payment. No underpayment
34 shall be deemed to exist with respect to a declaration or installment
35 otherwise due on or after the taxpayer's death.] *Underpayment of*
36 *estimated tax.*

37 (1) *Addition to tax.* In the case of any underpayment of esti-
38 mated tax by a taxpayer, except as provided in subsection (d)
39 below, there shall be added to the tax for the taxable year an
40 amount at the rate of 9% per annum upon the amount of under-
41 payment determined ^{ed} in accordance with subsection (c) (2) below
42 for the period of underpayment as determined under subsection
43 (c) (3) below.

44 (2) *Amount of underpayment.* For the purposes of subsection
45 (c) (1) the amount of underpayment shall be the excess of:

46 (A) The amount of the installment which would be re-
47 quired to be paid if the estimated tax were equal to 80%
48 (66⅔% in the case of farmers referred to in subsection (e)
49 of section 54A:8-4) of the tax shown on the return for the
50 taxable year or, if no return was filed, 80% (66⅔% in the case
51 of farmers referred to in subsection (e) of section 54A:8-4) of
52 the tax for such year, over

53 (B) The amount, if any, of the installment paid on or before
54 the last date prescribed for such payment.

55 (3) *Period of underpayment.* The period of underpayment shall
56 run from the date the installment was required to be paid to
57 whichever of the following dates is the earlier:

58 (A) The fifteenth day of the fourth month following the
59 close of the taxable year.

60 (B) With respect to any portion of the underpayment, the
61 date on which such portion is paid. For the purposes of this
62 paragraph a payment of estimated tax on any installment date
63 shall be considered a payment of any previous underpayment
64 only to the extent such payment exceeds the amount of the
65 installment determined under subsection (c) (2) (A) for such
66 installment date.

67 (d) Exception to addition for underpayment of estimated tax.
68 The addition to tax under subsection (c) with respect to any under-
69 payment of any installment, shall not be imposed if the total amount
70 of all payments of estimated tax made on or before the last date
71 prescribed for the payment of such installment equals or exceeds
72 whichever of the following is the lesser—

73 (1) The amount which would have been required to be paid on
74 or before such date if the estimated tax were whichever of the
75 following is the least—

76 (A) The tax shown on the return of the individual for the
77 preceding taxable year, if a return showing a liability for tax
78 was filed by the individual for the preceding taxable year and
79 such preceding year was a taxable year of 12 months, or

80 (B) An amount equal to the tax computed, at the rates appli-
81 cable to the taxable year, on the basis of the taxpayer's status
82 with respect to his personal exemptions for the taxable year,
83 but otherwise on the basis of the facts shown on his return for,
84 and the law applicable to, the preceding taxable year, or

85 (C) An amount equal to 80% of the tax for the taxable year
86 (two-thirds of the tax for farmers referred to in subsection (e)
87 of section 54A :8-4) computed by placing on an annualized basis
88 the income for the months in the taxable year ending before the
89 month in which the installment is required to be paid. For
90 purposes of this subparagraph, the income shall be placed on
91 an annualized basis by—

92 (i) Multiplying by 12 (or, in the case of a taxable year of
93 less than 12 months, the number of months in the taxable
94 year) the income for the months in the taxable year ending
95 before the month in which the installment is required to be
96 paid,

97 (ii) Dividing the resulting amount by the number of
98 months in the taxable year ending before the month in which
99 such installment date falls, and

100 (iii) Deducting from such amount the deductions for per-
101 sonal exemptions allowable for the taxable year (such per-
102 sonal exemptions being determined as of the last date pre-
103 scribed for payment of the installment); or

104 (2) An amount equal to 90% of the tax computed, at the rates
105 applicable to the taxable year, on the basis of the actual income
106 for the months in the taxable year ending before the month in
107 which the installment is required to be paid.

108 (e) Deficiency due to fraud. If any part of a deficiency is due
109 to fraud, there shall be added to the tax an amount equal to 50%
110 of the deficiency. This amount shall be in lieu of any other addition
111 to tax imposed by subsection (a) or (b).

112 (f) Non willful failure to pay withholding tax. If any employer,
113 without intent to evade or defeat any tax imposed by this act or the
114 payment thereof, shall fail to make a return and pay a tax withheld
115 by him at the time required by or under the provisions of section
116 54A:7-4, such employer shall be liable for such tax and shall pay
117 the same together with interest thereon and the addition to tax
118 provided in subsection (a), and such interest and addition to tax
119 shall not be charged to or collected from the employee by the
120 employer. The director shall have the same rights and powers for
121 the collection of such tax, interest and addition to tax against such
122 employer as are now prescribed by this act for the collection of tax
123 against an individual taxpayer.

124 (g) Willful failure to collect and pay over tax. Any person
125 required to collect, truthfully account for, and pay over the tax
126 imposed by this act who willfully fails to collect such tax or truth-
127 fully account for and pay over such tax or willfully attempts in any
128 manner to evade or defeat the tax or the payment thereof, shall, in
129 addition to other penalties provided by law, be liable to a penalty
130 equal to the total amount of the tax evaded, or not collected, or
131 not accounted for and paid over. No addition to tax under sub-
132 sections (b) or (c) shall be imposed for any offense to which this
133 subsection applies.

134 (h) Failure to file certain information returns. In case of each
135 failure to file a statement of a payment to another person, required
136 under authority of subsection (c) of section 54A:8-6 (relating to
137 information at source, including the duplicate statement of tax
138 withheld on wages) on the date prescribed therefor (determined
139 with regard to any extension of time for filing), unless it is shown
140 that such failure is due to reasonable cause and not to willful
141 neglect, there shall, upon notice and demand by the director and in
142 the same manner as tax, be paid by the person so failing to file the
143 statement, a penalty of \$1.00 for each statement not so filed, but
144 the total amount imposed on the delinquent person for all such
145 failures during any calendar year shall not exceed \$1,000.00.

146 (i) Additional penalty. Any person who with fraudulent intent
147 shall fail to pay, or to deduct or withhold and pay, any tax, or to
148 make, render, sign or certify any return or declaration of esti-
149 mated tax or to supply any information within the time required
150 by or under this act, shall be liable to penalty of not more than

151 \$1,000.00, in addition to any other amounts required under this act,
152 to be imposed, assessed and collected by the director. The director
153 shall have the power, in his discretion, to waive, reduce or compro-
154 mise any penalty under his subsection.

155 (j) Additions treated as tax. The additions to tax and penalties
156 provided by this section shall be paid upon notice and demand and
157 shall be assessed, collected and paid in the same manner as taxes
158 and any reference in this act to income tax or tax imposed by this
159 act, shall be deemed also to refer to the additions to tax and pen-
160 alties provided by this section. For purposes of section 54A:9-2,
161 this subsection shall not apply to:

162 (1) Any addition to tax under subsection (a) except as to that
163 portion attributable to a deficiency;

164 (2) Any addition to tax under subsection (e); and

165 (3) Any additional penalty under subsection (i).

166 (k) Determination of deficiency. For purposes of subsections
167 (b) and (c), the amount shown as the tax by the taxpayer upon his
168 return shall be taken into account in determining the amount of the
169 deficiency only if such return was filed on or before the last day
170 prescribed for the filing of such return, determined with regard to
171 any extension of time for such filing.

172 (l) Person defined. For purposes of subsections (g) and (i), the
173 term person includes an individual, corporation or partnership or
174 an officer or employee of any corporation (including a dissolved
175 corporation) or a member or employee of any partnership, who
176 as such officer, employee, or member is under a duty to perform
177 the act in respect of which the violation occurs.

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

2 54A:9-9. Petition to director. (a) General. The form of a peti-
3 tion to the director, and further proceedings before the director in
4 any case initiated by the filing of a petition, shall be governed by
5 such rules as the director shall prescribe. No petition shall be
6 [deemed] ^{denied} ~~determined~~ in whole or in part without opportunity for
7 a hearing on reasonable prior notice. Such hearing shall be con-
8 ducted by the director, or by a hearing officer designated by him
9 to take evidence and report to the director. The director shall
10 decide the case as quickly as practicable. Notice of the decision
11 shall be mailed promptly to the taxpayer at his last known address,
12 and such notice shall set forth the director's findings of fact and
13 a brief statement of the grounds of decision in each case decided in
14 whole or in part adversely to the taxpayer.

15 (b) Petition for redetermination of a deficiency. Within 90 days,
16 or 150 days if the notice is addressed to a person outside of the
17 United States, after the mailing of the notice of deficiency autho-
18 rized by section 54A:9-2, the taxpayer may file a petition with the
19 director for a redetermination of the deficiency. Such petition may
20 also assert a claim for refund for the same taxable year or years,
21 subject to the limitations of subsection (f) of section 54A:9-8.

22 (c) Petition for refund. A taxpayer may file a petition with the
23 director for the amounts asserted in a claim for refund if—

24 (1) The taxpayer has filed a timely claim for refund with the
25 director;

26 (2) The taxpayer has not previously filed with the director a
27 timely petition under subsection (b) for the same taxable year
28 unless the petition under this subsection relates to a separate claim
29 for credit or refund properly filed under subsection (e) of section
30 54A:9-8; and

31 (3) Either (A) 6 months have expired since the claim was filed,
32 or (B) the director has mailed to the taxpayer a notice of disallow-
33 ance of such claim in whole or in part.

34 No petition under this subsection shall be filed more than 2 years
35 after the date of mailing of a notice of disallowance, unless prior to
36 the expiration of such 2-year period it has been extended by written
37 agreement between the taxpayer and the director. If a taxpayer
38 files a written waiver of the requirement that he be mailed a notice
39 of disallowance, the 2-year period prescribed by this subsection for
40 filing a petition for refund shall begin on the date such waiver is
41 filed.

42 (d) Assertion of deficiency after filing petition—

43 (1) Petition for redetermination of deficiency. If a taxpayer
44 files with the director a petition for redetermination of a deficiency,
45 the director shall have power to determine a greater deficiency than
46 asserted in the notice of deficiency and to determine if there should
47 be assessed any addition to tax or penalty provided in section
48 54A:9-6, if claim therefor is asserted at or before the hearing under
49 rules of the director.

50 (2) Petition for refund. If the taxpayer files with the director a
51 petition for credit or refund for a taxable year, the director may

52 (A) Determine a deficiency for such year as to any amount
53 of deficiency asserted at or before the hearing under rules of
54 the director, and within the period in which an assessment
55 would be timely under section 54A:9-4, or

56 (B) Deny so much of the amount for which credit or refund
57 is sought in the petition, as is offset by other issues pertaining
58 to the same taxable year which are asserted at or before the
59 hearing under rules of the director.

60 (3) Opportunity to respond. A taxpayer shall be given a reason-
61 able opportunity to respond to any matters asserted by the director
62 under this subsection.

63 (4) Restriction on further notices of deficiency. If the taxpayer
64 files a petition with the director under this section, no notice of
65 deficiency under section 54A:9-2 may thereafter be issued by the
66 director for the same taxable year, except in case of fraud or with
67 respect to a change or correction in Federal taxable income re-
68 quired to be reported under section 54A:8-7.

69 (e) Burden of proof. In any case before the director under this
70 act, the burden of proof shall be upon the petitioner except for the
71 following issues, as to which the burden of proof shall be upon the
72 director:

73 (1) Whether the petitioner has been guilty of fraud with intent
74 to evade tax;

75 (2) Whether the petitioner is liable as the transferee of property
76 of a taxpayer, but not to show that the taxpayer was liable for the
77 tax; and

78 (3) Whether the petitioner is liable for any increase in a
79 deficiency where such increase is asserted initially after a notice of
80 deficiency was mailed and a petition under this section filed, unless
81 such increase in deficiency is the result of a change or correction of
82 Federal taxable income required to be reported under section
83 54A:8-7, and of which change or correction the director had no
84 notice at the time he mailed the notice of deficiency.

85 (f) Evidence of related Federal determination. Evidence of a
86 Federal determination relating to issues raised in a case before the
87 director under this section shall be admissible, under rules estab-
88 lished by the director.

89 (g) Jurisdiction over other years. The director shall consider
90 such facts with relation to the taxes for other years as may be
91 necessary correctly to determine the tax for the taxable year, but
92 in so doing shall have no jurisdiction to determine whether or not
93 the tax for any other year has been overpaid or underpaid.

1 18. N. J. S. 54A:5-6 is repealed.

2 19. This act shall take effect immediately.

STATEMENT

7
2
This legislation is designed to correct some of the unclear or conflicting language in the New Jersey Gross Income Tax Act. In the appropriate sections of the act the definitions of allowable medical expenses, alimony and separate maintenance, and the exemption on gain from the sale of a residence for senior citizens, have been conformed to language contained in the Internal Revenue Code, as was the intention of the Legislature.

In addition, this bill defines "taxable income" which was not previously defined. The bill also clarifies which charitable and pension trusts are exempt, those being trusts which are exempt under the Internal Revenue Code. The bill also clarifies that the credit for taxes paid to other jurisdictions is to be prorated according to the proper formula.


With respect to interest income, this bill clarifies an oversight in the existing act and allows a credit against interest income for penalties charged in connection with premature withdrawals of time deposits. The bill also clarifies that Federal nonrecognition of certain gains from transactions will be followed in New Jersey. This applies to both sale of residences and certain corporate reorganizations. Lastly, there are several transitional provisions to make adjustments between the unearned income tax and the gross income tax.

This bill has been reviewed by the Division of Taxation and they are in agreement with this bill.

The Income Tax Committee of the Taxation Section respectfully submits the following report and proposed Technical Amendments Bill concerning the New Jersey Gross Income Tax Act [P.L. 1976 c. 47]. In line with what the Committee feels to be its instructions from the Executive Committee of the Taxation Section, primary emphasis has been placed upon the Technical Amendments Bill and its accompanying report which are confined to items the Committee feels are technical omissions, oversights, or drafting errors in the Act as passed. In addition to the items covered in the Technical Amendments Bill and accompanying report, the Committee desires to express its concern regarding a number of substantive matters contained within the statute about which the Committee does not feel it appropriate to take a position beyond pointing out the problem as we see it. The substantive comments are attached hereto following the Technical Amendments Bill and report.

In addition to the proposed statutory changes, the Committee feels there are a number of other ambiguities which can be solved by regulations. We believe it would be more appropriate to await the publication of proposed regulations by the Division of Taxation before commenting further upon these items.

Respectfully submitted,


Robert B. Haines
Chairman Income Tax Committee
Taxation Section

Revised as approved September 8, 1976, by the Executive Council of the Section on Taxation.

Report to Accompany an Act to Amend and Supplement the "New Jersey Gross Income Tax Act" P.L. 1976 c. 47, Approved July 8, 1976

In this report paragraph numbers refer to the paragraphs in the Technical Amendments Bill to which this report is attached.

1. As presently written 54A:1-2(f) includes in the definition of a "disabled person, a person who is unable to engage in any substantial gainful activity by reason of blindness." N.J.S. 54A:3-1(b) 5 and 6 give an additional exemption for a taxpayer or spouse who is "blind or disabled". It appears that the intention is to give a blind person a \$1,000.00 additional exemption notwithstanding the fact that such taxpayer may be able to engage in substantial gainful activity. A proposed amendment to 1-2(f) and amendments to 54A:3-1(b) 5 and 6 are designed to correct this ambiguity.

The committee wishes to point out that the adoption of this proposal will have the additional effect of giving the extra \$35.00 Homestead credit (54A:4-3) to a blind person whether or not such person is able to engage in gainful activity.

2. The proposed amendment to 54A:1-2(g) incorporates

the definition of medical expenses as set forth in the Internal Revenue Code in Section 213. The proposal removes the ambiguity created by the present definition with regard to whether amounts paid to chiropractors, podiatrists, opticians, etc., are covered as medical expenses.

3. The proposed amendment to 54A:1-2(m) (2) makes it clear the section applies only to persons who are on active service with the Armed Forces and puts this section in harmony with 54A:8-1(b).

4. The proposed amendment to 54A:1-2 adds subsection (j) which defines the term "taxable income". The term "taxable income" is used in N.J.S.A. 54A:2-1 (lines 8 and 9) but is not defined in the statute.

5. Section 2-1 of the Act now exempts from taxation charitable trusts, and trusts forming part of pension or profit sharing plans. The Committee notes that the exemption for charitable trusts and pension and profit sharing trusts appears to be a legislative acceptance of the suggestion contained in Technical Comment No. 6 to Assembly Bill No. 1513 prepared by this Committee in March of 1976. The Committee notes, however, that the Legislature while accepting the Committee's recommendation neglected to limit the

exemption to "tax exempt" trusts. The proposed amendment will limit the exemption to "qualified" pension and profit sharing trusts and will also result in these trusts being taxed on unrelated business taxable income subject to tax under the Act to the same extent to which they are taxed on such income for Federal Income Tax purposes.

6. The proposed amendment to 54A:2-4 is designed to correct what appears to be an incorrect caption for the section. The present caption states "minimum taxable income" but the terminology in the section itself sets forth a minimum gross income requirement.

7. The proposed amendment to 54A:3-1(b) (5) has been explained above in paragraph 1.

8. The proposed amendment to 54A:3-1(b) (6) has been explained above in paragraph 1.

9. The Bill proposes that 54A:3-1(c) be amended to apply the rule that 15 days or more is a month for all purposes of the Gross Income Tax Act unless otherwise specified.

10. Comment for Technical Report: 54A:3-1 presently provides for a series of exemptions for a taxpayer and for the taxpayer's spouse. In addition to the basic exemption

for each taxpayer and spouse, the Act also provides for additional exemptions for the spouse of the taxpayer if such spouse is over age 65 or disabled. The present wording of the statute is ambiguous in that it may produce twice as many exemptions as is apparently intended. For instance, if both husband and wife are required to file, each may be entitled to an exemption for himself as taxpayer and one for his or her spouse. The proposed amendment to 54A:3-1 is designed to correct this deficiency in the present statutory language.

11. The proposed amendment to Section 54A:3-2 is designed to eliminate the ambiguity created by the definition of alimony and separate maintenance and to put this definition in harmony with existing Federal Income Tax law.

12. The proposed amendment to 54A:4-1(b) is designed to correct the ambiguity created by the present language and make it clear that the credit for taxes paid to other jurisdictions is prorated on the basis of gross income.

13. The proposed amendment to 54A:4-3a is to make it clear that the word "qualified" modifies both "residential tenant" and "shareholder in a cooperative". It further sets forth a definition for qualified residential tenant and

shareholder which, while arbitrary, was adapted from the original qualifications set forth in Assembly Bill 1513 as passed by the Assembly in March 1976.

14. 54A:4-3(b) is proposed to be amended to eliminate the words "elect to" since it appears to be the sense of the statute that married couples (except nonresidents) do not have an election to file separate returns. It is felt that section should be amended to be consistent with the balance of the Act.

15. It is suggested that 54A:5-1(c) be amended to delete that portion of the section which deals with non-recognition of gain arising out of corporate reorganizations. In light of the general rule adopting federal nonrecognition provisions the balance of this section from line 36 to the end should be deleted as unnecessarily repetitive.

16. It is proposed that 54A:5-1(e) be amended to provide for a reduction in interest income by the amounts of forfeited interest on premature withdrawals from savings and other time accounts. Although such amounts might constitute losses for the purpose of 54A:5-2, it is felt that the intention will be clearer if the definition of interest is amended.

17. It is proposed that 54A:5-1(n) be amended for the same reasons and to the same extent as is proposed to amend 54A:3-2. This will bring the definitions of alimony and separate maintenance into coordination with Federal Income Tax rules for both purposes of income and deduction.

18. It is proposed that 54A:6-1 be amended to add a subsection (c) to provide clear and consistent transitional rules for gain from transactions occurring (a) prior to the effective date of the New Jersey Tax on Capital Gains and Other Unearned Income Act and (b) between the effective dates of the New Jersey Tax on Capital Gains and Other Unearned Income Act and this act, where such gains are subject to tax, under the method of accounting or reporting used by the taxpayer, after the effective date of this act.

19. The Bill proposes that 54A:5-2 be amended to specify that losses may be offset within the subsections as defined in 54A:5-1. As presently drafted the statute refers to "categories of gross income" which is ambiguous.

20. It is proposed that 54A:5-6 be deleted. The return requirements for husband and wife are set forth in 54A:8-3.1 and the provisions of this section appear to be inconsistent.

21. The proposed bill would delete 54A:6-9a as unnecessary and duplicative in light of the general acceptance of Federal Nonrecognition Provisions. Subsection 54A:6-9a would exempt the same gain for which nonrecognition is provided under Section 1034 of the Internal Revenue Code.

22. The Bill would redesignate 54A:6-9b as 54A:6-9 and restate the section in its entirety. The present section attempts to give partial exemption for gain from sales of residences of taxpayers of age 65 or older, but the section as presently written does not describe the exemption. The proposed amendment is taken directly from Section 121 of the Internal Revenue Code.

23. The Bill would amend 54A:6-13 to make this section read consistently with the other subsections of 54A:6.

24. The Bill proposes that 54A:8-1a be amended to make it clear that the tax is imposed with respect to each fiscal or accounting year or portion thereof which occurs after June 30, 1976. As the statute now exists it reads literally that it applies only to "all or any part" of a year beginning on or after July 1, 1976. For a calendar year taxpayer this could well be interpreted to apply only to income earned in the calendar year beginning January 1,

1977.

25. As presently written 54A:8-3.1 requires non-resident spouses to file a joint return even though only one spouse has New Jersey income. The Committee feels there is serious question concerning jurisdiction by New Jersey over a non-resident who has no New Jersey income. The proposed amendment to 54A:8-3.1d is designed to correct this defect.

26. The Bill proposes that 54A:8-4 be amended to make it clear that the threshold level is \$100.00 for each year.

27. It is proposed that 54A:8-4(1) be amended to make it clear (a) that a declaration of estimated taxes is required for all tax years ending in 1976 and is not limited to the calendar year 1976, and (b) that no declaration of estimated tax is required to be made or filed prior to January 15, 1977.

28. The Committee notes that 54A:9-6(c) imposes an addition to tax at the rate of nine percent per annum if the taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax. The provision does not appear to impose the addition to tax on a taxpayer who in fact files and pays his estimated

tax installments but merely underestimates his total tax liability. 54A:9-6(d), however, clearly contemplates that the penalty be imposed for underpayment of estimated tax. The proposed amendment to this section is adapted from Section 6654 of the Internal Revenue Code and is designed to close this obviously unintentional gap.

29. The Bill proposes an amendment to 54A:9-9(a) to correct the word "deemed" which should apparently be the word "determined".

30. The Bill proposes that 54A:9-24 be amended to make it clear that the last two sentences apply to the New Jersey Tax on Capital Gains and Other Unearned Income Act, and that whether a taxpayer is using the hypothetical or actual method, the applicable method applies to taxable unearned income as well as to the Federal adjusted gross income and personal exemptions. This section is further amended to describe the denominator so as to include the case where the Federal accounting period is less than 12 months (e.g., if taxpayer dies between July 1, 1976, and December 31, 1976).

31. The Bill proposes that 54A:9-27(b) be amended to make it clear that unless a taxpayer elects to the contrary, his taxable income for the portion of 1976 subject to the Gross Income Tax Act is to be determined under the hypothetical method. However, he may elect to use the actual method with respect to all items except personal exemptions so long as he uses the actual method for all such items; provided, however, any taxpayer who is subject to the Tax on Capital Gains and Other Unearned Income Act for the period ending June 30, 1976, and to the Gross Income Tax Act for the period beginning July 1, 1976, shall be consistent in using the hypothetical or actual method for purposes of both Acts. This section is further amended, consistent with 54A:9-24, to provide for the proration by months and to describe the denominator so as to include the case where the Federal accounting period is less than a full year.

An Act to Amend and Supplement
the "New Jersey Gross Income Tax Act",
P.L. 1976 c. 47, Approved July 8, 1976

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

1. Subsection 1-2f of P.L. 1976 c. 47 [54A: 1-2(f)] is
amended to read as follows:

f. "Disabled" means either blindness or total and
permanent inability to engage in any substantial gainful
activity by reason of any medically determinable physical or
mental impairment [including blindness]. For purposes of
this subsection, "blindness" means central visual acuity of
20/200 or less in the better eye with the use of a correct-
ing lens. An eye which is accompanied by a limitation in
the fields of vision such that the widest diameter of the
visual field subtends an angle no greater than 20 degrees
shall be considered as having a central visual acuity of
20/200 or less.

2. Subsection 1-2g of P.L. 1976 c. 47 (54: 1-2(g)) is
amended to read as follows:

g. "Medical expenses" means nonreimbursed pay-
ments for [physicians, dental and other medical fees,
hospital care, nursing care, medicine and drugs, prosthetic

devices, X rays and other diagnostic services conducted by
or directed by a physician or dentist] the diagnosis, cure,
mitigation, treatment, or prevention of disease, for the
purpose of affecting any structure or function of the body.
In addition, medical expenses may also include amounts paid
for transportation primarily for and essential to medical
care and insurance (including amounts paid as premiums under
Part B of Title XVIII of the Social Security Act, relating
to supplementary medical insurance for the aged) covering
medical care.

3. Subsection 1-2m2 of P.L. 1976 c. 47 (54A: 1-2m2) is
amended to read as follows:

2. Who is not domiciled in this State but main-
tains a permanent place of abode in this State and spends in
the aggregate more than 183 days of the taxable year in this
State, unless such individual is in active service with the
Armed Forces of The United States.

4. Subsection 1-2j of P.L. 1976 c. 47 (54A:1-2j) is
amended to read as follows:

j. [blank] "Taxable Income" means gross income
as defined in Chapter 5 minus the personal exemptions and
deductions as set forth in Chapter 3.

5. Section 2-1 of P.L. 1976 c. 47 (54A:2-1) is amended to read as follows:

54A:2-1. Imposition of tax. There is hereby imposed tax for each taxable year (which shall be the same as a taxable year for Federal Income Tax purposes) on the New Jersey gross income as herein defined of every individual, state or trust (other than a charitable trust or a trust forming part of a pension or profit sharing plan, to the extent to which such trusts are exempt from tax for Federal income Tax purposes), subject to the deductions, limitations and modifications hereinafter provided, determined in accordance with the following table with respect to the taxpayer's taxable income:

If the Taxable Income is:	The tax is:
Not over \$20,000.00	2 percent of Taxable Income
Over \$20,000.00	\$400.00 plus 2.5 percent of the excess over \$20,000.00

6. Section 2-4 of P.L. 1976 c. 47 (54A:2-4) is amended to read as follows:

54A:2-4. Minimum gross (taxable) income. Notwithstanding any other provisions of this act, a taxpayer or

a married couple filing a joint return with a gross income of \$3,000 or less (\$1,500 or less in the case of a married person filing separately) shall not be subject to tax under this Act. In the case of a nonresident, gross income shall mean gross income which such nonresident would have reported if he had been a resident.

7. Subsection 3-1(b)5 of P.L. 1976 c. 47 [54A:3-1(b)5] is amended to read as follows:

5. [Blind or] Disabled taxpayer - \$1,000.00

8. Subsection 3-1(b)6 of P.L. 1976 c. 47 [54A:3-1(b)6] is amended to read as follows:

6. [Blind or] Disabled spouse - \$1,000.00

9. Subsection 3-1(c) of P.L. 1976 c. 47 [54A:3-1(c)] is amended to read as follows:

(c) The personal exemptions allowed under this section shall be limited to that percentage which the total number of months within a taxpayer's taxable year under this act bears to 12. For [this purpose] all purposes of this act, unless otherwise specified, fifteen days or more shall constitute a month.

10. Subsection 3-1 of P.L. 1976 c. 47 (54A:3-1) is amended to add subsection (e) as follows:

(e) Operating Rules. No exemption under (b) (1), (b) (4), or (b) (6) shall be allowed for the spouse of a taxpayer if such spouse is also entitled to an exemption as a taxpayer under (a), (b) (3), (b) (5).

11. Section 3-2 of P.L. 1975 c. 47 (54A:3-2) is amended to read as follows:

54A:3-2. Alimony and separate maintenance payments. There shall be allowed as a deduction amount paid to a spouse or former spouse of a taxpayer, to the extent to which such amounts are allowable to the taxpayer as deductions for alimony and separate maintenance payments for Federal income tax purposes. [Includible under Section 54A:5-1(n) with respect to payments included as income in the return of a former spouse or of a spouse receiving separate maintenance pursuant to a court decree (or which would have otherwise been includible if such payments were made to an individual subject to tax under this act).]

12. Subsection 4-1(b) of P.L. 1976 c. 47 (54A:4-1(b)) is amended to read as follows:

(b) The credit provided under this section shall not exceed the proportion of] be the lesser of (1) the amount

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of such income or wage tax imposed for such taxable year by such other state or jurisdiction or (2) that amount which bears the same ratio to the tax otherwise due under this act that the amount of the taxpayer's gross income subject to tax under this act and by the other jurisdiction bears to his entire New Jersey gross income.

13. Subsection 4-3a of P.L. 1976 c. 47 (54A:4-3a) is amended to read as follows:

a. Any qualified residential tenant or qualified shareholder in a cooperative shall be entitled to a home-
stead credit of \$65.00 against the tax otherwise due here-
under. Any qualified residential tenant or qualified
shareholder in a cooperative shall be entitled to an addi-
tional homestead credit of \$35.00 if such [resident] tenant
or shareholder is (1) [permanently and totally] disabled,
(2) 65 years of age or over, or (3) a surviving spouse of a
person qualified under (2) above who has remained unmarried
since becoming a widow or widower at the age of 55 years or
over. The term "qualified residential tenant" shall mean
a taxpayer who resides within the State of New Jersey in a
dwelling which was rented by such taxpayer and used as his
principal residence for a period of not less than 90 days

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of the tax year. Such dwelling may consist of a single unit or part of a multiple-unit dwelling or multi-purpose building and a part of the land upon which it is situated. The term "dwelling" as used in the preceding sentence does not include a mobile home unless assessed and taxed as real property pursuant to State statutes. A qualified shareholder in a cooperative is a taxpayer who resides within the cooperative in which he is a shareholder for a period of not less than 90 days of the tax year.

14. Subsection 4-3b of P.L. 1976 c. 47 (54A:4-3b) is amended to read as follows:

b. Husband and wife. A married couple who (elect to) file separate New Jersey returns shall each be entitled to one-half of the credit otherwise allowable under Subsection a.

15. Subsection 5-1(c) of P.L. 1976 c. 47 (54A:5-1(c)) is amended to read as follows:

(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.

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clauses (1) or (2) of Section 54A:6-14 of this act. The term "net gains or net income" shall not include gains or income from transactions to the extent to which non-recognition is allowed for Federal income tax purposes. [The term "sale, exchange or other disposition" shall not include . . . securities or property surrendered in exchange therefor.]

16. Subsection 5-1(c) of P.L. 1976 c. 47 (54A:5-1(e)) is amended to read as follows:

(e) Interest, except interest referred to in clauses (1) or (2) of section 54A:6-14 of this act reduced by amounts forfeited by the taxpayer during the tax year to a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank or homestead association as a penalty of premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.

17. Subsection 5-1(n) of P.L. 1976 c. 47 (54A:5-1(n)) is

amended to read as follows:

(n) Alimony and separate maintenance payments to the extent that such payments constitute an item or items of gross income for Federal income tax purposes [are required to be made under a decree of divorce or separate maintenance but not including payments for support of minor children].

18. Section 5-1 of P.L. 1976 c. 47 [54A:5-1] is amended to add the following:

(o) Transferrable rules. Gross income shall include net gain or net losses from dispositions of property if the sale, exchange or other disposition of property occurred on or after July 1, 1976; provided, however, that if a taxpayer has gain from a transaction completed after December 31, 1975, and prior to July 1, 1976, then, to the extent such gain has not previously been subject to tax under this act or under the New Jersey Tax on Capital Gains and Other Taxation Imposed Act (P.L. 1975 c. 172), such gain shall be accounted for and subject to tax under this act at the same time and to the same extent as accounted for by the taxpayer under his method of accounting used for Federal income tax purposes.

If the sale, exchange, or other disposition of property was completed prior to January 1, 1976, the gain, if any,

shall not be subject to tax under this act.

19. Section 5-2 of P.L. 1976 c. 47 [54A:5-2] is amended to read as follows:

Losses. Losses which occur within one [category of gross income] of the Subsections a through n of 54A:5-1 may be applied against other sources of gross income occurring within the same [category of gross income] subsection during the taxable year. However, a net loss in one [category of gross income] subsection may not be applied against gross income occurring in another subsection [category of gross income]."

20. Section 5-6 of P.L. 1976 c. 47 [54A:5-6] is deleted.

21. Subsection 6-9a of P.L. 1976 c. 47 [54A:6-9a.] is deleted.

22. Subsection 6-9b of P.L. 1976 c. 47 is redesignated 54A:6-9 and is amended to read as follows:

54A:6-9 Gain from sale or exchange of residence of individual who has attained age 65. (a) GENERAL RULE. At the election of the taxpayer, gross income does not include gain from the sale or exchange of property if--

- (1) the taxpayer has attained the age of 65 before the date of such sale or exchange, and
- (2) during the 8-year period ending on the

date of the sale or exchange, such property has been owned and used by the taxpayer as his principal residence for periods aggregating 5 years or more.

(b) LIMITATIONS.--

(1) WHERE ADJUSTED SALES PRICE EXCEEDS \$25,000. If the price of the property sold or exchanged exceeds \$25,000, subsection (a) shall apply to that portion of the gain which bears the same ratio to the total amount of such gain as \$25,000 bears to such adjusted sales price. For purposes of the preceding sentence, the term "adjusted sales price" has the meaning assigned to such term by 54A16-9(d) (7).

(2) APPLICATION TO ONLY ONE SALE OR EXCHANGE.--

Subsection (c) shall not apply to any sale or exchange by the taxpayer if an election by the taxpayer or his spouse under subsection (a) with respect to any other sale or exchange is in effect.

(c) ELECTION.--An election under subsection (a) may be made or revoked at any time before the expiration of the period for making a claim for credit or refund of the tax imposed by this chapter for the taxable year in which the

Director shall by regulations prescribe. In the case of a taxpayer who is married, an election under subsection (a) or a revocation thereof may be made only if his spouse joins in such election or revocation.

(c) SPECIAL RULES.--

(1) PROPERTY HELD JOINTLY BY HUSBAND AND WIFE.--For purposes of this section, if--

(A) property is held by a husband and wife as joint tenants, tenants by the entirety, or community property,

(B) such husband and wife make a joint return for the taxable year of the sale or exchange, and

(C) one spouse satisfies the age, holding, and use requirements of subsection (a) with respect to such property,

then both husband and wife shall be treated as satisfying the age, holding, and use requirements of subsection (a) with respect to such property.

(2) PROPERTY OF DECEASED SPOUSE.--For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property,

(A) the deceased spouse (during the 8-year period ending on the date of the sale or exchange) satisfied the holding and use requirements of subsection (c) (2) with respect to such property, and

(B) no election by the deceased spouse under subsection (c) is in effect with respect to a such sale or exchange.

then such individual shall be treated as satisfying the holding and use requirements of subsection (c) (2) with respect to such property.

(1) JOINT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.--For purposes of this section, if the taxpayer holds stock as a joint-stockholder in a cooperative housing corporation, then--

(A) the holding requirements of subsection

(c) (2) shall be applied to the holding of such stock, and

(B) the use requirements of subsection

(c) (2) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such

stockholder.

(4) INCIDENTAL CONVERSIONS.--For purposes of this section, the destruction, theft, seizure, regulation, or condemnation of property shall be treated as the sale of such property.

(5) PROPERTY USED IN PART AS PRINCIPAL RESIDENCE.--In the case of property only a portion of which, during the 5-year period ending on the date of the sale or exchange, has been owned and used by the taxpayer as his principal residence for periods aggregating 5 years or more, this section shall apply with respect to so much of the gain from the sale or exchange of such property as is determined, under regulations prescribed by the Director, to be attributable to the portion of the property so owned and used by the taxpayer.

(6) DETERMINATION OF MARITAL STATUS.--In the case of any sale or exchange, for purposes of this section--

(A) the determination of whether an individual is married shall be made as of the date of the sale or exchange; and

(B) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(7) RETURNED SALES 22103. For the purposes of this section, the term "returned sales price" means the amount realized, reduced by the percentage of the expenses for work performed on the old residence in order to assist in its sale, to the sale extent and subject to the same limitation as is provided for in the Federal income tax law.

23. Section 6-13 of P.L. 1976 c. 47 (54A:6-13) is amended to read as follows:

Unemployment insurance benefits. Gross income shall not include (a) payments and benefits received under any unemployment insurance law.

24. Subsection 2-1a of P.L. 1976 c. 47 (54A:2-1a) is amended to read as follows:

2. Every taxpayer shall annually pay the tax imposed by this act with respect to all or any part of each of his fiscal or calendar accounting years occurring (beginning on and after July 1, 1976) after June 30, 1976, to be computed as in this act provided, for such fiscal or calendar accounting year or part thereof, on a return which shall be filed, in the case of a taxpayer reporting on a calendar year basis, on or before April 15 following the close of such calendar year, or, in the case of a taxpayer

reporting on a fiscal year basis, on or before the fifteenth day of the fourth month following the close of such fiscal year, and the full amount of the tax shall be due and payable on or before the date prescribed herein for the filing of the return.

In the case of a taxable year which ends on or after July 1, 1976, and prior to December 31, 1976, an income tax return for such taxable year shall be filed on or before April 15, 1977.

25. Subsection 8-3.1d of P.L. 1976 c. 47 (54A:8-3.1d) is amended to read as follows:

d. If either husband or wife is a resident and the other is a non-resident, or if both are non-residents but only one has income subject to tax under this act, they shall file separate tax returns under this act on such single or separate forms as may be required by the Director in which event their tax liabilities shall be separate unless both elect to determine their joint taxable income as if both were residents, in which event their liabilities shall be joint and several.

26. Subsection 8-4(a) of P.L. 1976 c. 47 (54A:8-4(a)) is amended to read as follows:

(c). Requirement of filing. Every resident and nonresident individual shall make a declaration of his estimated New Jersey personal income tax for each taxable year (beginning) which ends after June 30, 1976, if his estimated New Jersey personal income tax for such year can reasonably be expected to be more than \$100 in excess of any credits allowable against his tax, whether or not he is required to file a federal declaration of estimated tax for such year.

27. Subsection 3-4(1) of P.L. 1976 c. 47 (S4A:3-4(1)) is amended to read as follows:

(1) In the taxable year ending in 1976, no declaration shall be required until the lapse of at least one full calendar quarter following enactment of this act.

28. Subsection 3-6(c) of P.L. 1976 c. 47 (S4A:3-6(c)) is revised to read as follows:

(c) Underpayment of estimated tax.

(1) Addition to tax. In the case of any underpayment of estimated tax by a taxpayer, except as provided in subsection (d) below, there shall be added to the tax for the taxable year an amount in the case of any taxpayer determined upon the amount of underpayment determined in accordance with subsection (c)(2) below for the period of underpayment as determined under subsection (c)(3) below.

(2) Amount of underpayment. For the purposes of Subsection (c)(1) the amount of under payment shall be the excess of:

A. The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent (66 2/3 percent in the case of farmers referred to in subsection (c) of section 54A:3-4) of the tax shown on the return for the taxable year or, if no return was filed, 80 percent (66 2/3 percent in the case of farmers referred to in Subsection (c) of Section 54A:3-4) of the tax for such year, over

B. The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(3) Period of underpayment. The period of underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

A. The fifteenth day of the fourth month

following the close of the taxable year.

B. With respect to any portion of the under-

payment, the date on which such portion is paid.

For the purposes of this paragraph, a payment of

estimated tax on any installment date shall be

considered a payment of any previous underpayment

only to the extent such payment exceeds the

amount of the installment determined under Sub-

section 2A for such installment date.

19. Subsection 9-9(a) of P.L. 1976 c. 47 (54A:9-9(a))

is amended to read as follows:

(a) General. The form of a petition to the

director, and further proceedings before the director in any

case initiated by the filing of a petition, shall be governed

by such rules as the director shall prescribe. No petition

shall be deemed determined in whole or in part without

opportunity for a hearing on reasonable prior notice. Such

hearing shall be conducted by the director, or by a hearing

officer designated by him to take evidence and report to the

director. The director shall decide the case as quickly as

practicable. Notice of the decision shall be mailed promptly

to the taxpayer at his last known address, and such notice

shall set forth the director's findings of fact and a brief
statement of the grounds of decision in each case decided in
whole or in part adversely to the taxpayer.

30. Subsection 9-24 of P.L. 1976 c. 47 (54A:9-24) is

amended to read as follows:

54A:9-24. Repeal of Tax on Capital Gains and Other

Unearned Income. Chapter 172, Laws of 1975 (C 54:82-1 et

seq.) is hereby repealed, effective July 1, 1976, and shall

be inoperative with respect to capital gains and other

unearned income subject to tax, under said act, paid or

accrued on and after said date. Such repeal shall not

affect the obligation, then or duty to pay any taxes, interest

or penalties which 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 or part of a taxable year

prior to July 1, 1976, nor shall this act affect the legal

authority to assess and collect the taxes which may be or

have been due and payable under said chapter 172, Laws of

1975 as amended, together with such interest and penalties

as would have accrued thereon under any provision of law

amended or repealed hereby; nor shall this act invalidate

any assessments or affect any proceeding for the enforcement

thereof. In the event of such report, the adjusted gross income requirements, the capital gains and other unearned income subject to tax, and the personal exemptions allowed shall, for purposes of chapter 172, laws of 1975, be prorated according to the number of taxable months required to be reported under said act divided by (12) the number of months in the accounting period for Federal income tax purposes under chapter 172, laws of 1975. The taxpayer may, at his option, determine actual adjusted gross income and capital gains and other unearned income for the period required to be reported under said act.

31. Subsection 9-27(b) of P.L. 1976 c. 47 (54A:9-27(b)) is amended to read as follows:

(b) New Jersey taxable income for (1976) the taxable year ending June 30, 1976 from a person or entity with an accounting period of Federal income tax purposes which begins before July 1, 1976, shall, unless the taxpayer elects to the contrary, be determined by computing the (total) taxable income of the person or entity for the full accounting period and by multiplying such taxable income by the quotient of the number of (days) months in such year after July 1, 1976, June 30, 1976, divided by (365) the

number of months in such accounting period. However, where the taxpayer's taxable year under this act covers a period of less than 12 months, the taxpayer may, at his option, determine (total) taxable income solely on the basis of the actual items of income, deductions, loss or gain occurring during such taxable year and personal exemptions prorated to such taxable year according to months provided, however, that if the taxpayer was subject to tax under chapter 172, laws of 1975, the method of determining taxable income under this section shall be consistent with the method used for purposes of said act under 54A:11-24.

32. This shall take effect immediately and shall be applicable with respect to tax years ending after June 30, 1976.

Substantive Comments

1. The Committee notes that 54A:5 specifically enumerates the categories of income which are subject to tax. Consistently with the Section's comments in March 1976, the Committee notes that there are many items of receipts which do not appear to be included in the enumerated categories.
2. The Committee notes that while estates and trusts are generally taxed (54A:5-3) there is an absence of statutory authority to deal with the complex area of grantor trusts.
3. The Committee notes that while the Act purports to be a tax imposed upon gross income, deductions are provided for two categories of expenses: alimony and medical expenses. The Committee feels the Act should either be a pure tax on gross income in which case these deductions should be eliminated, or in the alternative, serious consideration should be given to adding other deductions of importance equal to alimony and medical expenses.
4. The Committee notes that while net income from partnerships is a specific type of gross income for the purpose of the Act, the Act does not specifically provide for the preservation of the character of income between the

partnership and the partner. For instance, is interest income received by partnership "interest" income or "partnership" income for the partner.

5. The Committee also notes and with thanks to the New Jersey Society of Certified Public Accountants that the Act does not contain any rules on residency nor does it provide for any mechanism to accrue taxes for a person becoming or ceasing to be a resident. This may raise serious problems of administration. Consider, for example, a long-term installment sale effected by a non-resident taxpayer who becomes a resident prior to the receipt of all installment payments, as compared with a like installment sale effected by a resident who subsequently becomes a non-resident.

6. It appears to the Committee that 54A:5-6 may include pension payments to a non-resident as New Jersey income if the pension arose out of services rendered in New Jersey. If such is the case, a difficult collection problem may be posed. The collection problem will become even worse if the pension is paid by an insurance company from an out-of-state location.

7. The Committee notes that the Act does not specifically provide for the exclusion for income of pension or

profit sharing plan distributions which constitute qualified rollovers for federal income tax purposes. Since the taxpayer by necessity does not have actual use of the "roll-over" amount, it would be a hardship to require that he pay tax on distribution.

ASSEMBLY BILL NO. ____

STATE OF NEW JERSEY

AN ACT concerning the payment of interest on certain overpayments of tax.

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

1. R.S. 54:49-17 and R.S. 54:49-18 are hereby designated N.J.S. 54:49-18 and N.J.S. 54:49-19.

2. R.S. 54:49-17 shall hereinafter read as follows:

54:49-17. INTEREST ON OVERPAYMENTS. Interest shall be allowed and paid upon any overpayment in respect of any tax imposed by R.S. 54:10A-1 et. seq., 54:10B-1 et. seq., 54:10D-1 et. seq., 54:10E-1 et. seq., 54:32B-1 et. seq., and 54:33-1 et. seq., at the rate of six percent (6%) per annum commencing from a date six months after the date of filing of a written claim for refund by the taxpayer until (a) in the case of a credit, the date on which the credit is applied; or (b) in the case of a refund, a date not more than 30 days preceding the date of the refund check. For this purpose, the filing of a claim for refund, the filing of a return showing overpayment, or a finding by the Division of Taxation on audit that a refund is due shall constitute a claim for refund.

3. This act shall take effect immediately.

STATEMENT

At present New Jersey does not pay interest on overpayments of any tax except the gross income tax. This bill provides for the payment of interest on overpayments of tax under the transfer inheritance tax, the corporate business tax, the corporation income tax, the financial institutions tax, the

savings institutions tax and the sales and use taxes. The rate of interest is set at six percent (6%) per year and is one-third less than the rate of tax imposed on taxpayers on underpayments of tax.

APPENDIX

Impact of One Manufacturing Job on New Jersey State and Local Taxes

When considering business tax incentive proposals or other programs to bolster a state's economic development, it would be useful to policymakers to know the stakes involved - particularly the impact of a proposed incentive on tax revenue. While it is relatively easy to put a price tag on each proposed incentive or new development effort, great difficulty and uncertainty accompanies any effort to demonstrate revenue gains to be generated by such programs.

The following calculation attempts to predict New Jersey State and local revenue gains from the creation of each additional manufacturing job. It does not attempt to predict job gains or revenue impact from any specific program of incentives.

A generalized measure of the tax revenue impact of one industrial job must be based on industry averages, notwithstanding the fact that no particular manufacturing job will be average. Nor can averages predict the precise timing and magnitude of growth in a specific tax. What the following calculation does provide, based on very conservative assumptions, is a reasonable "ball park" estimate of the minimum impact of a manufacturing job on New Jersey State and local revenue.

The following calculations assume that each new industrial job is backed by a capital investment of \$40,000,¹ broken into \$9,200 per job for plant construction and \$30,800 for machinery and equipment purchases.²

1. Source: Chamber of Commerce of the United States.

2. Of total capital investments by New Jersey manufacturers, approximately 23% was invested in plants, 77% in machinery and equipment, as reported in the 1973 and 1974 Annual Survey of Manufacturers, U.S. Department of Commerce.

Two major assumptions underlie the calculations:

First, a relationship exists between personal income and State and local tax yields. It has been assumed that combined state and local tax revenue will experience an increase or decrease corresponding to the percentage change in personal income (an elasticity of 1.00 for the tax system).³

Second, using an economic multiplier, it has been determined that each new manufacturing job provided in New Jersey will result in creation of two jobs in other sectors of the economy. The manufacturer's payments for goods, services, wages and benefits result in the generation of retail, wholesale, service, transportation and construction activity. The per employee share of the manufacturer's total economic activity within the region (including employee compensation) is used to determine a multiplier. A 3.0 multiplier was selected as a conservative estimate for New Jersey (as a densely developed urban state with exceptionally diverse business economy) after reviewing previous studies of economic multipliers. For example, multipliers have been calculated for more limited geographic areas such as New York City (3.15), Cincinnati (2.70), Denver (2.54) and Wichita (2.74).⁴ Based on these multipliers for smaller geographic areas with less diverse business bases, a 3.0 multiplier for New Jersey seems suitable.

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3. The New Jersey Tax Policy Committee reported in 1972 that the State's revenue structure had an elasticity of .98. Numerous changes in both taxes and rates in recent years make a more current analysis of elasticity difficult if not impossible.

No assertion is made that variations in personal income will produce immediate and completely parallel changes in tax yields. Withdrawals from personal savings in recessionary periods and increased saving in periods of income growth affect the timing, although not necessarily the ultimate volume of tax yields. Business cycles also cause more radical variations in sales, excise and income taxes than in property taxes. Nonetheless, it is reasonable to conclude that a given amount of growth in personal income will produce, in time, corresponding growth in tax yields.

4. See review of employment multipliers for selected American communities by Smith, David M., (1971), Industrial Location, An Economic Geographical Analysis, New York, John Wiley & Sons, p.458 et seq.

Calculation of Tax Impact

I. Recurring (annual) Tax Yields.

For purposes of calculating the tax impact of one additional manufacturing job, the manufacturing employee's wage and the derivative earnings of two employees in other economic sectors must be determined.

The \$11,260 average earnings of a New Jersey manufacturing worker (1976) plus \$21,840 earnings from two derivative jobs (each calculated as equivalent to the \$10,920 average earnings of New Jersey employees covered by unemployment insurance in 1976)⁵ produces a total of \$33,100 in personal income resulting from the creation of one new manufacturing job. Each \$1.00 of personal income produces approximately 5.0 cents in State revenue and 6.2 cents of local property tax.⁶

The \$33,100 increase in personal income, generated by providing one additional manufacturing job for one year, would have produced \$1,655 in State revenue and \$2,052 in local property taxes in 1976.

To update the calculation from 1976 to 1973, an average 7.5% per year growth in manufacturing and non-manufacturing employee earnings has been projected.⁷ Based on estimated 1973 income levels, recurring annual tax yields generated per additional manufacturing job would be:

State.....	\$1,903
Local.....	\$2,360

Combined (recurring) State and local tax yield....\$4,263

5. Source: N.J. Department of Labor and Industry.

6. The ratio of personal income to tax revenue is based on U.S. Department of Commerce data on 1976 personal income of New Jersey residents and N.J. Department of the Treasury data on State revenue received during the 1976-1977 fiscal year and the 1976 local property tax levy. For this purpose, State taxes include major taxes, miscellaneous taxes and licenses, lottery and miscellaneous revenue but do not include Federal aid or revenue sharing or those taxes dedicated for local use which since have been repealed or made inapplicable to future purchases. Local taxes consist of the local property tax, not including other tax and miscellaneous revenue.

7. From July 1976 to July 1977, the average gross hourly earnings of production workers in New Jersey rose 3.2%. Source: N.J. Department of Labor and Industry, Economic Indicators, August 31, 1977.

II. Non-recurring Tax Yields.

Non-recurring taxes are generated by the investment in plant and equipment required to support a new manufacturing job. Sales taxes are imposed on purchases of construction materials. Payment of construction wages translates into growth in a mix of state and local taxes. Machinery and equipment purchases result in net income to durable goods manufacturers, taxable under the New Jersey Corporation Business Tax.

A. Plant Construction

(1) Construction Materials

Of the \$9,200 per job invested in plant per manufacturing job,⁸ approximately \$3,680, (40%) would be spent for purchase of construction materials. Purchase of these materials, which are subject to the 5.0% New Jersey Sales and Use Tax, would produce the following tax yield:

State.....\$184

(2) Construction Wages, Salaries and Profits

The balance of construction costs, approximately \$5,520 (60% of the \$9,200 invested in plant construction per job) has been treated as personal income.⁹ Using the rates of 5.0 cents of state taxes and 6.2 cents of local taxes generated by each \$1.00 of personal income, \$5,520 of earnings by persons employed in the construction industry will result in the following tax yields:

State.....\$276
Local.....\$342

3. See footnote 1 for breakdown of capital expenditures.

9. Although the application of an economic multiplier to construction would be justified at this point, no multiplier has been applied for purposes of this calculation.

B. Machinery and Equipment Purchases

Machinery and equipment purchases per manufacturing job totals approximately \$30,800. For lack of a more precise method, an extremely conservative assumption was made that New Jersey capital goods manufacturers would produce and sell 8.2% of such equipment.¹⁰ For purposes of determining state corporation tax payments generated by sales of this machinery and equipment, it was assumed that before tax net income equalled 9% of sales (the approximate average for all manufacturing industries for the 1974-1976 period). Allocated to New Jersey for purposes of the Corporation Business Tax was all net income attributable to sales by New Jersey firms plus one-third of net income attributable to sales by out-of-state firms. Imposed on this corporate income, the state's 7.5% net income tax would produce the following tax yield:¹¹

State.....\$81

Total non-recurring taxes would be:

State.....\$541

Local.....\$342

Combined non-recurring State and local tax yield..\$883

III. Initial Year's Tax Yield

Based on estimated 1978 income levels, total recurring and non-recurring tax revenue produced from one additional manufacturing job for a period of one year would be:

State.....\$2,444

Local.....\$2,702

Combined State and local tax yield
from first year's employment.....\$5,146

10. Corresponding with the State's share of employment in the manufacturing machinery industry, 1974 Annual Survey of Manufacturers, U.S. Department of Commerce.

11. New Jersey Corporation Business Tax owing = \$30,800 sales x .09 rate of profit x (.082 domestic share + .918/3 apportioned foreign share) x .075 tax rate.

As a final comment on the preceding calculations, it should be noted that no attempt has been made to determine the amount of reductions in State and local expenditures for welfare, Medicaid, police and institutional services which could result from employing a jobless individual. Each dollar reduction in State revenue needs would have the same impact as a like increase in revenue. The real revenue impact of a manufacturing job would be the combination of reductions in government costs plus new taxes generated.

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