

# ASSEMBLY, No. 3110

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 21, 2004

**Sponsored by:**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Mercer)**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Co-Sponsored by:**

**Assemblyman Caraballo, Senators Kenny and Bryant**

**SYNOPSIS**

Limits the corporation business tax application of net operating losses to 50% of taxable income for tax years 2004 and 2005.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/25/2004)**

A3110 WATSON COLEMAN, JOHNSON

2

1 AN ACT concerning the net operating loss deduction under the  
2 corporation business tax, amending P.L.1945, c.162.

3

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

6

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

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

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

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

16 (c) "Corporation" shall mean any corporation, joint-stock company  
17 or association and any business conducted by a trustee or trustees  
18 wherein interest or ownership is evidenced by a certificate of interest  
19 or ownership or similar written instrument, any other entity classified  
20 as a corporation for federal income tax purposes, and any state or  
21 federally chartered building and loan association or savings and loan  
22 association.

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

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

**Matter underlined thus is new matter.**

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

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

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

22 (e) (Deleted by amendment, P.L.1998, c.114.)

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

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

40 (h) "Taxpayer" shall mean any corporation, and any partnership  
41 required, or consenting, to report or to pay taxes, interest or penalties  
42 under this act. "Taxpayer" shall not include a partnership that is listed  
43 on a United States national stock exchange.

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

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

4 (k) "Entire net income" shall mean total net income from all  
5 sources, whether within or without the United States, and shall include  
6 the gain derived from the employment of capital or labor, or from both  
7 combined, as well as profit gained through a sale or conversion of  
8 capital assets.

9 For the purpose of this act, the amount of a taxpayer's entire net  
10 income shall be deemed prima facie to be equal in amount to the  
11 taxable income, before net operating loss deduction and special  
12 deductions, which the taxpayer is required to report, or, if the taxpayer  
13 is classified as a partnership for federal tax purposes, would otherwise  
14 be required to report, to the United States Treasury Department for  
15 the purpose of computing its federal income tax, provided however,  
16 that in the determination of such entire net income,

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

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

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

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

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

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

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

42 (F) (i) The amount by which depreciation reported to the United  
43 States Treasury Department for property placed in service on and after  
44 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
45 years beginning on and after the effective date of P.L.1993, c.172, for  
46 purposes of computing federal taxable income in accordance with

1 section 168 of the Internal Revenue Code in effect after December 31,  
2 1980, exceeds the amount of depreciation determined in accordance  
3 with the Internal Revenue Code provisions in effect prior to January  
4 1, 1981, but only with respect to a taxpayer's accounting period ending  
5 after December 31, 1981; provided, however, that where a taxpayer's  
6 accounting period begins in 1981 and ends in 1982, no modification  
7 shall be required with respect to this paragraph (F) for the report filed  
8 for such period with respect to property placed in service during that  
9 part of the accounting period which occurs in 1981. The provisions  
10 of this subparagraph shall not apply to assets placed in service prior to  
11 January 1, 1998 of a gas, gas and electric, and electric public utility  
12 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
13 seq.) prior to 1998.

14 (ii) For the periods set forth in subparagraph (F)(i) of this  
15 subsection, any amount, except with respect to qualified mass  
16 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
17 Internal Revenue Code as in effect immediately prior to January 1,  
18 1984, which the taxpayer claimed as a deduction in computing federal  
19 income tax pursuant to a qualified lease agreement under paragraph  
20 (8) of that section.

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

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

42 (ii) The amount of treble damages paid to the Department of  
43 Environmental Protection pursuant to subsection a. of section 7 of  
44 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
45 department in removing, or arranging for the removal of, an  
46 unauthorized discharge upon failure of the discharger to comply with

1 a directive from the department to remove, or arrange for the removal  
2 of, the discharge.

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

5 (I) Interest paid, accrued or incurred for the privilege period to a  
6 related member , as defined in section 5 of P.L.2002, c.40  
7 (C.54:10A-4.4), except that a deduction shall be permitted to the  
8 extent that the taxpayer establishes by clear and convincing evidence,  
9 as determined by the director, that: (i) a principal purpose of the  
10 transaction giving rise to the payment of the interest was not to avoid  
11 taxes otherwise due under Title 54 of the Revised Statutes or Title  
12 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to  
13 arm's length contracts at an arm's length rate of interest, and (iii)(aa)  
14 the related member was subject to a tax on its net income or receipts  
15 in this State or another state or possession of the United States or in  
16 a foreign nation, (bb) a measure of the tax includes the interest  
17 received from the related member, and (cc) the rate of tax applied to  
18 the interest received by the related member is equal to or greater than  
19 a rate three percentage points less than the rate of tax applied to  
20 taxable interest by this State.

21 A deduction shall also be permitted if the taxpayer establishes by  
22 clear and convincing evidence, as determined by the director, that the  
23 disallowance of a deduction is unreasonable, or the taxpayer and the  
24 director agree in writing to the application or use of an alternative  
25 method of apportionment under section 8 of P.L.1945, c.162  
26 (C.54:10A-8); nothing in this subsection shall be construed to limit or  
27 negate the director's authority to otherwise enter into agreements and  
28 compromises otherwise allowed by law.

29 A deduction shall also be permitted to the extent that the taxpayer  
30 establishes by a preponderance of the evidence, as determined by the  
31 director, that the interest is directly or indirectly paid, accrued or  
32 incurred to (i) a related member in a foreign nation which has in force  
33 a comprehensive income tax treaty with the United States, provided  
34 however that the taxpayer shall disclose on its return for the privilege  
35 period the name of the related member, the amount of the interest, the  
36 relevant foreign nation, and such other information as the director may  
37 prescribe or (ii) to an independent lender and the taxpayer guarantees  
38 the debt on which the interest is required.

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

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

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

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

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

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

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

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

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

25 (5) Entire net income shall exclude 100% of dividends which were  
26 included in computing such taxable income for federal income tax  
27 purposes, paid to the taxpayer by one or more subsidiaries owned by  
28 the taxpayer to the extent of the 80% or more ownership of investment  
29 described in subsection (d) of this section and shall exclude 50% of  
30 dividends which were included in computing such taxable income for  
31 federal income tax purposes, paid to the taxpayer by one or more  
32 subsidiaries owned by the taxpayer to the extent of 50% or more  
33 ownership of investment, such ownership of investment calculated in  
34 the same manner as the 80% or more of ownership of investment is  
35 calculated as described in subsection (d) of this section.

36 (6) (A) Net operating loss deduction. There shall be allowed as a  
37 deduction for the privilege period the net operating loss carryover to  
38 that period.

39 (B) Net operating loss carryover. A net operating loss for any  
40 privilege period ending after June 30, 1984 shall be a net operating  
41 loss carryover to each of the seven privilege periods following the  
42 period of the loss. The entire amount of the net operating loss for any  
43 privilege period (the "loss period") shall be carried to the earliest of  
44 the privilege periods to which the loss may be carried. The portion of  
45 the loss which shall be carried to each of the other privilege periods  
46 shall be the excess, if any, of the amount of the loss over the sum of

1 the entire net income, computed without the exclusions permitted in  
2 paragraphs (4) and (5) of this subsection or the net operating loss  
3 deduction provided by subparagraph (A) of this paragraph, for each of  
4 the prior privilege periods to which the loss may be carried.

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

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

19 (E) Notwithstanding the provisions of this paragraph (6) of  
20 subsection (k) of this section to the contrary, for privilege periods  
21 beginning during calendar year 2002 and calendar year 2003, no  
22 deduction for any net operating loss carryover shall be allowed, and  
23 for privilege periods beginning during calendar year 2004 and calendar  
24 year 2005, there shall be allowed as a deduction for the privilege  
25 period so much of the net operating loss carryover as reduces entire  
26 net income otherwise calculated by 50%. If and only to the extent that  
27 any net operating loss carryover deduction is disallowed by reason of  
28 this subparagraph (E), the date on which the amount of the disallowed  
29 net operating loss carryover deduction would otherwise expire shall be  
30 extended by [two years] a period equal to the period for which  
31 application of the net operating loss was disallowed by this  
32 subparagraph.

33 Provided, that this subparagraph (E) shall not restrict the surrender  
34 or acquisition of corporation business tax benefit certificates pursuant  
35 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict  
36 the application of corporation business tax benefit certificates pursuant  
37 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

38 (7) The entire net income of gas, electric and gas and electric  
39 public utilities that were subject to the provisions of P.L.1940, c.5  
40 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
41 the New Jersey depreciation allowance for federal tax depreciation  
42 with respect to assets placed in service prior to January 1, 1998. For  
43 gas, electric, and gas and electric public utilities that were subject to  
44 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,  
45 the New Jersey depreciation allowance shall be computed as follows:  
46 All depreciable assets placed in service prior to January 1, 1998 shall



1 be considered a single asset account. The New Jersey tax basis of this  
2 depreciable asset account shall be an amount equal to the carryover  
3 adjusted basis for federal income tax purposes on December 31, 1997  
4 of all depreciable assets in service on December 31, 1997, increased  
5 by the excess, of the "net carrying value," defined to be adjusted book  
6 basis of all assets and liabilities, excluding deferred income taxes,  
7 recorded on the public utility's books of account on December 31,  
8 1997, over the carryover adjusted basis for federal income tax  
9 purposes on December 31, 1997 of all assets and liabilities owned by  
10 the gas, electric, or gas and electric public utility as of December 31,  
11 1997. "Books of account" for gas, gas and electric, and electric public  
12 utilities means the uniform system of accounts as promulgated by the  
13 Federal Energy Regulatory Commission and adopted by the Board of  
14 Public Utilities. The following adjustments to entire net income shall  
15 be made pursuant to this section:

16 (A) Depreciation for property placed in service prior to January 1,  
17 1998 shall be adjusted as follows:

18 (i) Depreciation for federal income tax purposes shall be  
19 disallowed in full.

20 (ii) A deduction shall be allowed for the New Jersey depreciation  
21 allowance. The New Jersey depreciation allowance shall be computed  
22 for the single asset account described above based on the New Jersey  
23 tax basis as adjusted above as if all assets in the single asset account  
24 were first placed in service on January 1, 1998. Depreciation shall be  
25 computed using the straight line method over a thirty-year life. A full  
26 year's depreciation shall be allowed in the initial tax year. No half-year  
27 convention shall apply. The depreciable basis of the single account  
28 shall be reduced by the adjusted federal tax basis of assets sold,  
29 retired, or otherwise disposed of during any year on which gain or loss  
30 is recognized for federal income tax purposes as described in  
31 subparagraph (B) of this paragraph.

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

35 (C) The Director of the Division of Taxation shall promulgate  
36 regulations describing the methodology for allocating the single asset  
37 account in the event that a portion of the utility's operations are  
38 separated, spun-off, transferred to a separate company or otherwise  
39 desegregated.

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

46 (9) Notwithstanding paragraph (1) of this subsection, entire net

1 income shall not include the income derived by a corporation  
2 organized in a foreign country from the international operation of a  
3 ship or ships, or from the international operation of aircraft, if such  
4 income is exempt from federal taxation pursuant to section 883 of the  
5 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

6 (10) Entire net income shall exclude all income of an alien  
7 corporation the activities of which are limited in this State to investing  
8 or trading in stocks and securities for its own account, investing or  
9 trading in commodities for its own account, or any combination of  
10 those activities, within the meaning of section 864 of the federal  
11 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on  
12 December 31, 1998. Notwithstanding the previous sentence, if an  
13 alien corporation undertakes one or more infrequent, extraordinary or  
14 non-recurring activities, including but not limited to the sale of  
15 tangible property, only the income from such infrequent, extraordinary  
16 or non-recurring activity shall be subject to the tax imposed pursuant  
17 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income  
18 subject to tax shall be determined without regard to the allocation to  
19 that specific transaction of any general business expense of the  
20 taxpayer and shall be specifically assigned to this State for taxation by  
21 this State without regard to section 6 of P.L.1945, c.162  
22 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"  
23 means a corporation organized under the laws of a jurisdiction other  
24 than the United States or its political subdivisions.

25 (11) No deduction shall be allowed for research and experimental  
26 expenditures, to the extent that those research and experimental  
27 expenditures are qualified research expenses or basic research  
28 payments for which an amount of credit is claimed pursuant to section  
29 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and  
30 experimental expenditures are also used to compute a federal credit  
31 claimed pursuant to section 41 of the federal Internal Revenue Code  
32 of 1986, 26 U.S.C. s.41.

33 (12) (A) Notwithstanding the provisions of subsection (k) of  
34 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
35 s.168, and subsection (b) of section 1400L of the federal Internal  
36 Revenue Code of 1986, 26 U.S.C. s.1400L, for property acquired after  
37 September 10, 2001 and before September 11, 2004, the depreciation  
38 deduction otherwise allowed pursuant to section 167 of the federal  
39 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined  
40 pursuant to the requirements and limitations of section 168 of the  
41 federal Internal Revenue Code of 1986, 26 U.S.C. s.168, and section  
42 280F of the federal Internal Revenue Code of 1986, 26 U.S.C. s.280F,  
43 as if that subsection (k) and that section 1400L were not in effect.

44 (B) The director shall prescribe the rules and regulations necessary  
45 to carry out the provisions of this paragraph, including, among others,  
46 those for determining the adjusted basis of the acquired property for

1 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,  
2 c.162.

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

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

41 (n) "International banking facility" shall mean a set of asset and  
42 liability accounts segregated on the books and records of a depository  
43 institution, United States branch or agency of a foreign bank, or an  
44 Edge or Agreement Corporation that includes only international  
45 banking facility time deposits and international banking facility  
46 extensions of credit as such terms are defined in section 204.8(a)(2)

1 and section 204.8(a)(3) of Regulation D of the board of governors of  
2 the Federal Reserve System, 12 CFR Part 204, effective December 3,  
3 1981. In the event that the United States enacts a law, or the board  
4 of governors of the Federal Reserve System adopts a regulation which  
5 amends the present definition of international banking facility or of  
6 such facilities' time deposits or extensions of credit, the Commissioner  
7 of Banking and Insurance shall forthwith adopt regulations defining  
8 such terms in the same manner as such terms are set forth in the laws  
9 of the United States or the regulations of the board of governors of the  
10 Federal Reserve System. The regulations of the Commissioner of  
11 Banking and Insurance shall thereafter provide the applicable  
12 definitions.

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

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

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

23 (r) "Qualified investment partnership" means a partnership under  
24 this act that has more than 10 members or partners with no member or  
25 partner owning more than a 50% interest in the entity and that derives  
26 at least 90% of its gross income from dividends, interest, payments  
27 with respect to securities loans, and gains from the sale or other  
28 disposition of stocks or securities or foreign currencies or  
29 commodities or other similar income (including but not limited to gains  
30 from swaps, options, futures or forward contracts) derived with  
31 respect to its business of investing or trading in those stocks,  
32 securities, currencies or commodities, but "investment partnership"  
33 shall not include a "dealer in securities" within the meaning of section  
34 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

35 (s) "Savings institution" means a state or federally chartered  
36 building and loan association, savings and loan association, or savings  
37 bank.

38 (t) "Partnership" means an entity classified as a partnership for  
39 federal income tax purposes.

40 (cf: P.L.2002, c.40, s.3)

41

42 2. This act shall take effect immediately.

1 STATEMENT

2

3 This bill limits the application of net operating loss (NOL)  
4 deductions under the corporation business tax for privilege periods  
5 beginning in calendar years 2004 and 2005 to so much of the NOLs as  
6 reduce the entire net income subject to tax to 50% of what it would  
7 otherwise be.

8 "Net operating loss" is a tax accounting concept; if a taxpayer has  
9 more business expense than business income in a tax year, the taxpayer  
10 has a net operating loss for that year. The net operating loss can be  
11 deducted in later years from taxable income to reduce tax liability.  
12 The Business Tax Reform Act, P.L.2002, c.40, provided for a  
13 suspension of the application of net operating losses for privilege  
14 periods beginning in calendar years 2002 and 2003; under current law,  
15 corporation business tax payers are allowed to begin to apply NOLs  
16 against income for privilege periods beginning in calendar year 2004.

17 The Governor's Proposed Budget for State Fiscal Year 2004-2005  
18 assumed that the total suspension of NOL application would be  
19 extended for privilege periods beginning in calendar years 2004 and  
20 2005. This bill, however, allows the use of available NOLs for 2004  
21 and 2005 for reducing taxable income by up to 50%, returning NOLs  
22 to full deductibility for privilege periods beginning in calendar year  
23 2006.

24 The bill extends the usual seven year carryforward (14 years for  
25 certain high-technology corporations) extended for the period of  
26 suspension. The suspension does not apply to the NOLs purchased  
27 through the high-technology incentive program.