

ASSEMBLY, No. 2933

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:

Assemblyman JAY WEBBER

District 26 (Essex, Morris and Passaic)

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Eliminates \$375 minimum Corporation Business Tax on New Jersey S corporations with New Jersey gross receipts of less than \$100,000.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/9/2020)

1 **AN ACT** eliminating the \$375 minimum Corporation Business Tax
 2 on New Jersey S corporations with New Jersey gross receipts of
 3 less than \$100,000, amending P.L.1945, c.162.

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

7
 8 1. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to
 9 read as follows:

10 54:10A-5 Franchise tax.

11 5. The franchise tax to be annually assessed to and paid by
 12 each taxpayer shall be the greater of the amount computed pursuant
 13 to this section or the alternative minimum assessment computed
 14 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
 15 however, that in the case of a taxpayer that is a New Jersey S
 16 corporation, an investment company, a professional corporation
 17 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a
 18 similar corporation for profit organized for the purpose of rendering
 19 professional services under the laws of another state, or a person
 20 operating on a cooperative basis under Part I of Subchapter T of the
 21 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,
 22 there shall be no alternative minimum assessment computed
 23 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

24 The amount computed pursuant to this section shall be the sum
 25 of the amount computed under subsection (a) hereof, or in the
 26 alternative to the amount computed under subsection (a) hereof, the
 27 amount computed under subsection (f) hereof, and the amount
 28 computed under subsection (c) hereof:

29 (a) That portion of its entire net worth as may be allocable to
 30 this State as provided in section 6, multiplied by the following
 31 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
 32 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
 33 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
 34 mill per dollar on all amounts of allocated net worth in excess of
 35 \$300,000,000.00; provided, however, that with respect to reports
 36 covering accounting or privilege periods set forth below, the rate
 37 shall be that percentage of the rate set forth in this subsection for
 38 the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

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

2 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
3 1/4% of its entire net income or such portion thereof as may be
4 allocable to this State as provided in sections 6 through 10 of
5 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), plus such
6 portion thereof as is specifically assigned to this State as provided
7 in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided, however,
8 that with respect to reports covering accounting or privilege periods
9 or parts thereof ending after December 31, 1967, the rate shall be 4
10 1/4%; and that with respect to reports covering accounting or
11 privilege periods or parts thereof ending after December 31, 1971,
12 the rate shall be 5 1/2%; and that with respect to reports covering
13 accounting or privilege periods or parts thereof ending after
14 December 31, 1974, the rate shall be 7 1/2%; and that with respect
15 to reports covering privilege periods or parts thereof ending after
16 December 31, 1979, the rate shall be 9%; provided however, that
17 for a taxpayer that has entire net income of \$100,000 or less for a
18 privilege period and is not a partnership the rate for that privilege
19 period shall be 7 1/2% and provided further that for a taxpayer that
20 has entire net income of \$50,000 or less for a privilege period and is
21 not a partnership the rate for that privilege period shall be 6 1/2%.

22 For privilege periods ending on or after July 31, 2019, the tax
23 rate shall be applied against taxable net income.

24 (2) For a taxpayer that is a New Jersey S corporation:

25 (i) for privilege periods ending on or before June 30, 1998 the
26 rate determined by subtracting the maximum tax bracket rate
27 provided under N.J.S.54A:2-1 for the privilege period from the tax
28 rate that would otherwise be applicable to the taxpayer's entire net
29 income for the privilege period if the taxpayer were not an S
30 corporation provided under paragraph (1) of this subsection for the
31 privilege period; and

32 (ii) For a taxpayer that has entire net income in excess of
33 \$100,000 for the privilege period,

34 for privilege periods ending on or after July 1, 1998, but on or
35 before June 30, 2001, the rate shall be 2%,

36 for privilege periods ending on or after July 1, 2001, but on or
37 before June 30, 2006, the rate shall be 1.33%,

38 for privilege periods ending on or after July 1, 2006, but on or
39 before June 30, 2007, the rate shall be 0.67%, and

40 for privilege periods ending on or after July 1, 2007 there shall
41 be no rate of tax imposed under this paragraph; and

42 (iii) For a taxpayer that has entire net income of \$100,000 or
43 less for privilege periods ending on or after July 1, 1998, but on or
44 before June 30, 2001, the rate for that privilege period shall be
45 0.5%, and for privilege periods ending on or after July 1, 2001,
46 there shall be no rate of tax imposed under this paragraph.

47 (iv) The taxpayer's rate determined under subparagraph (i), (ii)

1 or (iii) of this paragraph shall be multiplied by its entire net income
2 that is not subject to federal income taxation or such portion thereof
3 as may be allocable to this State pursuant to sections 6 through 10
4 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) plus such
5 portion thereof as is specifically assigned to this State as provided
6 in section 5 of P.L.1993, c.173 (C.54:10A-6.1). For privilege
7 periods ending on or after July 31, 2019, the tax rate shall be
8 applied against taxable net income.

9 (3) For a taxpayer that is a New Jersey S corporation, in
10 addition to the amount, if any, determined under paragraph (2) of
11 this subsection, the tax rate that would otherwise be applicable to
12 the taxpayer's entire net income for the privilege period if the
13 taxpayer were not an S corporation provided under paragraph (1) of
14 this subsection for the privilege period multiplied by its entire net
15 income that is subject to federal income taxation or such portion
16 thereof as may be allocable to this State pursuant to sections 6
17 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).
18 For privilege periods ending on or after July 31, 2019, the tax rate
19 shall be applied against taxable net income.

20 (d) Provided, however, that the franchise tax to be annually
21 assessed to and paid by any investment company or real estate
22 investment trust, which has elected to report as such and has filed
23 its return in the form and within the time provided in this act and
24 the rules and regulations promulgated in connection therewith,
25 shall, in the case of an investment company, be measured by 40% of
26 its entire net income and 40% of its entire net worth, and in the case
27 of a real estate investment trust, by 4% of its entire net income and
28 15% of its entire net worth, at the rates hereinbefore set forth for the
29 computation of tax on net income and net worth, respectively, but in
30 no case less than \$250, and further provided, however, that the
31 franchise tax to be annually assessed to and paid by a regulated
32 investment company which for a period covered by its report
33 satisfies the requirements of Chapter 1, Subchapter M, Part I,
34 Section 852(a) of the federal Internal Revenue Code shall be \$250.
35 For privilege periods ending on or after July 31, 2019, the tax rate
36 shall be applied against taxable net income.

37 (e) The tax assessed to any taxpayer pursuant to this section
38 shall not be less than \$25 in the case of a domestic corporation, \$50
39 in the case of a foreign corporation, or \$250 in the case of an
40 investment company or regulated investment company. Provided
41 however, that for privilege periods beginning in calendar year 1994
42 and thereafter the minimum taxes for taxpayers other than an
43 investment company or a regulated investment company shall be as
44 provided in the following schedule:

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1	Period Beginning	Domestic	Foreign
2	In Calendar Year	Corporation	Corporation
3		Minimum Tax	Minimum Tax
4	1994	\$50	\$100
5	1995	\$100	\$200
6	1996	\$150	\$200
7	1997	\$200	\$200
8	1998	\$200	\$200
9	1999	\$200	\$200
10	2000	\$200	\$200
11	2001	\$210	\$210

12 and for calendar years 2002 through 2005 the minimum tax for all
13 taxpayers shall be \$500, and for calendar year 2006 through
14 calendar year 2011 the minimum tax for all corporations, and for
15 privilege periods beginning in calendar year 2012 and thereafter the
16 minimum tax for corporations that are not New Jersey S
17 corporations shall be based on the New Jersey gross receipts of the
18 taxpayer pursuant to the following schedule:

19	New Jersey Gross Receipts:	Minimum Tax:
20	Less than \$100,000	\$500
21	\$100,000 or more but	
22	less than \$250,000	 \$750
23	\$250,000 or more but	
24	less than \$500,000	 \$1,000
25	\$500,000 or more but	
26	less than \$1,000,000	 \$1,500
27	\$1,000,000 or more	 \$2,000

28 and for privilege periods beginning in calendar year 2012 and
29 thereafter the minimum tax for corporations that are New Jersey S
30 corporations shall be based on the New Jersey gross receipts of the
31 taxpayer pursuant to the following schedule:

32 For Privilege Periods Beginning in Calendar Year 2012 but Before
33 the Date of Enactment of P.L. ,c. (pending before the Legislature
34 as this bill)

35	New Jersey Gross Receipts:	Minimum Tax:
36	Less than \$100,000	\$375
37	\$100,000 or more but	
38	less than \$250,000	 \$562.50
39	\$250,000 or more but	
40	less than \$500,000	 \$750
41	\$500,000 or more but	
42	less than \$1,000,000	 \$1,125
43	\$1,000,000 or more	 \$1,500

44 For Privilege Periods Beginning in Calendar Year 2012 but Before
45 the Date of Enactment of P.L. ,c. (pending before the Legislature
46 as this bill)

<u>New Jersey Gross Receipts:</u>	<u>Minimum Tax:</u>
<u>Less than \$100,000</u>	<u>.....\$0</u>
<u>\$100,000 or more but</u>	
<u>less than \$250,000</u>	<u>..... \$562.50</u>
<u>\$250,000 or more but</u>	
<u>less than \$500,000</u>	<u>..... \$750</u>
<u>\$500,000 or more but</u>	
<u>less than \$1,000,000</u>	<u>..... \$1,125</u>
<u>\$1,000,000 or more</u>	<u>..... \$1,500</u>

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11 provided however, that for a taxpayer that is a member of an
 12 affiliated group or a controlled group pursuant to section 1504 or
 13 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
 14 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
 15 more for the privilege period, the minimum tax shall be \$2,000 for
 16 the privilege period. For privilege periods ending on and after July
 17 31, 2019, the minimum tax of each member of a combined group
 18 filing a mandatory or elective New Jersey combined return shall be
 19 \$2,000 for the group privilege period, except that for a New Jersey
 20 S corporation with New Jersey gross receipts of less than \$100,000
 21 for the privilege period the minimum tax for the privilege period
 22 shall be \$0.

23 (f) In lieu of the portion of the tax based on net worth and to be
 24 computed under subsection (a) of this section, any taxpayer, the
 25 value of whose total assets everywhere, less reasonable reserves for
 26 depreciation, as of the close of the period covered by its report,
 27 amounts to less than \$150,000, may elect to pay the tax shown in a
 28 table which shall be promulgated by the director.

29 (g) Provided however, that for privilege periods beginning on or
 30 after January 1, 2001 but before January 1, 2002 the franchise tax
 31 annually assessed to and paid by a taxpayer:

32 (1) that is a limited liability company or foreign limited liability
 33 company classified as a partnership for federal income tax purposes
 34 shall be the amount determined pursuant to the provisions of section
 35 3 of P.L.2001, c.136 (C.54:10A-15.6); or

36 (2) that is a limited partnership or foreign limited partnership
 37 classified as a partnership for federal income tax purposes shall be
 38 the amount determined pursuant to the provisions of section 4 of
 39 P.L.2001, c.136 (C.54:10A-15.7).

40 (h) Provided however, that for privilege periods beginning on or
 41 after January 1, 2002 the franchise tax annually assessed to and paid
 42 by a taxpayer that is a partnership shall be the amount determined
 43 pursuant to the provisions of section 12 of P.L.2002, c.40
 44 (C.54:10A-15.11).

45 (i) (Deleted by amendment, P.L.2008, c.120)
 46 (cf: P.L.2018, c.131, s.6)

1 2. This act shall take effect immediately and apply to privilege
2 periods beginning on or after the date of enactment.

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STATEMENT

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7 This bill eliminates the \$375 minimum Corporation Business
8 Tax (CBT) payment due for New Jersey S corporations with New
9 Jersey gross receipts of less than \$100,000.

10 At present, if a New Jersey S corporation earns New Jersey gross
11 receipts of less than \$100,000, a \$375 minimum CBT payment is
12 due. The \$375 minimum CBT payment is due even if the New
13 Jersey S corporation earns New Jersey gross receipts significantly
14 less than \$100,000. And this minimum CBT payment does not
15 account for the further possibility of the gross income tax's
16 application to the New Jersey S corporation's income through the
17 shareholders.

18 This bill alleviates the rigid application of the CBT minimum tax
19 on New Jersey S corporations with less than \$100,000 in New
20 Jersey gross receipts. As New Jersey continues to recover from the
21 most recent economic downturn, this bill will help some of New
22 Jersey's smallest grossing S corporations free up potentially
23 duplicative tax payments for more productive investment in the
24 economy.

25 The bill applies to privilege periods beginning on and after the
26 date of enactment.