

SENATE, No. 1626

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Establishes net operating loss carryback deduction under corporation business tax.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** establishing a net operating loss carryback deduction under
2 the 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
8 read 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
15 measure of its tax under this act.

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

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

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

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

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

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

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

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

46 (i) "Fiscal year" shall mean an accounting period ending on any
47 day other than the last day of December on the basis of which the
48 taxpayer 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
3 under 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
6 include the gain derived from the employment of capital or labor, or
7 from both combined, as well as profit gained through a sale or
8 conversion of 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
13 taxpayer is classified as a partnership for federal tax purposes,
14 would otherwise be required to report, to the United States Treasury
15 Department for the purpose of computing its federal income tax,
16 provided however, that in the determination of such entire net
17 income,

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

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

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

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

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

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

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

43 (F) (i) The amount by which depreciation reported to the United
44 States Treasury Department for property placed in service on and
45 after January 1, 1981, but prior to taxpayer fiscal or calendar
46 accounting years beginning on and after the effective date of
47 P.L.1993, c.172, for purposes of computing federal taxable income
48 in accordance with section 168 of the Internal Revenue Code in

1 effect after December 31, 1980, exceeds the amount of depreciation
2 determined in accordance with the Internal Revenue Code
3 provisions in effect prior to January 1, 1981, but only with respect
4 to a taxpayer's accounting period ending after December 31, 1981;
5 provided, however, that where a taxpayer's accounting period
6 begins in 1981 and ends in 1982, no modification shall be required
7 with respect to this paragraph (F) for the report filed for such period
8 with respect to property placed in service during that part of the
9 accounting period which occurs in 1981. The provisions of this
10 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 paragraph
15 (2) of this subsection, any amount, except with respect to qualified
16 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
17 the Internal Revenue Code as in effect immediately prior to January
18 1, 1984, which the taxpayer claimed as a deduction in computing
19 federal income tax pursuant to a qualified lease agreement under
20 paragraph (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
24 shall 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
30 entity, and any interest earned on the penalty or fine, and any
31 economic benefits having accrued to the violator as a result of a
32 violation, which benefits are assessed and recovered in a civil, civil
33 administrative, or criminal action, or pursuant to an administrative
34 consent order. The provisions of this paragraph shall not apply to a
35 penalty or fine assessed or collected for a violation of a State or
36 federal environmental law, or local environmental ordinance or
37 resolution, if the penalty or fine was for a violation that resulted
38 from fire, riot, sabotage, flood, storm event, natural cause, or other
39 act of God beyond the reasonable control of the violator, or caused
40 by an act or omission of a person who was outside the reasonable
41 control of the 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
47 with a directive from the department to remove, or arrange for the
48 removal of, the discharge.

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

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

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

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

38 (J) Amounts deducted for federal tax purposes pursuant to
39 section 199 of the federal Internal Revenue Code of 1986, 26
40 U.S.C. s.199, except that this exclusion shall not apply to amounts
41 deducted pursuant to that section that are exclusively based upon
42 domestic production gross receipts of the taxpayer which are
43 derived only from any lease, rental, license, sale, exchange, or other
44 disposition of qualifying production property which the taxpayer
45 demonstrates to the satisfaction of the director was manufactured or
46 produced by the taxpayer in whole or in significant part within the
47 United States but not qualified production property that was grown
48 or extracted by the taxpayer. "Manufactured or produced" as used

1 in this paragraph shall be limited to performance of an operation or
2 series of operations the object of which is to place items of tangible
3 personal property in a form, composition, or character different
4 from that in which they were acquired. The change in form,
5 composition, or character shall be a substantial change, and result in
6 a transformation of property into a different or substantially more
7 usable product.

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

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

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

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

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

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

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

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

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

43 (5) Entire net income shall exclude 100% of dividends which
44 were included in computing such taxable income for federal income
45 tax purposes, paid to the taxpayer by one or more subsidiaries
46 owned by the taxpayer to the extent of the 80% or more ownership
47 of investment described in subsection (d) of this section and shall
48 exclude 50% of dividends which were included in computing such

1 taxable income for federal income tax purposes, paid to the
2 taxpayer by one or more subsidiaries owned by the taxpayer to the
3 extent of 50% or more ownership of investment, such ownership of
4 investment calculated in the same manner as the 80% or more of
5 ownership of investment is calculated as described in subsection (d)
6 of this section.

7 (6) (A) Net operating loss deduction. There shall be allowed as
8 a deduction for the privilege period the net operating loss carryover
9 or net operating loss carryback to that period.

10 (B) Net operating loss carryover and net operating loss
11 carryback. A net operating loss for any privilege period ending
12 after June 30, 1984 shall be a net operating loss carryover to each of
13 the seven privilege periods following the period of the loss **[and]**, a
14 net operating loss for any privilege period ending after June 30,
15 2009 shall be a net operating loss carryover to each of the twenty
16 privilege periods following the period of the loss, and a net
17 operating loss for any privilege period ending after June 30, 2018
18 shall be, at the election of the taxpayer, either a net operating loss
19 carryover to each of the twenty privilege periods following the
20 period of the loss or a net operating loss carryback to each of the
21 two privilege periods preceding the period of the loss. The entire
22 amount of the net operating loss for any privilege period (the "loss
23 period") shall be carried to the earliest of the privilege periods to
24 which the loss may be carried in accordance with the taxpayer's
25 election of a net operating loss carryover or a net operating loss
26 carryback. The portion of the loss which shall be carried to each of
27 the other privilege periods shall be the excess, if any, of the amount
28 of the loss over the sum of the entire net income, computed without
29 the exclusions permitted in paragraphs (4) and (5) of this subsection
30 or the net operating loss deduction provided by subparagraph (A) of
31 this paragraph, for each of the prior privilege periods to which the
32 loss may be carried.

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

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

1 (E) Notwithstanding the provisions of this paragraph (6) of
2 subsection (k) of this section to the contrary, for privilege periods
3 beginning during calendar year 2002 and calendar year 2003, no
4 deduction for any net operating loss carryover shall be allowed and
5 for privilege periods beginning during calendar year 2004 and
6 calendar year 2005, there shall be allowed as a deduction for the
7 privilege period so much of the net operating loss carryover as
8 reduces entire net income otherwise calculated by 50%. If and only
9 to the extent that any net operating loss carryover deduction is
10 disallowed by reason of this subparagraph (E), the date on which
11 the amount of the disallowed net operating loss carryover deduction
12 would otherwise expire shall be extended by a period equal to the
13 period for which application of the net operating loss was
14 disallowed by this subparagraph.

15 Provided, that this subparagraph (E) shall not restrict the
16 surrender or acquisition of corporation business tax benefit
17 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
18 7.42a) and shall not restrict the application of corporation business
19 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
20 (C.54:10A-4.2).

21 (F) Reduction for discharge of indebtedness. A net operating
22 loss for any privilege period ending after June 30, 2014, and any net
23 operating loss carryover to such privilege period, shall be reduced
24 by the amount excluded from federal taxable income under
25 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
26 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),
27 for the privilege period of the discharge of indebtedness.

28 (7) The entire net income of gas, electric and gas and electric
29 public utilities that were subject to the provisions of P.L.1940, c.5
30 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
31 substituting the New Jersey depreciation allowance for federal tax
32 depreciation with respect to assets placed in service prior to January
33 1, 1998. For gas, electric, and gas and electric public utilities that
34 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
35 seq.) prior to 1998, the New Jersey depreciation allowance shall be
36 computed as follows: All depreciable assets placed in service prior
37 to January 1, 1998 shall be considered a single asset account. The
38 New Jersey tax basis of this depreciable asset account shall be an
39 amount equal to the carryover adjusted basis for federal income tax
40 purposes on December 31, 1997 of all depreciable assets in service
41 on December 31, 1997, increased by the excess, of the "net carrying
42 value," defined to be adjusted book basis of all assets and liabilities,
43 excluding deferred income taxes, recorded on the public utility's
44 books of account on December 31, 1997, over the carryover
45 adjusted basis for federal income tax purposes on December 31,
46 1997 of all assets and liabilities owned by the gas, electric, or gas
47 and electric public utility as of December 31, 1997. "Books of
48 account" for gas, gas and electric, and electric public utilities means

1 the uniform system of accounts as promulgated by the Federal
2 Energy Regulatory Commission and adopted by the Board of Public
3 Utilities. The following adjustments to entire net income shall be
4 made pursuant to this section:

5 (A) Depreciation for property placed in service prior to January
6 1, 1998 shall be adjusted as follows:

7 (i) Depreciation for federal income tax purposes shall be
8 disallowed in full.

9 (ii) A deduction shall be allowed for the New Jersey
10 depreciation allowance. The New Jersey depreciation allowance
11 shall be computed for the single asset account described above
12 based on the New Jersey tax basis as adjusted above as if all assets
13 in the single asset account were first placed in service on January 1,
14 1998. Depreciation shall be computed using the straight line
15 method over a thirty-year life. A full year's depreciation shall be
16 allowed in the initial tax year. No half-year convention shall apply.
17 The depreciable basis of the single account shall be reduced by the
18 adjusted federal tax basis of assets sold, retired, or otherwise
19 disposed of during any year on which gain or loss is recognized for
20 federal income tax purposes as described in subparagraph (B) of
21 this paragraph.

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

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

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

37 (9) Notwithstanding paragraph (1) of this subsection, entire net
38 income shall not include the income derived by a corporation
39 organized in a foreign country from the international operation of a
40 ship or ships, or from the international operation of aircraft, if such
41 income is exempt from federal taxation pursuant to section 883 of
42 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

43 (10) Entire net income shall exclude all income of an alien
44 corporation the activities of which are limited in this State to
45 investing or trading in stocks and securities for its own account,
46 investing or trading in commodities for its own account, or any
47 combination of those activities, within the meaning of section 864
48 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in

1 effect on December 31, 1998. Notwithstanding the previous
2 sentence, if an alien corporation undertakes one or more infrequent,
3 extraordinary or non-recurring activities, including but not limited
4 to the sale of tangible property, only the income from such
5 infrequent, extraordinary or non-recurring activity shall be subject
6 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
7 seq.), and that amount of income subject to tax shall be determined
8 without regard to the allocation to that specific transaction of any
9 general business expense of the taxpayer and shall be specifically
10 assigned to this State for taxation by this State without regard to
11 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this
12 paragraph, "alien corporation" means a corporation organized under
13 the laws of a jurisdiction other than the United States or its political
14 subdivisions.

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

23 (12) (A) Notwithstanding the provisions of subsection (k) of
24 section 168 of the federal Internal Revenue Code of 1986, 26
25 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
26 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
27 law, for property acquired after September 10, 2001, the
28 depreciation deduction otherwise allowed pursuant to section 167 of
29 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
30 be determined pursuant to the provisions of the federal Internal
31 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
32 December 31, 2001.

33 (B) The director shall prescribe the rules and regulations
34 necessary to carry out the provisions of this paragraph, including,
35 among others, those for determining the adjusted basis of the
36 acquired property for the purposes of the Corporation Business Tax
37 Act (1945), P.L.1945, c.162.

38 (13) (A) Notwithstanding the provisions of section 179 of the
39 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
40 property placed in service on or after January 1, 2004, the costs that
41 a taxpayer may otherwise elect to treat as an expense which is not
42 chargeable to a capital account shall be determined pursuant to the
43 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.
44 s.1 et seq.) in effect on December 31, 2002.

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

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

3 (14) Notwithstanding the provisions of subsection (i) of section
4 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
5 for privilege periods beginning after December 31, 2008 and before
6 January 1, 2011, entire net income shall include the amount of
7 discharge of indebtedness income excluded for federal income tax
8 purposes pursuant to subsection (i) of section 108 of the federal
9 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
10 periods beginning on or after January 1, 2014 and before January 1,
11 2019, entire net income shall exclude the amount of discharge of
12 indebtedness income included for federal income tax purposes,
13 pursuant to subsection (i) of section 108 of the federal Internal
14 Revenue Code of 1986 (26 U.S.C. s.108).

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

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

1 bankers not employing moneyed capital coming into competition
2 with the business of national banks, real estate investment trusts, or
3 any of the following entities organized under the laws of this State:
4 credit unions, savings banks, savings and loan and building and
5 loan associations, pawnbrokers, and State banks and trust
6 companies.

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

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

29 (p) "New Jersey S corporation" means a corporation that is an S
30 corporation; which has made a valid election pursuant to section 3
31 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
32 corporation continuously since the effective date of the valid
33 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
34 5.22).

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

37 (r) "Qualified investment partnership" means a partnership
38 under this act that has more than 10 members or partners with no
39 member or partner owning more than a 50% interest in the entity
40 and that derives at least 90% of its gross income from dividends,
41 interest, payments with respect to securities loans, and gains from
42 the sale or other disposition of stocks or securities or foreign
43 currencies or commodities or other similar income (including but
44 not limited to gains from swaps, options, futures or forward
45 contracts) derived with respect to its business of investing or
46 trading in those stocks, securities, currencies or commodities, but
47 "investment partnership" shall not include a "dealer in securities"

1 within the meaning of section 1236 of the federal Internal Revenue
2 Code of 1986, 26 U.S.C. s.1236.

3 (s) "Savings institution" means a state or federally chartered
4 building and loan association, savings and loan association, or
5 savings bank.

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

8 (cf: P.L.2014, c.13, s.3)

9
10 2. This act shall take effect immediately and shall apply to net
11 operating losses accruing for privilege periods ending after June 30,
12 2018.

13 14 15 STATEMENT

16
17 This bill establishes a two-year carryback deduction for net
18 operating losses incurred by corporation business taxpayers. A net
19 operating loss carryback deduction allows corporate taxpayers to
20 file amended income tax returns for past tax years in which they
21 were profitable, use current tax year business losses to offset those
22 profits, and receive refunds of taxes paid in past tax years. Along
23 with carryforward net operating loss deductions (which allow
24 corporations to deduct from taxable income in future years net
25 operating losses sustained in preceding tax years), carryback net
26 operating loss deductions enable businesses to average their income
27 over a time period that more closely corresponds to their investment
28 horizon.

29 The federal government and 17 states authorize businesses to
30 carry back and forward net operating losses. The standard federal
31 carryback period and that of most states is two years. New Jersey,
32 on the other hand, only allows for a 20-year carryforward of net
33 operating losses. The inclusion of a carryback provision in its
34 corporation business tax code would make New Jersey not just
35 more competitive relative to other states, but it would also
36 counteract the growth-stunting perception within the business
37 community that the State is more interested in penalizing and
38 thwarting than in rewarding and encouraging the creation and
39 growth of businesses.

40 Even though the enactment of this legislation would not turn
41 New Jersey into the state with the business-friendliest system of
42 taxation, it would nonetheless make New Jersey more welcoming to
43 businesses and thus encourage them to invest and create
44 employment in the Garden State.