

SENATE, No. 31

STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1997

By Senators DiFRANCESCO and INVERSO

1 AN ACT revising the taxation of gas and electric public utilities and
2 certain telecommunications companies, and sales of electricity,
3 natural gas and energy transportation service, in order to preserve
4 certain revenues under transitions to more competitive markets in
5 energy and telecommunications, revising and repealing various
6 sections of statutory law.

7
8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10
11 1. Section 3 of P.L.1945, c.162 (C.54:10A-3) is now amended to
12 read as follows:

13 3. The following corporations shall be exempt from the tax
14 imposed by this act:

15 (a) Corporations subject to a tax assessed upon the basis of gross
16 receipts, or insurance premiums collected;

17 (b) Corporations which operate regular route autobus service
18 within this State under operating authority conferred pursuant to
19 R.S.48:4-3, provided, however, that such corporations shall not be
20 exempt from the tax on net income imposed by section 5(c) of
21 P.L.1945, c.162 (C.54:10A-5);

22 (c) Railroad, canal corporations, savings banks, production credit
23 associations organized under the Farm Credit Act of 1933, agricultural
24 cooperative associations incorporated or domesticated under or
25 subject to chapter 13 of Title 4 of the Revised Statutes and exempt
26 under Subtitle A, Chapter 1F, Part IV, Section 521 of the federal
27 Internal Revenue Code (26 U.S.C. §521), or building and loan or
28 savings and loan associations;

29 (d) Cemetery corporations not conducted for pecuniary profit or
30 any private shareholder or individual;

31 (e) Nonprofit corporations, associations or organizations
32 established, organized or chartered, without capital stock, under the
33 provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of
34 the New Jersey Statutes or under a special charter or under any similar

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

Matter underlined thus is new matter.

1 general or special law of this or any other State, and not conducted for
2 pecuniary profit of any private shareholders or individual;

3 (f) [Corporations] Sewerage and water corporation subject to a tax
4 under the provisions of [P.L.1940, c.4 (C.54:30A-16 et seq.),]
5 P.L.1940, c.5 (C.54:30A-49 et seq.) [, or P.L.1991, c.184
6 (C.54:30A-18.6 et al.)] or any statute or law imposing a similar tax or
7 taxes;

8 (g) Nonstock corporations organized under the laws of this State
9 or of any other state of the United States to provide mutual ownership
10 housing under federal law by tenants, provided, however, that the
11 exemption hereunder shall continue only so long as the corporations
12 remain subject to rules and regulations of the Federal Housing
13 Authority and the Commissioner of the Federal Housing Authority
14 holds membership certificates in the corporations and the corporate
15 property is encumbered by a mortgage deed or deed of trust insured
16 under the National Housing Act (48 Stat. 1246) as amended by
17 subsequent Acts of Congress. In order to be exempted under this
18 subsection, corporations shall annually file a report on or before
19 August 15 with the commissioner, in the form required by the
20 commissioner, to claim such exemption, and shall pay a filing fee of
21 \$25.00;

22 (h) Corporations not for profit organized under any law of this
23 State where the primary purpose thereof is to provide for its
24 shareholders or members housing in a retirement community as the
25 same [as] is defined under the provisions of the "Retirement
26 Community Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et
27 seq.); and

28 (i) Corporations which are licensed as insurance companies under
29 the laws of another state, including corporations which are surplus
30 lines insurers declared eligible by the Commissioner of Insurance and
31 Banking pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to
32 insure risks within this State.

33 (j) Municipal electric corporations that are in existence as of
34 January 1, 1995 and were exempt from tax under the provisions of
35 P.L.1940, c.5 (C.54:30A-49 et seq.), but only if the corporation shall
36 not expand by acquisition or creation of a facility or facilities beyond
37 the municipal boundaries or by the acquisition or creation of a facility
38 or facilities outside the geographical service area fixed as of December
39 31, 1995.

40 (cf: P.L.1993, c.338, s.1)

41

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

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

46 (a) "Commissioner" shall mean the Director of the Division of

1 Taxation of the State Department of the Treasury.

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

5 (c) "Corporation" shall mean any corporation, joint-stock company
6 or association and any business conducted by a trustee or trustees
7 wherein interest or ownership is evidenced by a certificate of interest
8 or ownership or similar written instrument. The term corporation shall
9 also mean and include any municipal electric utility or corporation.

10 (d) "Net worth" shall mean the aggregate of the values disclosed
11 by the books of the corporation for (1) issued and outstanding capital
12 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
13 profits, and (4) surplus reserves which can reasonably be expected to
14 accrue to holders or owners of equitable shares, not including
15 reasonable valuation reserves, such as reserves for depreciation or
16 obsolescence or depletion. Notwithstanding the foregoing, net worth
17 shall not include any deduction for the amount of the excess
18 depreciation described in paragraph (2)(F) of subsection (k) of this
19 section. The foregoing aggregate of values shall be reduced by 50%
20 of the amount disclosed by the books of the corporation for investment
21 in the capital stock of one or more subsidiaries, which investment is
22 defined as ownership (1) of at least 80% of the total combined voting
23 power of all classes of stock of the subsidiary entitled to vote and (2)
24 of at least 80% of the total number of shares of all other classes of
25 stock except nonvoting stock which is limited and preferred as to
26 dividends. In the case of investment in an entity organized under the
27 laws of a foreign country, the foregoing requisite degree of ownership
28 shall effect a like reduction of such investment from the net worth of
29 the taxpayer, if the foreign entity is considered a corporation for any
30 purpose under the United States federal income tax laws, such as (but
31 not by way of sole examples) for the purpose of supplying deemed
32 paid foreign tax credits or for the purpose of status as a controlled
33 foreign corporation. In calculating the net worth of a taxpayer entitled
34 to reduction for investment in subsidiaries, the amount of liabilities of
35 the taxpayer shall be reduced by such proportion of the liabilities as
36 corresponds to the ratio which the excluded portion of the subsidiary
37 values bears to the total assets of the taxpayer.

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

45 If in the opinion of the commissioner, the corporation's books do
46 not disclose fair valuations the commissioner may make a reasonable

1 determination of the net worth which, in his opinion, would reflect the
2 fair value of the assets, exclusive of subsidiary investments as defined
3 aforesaid, carried on the books of the corporation, in accordance with
4 sound accounting principles, and such determination shall be used as
5 net worth for the purpose of this act.

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

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

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

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

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

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

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

1 net income,

2 (1) Entire net income shall exclude for the periods set forth in
3 paragraph (2)(F)(i) of this subsection, any amount, except with respect
4 to qualified mass commuting vehicles as described in section
5 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
6 prior to January 1, 1984, which is included in a taxpayer's federal
7 taxable income solely as a result of an election made pursuant to the
8 provisions of paragraph (8) of that section.

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

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

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

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

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

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

26 (F) (i) The amount by which depreciation reported to the United
27 States Treasury Department for property placed in service on and after
28 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
29 years beginning on and after the effective date of P.L.1993, c.172, for
30 purposes of computing federal taxable income in accordance with
31 section 168 of the Internal Revenue Code in effect after December 31,
32 1980, exceeds the amount of depreciation determined in accordance
33 with the Internal Revenue Code provisions in effect prior to January
34 1, 1981, but only with respect to a taxpayer's accounting period ending
35 after December 31, 1981; provided, however, that where a taxpayer's
36 accounting period begins in 1981 and ends in 1982, no modification
37 shall be required with respect to this paragraph (F) for the report filed
38 for such period with respect to property placed in service during that
39 part of the accounting period which occurs in 1981. The provisions
40 of this subparagraph shall not apply to assets placed in service prior to
41 January 1, 1998 of a gas, gas and electric, and electric public utility
42 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
43 seq.) prior to 1998.

44 (ii) For the periods set forth in subparagraph (F)(i) of this
45 subsection, any amount, except with respect to qualified mass
46 commuting vehicles as described in section 168(f)(8)(D)(v) of the

1 Internal Revenue Code as in effect immediately prior to January 1,
2 1984, which the taxpayer claimed as a deduction in computing federal
3 income tax pursuant to a qualified lease agreement under paragraph
4 (8) of that section.

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

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

26 [(2)] (ii) The amount of treble damages paid to the Department of
27 Environmental Protection [and Energy] pursuant to subsection a. of
28 section 7 of P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by
29 the department in removing, or arranging for the removal of, an
30 unauthorized discharge upon failure of the discharger to comply with
31 a directive from the department to remove, or arrange for the removal
32 of, the discharge.

33 (H) The amount of any sales and use tax paid by a utility vendor
34 pursuant to section 71 of P.L. , c. (C.)(now pending
35 before the Legislature as this bill).

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

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

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

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

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

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

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

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

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

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

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

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

44 (C) Net operating loss. For purposes of this paragraph the term
45 "net operating loss" means the excess of the deductions over the gross
46 income used in computing entire net income without the net operating

1 loss deduction provided for in subparagraph (A) of this paragraph and
2 the exclusions in paragraphs (4) and (5) of this subsection.

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

12 (7) The entire net income of gas, electric and gas and electric
13 public utilities and municipal electric corporations that were subject to
14 the provisions of P.L.1940, c.5 (54:30A-49 et seq.) prior to 1998,
15 shall be adjusted by substituting the New Jersey depreciation
16 allowance for federal tax depreciation with respect to assets placed in
17 service prior to January 1, 1998. For gas, electric, and gas and
18 electric public utilities, and municipal electric corporations that were
19 subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior
20 to 1998, the New Jersey depreciation allowance shall be computed as
21 follows: All depreciable assets placed in service prior to January 1,
22 1998 shall be considered a single asset account. The New Jersey tax
23 basis of this depreciable asset account shall be an amount equal to the
24 carryover adjusted basis for federal income tax purposes on December
25 31, 1997 of all depreciable assets in service on December 31, 1997,
26 increased by the excess, of the "net carrying value," defined to be
27 adjusted book basis of all assets and liabilities, excluding deferred
28 income taxes, recorded on the public utility's books of account on
29 December 31, 1997, over the carryover adjusted basis for federal
30 income tax purposes on December 31, 1997 of all assets and liabilities
31 owned by the gas, electric, or gas and electric public utility or
32 municipal electric corporation as of December 31, 1997. "Books of
33 account" for gas, gas and electric, and electric public utilities and
34 municipal electric corporations means the uniform system of accounts
35 as promulgated by the Federal Energy Regulatory Commission and
36 adopted by the Board of Public Utilities. The following adjustments
37 to entire net income shall be made pursuant to this section:

38 (A) Depreciation for property placed in service prior to January 1,
39 1998 shall be adjusted as follows:

40 (i) Depreciation for federal income tax purposes shall be
41 disallowed in full.

42 (ii) A deduction shall be allowed for the New Jersey depreciation
43 allowance. The New Jersey depreciation allowance shall be computed
44 for the single asset account described above based on New Jersey tax
45 basis as adjusted above as if all assets in the single asset account were
46 first placed in service on January 1, 1998. Depreciation shall be

1 computed using the straight line method over a thirty year life. A full
2 year's depreciation shall be allowed in the initial tax year. No half-
3 year convention shall apply. The depreciable basis of the single
4 account shall be reduced by the adjusted federal tax basis of assets
5 sold, retired, or otherwise disposed of during any year on which gain
6 or loss is recognized for federal income tax purposes as described in
7 subparagraph (B) of this paragraph.

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

11 (C) The Director of the Division of Taxation shall promulgate
12 regulations describing the methodology for allocating the single asset
13 account in the event that a portion of the utility's operations are
14 separated, spun-off, transferred to a separate company or otherwise
15 disaggregated.

16 (8) In the case of taxpayers that are gas, electric, gas and electric,
17 or telecommunication public utilities as defined pursuant to subsection
18 (q) of this section, the director shall have authority to promulgate rules
19 and issue guidance correcting distortions and adjusting timing
20 differences, resulting from the adoption of P.L. , c. (C.)(now
21 pending before the Legislature as this bill).

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

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

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

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

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

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

40 (q) "Public Utility" means "public utility" as defined in R.S.48:2-
41 13.

42 (cf: P.L.1995, c.418, s.1)

43

44 3. (New section) a. Gas, electric, gas and electric and
45 telecommunications public utilities and municipal electric corporations
46 that were subject to a public utility tax either pursuant to P.L.1940,

1 c.5 (C.54:30A-17 et seq.) or P.L.1940, c.4 (C.54:30A-49 et seq.) as
2 of December 31, 1996, shall be required to file and remit installment
3 payments of estimated corporation business tax pursuant to the
4 provisions of subsection (f) of section 15 of P.L.1945, c.162
5 (C.54:10A-15) during the calendar year in which those taxpayers first
6 become subject to the corporation business tax, provided however,
7 that the provisions of subsection d. of section 5 of P.L.1981, c.184
8 (C.54:10A-15.4) shall not apply to those taxpayers during that year.

9 b. A telecommunications public utility that makes an advance
10 payment of its applicable gross receipts and franchise tax to the State
11 in the final year of the existence of such tax shall be entitled to a credit
12 against its corporation business tax liability equal to the amount of
13 such advance payment. Any unused portion of the credit may be
14 carried forward in full to future privilege periods, provided however,
15 that in any one privilege period the total amount of such credit which
16 the taxpayer may utilize to pay its corporation business tax liability
17 shall not exceed \$5,000,000. Any gas, electric, or gas and electric
18 public utility taxpayer that has made any advance credit payment
19 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), shall not be eligible
20 for a credit for such amount or any part thereof to offset any liability
21 under P.L.1945, c.162. Under no circumstances may any portion of
22 an unused \$5,000,000 per year credit be subject to refund.

23 c. All amounts remitted under P.L.1945, c.162 by any gas, electric,
24 gas and electric or telecommunication public utility or municipal
25 electric corporation shall be separately accounted for by the State
26 Treasurer.

27 d. A public utility, including a municipal electric corporation, with
28 gas, electric or telecommunications operations or any of them shall file
29 with the Board of Public Utilities amendments to its existing tariffs,
30 contracts or schedules of service designating the appropriate
31 apportionment of its corporation business tax liability in these tariffs,
32 contracts or schedules so that rates will not be increased for any class
33 of ratepayer as a result of the transition to this tax. The board may
34 permit gas, electric, gas and electric or telecommunications public
35 utilities or municipal electric corporations to establish new tariffs,
36 contracts or schedules, or to amend existing tariffs, contracts or
37 schedules, as necessary to comply with the provisions of this act.

38 e. A qualified taxpayer may claim a corporation business tax credit
39 in accordance with the provisions of section 53 of P.L. , c.
40 (C.) (now pending before the Legislature as this bill).

41
42 4. (New section) If, in the first full privilege period commencing
43 after the assessment under the Transitional Energy Facility Assessment
44 Act, established in sections 36 through 49 of P.L. , c. (C.) (now
45 pending before the Legislature as this bill), has terminated, or in any
46 subsequent privilege period thereafter, a taxpayer that was formerly

1 subject to the Transitional Energy Facility Assessment Act and whose
2 liability under the Corporation Business Tax Act (1945), P.L.1945,
3 c.162 (C.54:10A-1 et seq.), for such privilege period after the
4 assessment under the Transitional Energy Facility Assessment Act has
5 terminated, is less than the taxpayer's liability for the first full privilege
6 period as a taxpayer under P.L.1945, c.162, then that taxpayer or
7 corporate or noncorporate legal successor or assignee whether
8 through any reorganization, sale, bankruptcy, consolidation, merger,
9 or other transaction or occurrence of any kind without limitation, shall
10 pay as its liability under P.L.1945, c.162 for any of those privilege
11 periods after the assessment under the Transitional Energy Facility
12 Assessment Act has terminated an amount equal to the higher of:

13 a. The amount of its corporation business tax liability for that
14 privilege period as would otherwise be computed under P.L.1945,
15 c.162; or

16 b. The amount of corporation business tax it would be liable to pay
17 for such privilege period if its gas, electric or telecommunications
18 operations were accounted for on a separate basis, pursuant to
19 regulations as may be promulgated by the director.

20

21 5. The title of P.L.1940, c.5 is amended to read as follows:

22 **AN ACT** for the taxation of the gross receipts of [street railway,
23 traction,] sewerage[,] and water corporations, [and of the units of
24 electricity and natural gas sold in the business of gas and electric
25 light, heat and power corporations] using or occupying the public
26 streets, highways, roads or other public places, for the exemption
27 from taxation of the franchises, stock and certain property of such
28 corporations, and for the taxation of certain of the property of such
29 corporations not so exempted from taxation.

30 (cf: P.L.1991, c.184, s.7)

31

32 6. Section 1 of P.L.1940, c.5 (C.54:30A-49) is amended to read as
33 follows:

34 1. The purpose of this act is to provide a complete scheme and
35 method for the taxation of [street railway, traction,] sewerage and
36 water [, gas and electric light, heat and power] corporations using or
37 occupying the public streets, highways, roads or other public places,
38 to exempt from taxation other than imposed by this act the franchises,
39 stock, and certain property of such corporations and for the taxation
40 of the property of such corporations not so exempted from taxation;
41 and the reimbursement to the State of certain costs and expenses
42 incurred in the imposition [and apportionment] of such taxes; [the
43 apportionment of certain of such taxes among municipalities upon the
44 fixed standards hereinafter set forth; and to supersede sections
45 54:31-1 to 54:32-7 of the Revised Statutes, inclusive, and chapter 8

1 of the laws of 1938 for the year 1940 and thereafter].

2 (cf: P.L.1963, c.42, s.1)

3

4 7. Section 2 of P.L.1940, c.5 (C.54:30A-50) is amended as
5 follows:

6 2. Definitions. As used in this act--unless the context otherwise
7 requires:

8 (a) "Taxpayer" means any corporation subject to taxation under the
9 provisions of this act. [A person or business entity owning or
10 operating a cogeneration facility as defined in subsection (j) of this
11 section shall not be deemed a corporation subject to taxation under
12 this act unless it shall be a public utility as specifically enumerated in
13 sections 1 and 6 of P.L.1940, c.5 (C.54:30A-49 and C.54:30A-54).]

14 (b) "Real estate" means lands and buildings of taxpayers, but it
15 does not include [railways, tracks, ties, lines, wires, cables, poles,]
16 pipes, conduits, bridges, viaducts, dams and reservoirs (except that the
17 lands upon which dams and reservoirs are situated are real estate),
18 machinery, apparatus and equipment, notwithstanding any attachment
19 thereof to lands or buildings.

20 (c) "Gross receipts" means all receipts from the taxpayer's
21 business over, in, through or from the whole of its lines or mains but
22 does not include any sum or sums of money received by the taxpayer
23 in payment for [gas or electrical energy or] water sold and furnished
24 to another public utility which is also subject to the payment of a tax
25 based upon its gross receipts, [nor any sum or sums of money received
26 by the taxpayer from a cogenerator in payment for cogenerated
27 electrical energy resold by the taxpayer to the producing cogenerator
28 where produced, nor any sum or sums of money received by the
29 taxpayer from a cogenerator in payment for natural gas sold by the
30 taxpayer to the cogenerator and separately metered for use in a
31 cogeneration facility, nor in the case of a street railway or traction
32 corporation, the receipts from the operation of autobuses or vehicles
33 of the character described in R.S.48:15-41 through R.S.48:15-56,
34 inclusive,] nor in the case of a sewerage corporation, an amount equal
35 to any sum or sums of money payable by such sewerage corporation
36 to any board, commission, department, branch, agency or authority of
37 the State or of any county or municipality, for the treatment,
38 purification or disposal of sewage or other wastes, nor in the case of
39 a water purveyor, the amount which represents the water tax imposed
40 by section 11 of P.L.1983, c.443 (C.58:12A-21) and which is included
41 in the tariff altered pursuant to section 6 of P.L.1983, c.443
42 (C.58:12A-17).

43 (d) ["Scheduled property" means only those classes or types of
44 property of a taxpayer set forth in section 10 of this act and which are
45 to be used in computing the apportionment value as herein defined.]

46 Deleted by amendment, P.L. _____, c. _____.

1 (e) ["Unit value" means the value set forth in section 10 of this act
2 to be uniformly applied to each of the several classes or types of
3 scheduled property in computing the apportionment value.] Deleted by
4 amendment, P.L. _____, c. _____.)

5 (f) ["Apportionment value" or "apportionment valuation" means
6 the result obtained by multiplying the quantities of each class or type
7 of scheduled property of a taxpayer by the applicable unit value, and
8 the addition of such results.] Deleted by amendment, P.L. _____, c. _____.)

9 (g) "Public street, highway, road or other public place" includes
10 any street, highway, road or other public place which is open and used
11 by the public, even though the same has not been formally accepted as
12 a public street, highway, road, or other public place. However, for
13 purposes of computing the tax in connection with lines or mains
14 installed prior to February 19, 1991, "public street, highway, road or
15 other public place" shall not mean or include non-restricted roadways,
16 such as extended residential, commercial or recreational facility
17 driveways, or dead end streets, cul-de-sacs or alleys which are
18 connected to public roadways and are for access to or the use of
19 supermarkets, shopping malls, planned communities and the
20 connecting roads within or around the above facilities whether these
21 roadways shall be located on public or private property, unless such
22 shall have been determined a "public street, highway, road or other
23 public place" for the purposes of P.L.1940, c.5 (C.54:30A-49 et seq.)
24 prior to February 19, 1991.

25 (h) "Service connections" means the [wires or] pipes connecting
26 the building or place where the service or commodity supplied by the
27 taxpayer is used or delivered, or is made available for use or delivery,
28 with a supply line or supply main in the street, highway, road, or other
29 public place, or with such supply line or supply main on private
30 property.

31 (i) "State Tax Commissioner" or "director" means the Director of
32 the Division of Taxation in the Department of the Treasury.

33 (j) ["Cogenerator" means a person or business entity which owns
34 or operates a cogeneration facility in the State of New Jersey, which
35 facility is a plant, installation or other structure whose primary purpose
36 is the sequential production of electricity and steam or other forms of
37 useful energy which are used for industrial, commercial, heating or
38 cooling purposes; and which is designated by the Federal Energy
39 Regulatory Commission, or its successor, as a "qualifying facility"
40 pursuant to the provisions of the "Public Utility Regulatory Policies
41 Act of 1978," Pub. L.95-617.] (Deleted by amendment, P.L. _____,
42 c. _____.)

43 (k) ["Corresponding therms of gas" or "corresponding
44 kilowatthours of electricity" means all therms of gas or kilowatthours
45 of electricity from the taxpayer's business over, on, in, through or from
46 the whole of its lines or mains, excluding therefrom, however, (1) any

1 terms of gas or kilowatthours of electricity as may have been sold and
2 furnished to another public utility which is also subject to either the
3 payment of a tax based upon gross receipts or the payment of a
4 unit-based tax applied to therms of gas or kilowatthours of electricity;
5 (2) any kilowatthours of cogenerated electrical energy resold by the
6 taxpayer to a producing cogenerator where produced; and (3) any
7 therms of natural gas sold by the taxpayer to a cogenerator and
8 separately metered for use in a cogeneration facility.] (Deleted by
9 amendment, P.L. , c. .)

10 (l) ["Class" means any segment, grouping or other division of an
11 electric company's or gas company's customers which is established for
12 the purpose of charging rates for electric or gas service. For the
13 purposes of this act, any such class shall be designated to be in the
14 residential class category or non-residential class category.] (Deleted
15 by amendment, P.L. , c. .)

16 (m) [With respect to electric companies, (1) "residential class
17 category" means any class established by an electric company which
18 generally includes customers taking electric service under rate
19 schedules that are primarily residential in nature; and (2)
20 "non-residential class category" means any class established by an
21 electric company which generally includes customers taking electric
22 service under rate schedules that are primarily non-residential in
23 nature.] (Deleted by amendment, P.L. , c. .)

24 (n) [With respect to gas companies, (1) "residential class
25 category" means any class established by a gas company which
26 generally includes customers taking natural gas service under rate
27 schedules that are primarily residential in nature; and (2)
28 "non-residential class category" means any class established by a gas
29 company which generally includes customers taking gas service under
30 rate schedules that are primarily non-residential in nature.] (Deleted
31 by amendment, P.L. , c. .)

32 (cf: P.L.1991, c.184, s.8)

33

34 8. Section 3 of P.L.1940, c.5 (C.54:30A-51) is amended to read as
35 follows:

36 3. [Street railway, traction, sewerage,] Sewerage and water [, gas
37 and electric light, heat and power] corporations using or occupying
38 public streets, highways, roads or other public places, and their
39 property and franchises, shall be subject to taxation only as in this act
40 provided. Any such corporation shall not be subject to any other
41 taxes upon its property, franchises, stock or gross receipts, and the
42 shares of stock of any such corporation shall not be taxed in the hands
43 of shareholders.

44 (cf: P.L.1961, c.93, s.4)

45

46 9. Section 4 of P.L.1940, c.5 (C.54:30A-52) is amended to read as

1 follows:

2 4. All the real estate as herein defined, [and the electric and gas
3 appliances to be used for the consumption of gas or electricity and
4 held for resale and not for the purpose of production, transmission or
5 distribution of gas or electric energy, and byproducts of gas
6 manufacture held for resale and not for the purpose of production,
7 transmission or distribution of gas or electric energy,] owned or held
8 by any taxpayer shall be assessed and taxed at local rates in the manner
9 provided by law for the taxation of similar property owned by other
10 corporations or individuals, and all proceedings for appeal, review and
11 collection available to municipalities and other corporations or
12 individuals with respect to similar property shall be applicable.

13 (cf: P.L.1940, c.5, s.4)

14

15 10. Section 6 of P.L.1940, c.5 (C.54:30A-54) is amended to read
16 as follows:

17 6. Every [street railway, traction,] sewerage [,] and water
18 corporation using or occupying the public streets, highways, roads, or
19 other public places in this State shall, annually, pay excise taxes for the
20 privilege of exercising its franchises and using the public streets,
21 highways, roads or other public places in this State, as follows:

22 (a) A tax computed at the rate of 5% of such proportion of the
23 gross receipts of such taxpayer for the preceding calendar year as the
24 length of the lines or mains in this State, located along, in or over any
25 public street, highway, road or other public place, exclusive of service
26 connections, bears to the whole length of its lines or mains, exclusive
27 of service connections. In case the gross receipts of any such taxpayer
28 for any calendar year shall not exceed \$50,000.00 the tax on such
29 taxpayer for such calendar year shall be computed at the rate of 2%
30 instead of at the rate of 5%.

31 (b) A tax at the rate of 7 % upon the gross receipts of such
32 taxpayer for the preceding calendar year from its business over, on, in,
33 through or from its lines or mains in the State of New Jersey.

34 (c) In addition to the excise taxes imposed in subsections (a) and
35 (b) hereof, every [street railway, traction,] sewerage and water
36 corporation which is subject to the taxes imposed thereunder shall also
37 pay to the State excise taxes for the franchise to operate and conduct
38 business within the State and to use the public streets, highways, roads
39 or other public places in the State as follows:

40 (1) A tax computed at the rate of 0.625% of such proportion of the
41 gross receipts of such taxpayer for the preceding calendar year as the
42 length of the lines or mains in this State, located along, in or over any
43 public street, highway, road or other public place, exclusive of service
44 connections, bears to the whole length of its lines or mains, exclusive
45 of service connections. In case the gross receipts of any such taxpayer
46 for any calendar year shall not exceed \$50,000.00 the tax on such

1 taxpayer for such calendar year shall be computed at the rate of 0.25%
2 instead of at the rate of 0.625%.

3 (2) A tax at the rate of 0.9375% upon the gross receipts of such
4 taxpayer for the preceding calendar year from its business over, on, in,
5 through or from its lines or mains in the State of New Jersey.
6 (P.L.1991, c.184, s.9)

7

8 11. Section 8 of P.L.1963, c.42 (C.54:30A-54.1) is amended to
9 read as follows:

10 8. The director shall annually, on or before April 1, 1964, and April
11 1 in each year thereafter, compute the excise taxes payable to the
12 State as provided in subsection (c) of section 6 hereof. [In making
13 such computation the director shall allow as a credit against the excise
14 taxes payable to the State as provided in subsection (c)(2) of section
15 6 hereof, the amount of taxes paid in the previous calendar year by
16 any such taxpayers pursuant to L.1961, c. 91, as amended and
17 supplemented.] Within 5 days after making such computation, the
18 director shall certify such taxes and the taxes provided for in section
19 2 of this act as a partial payment to the respective taxpayers who shall
20 make payment thereof to the director on or before May 1 next
21 succeeding.

22 (P.L.1971, c.108, s.1)

23

24 12. Section 2 of P.L.1971, c.108 (C.54:30A-54.1a) is amended to
25 read as follows:

26 2. a. For [street railway, traction,] sewerage and water
27 corporations, on or before May 1, 1971, except as hereinafter
28 provided, and on or before May 1 of each year thereafter, [and for gas
29 and electric light, heat and power corporations, on or before May 1
30 each year from 1972 through 1991 and on or before April 1, 1992,]
31 every person, copartnership, association or corporation subject to the
32 excise tax imposed by section 6 of P.L.1940, c.5 (C.54:30A-54) shall
33 pay to the director an amount equal to 1/2 of the tax payable under
34 section 6 of P.L.1940, c.5 (C.54:30A-54) upon its gross receipts
35 determined thereunder for the preceding calendar year. Each such
36 payment shall be in addition to the tax payable under section 6 of
37 P.L.1940, c.5 (C.54:30A-54) and shall be considered as a partial
38 payment of the tax which will become due under said section[.] upon
39 the following May 1 [or April 1, as may be applicable]. The additional
40 taxes due on or before May 1, 1971 shall be payable in two equal
41 installments. With respect to the additional taxes herein, the first
42 installment shall be payable on May 1, 1971 and the second installment
43 thereof shall be payable on or before June 15, 1971.

44 In the calculation of the tax due in accordance with section 6 of
45 P.L.1940, c.5 (C.54:30A-54) in the year 1972 and each applicable year
46 thereafter, every person, copartnership, association or corporation

1 subject to tax hereunder shall be entitled to a credit in the amount of
2 the tax paid hereunder as a partial payment in the preceding calendar
3 year and shall be entitled to the return, or credit against taxes due and
4 payable in the next year, of any amount so paid which shall be found
5 to be in excess of the total amount payable in accordance with section
6 6 of P.L.1940, c.5 (C.54:30A-54).

7 b. [For gas and electric light, heat and power corporations, on or
8 before April 1, 1993, and on or before April 1 of each year thereafter,
9 such corporations subject to the tax imposed pursuant to section 10 of
10 P.L.1991, c.184 (C.54:30A-54.6), shall pay to the director an amount
11 equal to 1/2 of the tax payable pursuant to subsection b. of section 10
12 of P.L.1991, c.184 (C.54:30A-54.6), for the preceding calendar year.
13 Each such payment shall be in addition to the tax payable pursuant to
14 section 10 of P.L.1991, c.184 (C.54:30A-54.6), and shall be
15 considered as a partial payment of the tax which will become due
16 pursuant to that section. In calculation of the tax due in accordance
17 with section 10 of P.L.1991, c.184 (C.54:30A-54.6) for the year 1992
18 and for each year thereafter every such corporation subject to this
19 subsection shall be entitled to a credit in the amount of the tax paid
20 hereunder as a partial payment in the preceding calendar year and shall
21 be entitled to the return, or credit against taxes due and payable in the
22 next year, of any amount so paid which shall be found to be in excess
23 of the total amount of tax payable pursuant to subsection b. of section
24 10 of P.L.1991, c.184 (C.54:30A-54.6).] Deleted by amendment,
25 P.L. ____, c. __.
26 (cf: P.L.1991, c.184, s.13)
27

28 13. Section 14 of P.L.1991, c.184 (C.54:30A-54.4) is amended to
29 read as follows:

30 14. a. For [street railway, traction,] sewerage and water
31 corporations, on or before April 1, 1979 and on or before June 1 in
32 each year thereafter, [and for gas and electric light, heat and power
33 corporations, on or before June 1 each year from 1980 through 1991
34 and on or before April 1, 1992,] the director shall compute an advance
35 payment equal in amount to 55% of the increase in taxes due under
36 subsections (a) and (b) of section 6 of P.L.1940, c.5 (C.54:30A-54)
37 during the preceding calendar year over the taxes due under such
38 subsections in the calendar year immediately preceding that year. The
39 advance payment shall not be considered for the purpose of
40 determining the amount of the increase. Each such payment shall be in
41 addition to the taxes payable under section 6 of P.L.1940, c.5
42 (C.54:30A-54) and section 2 of P.L.1971, c.108 (C.54:30A-54.1a) and
43 shall be considered as a partial payment of the tax to become due and
44 payable in the following year.

45 b. Every taxpayer subject to tax under section 6 of P.L.1940, c.5
46 (C.54:30A-54) shall be required to remit to the State for the use of the

1 State as an advance payment, an amount equal to the amount as
2 computed in subsection a. of this section payable in two installments
3 as follows: 60% on May 1, 1979 and 40% on August 1, 1979.

4 c. In the year 1980 and in each year thereafter an advance payment
5 pursuant to subsection a. of this section shall be paid by each taxpayer
6 subject to subsection a. of this section in the manner provided for by
7 law for payment of the taxes due under section 6 of P.L.1940, c.5
8 (C.54:30A-54).

9 d. [(1) Each gas and electric light, heat and power corporation, on
10 or before April 1, 1993, shall pay to the director an advance payment
11 as shall be computed by the director equal to 55% of the increase in
12 taxes due from a taxpayer pursuant to subsection a. of section 10 of
13 P.L.1991, c.184 (C.54:30A-54.6) for 1992 over the taxes due from the
14 taxpayer pursuant to subsections (a) and (b) of section 6 of P.L.1940,
15 c.5 (C.54:30A-54) for 1991.

16 (2) Each gas and electric light, heat and power corporation, on or
17 before April 1, 1994, and on or before April 1 in each year thereafter,
18 shall pay to the director an advance payment as shall be computed by
19 the director equal to 55% of the increase in taxes due from a taxpayer
20 pursuant to subsection a. of section 10 of P.L.1991, c.184
21 (C.54:30A-54.6) during the preceding calendar year over the taxes due
22 from the taxpayer under such subsection a. of section 10 of P.L.1991,
23 c.184 in the calendar year immediately preceding that year.

24 (3) In calculating the amount of tax increase for the purposes of
25 paragraphs (1) and (2) of this subsection, advance payments made
26 pursuant to this section shall not be considered. Each advance
27 payment made pursuant to this subsection shall be in addition to the
28 taxes payable pursuant to section 10 of P.L.1991, c.184
29 (C.54:30A-54.6) and section 2 of P.L.1971, c. 108 (C.54:30A-54.1a)
30 and shall be considered as a partial payment of the tax to become due
31 and payable in the following year.] (Deleted by amendment, P.L. . ,
32 c. . .)

33 (cf: P.L.1991, 184, s.14)

34
35 14. Section 7 of P.L.1940, c.5 (C.54:30A-55) is amended to read
36 as follows:

37 7. (A) Every taxpayer shall on or before the first day of
38 September, 1941 and on or before the first day of September in each
39 year thereafter return to the Director of the Division of Taxation a
40 statement in such form, manner, and detail as the Director of the
41 Division of Taxation shall require, showing, as of the first day of July
42 of such year:

43 (1) [The scheduled property of the taxpayer located in, on or over
44 any public street, highway, road or other public place in each
45 municipality in this State and the scheduled property not so located in
46 each municipality in this State]Deleted by amendment, P.L. . , c. . .);

1 (2) The length of the taxpayer's lines and mains along, in, on or
2 over any public street, highway, road or other public place in this
3 State, exclusive of service connections [(but not including in the case
4 of a street railway or traction company the length of the lines operated
5 by autobuses or vehicles of the character described in R.S.48:15-41 et
6 seq.)]; and

7 (3) The whole length of the taxpayer's lines and mains, exclusive
8 of service connections [(but not including in the case of a street
9 railway or traction company the length of the lines operated by
10 autobuses or vehicles of the character described in R.S.48:15-41 et
11 seq.)].

12 (4) [Every taxpayer operating both gas and electric facilities shall
13 supply the information required by this subsection (A) in such manner
14 as the Director of the Division of Taxation shall require so that its gas
15 and electric scheduled property and length of gas and electric lines
16 shall be shown separately.] Deleted by amendment, P.L. .c. .)

17 (B) Every taxpayer shall on or before February 1, [1941] 1998, and
18 on or before February 1 in each year thereafter return to the Director
19 of the Division of Taxation a statement showing:

20 (1) The gross receipts for the preceding calendar year from the
21 business over, on, in, through or from the taxpayer's lines and mains
22 in this State, stated separately for each class of business; and

23 (2) The gross receipts for the preceding calendar year from the
24 business over, on, in, through or from the whole of the taxpayer's lines
25 and mains. [In addition, as to gas and electric light, heat and power
26 corporation taxpayers, commencing with the statement to be returned
27 on or before February 1, 1992, a statement of the corresponding
28 therms of gas and the corresponding kilowatthours of electricity sold
29 in this State in the preceding year itemized separately for classes in the
30 residential class category and the nonresidential class categories.]

31 (3) [Every taxpayer operating both gas and electric facilities shall
32 supply the information required by this subsection (B) in such manner
33 as the Director of the Division of Taxation shall require, separating its
34 gross receipts and sales of units from gas operations from its gross
35 receipts and sales of units from electric operations.] (Deleted by
36 amendment, P.L. .c. .)

37 (C) The statements herein provided for shall be subscribed and
38 sworn to by the president, a vice-president or chief officer of the
39 corporation making such return; any taxpayer or refusing or neglecting
40 to make the statements herein provided for shall forfeit and pay to the
41 State of New Jersey the sum of one hundred dollars (\$100) per day for
42 each day of such refusal or neglect, to be recovered in an action at law
43 in the name of the State and which, when recovered, shall be paid into
44 the State Treasury. It shall be the duty of the Director of the Division
45 of Taxation to certify any such default to the Attorney General of the
46 State who, thereupon, shall prosecute an action at law for such

1 penalty.

2 (D) The Director of the Division of Taxation shall audit and verify
3 the statements filed by taxpayers and whenever and in such respects as
4 he shall deem necessary or advisable. The Director of the Division of
5 Taxation may require any taxpayer to supply additional data and
6 information in such form and detail as he shall request, whenever he
7 may deem it necessary or helpful, for the proper performance of his
8 duties under this act.

9 (cf: P.L.1991, c.184, s.17)

10

11 15. Section 14 of P.L.1940, c.5 (C.54:30A-62) is amended to read
12 as follows:

13 14. Within five days after making the computation [and
14 apportionment] of the excise taxes under subsections (a) and (b) of
15 section 6 of P.L.1940, c.5 (C.54:30A-54) [and under subsection a. of
16 section 10 of P.L.1991, c.184 (C.54:30A-54.6),] the Director of the
17 Division of Taxation shall certify to the State Treasurer the amount of
18 such taxes [apportioned to each municipality]. At the same time, the
19 director shall issue directly to each taxpayer statements of taxes due,
20 and payments with respect thereto shall be remitted by each taxpayer
21 to the director in the following manner: 35% thereof within 15 days
22 after the date of certification of the [apportionment]computation by
23 the director, 35% thereof on or before August 15 and 30% thereof on
24 or before November 15, [except that for gas and electric light, heat
25 and power corporations for the calendar years 1992, 1993 and 1994,
26 payment of all taxes due shall be remitted to the director on or before
27 April 1, and for calendar year 1995 and each calendar year thereafter
28 taxes shall be remitted in the following manner: a payment of the
29 estimated tax liability on or before April 1 of the current year and a
30 payment of the remaining tax liability, if any, on or before April 1 of
31 the next following year. If for any reason the making and delivering
32 of a certificate of apportionment shall be delayed until after December
33 1 in any year then in that case all of the taxes for such year affected by
34 such certificate of apportionment shall become due and payable 30
35 days after the date of such certification of apportionment; and
36 provided, that in case of an appeal from any apportionment valuation
37 or apportionment or any review thereof in any court, the portion of
38 any such tax not paid prior to the commencement of any such appeal
39 or proceedings for review, shall not become payable until 30 days after
40 final determination of such appeal or review and the certification or
41 recertification of the apportionment required.] The administration,
42 collection and enforcement of the taxes payable by each taxpayer
43 under subsections (a) and (b) of section 6 of P.L.1940, c.5
44 (C.54:30A-54) [or under section 10 of P.L.1991, c.184
45 (C.54:30A-54.6)] and any advance payment or payment of estimated
46 tax liability required with regard to those taxes shall be subject to the

1 provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et
2 seq., to the extent that the provisions of that law are not inconsistent
3 with the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) [or
4 P.L.1991, c.184 (C.54:30A-18.6 et al.)].

5 The director may, by regulation, require that any payment of tax
6 made, on or before the date established pursuant to this section for the
7 payment, shall be by electronic funds transfer to such depositories as
8 the State Treasurer shall designate pursuant to section 1 of P.L.1956,
9 c.174 (C.52:18-16.1). A payment by electronic funds transfer shall be
10 deemed to be made on the date the payment is received by the
11 designated depository. The form and content of the electronic funds
12 transfer message, the circumstances under which an electronic funds
13 transfer shall serve as a substitute for the filing of another form of
14 return, the means by which taxpayers will be provided with
15 acknowledgments of payments, and the classes of taxpayers subject to
16 the electronic funds transfer requirement shall be as prescribed by the
17 director.

18 For the purposes of this section "electronic funds transfer" means
19 any transfer of funds, other than a transaction originated by check,
20 draft, or similar paper instrument, that is initiated through an
21 electronic terminal, telephone, or computer or magnetic tape for the
22 purpose of ordering, instructing or authorizing a financial institution
23 to debit or credit an account.

24 (cf: P.L.1991, c.184, s.15)

25

26 16. Section 15 of P.L.1940, c.5 (C.54:30A-63) is amended to read
27 as follows:

28 15. When any corporation subject to taxation under this act shall
29 acquire the rights, property and franchises of using and occupying
30 public streets, highways, roads or other public places in this State[,
31 other than the right and franchise to operate autobuses or vehicles of
32 the character described in Title 48, chapter 15, section 41 to the end
33 of the chapter, of the Revised Statutes (Revised Statutes, section
34 48:15-41 et seq.)], of persons, copartnerships, associations or
35 corporations then subject to an excise tax based upon its gross
36 receipts, and shall retain such rights, property and franchises at the end
37 of the calendar year in which such acquisition occurs, then and in such
38 case on or before February 1 of the succeeding year, such acquiring
39 corporation shall return to the State Tax Commissioner in the manner
40 and form required by this act and in addition to the statements of
41 gross receipts[, scheduled property] and length of lines to be filed
42 under this act, a statement showing the gross receipts from the
43 business over, on, in, through or from the lines or mains of the
44 persons, copartnerships, associations or corporations whose rights,
45 property and franchises were acquired as aforesaid, from January 1 of
46 the year in which such property was acquired to the date of such

1 acquisition, together with a statement showing the [scheduled
2 property and] length of lines or mains as of July 1 of the year in which
3 such acquisition took place, as hereinbefore required, unless such
4 information has previously been supplied and filed with the State Tax
5 Commissioner. The total of the gross receipts as shown in both of
6 said statements to the State Tax Commissioner, or as otherwise
7 ascertained by him, shall be used in ascertaining[,] and fixing [and
8 apportioning] the excise tax imposed by section 6(a) of this act upon
9 such acquiring corporation, and if said rights, property and franchises
10 were acquired from a corporation subject to taxation under this act,
11 then the total of the gross receipts as shown in both of said statements
12 to the State Tax Commissioner, or as otherwise ascertained by him,
13 shall be used in ascertaining[,] and fixing [and apportioning] the
14 excise tax imposed by section 6(b) of this act upon such acquiring
15 corporation.

16 The total of the gross receipts as shown in both of said statements
17 to the State Tax Commissioner, or as otherwise ascertained by him,
18 shall be used in ascertaining and fixing the excise tax imposed by
19 section 6(c) of this act upon such acquiring corporation.

20 (cf: P.L.1963, c.42, s.9)

21

22 17. Section 2 of P.L.1966, c.30 (C.54:32B-2) shall be amended to
23 read:

24 2. Unless the context in which they occur requires otherwise, the
25 following terms when used in this act shall mean:

26 (a) Person. Person includes an individual, partnership, society,
27 association, joint stock company, corporation, public corporation or
28 public authority, estate, receiver, trustee, assignee, referee, and any
29 other person acting in a fiduciary or representative capacity, whether
30 appointed by a court or otherwise, and any combination of the
31 foregoing.

32 (b) Purchase at retail. A purchase by any person at a retail sale.

33 (c) Purchaser. A person who purchases property or who receives
34 services.

35 (d) Receipt. The amount of the sales price of any property and the
36 charge for any service taxable under this act, valued in money, whether
37 received in money or otherwise, including any amount for which credit
38 is allowed by the vendor to the purchaser, without any deduction for
39 expenses or early payment discounts, but excluding any credit for
40 property of the same kind that is not tangible personal property
41 purchased for lease accepted in part payment and intended for resale,
42 excluding the cost of transportation where such cost is separately
43 stated in the written contract, if any, and on the bill rendered to the
44 purchaser, and excluding the amount of the sales price for which food
45 stamps have been properly tendered in full or part payment pursuant
46 to the federal Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C.

1 §2011 et seq.).

2 (e) Retail sale. (1) A sale of tangible personal property to any
3 person for any purpose, other than (A) for resale either as such or as
4 converted into or as a component part of a product produced for sale
5 by the purchaser, or (B) for use by that person in performing the
6 services subject to tax under subsection (b) of section 3 where the
7 property so sold becomes a physical component part of the property
8 upon which the services are performed or where the property so sold
9 is later actually transferred to the purchaser of the service in
10 conjunction with the performance of the service subject to tax.

11 (2) For the purposes of this act, the term retail sales includes:

12 Sales of tangible personal property to all contractors,
13 subcontractors or repairmen of materials and supplies for use by them
14 in erecting structures for others, or building on, or otherwise
15 improving, altering, or repairing real property of others.

16 (3) For the purposes of this act, the term retail sale includes the
17 purchase of tangible personal property for lease.

18 (4) The term retail sales does not include:

19 (A) Professional, insurance, or personal service transactions which
20 involve the transfer of tangible personal property as an inconsequential
21 element, for which no separate charges are made.

22 (B) The transfer of tangible personal property to a corporation,
23 solely in consideration for the issuance of its stock, pursuant to a
24 merger or consolidation effected under the laws of New Jersey or any
25 other jurisdiction.

26 (C) The distribution of property by a corporation to its
27 stockholders as a liquidating dividend.

28 (D) The distribution of property by a partnership to its partners in
29 whole or partial liquidation.

30 (E) The transfer of property to a corporation upon its organization
31 in consideration for the issuance of its stock.

32 (F) The contribution of property to a partnership in consideration
33 for a partnership interest therein.

34 (G) The sale of tangible personal property where the purpose of the
35 vendee is to hold the thing transferred as security for the performance
36 of an obligation of the vendor.

37 (f) Sale, selling or purchase. Any transfer of title or possession or
38 both, exchange or barter, rental, lease or license to use or consume,
39 conditional or otherwise, in any manner or by any means whatsoever
40 for a consideration, or any agreement therefor, including the rendering
41 of any service, taxable under this act, for a consideration or any
42 agreement therefor.

43 (g) Tangible personal property. Corporeal personal property of
44 any nature including energy.

45 (h) Use. The exercise of any right or power over tangible personal
46 property by the purchaser thereof and includes, but is not limited to,

1 the receiving, storage or any keeping or retention for any length of
2 time, withdrawal from storage, any installation, any affixation to real
3 or personal property, or any consumption of such property. Use also
4 includes the exercise of any right or power over intrastate or interstate
5 telecommunications. Use also includes the exercise of any right or
6 power over utility service.

7 (i) Vendor. (1) The term "vendor" includes:

8 (A) A person making sales of tangible personal property or
9 services, the receipts from which are taxed by this act;

10 (B) A person maintaining a place of business in the State and
11 making sales, whether at such place of business or elsewhere, to
12 persons within the State of tangible personal property or services, the
13 use of which is taxed by this act;

14 (C) A person who solicits business either by employees,
15 independent contractors, agents or other representatives or by
16 distribution of catalogs or other advertising matter and by reason
17 thereof makes sales to persons within the State of tangible personal
18 property or services, the use of which is taxed by this act;

19 (D) Any other person making sales to persons within the State of
20 tangible personal property or services, the use of which is taxed by this
21 act, who may be authorized by the director to collect the tax imposed
22 by this act;

23 (E) The State of New Jersey, any of its agencies, instrumentalities,
24 public authorities, public corporations (including a public corporation
25 created pursuant to agreement or compact with another state) or
26 political subdivisions when such entity sells services or property of a
27 kind ordinarily sold by private persons; [and]

28 (F) A person who purchases tangible personal property for lease,
29 whether in this State or elsewhere. For the purposes of Title 54 of the
30 Revised Statutes, the presence of leased tangible personal property in
31 this State is deemed to be a place of business in this State; and

32 (G) A person who, in the regular course of business, sells, stores,
33 delivers or transports energy to users or customers in this State
34 whether by mains, lines or pipes located within this State or by any
35 other means of delivery.

36 (2) In addition, when in the opinion of the director it is necessary
37 for the efficient administration of this act to treat any salesman,
38 representative, peddler or canvasser as the agent of the vendor,
39 distributor, supervisor or employer under whom he operates or from
40 whom he obtains tangible personal property sold by him or for whom
41 he solicits business, the director may, in his discretion, treat such agent
42 as the vendor jointly responsible with his principal, distributor,
43 supervisor or employer for the collection and payment over of the tax.

44 (j) Hotel. A building or portion of it which is regularly used and
45 kept open as such for the lodging of guests. The term "hotel" includes
46 an apartment hotel, a motel, boarding house or club, whether or not

1 meals are served.

2 (k) Occupancy. The use or possession or the right to the use or
3 possession, of any room in a hotel.

4 (l) Occupant. A person who, for a consideration, uses, possesses,
5 or has the right to use or possess, any room in a hotel under any lease,
6 concession, permit, right of access, license to use or other agreement,
7 or otherwise.

8 (m) Permanent resident. Any occupant of any room or rooms in a
9 hotel for at least 90 consecutive days shall be considered a permanent
10 resident with regard to the period of such occupancy.

11 (n) Room. Any room or rooms of any kind in any part or portion
12 of a hotel, which is available for or let out for any purpose other than
13 a place of assembly.

14 (o) Admission charge. The amount paid for admission, including
15 any service charge and any charge for entertainment or amusement or
16 for the use of facilities therefor.

17 (p) Amusement charge. Any admission charge, dues or charge of
18 roof garden, cabaret or other similar place.

19 (q) Charge of a roof garden, cabaret or other similar place. Any
20 charge made for admission, refreshment, service, or merchandise at a
21 roof garden, cabaret or other similar place.

22 (r) Dramatic or musical arts admission charge. Any admission
23 charge paid for admission to a theater, opera house, concert hall or
24 other hall or place of assembly for a live, dramatic, choreographic or
25 musical performance.

26 (s) Lessor. Any person who is the owner, licensee, or lessee of any
27 premises or tangible personal property which he leases, subleases, or
28 grants a license to use to other persons.

29 (t) Place of amusement. Any place where any facilities for
30 entertainment, amusement, or sports are provided.

31 (u) Casual sale. Casual sale means an isolated or occasional sale
32 of an item of tangible personal property by a person who is not
33 regularly engaged in the business of making sales at retail where such
34 property was obtained by the person making the sale, through
35 purchase or otherwise, for his own use in this State.

36 (v) Motor vehicle. Motor vehicle shall include all vehicles
37 propelled otherwise than by muscular power (excepting such vehicles
38 as run only upon rails or tracks), trailers, semitrailers, housetrailers, or
39 any other type of vehicle drawn by a motor-driven vehicle, and
40 motorcycles, designed for operation on the public highways.

41 (w) "Persons required to collect tax" or "persons required to
42 collect any tax imposed by this act" shall include: every vendor of
43 tangible personal property or services; every recipient of amusement
44 charges; every operator of a hotel; every lessor; and every vendor of
45 telecommunications. Said terms shall also include any officer or
46 employee of a corporation or of a dissolved corporation who as such

1 officer or employee is under a duty to act for such corporation in
2 complying with any requirement of this act and any member of a
3 partnership. Provided, however, the vendor of tangible personal
4 property to all contractors, subcontractors or repairmen, consisting of
5 materials and supplies for use by them in erecting structures for others,
6 or building on, or otherwise improving, altering or repairing real
7 property of others, shall not be deemed a person required to collect
8 tax, and the tax imposed by any section of this act shall be paid
9 directly to the director by such contractors, subcontractors or
10 repairmen.

11 (x) "Customer" shall include: every purchaser of tangible personal
12 property or services; every patron paying or liable for the payment of
13 any amusement charge; and every occupant of a room or rooms in a
14 hotel.

15 (y) "Property and services the use of which is subject to tax" shall
16 include: (1) all property sold to a person within the State, whether or
17 not the sale is made within the State, the use of which property is
18 subject to tax under section 6 or will become subject to tax when such
19 property is received by or comes into the possession or control of such
20 person within the State; (2) all services rendered to a person within the
21 State, whether or not such services are performed within the State,
22 upon tangible personal property the use of which is subject to tax
23 under section 6 or will become subject to tax when such property is
24 received by or comes into possession or control of such person within
25 the State; (3) intrastate or interstate telecommunications charged to a
26 service address in this State; [and] (4) (Deleted by amendment,
27 P.L.1995, c.184); (5) energy sold, exchanged or delivered in this State
28 for use in this State; and (6) utility service sold, exchanged or
29 delivered in this State for use in this State.

30 (z) Director. Director means the Director of the Division of
31 Taxation of the State Department of the Treasury, or any officer,
32 employee or agency of the Division of Taxation in the Department of
33 the Treasury duly authorized by the director (directly, or indirectly by
34 one or more redelegations of authority) to perform the functions
35 mentioned or described in this act.

36 (aa) "Lease" means the possession or control of tangible personal
37 property by an agreement, not transferring sole title, as may be
38 evidenced by a contract, contracts, or by implication from other
39 circumstances including course of dealing or usage of trade or course
40 of performance, for a period of more than 28 days.

41 (bb) "The amount of the sales price" of tangible personal property
42 purchased for lease means, at the election of the lessor, either (1) the
43 amount of the lessor's purchase price or (2) the amount of the total of
44 the lease payments attributable to the lease of such property. Tangible
45 personal property purchased for lease is subject to the provisions of
46 subsection (a) of section 3 of P.L.1966, c.30 (C.54:32B-3).

1 (cc) "Telecommunications" means the act or privilege of
2 originating or receiving messages or information through the use of
3 any kind of one-way or two-way communication; including but not
4 limited to voice, video, facsimile, teletypewriter, computer, cellular
5 mobile or portable telephone, specialized mobile or portable pager or
6 paging service, or any other type of communication; using electronic
7 or electromagnetic methods, and all services and equipment provided
8 in connection therewith or by means thereof. "Telecommunications"
9 shall not include:

10 (1) one-way radio or television broadcasting transmissions
11 available universally to the general public without a fee;

12 (2) purchases of telecommunications by a telecommunications
13 provider for use as a component part of telecommunications provided
14 to an ultimate retail consumer who (A) originates or terminates the
15 taxable end-to-end communications or (B) pays charges exempt from
16 taxation pursuant to paragraph (5) of this subsection;

17 (3) services provided by a person, or by that person's wholly owned
18 subsidiary, not engaged in the business of rendering or offering
19 telecommunications services to the public, for private and exclusive
20 use within its organization, provided however, that
21 "telecommunications" shall include the sale of telecommunications
22 services attributable to the excess unused telecommunications capacity
23 of that person to another;

24 (4) charges in the nature of subscription fees paid by subscribers
25 for cable television service; and

26 (5) charges subject to the local calling rate paid by inserting coins
27 into a coin operated telecommunications device available to the public.

28 (dd) "Interstate telecommunication" means any telecommunication
29 that originates or terminates inside this State, including international
30 telecommunication.

31 (ee) "Intrastate telecommunication" means any telecommunication
32 that originates and terminates within this State.

33 (ff) "Natural gas" means any gaseous fuel distributed through a
34 pipeline system.

35 (gg) "Energy" means natural gas or electricity.

36 (hh) "Utility service" means the transportation or transmission of
37 natural gas or electricity by means of mains, wires, lines or pipes, to
38 users or customers.

39 (ii) "Self-generation unit" means a facility located on the user's
40 property, which generates electricity to be used only by that user on
41 that property and is not transported to the user over wires that cross
42 a property line or public thoroughfare.

43 (jj) "Co-generation facility" means a facility the primary purpose of
44 which is the sequential production of electricity and steam or other
45 forms of useful energy which are used for industrial or commercial
46 heating or cooling purposes and which is designated by the Federal

1 Energy Regulatory Commission, or its successor, as a "qualifying
2 facility" pursuant to the provisions of the "Public Utility Regulatory
3 Policies Act of 1978," Pub.L. 95-617.

4 (kk) "Non-utility" means a company engaged in the sale, exchange
5 or transfer of natural gas that was not subject to the provisions
6 P.L.1940, c.5 (C.54:30A-49 et seq.) prior to December 31, 1997.

7 (cf: P.L.1995, c.184, s.1)

8

9 18. Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended to read
10 as follows:

11 3. There is imposed and there shall be paid a tax of 6% upon:

12 (a) The receipts from every retail sale of tangible personal
13 property, except as otherwise provided in this act. If the lessor of
14 tangible personal property purchased for lease elects to pay tax on the
15 amount of the sales price as provided in paragraph (2) of subsection
16 (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each
17 subsequent lease or rental is a retail sale, and a subsequent sale of such
18 property is a retail sale.

19 (b) The receipts from every sale, except for resale, of the following
20 services:

21 (1) Producing, fabricating, processing, printing or imprinting
22 tangible personal property, performed for a person who directly or
23 indirectly furnishes the tangible personal property, not purchased by
24 him for resale, upon which such services are performed.

25 (2) Installing tangible personal property, or maintaining, servicing,
26 repairing tangible personal property not held for sale in the regular
27 course of business, whether or not the services are performed directly
28 or by means of coin-operated equipment or by any other means, and
29 whether or not any tangible personal property is transferred in
30 conjunction therewith, except (i) such services rendered by an
31 individual who is engaged directly by a private homeowner or lessee
32 in or about his residence and who is not in a regular trade or business
33 offering his services to the public, (ii) such services rendered with
34 respect to personal property exempt from taxation hereunder pursuant
35 to section 13 of P.L.1980, c.105 (C.54:32B-8.1), (iii) (Deleted by
36 amendment, P.L.1990, c.40), (iv) any receipts from laundering, dry
37 cleaning, tailoring, weaving, pressing, shoe repairing and shoeshining
38 and (v) services rendered in installing property which, when installed,
39 will constitute an addition or capital improvement to real property,
40 property or land.

41 (3) Storing all tangible personal property not held for sale in the
42 regular course of business and the rental of safe deposit boxes or
43 similar space.

44 (4) Maintaining, servicing or repairing real property, other than a
45 residential heating system unit serving not more than three families
46 living independently of each other and doing their cooking on the

1 premises, whether the services are performed in or outside of a
2 building, as distinguished from adding to or improving such real
3 property by a capital improvement, but excluding services rendered by
4 an individual who is not in a regular trade or business offering his
5 services to the public, and excluding garbage removal and sewer
6 services performed on a regular contractual basis for a term not less
7 than 30 days.

8 (5) Advertising services, except advertising services for use directly
9 and primarily for publication in newspapers and magazines and except
10 for direct-mail advertising processing services in connection with
11 distribution to out-of-State recipients.

12 (6) (Deleted by amendment, P.L.1995, c.184).

13 (7) Utility service provided to persons in this State, any right or
14 power over which is exercised in this State.

15 Wages, salaries and other compensation paid by an employer to an
16 employee for performing as an employee the services described in this
17 subsection are not receipts subject to the taxes imposed under this
18 subsection (b).

19 Services otherwise taxable under paragraph (1) or (2) of this
20 subsection (b) are not subject to the taxes imposed under this
21 subsection, where the tangible personal property upon which the
22 services were performed is delivered to the purchaser outside this
23 State for use outside this State.

24 (c) Receipts from the sale of food and drink in or by restaurants,
25 taverns, vending machines or other establishments in this State, or by
26 caterers, including in the amount of such receipts any cover, minimum,
27 entertainment or other charge made to patrons or customers:

28 (1) In all instances where the sale is for consumption on the
29 premises where sold;

30 (2) In those instances where the vendor or any person whose
31 services are arranged for by the vendor, after the delivery of the food
32 or drink by or on behalf of the vendor for consumption off the
33 premises of the vendor, serves or assists in serving, cooks, heats or
34 provides other services with respect to the food or drink, except for
35 meals especially prepared for and delivered to homebound elderly, age
36 60 or older, and to disabled persons, or meals prepared and served at
37 a group-sitting at a location outside of the home to otherwise
38 homebound elderly persons, age 60 or older, and otherwise
39 homebound disabled persons, as all or part of any food service project
40 funded in whole or in part by government or as part of a private,
41 nonprofit food service project available to all such elderly or disabled
42 persons residing within an area of service designated by the private
43 nonprofit organization;

44 (3) In those instances where the sale is for consumption off the
45 premises of the vendor, and consists of a meal, or food prepared and
46 ready to be eaten, of a kind obtainable in restaurants as the main

1 course of a meal, including a sandwich, except where food other than
2 sandwiches is sold in an unheated state and is of a type commonly sold
3 in the same form and condition in food stores other than those which
4 are principally engaged in selling prepared foods; and

5 (4) Sales of food and beverages sold through coin-operated
6 vending machines, at the wholesale price of such sale, which shall be
7 defined as 70% of the retail vending machine selling price, except sales
8 of milk, which shall not be taxed. Nothing herein contained shall
9 affect other sales through coin-operated vending machines taxable
10 pursuant to subsection (a) above or the exemption thereto provided by
11 section 21 of P.L.1980, c.105 (C.54:32B-8.9).

12 The tax imposed by this subsection (c) shall not apply to food or
13 drink which is sold to an airline for consumption while in flight.

14 (d) The rent for every occupancy of a room or rooms in a hotel in
15 this State, except that the tax shall not be imposed upon (1) a
16 permanent resident, or (2) where the rent is not more than at the rate
17 of \$2.00 per day.

18 (e) (1) Any admission charge, where such admission charge is in
19 excess of \$0.75 to or for the use of any place of amusement in the
20 State, including charges for admission to race tracks, baseball,
21 football, basketball or exhibitions, dramatic or musical arts
22 performances, motion picture theaters, except charges for admission
23 to boxing, wrestling, kick boxing or combative sports exhibitions,
24 events, performances or contests which charges are taxed under any
25 other law of this State or under section 20 of P.L.1985, c.83
26 (C.5:2A-20), and, except charges to a patron for admission to, or use
27 of, facilities for sporting activities in which such patron is to be a
28 participant, such as bowling alleys and swimming pools. For any
29 person having the permanent use or possession of a box or seat or
30 lease or a license, other than a season ticket, for the use of a box or
31 seat at a place of amusement, the tax shall be upon the amount for
32 which a similar box or seat is sold for each performance or exhibition
33 at which the box or seat is used or reserved by the holder, licensee or
34 lessee, and shall be paid by the holder, licensee or lessee.

35 (2) The amount paid as charge of a roof garden, cabaret or other
36 similar place in this State, to the extent that a tax upon such charges
37 has not been paid pursuant to subsection (c) hereof.

38 (f) The receipts from every sale, except for resale, of intrastate or
39 interstate telecommunications charged to an address in this State,
40 regardless of where the services are billed or paid.

41 (cf: P.L.1995, c.184, s.2)

42

43 19. Section 6 of P.L.1966, c.30 (C.54:32B-6) is amended to read
44 as follows:

45 6. Unless property or services have already been or will be subject
46 to the sales tax under this act, there is hereby imposed on and there

1 shall be paid by every person a use tax for the use within this State of
2 6%, except as otherwise exempted under this act, (A) of any tangible
3 personal property purchased at retail, including energy, provided
4 however, that electricity consumed by the generating facility that
5 produced it shall not be subject to tax. (B) of any tangible personal
6 property manufactured, processed or assembled by the user, if items
7 of the same kind of tangible personal property are offered for sale by
8 him in the regular course of business, or if items of the same kind of
9 tangible personal property are not offered for sale by him in the regular
10 course of business and are used as such or incorporated into a
11 structure, building or real property, (C) of any tangible personal
12 property, however acquired, where not acquired for purposes of
13 resale, upon which any taxable services described in paragraphs (1)
14 and (2) of subsection (b) of section 3 of P.L.1966, c.30 (C.54:32B-3)
15 have been performed, (D) of interstate or intrastate
16 telecommunications described in subsection (f) of section 3 of
17 P.L.1966, c.30, [and] (E) (Deleted by amendment, P.L.1995, c.184),
18 and (F) of utility service provided to persons in this State for use in
19 this State, provided however, that utility service used by the facility
20 that provides the service shall not be subject to tax. For purposes of
21 clause (A) of this section, the tax shall be at the applicable rate, as set
22 forth hereinabove, of the consideration given or contracted to be given
23 for such property or for the use of such property, but excluding any
24 credit for property of the same kind accepted in part payment and
25 intended for resale, plus the cost of transportation, except where such
26 cost is separately stated in the written contract, if any, and on the bill
27 rendered to the purchaser, provided however, that there shall be no
28 exclusion for the cost of the utility service. For the purposes of clause
29 (B) of this section, the tax shall be at the applicable rate, as set forth
30 hereinabove, of the price at which items of the same kind of tangible
31 personal property are offered for sale by the user, or if items of the
32 same kind of tangible personal property are not offered for sale by the
33 user in the regular course of business and are used as such or
34 incorporated into a structure, building or real property the tax shall be
35 at the applicable rate, as set forth hereinabove, of the consideration
36 given or contracted to be given for the tangible personal property
37 manufactured, processed or assembled by the user into the tangible
38 personal property the use of which is subject to use tax pursuant to
39 this section, and the mere storage, keeping, retention or withdrawal
40 from storage of tangible personal property by the person who
41 manufactured, processed or assembled such property shall not be
42 deemed a taxable use by him. For purposes of clause (C) of this
43 section, the tax shall be at the applicable rate, as set forth hereinabove,
44 of the consideration given or contracted to be given for the service,
45 including the consideration for any tangible personal property
46 transferred in conjunction with the performance of the service, plus the

1 cost of transportation, except where such cost is separately stated in
2 the written contract, if any, and on the bill rendered to the purchaser.
3 For the purposes of clause (D) of this section, the tax shall be at the
4 applicable rate on the charge made by the telecommunications service
5 provider. For purposes of clause (F) of this section, the tax shall be
6 at the applicable rate on the charge made by the utility service
7 provider.

8 (cf: P.L.1995, c.184, s.3)

9

10 20. Section 17 of P.L.1966, c.30 (C.54:32B-7) is amended to read
11 as follows:

12 17. (a) The retail sales tax imposed under subsection (a) of section
13 3 and the compensating use tax imposed under section 6, when
14 computed in respect to tangible personal property wherever
15 manufactured, processed or assembled and used by such manufacturer,
16 processor or assembler in the regular course of business within this
17 State, shall be based on the price at which items of the same kind of
18 tangible personal property are offered for sale by him.

19 (b) Tangible personal property, which has been purchased by a
20 resident of the State of New Jersey outside of this State for use
21 outside of this State and subsequently becomes subject to the
22 compensating use tax imposed under this act, shall be taxed on the
23 basis of the purchase price of such property, provided, however:

24 (1) That where a taxpayer affirmatively shows that the property
25 was used outside such State by him for more than six months prior to
26 its use within this State, such property shall be taxed on the basis of
27 current market value of the property at the time of its first use within
28 this State. The value of such property, for compensating use tax
29 purposes, may not exceed its cost.

30 (2) That the compensating use tax on such tangible personal
31 property brought into this State (other than for complete consumption
32 or for incorporation into real property located in this State) and used
33 in the performance of a contract or subcontract within this State by a
34 purchaser or user for a period of less than six months may be based,
35 at the option of the taxpayer, on the fair rental value of such property
36 for the period of use within this State.

37 (c) Leased tangible personal property which has been purchased
38 outside this State for lease outside of this State and subsequently
39 becomes subject to the compensating use tax imposed under this act
40 shall be taxed on the basis of the purchase price of such property,
41 provided however, that the compensating use tax on such property
42 brought into and used within this State may be based, at the option of
43 the lessor, on the total of the lease payments attributable to the lease
44 of that property attributable to the period of the lease remaining after
45 first use in this State.

46 (d) Unless tangible personal property purchased for lease has

1 already been subject to the sales tax imposed under subsection (a) of
2 section 3 or the compensating use tax imposed under section 6, the use
3 tax computed with respect to such property, in the discretion of the
4 director, may be assessed against the lessee or sub-lessee and shall be
5 based on the total of the periodic payments required under the lease.
6 The fact that the lessee has accepted in good faith the certificate of the
7 lessor, in the form prescribed by the director, and the fact that the tax
8 imposed on property purchased for lease in this act has been paid may
9 be considered by the director, but shall not be deemed conclusive if
10 good faith issuance or acceptance of such certificate is in question.

11 (e) The purchase of energy shall be subject to the compensating use
12 tax imposed under section 6 on the basis of the purchase price of the
13 energy, including any charges for utility service.

14 (cf: P.L.1989, c.123, s.3)

15

16 21. Section 19 of P.L.1980, c.105 (C.54:32B-8.7) is amended to
17 read as follows:

18 19. Receipts from the following are exempt from the tax imposed
19 under the Sales and Use Tax Act: sales of gas other than natural gas,
20 water, steam, or fuel [or electricity] delivered to consumers through
21 mains, lines, pipe, or in containers or bulk.

22 (cf: P.L.1990, c.40, s.6)

23

24 22. Section 23 of P.L.1980, c.105 (C.54:32B-8.11) is amended to
25 read as follows:

26 23. Receipts from charges for the transportation of persons or
27 property, except of energy, are exempt from the tax imposed under
28 the Sales and Use Tax Act.

29 (cf: P.L.1980, c.105, s.23)

30

31 23. Section 25 of P.L.1980, c.105 (C.54:32B-8.13) is amended to
32 read as follows:

33 25. Receipts from the following are exempt from the tax imposed
34 under the Sales and Use Tax Act:

35 a. Sales of machinery, apparatus or equipment for use or
36 consumption directly and primarily in the production of tangible
37 personal property by manufacturing, processing, assembling or
38 refining;

39 b. Sales of machinery, apparatus or equipment for use or
40 consumption directly and primarily in the production, generation,
41 transmission or distribution of gas, electricity, refrigeration, steam or
42 water for sale or in the operation of sewerage systems;

43 c. Sales of telephones, telephone lines, cables, central office
44 equipment or station apparatus, or other machinery, equipment or
45 apparatus, or comparable telegraph equipment to a service provider
46 subject to the jurisdiction of the Board of Public Utilities or the

1 Federal Communications Commission, for use directly and primarily
2 in receiving at destination or initiating, transmitting and switching
3 telephone, telegraph or interactive telecommunications service for sale
4 to the general public;

5 d. Sales of machinery, apparatus, equipment, building materials, or
6 structures or portions thereof, used directly and primarily for
7 cogeneration in a cogeneration facility. As used in this subsection,
8 "cogeneration facility" means a facility the primary purpose of which
9 is the sequential production of electricity and steam or other forms of
10 useful energy which are used for industrial or commercial heating or
11 cooling purposes and which is designated by the Federal Energy
12 Regulatory Commission, or its successor, as a "qualifying facility"
13 pursuant to the provisions of the "Public Utility Regulatory Policies
14 Act of 1978," Pub. L. 95-617. The Director of the Office of Energy
15 in the Department of Environmental Protection, in consultation with
16 the Director of the Division of Taxation, shall adopt, pursuant to the
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
18 seq.), rules and regulations establishing technical specifications for
19 eligibility for the exemption provided in this subsection;

20 e. Sales of machinery, apparatus or equipment, including
21 transponders, earth stations, microwave dishes, transmitters and
22 receivers which have a useful life exceeding one year, other than that
23 used in the construction or operation of towers, to a commercial
24 broadcaster operating under a broadcasting license issued by the
25 Federal Communications Commission or to a provider of
26 cable/satellite television program services who may or may not operate
27 under a broadcasting license issued by the Federal Communications
28 Commission for use or consumption directly and primarily in the
29 production or transmission of radio or television information
30 transmitted, delivered or archived through any medium or method.

31 The exemptions granted under this section shall not be construed to
32 apply to sales, otherwise taxable, of machinery, equipment or
33 apparatus whose use is incidental to the activities described in
34 subsections a., b., c., d. and e. of this section.

35 The exemptions granted in this section shall not apply to energy,
36 motor vehicles, or to parts with a useful life of one year or less or
37 tools or supplies used in connection with the machinery, equipment or
38 apparatus described in this section.

39 (cf: P.L.1996, c.26, s.18)

40

41 24. Section 26 of P.L.1980, c.105 (C.54:32B-8.14) is amended to
42 read as follows:

43 26. Receipts from sales of tangible personal property, except
44 energy, purchased for use or consumption directly and exclusively in
45 research and development in the experimental or laboratory sense are
46 exempt from the tax imposed under the Sales and Use Tax Act. Such

1 research and development shall not be deemed to include the ordinary
2 testing or inspection of materials or products for quality control,
3 efficiency surveys, management studies, consumer surveys,
4 advertising, promotions or research in connection with literary,
5 historical or similar projects.

6 (cf: P.L.1980, c.105, s.26)

7

8 25. Section 28 of P.L.1980, c.105 (C.54:32B-8.16) is amended to
9 read as follows:

10 28. Receipts from sales of tangible personal property except
11 automobiles, [and] except property incorporated in a building or
12 structure, ~~and except energy~~, for use and consumption directly and
13 exclusively in the production for sale of tangible personal property on
14 farms, including stock, dairy, poultry, fruit, fur-bearing animals, and
15 truck farms, ranches, nurseries, greenhouses or other similar
16 structures used primarily for the raising of agricultural or horticultural
17 commodities, and orchards are exempt from the tax imposed under the
18 Sales and Use Tax Act.

19 (cf: P.L.1980, c.105, s.28)

20

21 26. (New section) a. Receipts from the sale, exchange, delivery
22 or use of electricity are exempt from the tax imposed under the Sales
23 and Use Tax Act if the electricity:

24 (1) Is sold by a municipal electric utility in existence as of
25 December 31, 1995 and exempt from the provisions of P.L.1940, c.5
26 (C.54:30A-49 et seq.), provided however, that if the utility expands
27 service beyond its municipal boundaries or expands its facility base
28 beyond the geographic service area fixed as of December 31, 1995; all
29 receipts from sales made by the utility shall be subject to the tax
30 imposed under the Sales and Use Tax Act;

31 (2) Was generated by a facility located on the user's property, and
32 was consumed by the user on such property, and was not transported
33 to the user over wires that cross a property line or public
34 thoroughfare; or

35 (3) Is sold for resale in the regular course of business.

36 b. Receipts from the purchase or use of the following are exempt
37 from the tax imposed under the Sales and Use Tax Act:

38 (1) Natural gas or utility service that is used to produce electricity
39 that is sold to an end user other than the producer; and

40 (2) Natural gas up to an amount used to generate electricity at the
41 facility's name plate capacity rating as of March 10, 1997, and utility
42 service, to be used by the person that owns a qualified co-generation
43 facility or a self-generation unit in operation on or before March 10,
44 1997, or for which an application for an operating permit in order to
45 comply with air quality standards under P.L.1954, c.212 (C.26:2C-1
46 et seq.) has been filed with the Department of Environmental

1 Protection on or before March 10, 1997, to produce electricity for the
2 use by that person as the one on-site end user.

3

4 27. Section 9 of P.L.1966, c.30 (C.54:32B-9) is amended to read
5 as follows:

6 9. (a) Except as to motor vehicles sold by any of the following, any
7 sale, service or amusement charge by or to any of the following or any
8 use or occupancy by any of the following shall not be subject to the
9 sales and use taxes imposed under this act:

10 (1) The State of New Jersey, or any of its agencies,
11 instrumentalities, public authorities, public corporations (including a
12 public corporation created pursuant to agreement or compact with
13 another State) or political subdivisions where it is the purchaser, user
14 or consumer, or where it is a vendor of services or property of a kind
15 not ordinarily sold by private persons;

16 (2) The United States of America, and any of its agencies and
17 instrumentalities, insofar as it is immune from taxation where it is the
18 purchaser, user or consumer, or where it sells services or property of
19 a kind not ordinarily sold by private persons;

20 (3) The United Nations or any international organization of which
21 the United States of America is a member where it is the purchaser,
22 user or consumer, or where it sells services or property of a kind not
23 ordinarily sold by private persons.

24 (b) Except as otherwise provided in this section any sale or
25 amusement charge by or to any of the following or any use or
26 occupancy by any of the following, where such sale, charge, use or
27 occupancy is directly related to the purposes for which the following
28 have been organized, shall not be subject to the sales and use taxes
29 imposed under this act:

30 (1) Any corporation, association, trust, or community chest, fund
31 or foundation, organized and operated exclusively for religious,
32 charitable, scientific, testing for public safety, literary or educational
33 purposes, or for the prevention of cruelty to children or animals, or
34 as a volunteer fire company, rescue, ambulance, first aid or emergency
35 company or squad, and an association of parents and teachers of an
36 elementary or secondary public or private school exempt under the
37 provisions of section 9, no part of the net earnings of which inures to
38 the benefit of any private shareholder or individual, no substantial part
39 of the activities of which is carrying on propaganda, or otherwise
40 attempting to influence legislation, and which does not participate in,
41 or intervene in (including the publishing or distributing of statements),
42 any political campaign on behalf of any candidate for public office.

43 (c) (1) Nothing in this section shall exempt the sale of a motor
44 vehicle by an organization described in subsection (b)(1) of this
45 section or retail sales of tangible personal property by any shop or
46 store operated by such organization from the taxes imposed hereunder,

1 unless the purchaser is an organization exempt under this section.

2 (2) Nothing in this section shall exempt the sale or use of energy
3 or utility service to or by an organization described in subsection
4 (a)(1) or (b)(1) of this section.

5 (d) Any organization enumerated in subsection (b)(1) hereof shall
6 not be entitled to the exemption herein granted unless it has complied
7 with such requirements for obtaining a tax immunity authorization as
8 may be provided in this act.

9 (e) Where any organization described in subsection (b)(1) hereof
10 carries on its activities in furtherance of the purposes for which it was
11 organized, in premises in which, as part of said activities, it operates
12 a hotel, occupancy of rooms in the premises and rents therefrom
13 received by such corporation or association shall not be subject to tax
14 hereunder.

15 (f)(1) Except as provided in paragraph (2) of this subsection, any
16 admissions all of the proceeds of which inure exclusively to the benefit
17 of the following organizations shall not be subject to any of the taxes
18 imposed under subsection (e) of section 3:

19 (A) an organization described in subsection (a)(1) or (b) of this
20 section;

21 (B) a society or organization conducted for the sole purpose of
22 maintaining symphony orchestras or operas and receiving substantial
23 support from voluntary contributions;

24 (C) national guard organizations, posts or organizations of war
25 veterans, or auxiliary units or societies of any such posts or
26 organizations, if such posts, organizations, units or societies are
27 organized in this State, and if no part of their net earnings inures to
28 the benefit of any private stockholder or individual; or

29 (D) a police or fire department of a political subdivision of the
30 State, or a volunteer fire company, ambulance, first aid, or emergency
31 company or squad, or exclusively to a retirement, pension or disability
32 fund for the sole benefit of members of a police or fire department or
33 to a fund for the heirs of such members.

34 (2) The exemption provided under paragraph (1) of this subsection
35 shall not apply in the case of admissions to:

36 (A) Any athletic game or exhibition unless the proceeds shall inure
37 exclusively to the benefit of elementary or secondary schools or unless
38 in the case of an athletic game between two elementary or secondary
39 schools, the entire gross proceeds from such game shall inure to the
40 benefit of one or more organizations described in subsection (b)(1) of
41 this section;

42 (B) Carnivals, rodeos, or circuses in which any professional
43 performer or operator participates for compensation;

44 (3) Admission charges for admission to the following places or
45 events shall not be subject to any of the taxes imposed under
46 subsection (e) of section 3:

1 (A) Any admission to agricultural fairs if no part of the net earnings
2 thereof inures to the benefit of any stockholders or members of the
3 association conducting the same; provided the proceeds therefrom
4 are used exclusively for the improvement, maintenance and operation
5 of such agricultural fairs.

6 (B) Any admission to a home or garden which is temporarily open
7 to the general public as a part of a program conducted by a society or
8 organization to permit the inspection of historical homes and gardens;
9 provided no part of the net earnings thereof inures to the benefit of
10 any private stockholder or individual.

11 (C) Any admissions to historic sites, houses and shrines, and
12 museums conducted in connection therewith, maintained and operated
13 by a society or organization devoted to the preservation and
14 maintenance of such historic sites, houses, shrines and museums;
15 provided no part of the net earnings thereof inures to the benefit of
16 any private stockholder or individual.

17 (cf: P.L.1967, c.25, s.3)

18

19 28. Section 11 of P.L.1966, c.30 (C.54:32B-11) is amended to read
20 as follows:

21 11. Exemptions from use tax. The following uses of property shall
22 not be subject to the compensating use tax imposed under this act:

23 (1) In respect to the use of property used by the purchaser in this
24 State prior to July 1, 1966.

25 (2) In respect to the use of property purchased by the user while a
26 nonresident of this State, except in the case of tangible personal
27 property which the user, in the performance of a contract, incorporates
28 into real property located in the State or except in the case of tangible
29 personal property purchased for lease. A person while engaged in any
30 manner in carrying on in this State any employment, trade, business or
31 profession, not entirely in interstate or foreign commerce, shall not be
32 deemed a nonresident with respect to the use in this State of property
33 in such employment, trade, business or profession.

34 (3) In respect to the use of property or services upon the sale of
35 which the purchaser would be expressly exempt from the taxes
36 imposed under subsection (a) or (b) of section 3.

37 (4) In respect to the use of property which is converted into or
38 becomes a component part of a product produced for sale or for
39 market sampling by the purchaser.

40 (5) In respect to the use of paper in the application of newspapers
41 and periodicals.

42 (6) In respect to the use of property or services to the extent that
43 a retail sales or use tax was legally due and paid thereon, without any
44 right to a refund or credit thereof, to any other State or jurisdiction
45 within any other state but only when it is shown that such other State
46 or jurisdiction allows a corresponding exemption with respect to the

1 sale or use of tangible personal property or services upon which such
2 a sales tax or compensating use tax was paid to this State. To the
3 extent that the tax imposed by this act is at a higher rate than the rate
4 of tax in the first taxing jurisdiction, this exemption shall be
5 inapplicable and the tax imposed by section 6 of this act shall apply to
6 the extent of the difference in such rates.

7 (7) In respect to the use of natural gas by an eligible person, other
8 than a co-generation facility, as defined in section 34 of P.L. , c.
9 (C.) (now pending before the Legislature as this bill), who
10 purchases from a non-utility, up to the base level of volume as defined
11 in section 34 of P.L. , c. , but only as long as the eligible person
12 remains at the same physical site that was occupied on December 31,
13 1995.

14 (cf: P.L.1989, c.123, s.5)

15
16 29. Section 12 of P.L.1966, c.30 (C.54:32B-12) is amended to read
17 as follows:

18 12. (a) Every person required to collect the tax shall collect the tax
19 from the customer when collecting the price, service charge,
20 amusement charge or rent to which it applies. If the customer is given
21 any sales slip, invoice, receipt or other statement or memorandum of
22 the price, service charge, amusement charge or rent paid or payable,
23 the tax shall be stated, charged and shown separately on the first of
24 such documents given to him. The tax shall be paid to the person
25 required to collect it as trustee for and on account of the State.

26 (b) For the purpose of the proper administration of this act and to
27 prevent evasion of the tax hereby imposed, it shall be presumed that
28 all receipts for property or services of any type mentioned in
29 subsections (a), (b) and (c) of section 3, all rents for occupancy of the
30 type mentioned in subsection (d) of said section, and all amusement
31 charges of any type mentioned in subsection (e) of said section, are
32 subject to tax until the contrary is established, and the burden of
33 proving that any such receipt, amusement charge or rent is not taxable
34 hereunder shall be upon the person required to collect tax or the
35 customer. Unless a vendor shall have taken from the purchaser a
36 certificate, signed by the purchaser and bearing his name and address
37 and the number of his registration certificate, to the effect that the
38 property or service was purchased for resale or the purchaser prior to
39 taking delivery, furnishes to the vendor any affidavit, statement or
40 additional evidence, documentary or otherwise, which the director
41 may require demonstrating that the purchaser is an exempt
42 organization described in section 9(b)(1), the sale shall be deemed a
43 taxable sale at retail. Provided however, the director may, in his
44 discretion, authorize a purchaser, who acquires tangible personal
45 property or services under circumstances which make it impossible at
46 the time of acquisition to determine the manner in which the tangible

1 personal property or services will be used, to pay the tax directly to
2 the director and waive the collection of the tax by the vendor.
3 Provided, further, the director shall authorize any contractor,
4 subcontractor or repairman who acquires tangible personal property
5 consisting of materials and supplies for use by him in erecting
6 structures for others, or building on, or otherwise improving, altering,
7 or repairing real property of others, to pay the tax directly to the
8 director and waive the collection of the tax by the vendor. Provided
9 further, the director shall authorize any eligible person, as defined in
10 section 34 of P.L. c. , (C.)(now pending before the Legislature
11 as this bill), who purchases natural gas from a non-utility on and after
12 January 1, 1998, to pay the tax on the commodity directly to the
13 director and waive the collection of the tax by the vendor. No such
14 authority shall be granted or exercised except upon application to the
15 director, and the issuance by the director of a direct payment permit.
16 If a direct payment permit is granted, its use shall be subject to
17 conditions specified by the director, and the payment of tax on all
18 acquisitions pursuant to the permit shall be made directly to the
19 director by the permit holder.

20 (c) The director may provide by regulation that the tax upon
21 receipts from sales on the installment plan may be paid on the amount
22 of each installment and upon the date when such installment is due.
23 He may also provide by regulation for the exclusion from taxable
24 receipts, amusement charges or rents of amounts representing sales
25 where the contract of sale has been canceled, the property returned or
26 the receipt, charge or rent has been ascertained to be uncollectible or,
27 in the case the tax has been paid upon such receipt, charge or rent, for
28 refund or credit of the tax so paid.

29 (cf: P.L.1968, c.106, s.2)

30

31 30. Section 14 of P.L.1966, c.30 (C.54:32B-14) is amended to
32 read as follows:

33 14. (a) Every person required to collect any tax imposed by this act
34 shall be personally liable for the tax imposed, collected or required to
35 be collected under this act. Any such person shall have the same right
36 in respect to collecting the tax from his customer or in respect to
37 non-payment of the tax by the customer as if the tax were a part of
38 the purchase price of the property or service, amusement charge or
39 rent, as the case may be, and payable at the same time; provided,
40 however, that the director shall be joined as a party in any action or
41 proceeding brought to collect the tax.

42 (b) Where any customer has failed to pay a tax imposed by this act
43 to the person required to collect the same, then in addition to all other
44 rights, obligations and remedies provided, such tax shall be payable by
45 the customer directly to the director and it shall be the duty of the
46 customer to file a return with the director and to pay the tax to him

1 within 20 days of the date the tax was required to be paid.

2 (c) The director may, whenever he deems it necessary for the proper
3 enforcement of this act, provide by regulation that customers shall file
4 returns and pay directly to the director any tax herein imposed, at such
5 times as returns are required to be filed and payment over made by
6 persons required to collect the tax.

7 (d) No person required to collect any tax imposed by this act shall
8 advertise or hold out to any person or to the public in general, in any
9 manner, directly or indirectly, that the tax is not considered as an
10 element in the price, amusement charge or rent payable by customer,
11 or that he will pay the tax, that the tax will not be separately charged
12 and stated to the customer or that the tax will be refunded to the
13 customer. Upon written application duly made and proof duly
14 presented to the satisfaction of the director showing that in his
15 particular business it would be impractical for the vendor to separately
16 charge the tax to the customer, the director may waive the application
17 of the requirement herein as to such vendor.

18 (e) All vendors of energy or utility service shall include the tax
19 imposed by the Sales and Use Tax Act within the purchase price of the
20 tangible personal property or service, unless otherwise provided in this
21 act.

22 (cf: P.L.1966, c.53, s.7)

23

24 31. Section 20 of P.L.1983, c.303 (C.52:27H-79) is amended to
25 read as follows:

26 20. Retail sales of personal property (except motor vehicles and
27 energy) and sales of services (except telecommunications and utility
28 services) to a qualified business for the exclusive use or consumption
29 of such business within an enterprise zone are exempt from the taxes
30 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
31 (C.54:32B-1 et seq.).

32 (cf: P.L.1990, c.40, s.9)

33

34 32. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to
35 read as follows:

36 21. Receipts of retail sales, except retail sales of motor vehicles, of
37 alcoholic beverages as defined in the "Alcoholic Beverage Tax Law,"
38 R.S.54:41-1 et seq., of cigarettes as defined in the "Cigarette Tax
39 Act," P.L.1948, c.65 (C.54:40A-1 et seq.) [and] and of energy, of manufacturing
40 machinery, equipment or apparatus, and of energy, made by a certified
41 vendor from a place of business owned or leased and regularly
42 operated by the vendor for the purpose of making retail sales, and
43 located in a designated enterprise zone established pursuant to the
44 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303
45 (C.52:27H-60 et al.), are exempt to the extent of 50% of the tax
46 imposed under the "Sales and Use Tax Act," P.L.1966, c.30

1 (C.54:32B-1 et seq.).

2 Any vendor, which is a qualified business having a place of business
3 located in a designated enterprise zone, may apply to the Director of
4 the Division of Taxation in the Department of the Treasury for
5 certification pursuant to this section. The director shall certify a
6 vendor if he shall find that the vendor owns or leases and regularly
7 operates a place of business located in the designated enterprise zone
8 for the purpose of making retail sales, that items are regularly
9 exhibited and offered for retail sale at that location, and that the place
10 of business is not utilized primarily for the purpose of catalogue or
11 mail order sales. The certification under this section shall remain in
12 effect during the time the business retains its status as a qualified
13 business meeting the eligibility criteria of section 27 of P.L.1983,
14 c.303 (C.52:27H-86). However, the director may at any time revoke
15 a certification granted pursuant to this section if he shall determine
16 that the vendor no longer complies with the provisions of this section.

17 Notwithstanding the provisions of this act to the contrary, except
18 as may otherwise be provided by section 7 of P.L.1983, c.303
19 (C.52:27H-66), the authority may, in its discretion, determine whether
20 or not the provisions of this section shall apply to any enterprise zone
21 designated after the effective date of P.L.1985, c.142 (C.52:27H-66
22 et al.); provided, however, that the authority may make such a
23 determination only where the authority finds that the award of an
24 exemption of 50 percent of the tax imposed under the "Sales and Use
25 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) will not have any
26 adverse economic impact upon any other urban enterprise zone.

27 Notwithstanding any other provisions of law to the contrary, except
28 as provided in subsection b. of section 6 of P.L.1996, c.124 (C.13:1E-
29 116.6), after first depositing 10 percent of the gross amount of all
30 revenues received from the taxation of retail sales made by certified
31 vendors from business locations in designated enterprise zones to
32 which this exemption shall apply into the account created in the name
33 of the authority in the enterprise zone assistance fund pursuant to
34 section 29 of P.L.1983, c.303 (C.52:27H-88), the remaining 90
35 percent shall be deposited immediately upon collection by the
36 Department of the Treasury, as follows:

37 a. In the first five year period during which the State shall have
38 collected reduced rate revenues within an enterprise zone, all such
39 revenues shall be deposited in the enterprise zone assistance fund
40 created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

41 b. In the second five year period during which the State shall have
42 collected reduced rate revenues within an enterprise zone, 66 2/3% of
43 all those revenues shall be deposited in the enterprise zone assistance
44 fund, and 33 1/3% shall be deposited in the General Fund;

45 c. In the third five year period during which the State shall have
46 collected reduced rate revenues within an enterprise zone, 33 1/3% of

1 all those revenues shall be deposited in the enterprise zone assistance
2 fund, and 66 2/3% shall be deposited in the General Fund;

3 d. In the final five year period during which the State shall have
4 collected reduced rate revenues within an enterprise zone, but not to
5 exceed the life of the enterprise zone, all those revenues shall be
6 deposited in the General Fund.

7 Commencing on the effective date of P.L.1993, c.144, all revenues
8 in any enterprise zone to which the provisions of this section have
9 been extended prior to the enactment of P.L.1993, c.144 shall be
10 deposited into the enterprise zone assistance fund until there shall have
11 been deposited all revenues into that fund for a total of five full years,
12 as set forth in subsection a. of this section. The State Treasurer then
13 shall proceed to deposit funds into the enterprise zone assistance fund
14 according to the schedule set forth in subsections b. through d. of this
15 section, beginning at the point where the enterprise zone was located
16 on that schedule on the effective date of P.L.1993, c.144. No
17 enterprise zone shall receive the deposit benefit granted by any one
18 subsection of this section for more than five cumulative years.

19 The revenues required to be deposited in the enterprise zone
20 assistance fund under this section shall be used for the purposes of that
21 fund and for the uses prescribed in section 29 of P.L.1983, c.303
22 (C.52:27H-88), subject to annual appropriations being made for those
23 purposes and uses.

24 (cf: P.L.1996, c.124, s.8)

25

26 33. (New section) Receipts from the sale or use of energy and
27 utility service to or by a corporation or person that was subject to the
28 provisions of P.L.1940, c.4 (C.54:30A-16 et seq.), as of April 1, 1997,
29 or currently or formerly subject to taxation pursuant to P.L.1940, c.5
30 (C.54:30A-49 et seq.), for their own use and consumption, are exempt
31 from the tax imposed under the Sales and Use Tax Act.

32

33 34. (New section) a. As used in this act, "eligible person" means
34 any person other than a co-generation facility as defined in this act
35 whose last purchase and delivery of natural gas on or before December
36 31, 1995 was from an eligible supplier and who satisfactorily
37 documents such purchase to the director. As used in this act, "eligible
38 supplier" means an eligible person's contracted supplier as of
39 December 31, 1995 that was not a utility. If, at any time subsequent
40 to December 31, 1995 an eligible person other than a co-generation
41 facility purchases natural gas from a supplier other than its eligible
42 supplier, that person shall no longer be an "eligible person" for
43 purposes of this act;

44 b. An eligible person other than a co-generation facility shall
45 determine and certify to the director, and satisfactorily document to
46 the director, a base level of volume as of December 31, 1995, which

1 shall be equal to the average annual volume of natural gas units
2 purchased by the eligible person from any non-utility and delivered,
3 but such computation shall not include any purchases delivered prior
4 to January 1, 1992, provided however, that the base level of volume
5 of an eligible person other than a co-generation facility shall be
6 reduced on an annual basis beginning in 1999 by multiplying the base
7 level of volume as of December 31, 1995 by the following reduction
8 ratios: 0.8 in 1999, 0.6 in 2000, 0.4 in 2001 and 0.2 in 2002. In 2003
9 and thereafter there shall be no exemption for purchases of natural gas
10 by an eligible person other than a co-generation facility.

11 c. For purchases of natural gas from its eligible supplier on and
12 after January 1, 1998, an eligible person shall issue a direct payment
13 certificate to its eligible supplier and shall pay any tax due pursuant to
14 the method prescribed by this section. Unless specifically exempt from
15 the tax imposed under the Sales and Use Tax Act pursuant to
16 subsection b. of section 26 of P.L. , c. (C.)(now pending
17 before the Legislature as this bill), utility service is subject to the tax
18 imposed pursuant to section 3 of P.L.1966, c.30 (C.54:32B-3).

19 d. On an annual basis, each eligible person, other than a co-
20 generation facility, shall be required to file with the director:

21 (1) An energy volume report, which shall contain a certification as
22 to the gross annual volume of gas (in units) purchased and delivered
23 in the previous 12 month period from its eligible supplier, any other
24 non-utility and utilities, the purchase price per unit, and any additional
25 information that the director deems necessary to effectuate the
26 provisions herein; and

27 (2) An energy use tax return, wherein any tax due on natural gas
28 purchased from its eligible supplier shall be reported and remitted as
29 follows:

30 (a) If the certified gross annual volume (in units) was purchased
31 solely from its eligible supplier, and does not exceed the base level of
32 volume, no tax shall be due on purchases of natural gas in that
33 calendar year;

34 (b) If the certified gross annual volume (in units) was purchased
35 solely from its eligible supplier, and exceeds the base level of volume,
36 the tax shall be remitted on the purchases of natural gas that exceed
37 the base level of volume, based on the purchase price of the gas; and

38 (c) If in any given year, any part of the certified gross annual
39 volume (in units) was not purchased solely from its eligible supplier,
40 an exemption for purchases of natural gas from its eligible supplier
41 shall only be allowed up to the volume purchased from its eligible
42 supplier that does not exceed the base level of volume, and shall only
43 apply to purchases from its eligible supplier made prior to any
44 purchase from any other non-utility or a utility.

45

46 35. (New section) a. A corporation that was subject to tax

1 pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
2 prior to January 1, 1998 shall be entitled to claim a credit against
3 remittances of sales and use tax after July 1, 1998 and after August 1
4 in each year thereafter pursuant to the provisions of section 53 of
5 P.L. c. (C.) (now pending before the Legislature as this bill).

6 b. Any gas, electric, or telecommunications public utility taxpayer
7 that has made any advance credit payment pursuant to P.L.1940, c.4
8 (C.54:30A-16 et seq.) or P.L.1940, c.5 (C. 54:30A-49 et seq.) shall
9 not be eligible for a credit for such amount or any part thereof to
10 offset any liability under the "Sales and Use Tax Act," P.L.1966, c.30
11 (C.54:32B-1 et seq.).

12

13 36. (New section) a. Sections 36 through 49 of this act shall be
14 known and may be cited as the "Transitional Energy Facility
15 Assessment Act."

16 b. The purpose of the Transitional Energy Facility Assessment Act
17 is to provide a complete framework and method for the assessment of
18 a transitional energy facility assessment on gas and electric light, heat
19 and power corporations, municipal or otherwise, that were subject to
20 tax pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
21 prior to January 1, 1998, or the corporate or non-corporate legal
22 successor or assignee whether through any reorganization, sale,
23 bankruptcy, consolidation, merger or other transaction or occurrence
24 of any kind without limitation, those municipal electric operations not
25 previously subject to P.L.1940, c.5 (C.54:30A-49 et seq.) which
26 expand beyond their municipal boundaries subsequent to December 31,
27 1995, and those municipal electric operations not previously subject
28 to P.L.1940, c.5 (C.54:30A-49 et seq.) which expand their facility
29 base subsequent to December 31, 1995, beyond its geographical
30 service area fixed as of December 31, 1995.

31

32 37. (New section) As used in this act, unless the context requires
33 otherwise:

34 "Base year" means, for the purpose of determining the assessments
35 to be made under this act, calendar year 1996 for those gas and
36 electric light, heat and power corporations, municipal or otherwise,
37 that were subject to tax pursuant to P.L.1940, c.5 (C.54:30A-49 et
38 seq.) prior to January 1, 1998, and for those remitters identified
39 subsequent to 1998 the first year of subjectivity to this act shall be the
40 base year;

41 "Base year liability" means each remitter's unit energy tax liability
42 in the base year pursuant to the provisions of P.L.1940, c.5
43 (C.54:30A-49 et seq.) adjusted to reflect the remitter's total unit
44 energy tax rates in effect on January 1, 1997;

45 "Base year transitional energy facility assessment" means an amount
46 equal to the base year liability less:

1 a. The pro forma corporation business tax that would have been
2 booked by the remitter in the base year if the changes in the remitter's
3 rates implemented pursuant to section 67 of this act had been in effect
4 in that year. This amount shall reflect adjustments to the
5 determination of the corporation business tax, if any, filed in
6 accordance with section 67;

7 b. The pro forma sales and use tax that would have been collected
8 by the remitter in the base year if the changes in the remitter's rates
9 implemented pursuant to section 67 of this act had been in effect in
10 that year. The amount shall reflect adjustments to the sales and use
11 tax, if any, filed in accordance with section 67; and

12 c. The amount of tax derived pursuant to the customer-specific tax
13 classification described in section 59 of this act;

14 "Board" means the Board of Public Utilities of the State of New
15 Jersey;

16 "First year" means the year immediately following the initial year;

17 "Initial year" means the year immediately following the base year;

18 "Remitter" means any corporation subject to assessment under this
19 act; and

20 "Sales and use tax" means the sales and use tax liability computed
21 on sales and use of energy and utility service as defined in section 2 of
22 P.L.1966, c.30 (C.54:32B-2).

23

24 38. (New section) Each remitter's transitional energy facility
25 assessment shall be established pursuant to section 67 of this act.
26 Under no circumstances shall an assessment be made under this act for
27 any year commencing after December 31, 2002.

28

29 39. (New section) Every gas and electric light, heat and power
30 corporation, municipal or otherwise, subject to tax pursuant to the
31 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1,
32 1998, or the corporate or non-corporate legal successor or assignee
33 whether through any reorganization, sale, bankruptcy, consolidation,
34 merger or other occurrence of any kind without limitation, and every
35 corporation otherwise assessable set forth hereinbelow, shall annually
36 pay the transitional energy facility assessment set forth in section 67
37 of this act.

38

39 40. (New section) a. On or before February 1, 1999, and on or
40 before February 1 of each year thereafter until the year after the final
41 year in which there is imposed a transitional energy facility assessment,
42 every remitter shall return to the Director of the Division of Taxation
43 in the Department of the Treasury a statement in such form, manner
44 and detail as the director shall require showing:

45 a. The therms of natural gas and kilowatthours of electricity sold or
46 transported for sale to ultimate consumers in New Jersey during the

- 1 prior calendar year; and
- 2 b. The transitional energy facility assessment unit rate surcharges
3 (exclusive of the provision for corporation business taxes included
4 therein) as calculated pursuant to section 67 of this act applicable to
5 the prior calendar year.
- 6
- 7 41. (New section) a. Every remitter shall on or before October 15,
8 1998, and on or before October 15, in each year thereafter, return to
9 the Director of the Division of Taxation in the Department of the
10 Treasury and the Board of Public Utilities a statement in such form,
11 manner and detail as the director shall require showing the following:
- 12 (1) Sales and use tax collected and use tax liability through
13 September 30 of the current calendar year;
- 14 (2) Estimated sales tax collections and use tax liability for the
15 period from October 1 through December 31 of the current calendar
16 year;
- 17 (3) Estimated corporation business tax, exclusive of negative
18 deferred taxes, for the current privilege period based upon actual
19 taxable income from January 1 through September 30 and estimated
20 taxable income from October 1 through December 31; and
- 21 (4) Actual transitional energy facility assessment liability from
22 January 1 through September 30 and estimated liability from October
23 1 through December 31 for the current calendar year.
- 24 b. On or before November 15, 1998, and on or before November
25 15 of each year thereafter, the State Treasurer shall, with the
26 cooperation the Board of Public Utilities, calculate the percentage
27 reduction in the initial TEFA unit rate surcharges based upon the
28 formula set forth in section 67 of this act and the board shall report the
29 amount of such reduction to the remitters subject to the transitional
30 energy facility assessment.
- 31 c. Every remitter shall on or before February 1, 1998 file with the
32 director a statement showing:
- 33 (1) The total public utility tax advance payments paid in the initial
34 year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and
- 35 (2) The remitter's base year liability and each of the amounts
36 described in subsections (a), (b) and (c) in the definition of "base year
37 transitional energy facility assessment" in section 37 of this act.
- 38 d. For any remitter owning or holding both gas and electric
39 facilities and conducting both gas and electric business in this State
40 each of the amounts reported on the return required to be filed
41 pursuant to subsection c. shall be allocated by the director between
42 those operations in the proportion that the sum of the unit-based taxes
43 bore to the whole of the unit-based taxes in the base year.
- 44 e. The statements required pursuant to this section shall be
45 subscribed and sworn to by the president, a vice-president or chief
46 officer of the corporation preparing each statement. Any remitter

1 refusing or neglecting to make the statements herein provided for shall
2 forfeit and pay to the State of New Jersey the sum of \$100 per day for
3 each day of such refusal or neglect, to be recovered in an action at law
4 in the name of the State and which, when recovered, shall be paid into
5 the State Treasury. It shall be the duty of the director to certify any
6 such default to the Attorney General of the State who, thereupon, shall
7 prosecute an action at law for each penalty.

8 f. The Director of the Division of Taxation shall audit and verify
9 the statements filed by remitters whenever and in such respects the
10 director shall deem necessary or advisable. The director may require
11 any remitter to supply additional data and information in such form,
12 manner, and detail as the director shall request, whenever the director
13 may deem it necessary or helpful, for the proper performance of the
14 director's duties under this act.

15 g. The director may, by regulation, additionally require that all
16 filings required for the calculation and certification of assessment to
17 be paid by remitters established pursuant to this act shall be made in
18 an electronic form. The form and content of the electronic filing
19 message, the circumstances under which the electronic filing message
20 shall serve as a substitute for the filing of another return and the means
21 by which remitters shall be determined to be subject to this electronic
22 filing requirement shall be prescribed by the director.

23 For the purpose of this act "electronic filing" or "electronic filings"
24 means any message that is initiated through an electronic terminal,
25 telecommunication device, or computer for the purpose of fulfilling the
26 reporting responsibilities set forth hereinabove.

27
28 42. (New section) a. On or before April 1, 1999, and on or before
29 April 1 of each year thereafter until the year after the final year in
30 which the transitional energy facility assessment is imposed, the
31 Director of the Division of Taxation shall send to each remitter a
32 statement showing the transitional energy facility assessment liability
33 for the prior calendar year, estimated payment received for the prior
34 calendar year and any overpayment or underpayment of the tax
35 liability for that calendar year.

36 b. Remitters shall make a payment of the underpayment as
37 determined in subsection a. of this section, if any, to the director on or
38 before May 15 of the current year.

39 c. Remitters shall treat any overpayment as determined in
40 subsection a. of this section, if any, as an estimated payment as set
41 forth in subsection d. of section 43 of this act.

42
43 43. (New section) a. (1) The liability for the transitional energy
44 facility assessment made against any remitter in the first year of
45 assessment shall be an amount equal to TEFA unit rate surcharges
46 (excluding the provision for corporation business taxes included

1 therein) determined in section 67 of this act multiplied by the
2 associated therms of natural gas and kilowatthours of electricity sold
3 or transported for sale to ultimate consumers in New Jersey in the first
4 year plus any advances paid in the initial year pursuant to P.L.1940,
5 c.5 (C.54:30A-49 et seq.) by that remitter.

6 (2) The liability for the transitional energy facility assessment made
7 against any remitter for each year subsequent to the first year shall be
8 an amount equal to the TEFA unit rate surcharges (excluding the
9 provision for corporation business taxes included therein) calculated
10 in section 67 of this act for that year multiplied by the associated
11 therms of natural gas and kilowatthours of electricity sold or
12 transported for sale to ultimate consumers in New Jersey in that year.

13 b. A credit against the liability determined pursuant to paragraph
14 (1) of subsection a. of this section shall be taken in the first year by the
15 remitter in the amount of all advances paid in the initial year pursuant
16 to P.L.1940, c.5 (C.54:30A-49 et seq.).

17 c. (1) Each remitter shall make an estimated payment on May 15
18 of the first assessment year in the amount of the base year transitional
19 energy facility assessment.

20 (2) Subsequent to the first year, each remitter shall make an
21 estimated payment on May 15 of each assessment year in which the
22 transitional energy facility assessment is in effect, in an amount equal
23 to the transitional energy facility assessment liability described in
24 subsection a. of this section for the immediately preceding assessment
25 year, excluding advances paid in the initial year pursuant to P.L.1940,
26 c.5 (C.54:30A-49 et seq.), reduced by the reduction percentage for the
27 current assessment year determined pursuant to paragraphs (2), (3)
28 and (4) of subsection d. of section 67 of this act less credits described
29 in subsection d. of this section, if any.

30 d. Any excess of the estimated payment made pursuant to
31 paragraphs (1) or (2) of subsection c. of this section over the liability
32 determined pursuant to subsection a. of this section shall be treated as
33 a credit against the estimated payment for the subsequent assessment
34 year and reduce the amount of the estimated payment required to be
35 made for that subsequent year. Any excess of the estimated payment
36 made pursuant to paragraph (2) of subsection c. of this section over
37 the liability for the final year of the transitional energy facility
38 assessment shall be utilized as a nonrefundable credit with an unlimited
39 carryforward against that remitter's corporation business tax liability
40 in the subsequent privilege period year. Such credit shall be applied
41 in full to each estimated corporation business tax payment beginning
42 in the subsequent privilege period until fully utilized.

1 44. (New section) All payments shall be made in full on an annual
2 basis to the State on or before May 15, 1998, and on or before May 15
3 of each year thereafter as long as this assessment shall remain in effect.
4

5 45. (New section) a. Within 30 days after making the computation
6 of the assessments under this act, the Director of the Division of
7 Taxation shall certify the amount of such assessments. Within 5 days
8 after making the computation of the assessments, the director shall
9 issue directly to each remitter statements of amounts due, and
10 payments with respect thereto shall be made by each taxpayer to the
11 director in the following manner: all assessments due shall be remitted
12 to the director on or before May 15, for calendar year 1998, and for
13 each calendar year thereafter. If for any reason the making and
14 delivering of a certificate of assessments shall be delayed until after
15 April 15 in any year, then all of the assessments for such year affected
16 by such certificate of assessment shall become due and payable 30 days
17 after the date of such certification of assessment. The administration,
18 collection and enforcement of the assessments payable by each remitter
19 under this act shall be subject to the provisions of the State Tax
20 Uniform Procedure Law, R.S.54:48-1 et seq., to the extent that the
21 provisions of that law are not inconsistent with the provisions of this
22 act.

23 b. The director may, by regulation, require that any payment of
24 assessment made on or before the date established therefore pursuant
25 to this act shall be by electronic funds transfer to such depositories as
26 the State Treasurer shall designate pursuant to section 1 of P.L.1956,
27 c.174 (C.52:18-16.1). A payment by electronic funds transfer shall be
28 deemed to be made on the date the payment is received by the
29 designated depository. The manner, form, and content of the
30 electronic funds transfer message, the circumstances under which an
31 electronic funds transfer shall serve as a substitute for the filing of
32 another form of return, the means by which taxpayers will be provided
33 with acknowledgments of payments, and the classes of taxpayers
34 subject to the electronic funds transfer requirement shall be as
35 prescribed by the director.

36 c. For the purposes of this section "electronic funds transfer"
37 means any transfer of funds, other than a transaction originated by
38 check, draft, or similar paper instrument, that is initiated through an
39 electronic terminal, telecommunication device, or computer for the
40 purpose of ordering, instructing or authorizing a financial institution
41 to debit or credit an account.
42

43 46. (New section) If a municipal corporation not previously
44 subject to assessment under P.L.1940, c.5 (C.54:30A-49 et seq.) shall
45 expand its service beyond its municipal boundaries or shall expand its
46 facility base beyond its geographical service area fixed as of December

1 31, 1995, that municipal corporation shall be deemed a remitter for the
2 purposes of enforcing the provisions of this act.

3

4 47. (New section) A municipal corporation determined to be a
5 remitter pursuant to section 46 of this act shall be subject to the
6 transitional energy facility assessment. The amount of the transitional
7 energy facility assessment liability and estimated payment shall be
8 determined in accordance with regulations as shall be promulgated by
9 the Director of the Division of Taxation in the Department of the
10 Treasury.

11

12 48. (New section) The Director of the Division of Taxation in
13 making the assessment imposed by this act on any remitter for any year
14 shall deduct from or add to the assessment for the year any deduction
15 or addition to the extent and in the manner which may heretofore have
16 been or may hereafter be ordered or decreed by any judgment of the
17 Tax court or any court by reason of any error or omission in
18 connection with the assessment of the remitter in any prior year.

19

20 49. (New section) The Director of the Division of Taxation in the
21 Department of the Treasury shall promulgate such rules and
22 regulations applicable to remitters subject to this act as may be
23 necessary to effectuate the purposes and provisions of this act.

24

25 50. (New section) a. Sections 50 through 58 of this act shall be
26 known and may be cited as the "Uniform Transitional Utility
27 Assessment Act."

28 b. The purpose of the Uniform Transitional Utility Assessment Act
29 is to provide a complete framework and method for the making of a
30 uniform transitional utility assessment on telephone companies that
31 were subject to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.)
32 as of April 1, 1997, and gas and electric light, heat and power
33 corporations that were subject to the provisions of P.L.1940, c.5
34 (C.54:30A-49 et seq.), municipal or otherwise, prior to January 1,
35 1998 or their corporate or non-corporate legal successor or assignee
36 whether through any reorganization, sale, bankruptcy, consolidation,
37 merger or other transaction or occurrence of any kind without
38 limitation.

39

40 51. (New section) As used in this act, unless the context requires
41 otherwise:

42 "Annual assessment" means the assessment made against each
43 remitter in any year;

44 "Base year" means calendar year 1996;

45 "Remitter" means any corporation subject to assessment under this
46 act; and

1 "Sales and use tax" means the sales and use tax liability computed
2 on sales and use of energy and utility service as defined in section 2 of
3 P.L.1966, c.30 (C.54:32B-2).

4
5 52. (New section) a. Every gas and electric light, heat and power
6 corporation, municipal or otherwise, that was subject to the provisions
7 of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 and
8 every telephone company that was subject to the provisions of
9 P.L.1940, c.4 (C.54:30A-16 et seq.) as of April 1, 1997 shall annually
10 pay an annual assessment annually determined by the Director of the
11 Division of Taxation as provided in this section.

12 b. (1) For energy remitters, the uniform transitional utility
13 assessment in the first year of assessment shall be equal to the
14 remitters unit energy tax liability paid in the base year pursuant to the
15 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) adjusted to reflect
16 the remitters unit energy tax rates in effect on January 1, 1997 less

17 (a) The sales and use tax remitted pursuant to P.L.1966, c.30
18 (C.54:32B-1 et seq.) as of June 20 in the first year;

19 (b) The amount of estimated corporation business tax remitted
20 pursuant to section 15 of P.L.1945, c.162 (C.54:10A-15) as of June
21 20 in the first year;

22 (c) the payment of base year transitional energy facility assessment
23 as defined in section 37 of this act made on May 15 of that year; and

24 (d) the tax remitted pursuant to customer specific tax
25 classifications described in section 59 of this act.

26 Each remitter shall allocate a portion of the uniform transitional
27 utility assessment to its liability for first year sales and use tax
28 remittance and first year corporation business tax liability and notify
29 the director of such allocation.

30 (2) For telecommunications remitters, the uniform transitional
31 utility assessment in the first year of assessment shall be equal to the
32 remitter's liability paid in the base year pursuant to the provisions of
33 P.L.1940, c.4 (C.54:30A-16 et seq.) less the amount of estimated
34 corporation business tax remitted pursuant to section 15 of P.L.1945,
35 c.162 (C.54:10A-15) as of June 20 in the first year.

36 c. (1) For energy remitters, the uniform transitional utility
37 assessment in each year after the first year of assessment shall be equal
38 to 50% of the total of the remitter's estimate of sales and use tax
39 remittance for that year and corporation business tax liability for that
40 year.

41 (2) For telecommunications remitters, the uniform transitional
42 utility assessment in each year after the first year of assessment shall
43 be equal to 50% of the remitter's estimate of its corporation business
44 tax liability for that year.

45 (3) The estimates described in paragraphs (1) and (2) of this
46 subsection, as applicable, shall be certified by the State Treasurer. The

1 State Treasurer may, based upon each remitter's immediate prior year's
2 sales tax remittances, immediate prior year's estimated corporation
3 business tax liability and/or payments, current year sales tax
4 remittances and current year estimated corporation business tax
5 payments, as well as the economic conditions of the State,
6 consideration of the State's revenues and expenditures and anticipated
7 revenues and expenditures for the fiscal year and any other factor or
8 factors which the State Treasurer deems relevant, reject the estimation
9 and not certify the same. The remitter shall within five business days
10 of the rejection recalculate the estimate and provide the recalculated
11 estimate to the State Treasurer or provide the State Treasurer with
12 sufficient justification of its original estimate. If the State Treasurer
13 fails to certify the original, recalculated or other agreed estimate
14 within five business days after the previous five business day period set
15 forth herein, the dispute shall be resolved pursuant to a procedure to
16 be established by regulations as shall be promulgated by the director.
17 Prior to such resolution, the remitter shall pay as its uniform
18 transitional utility assessment for that year an amount determined by
19 the State Treasurer which (a) for energy remitters shall not exceed the
20 greater of (i) 50% of the sum of the remitter's sales and use tax
21 remittances for the preceding year and the tax shown on the remitter's
22 corporation business tax return, or tentative return filed with an
23 application for extension of time to file, for the preceding year, or (ii)
24 50% of the net of the remitter's base year liability less the base year
25 transitional energy facility assessment both as defined in section 37 of
26 P.L. , c. (C.)(now pending before the Legislature as this
27 bill), and (b) for telecommunications remitters shall not exceed the
28 greater of (i) 50% of the tax shown on the remitter's corporation
29 business tax return, or tentative return filed with an application for
30 extension of time to file, for the preceding year, or (ii) 50% of the
31 remitter's base year gross receipts and franchise tax liability pursuant
32 to P.L.1940, c.4 (C.54:30A-16 et seq.).

33 d. Nothing in this section shall be construed to relieve an energy
34 remitter of the requirement to collect and pay its current year
35 transitional energy facility assessment.

36

37 53. (New section) Any amount paid by a remitter pursuant to this
38 act shall be available as a nonrefundable credit. Credits established
39 pursuant to payments made under the "Uniform Transitional Utility
40 Assessment Act" shall be granted only on the basis of the remitters
41 estimation as certified by the State Treasurer pursuant to section 52 of
42 this act, only against the tax in which the estimation is made, and shall
43 not be claimed until after July 1 for the first year of assessment and
44 after August 1st of each subsequent calendar year in which the uniform
45 transitional utility assessment is paid. If, in any calendar year, the
46 credits available against payments in any tax exceed the total amount

1 due in that tax, the remitter may elect to have the excess credits for
2 that year applied to the amounts due in that tax in subsequent years or,
3 if applicable, as a credit to the transitional energy facility assessment
4 payments to be made in the next year. Such credit shall be applied in
5 full to each estimated tax payment beginning in the subsequent year
6 until fully utilized. These credits may not be applied against any other
7 liability except as set forth hereinabove.

8
9 54. (New section) a. Every remitter that was subject to the
10 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1,
11 1998 shall on or before June 20, 1998, return to the Director of the
12 Division of Taxation a statement showing, as shall apply,:

13 (1) The sales and use tax remitted pursuant to P.L.1966, c.30
14 (C.54:32B-1 et seq.) as of June 20, 1998.

15 (2) The amount of estimated corporation business tax remitted
16 pursuant to section 15 of P.L.1945, c.162 (C.54:10A-15) as of June
17 20, 1998.

18 (3) The percentage of the uniform transitional utility assessment the
19 director shall allocate to the sales and use tax and to the corporation
20 business tax.

21 b. Every remitter that was subject to the provisions of P.L.1940,
22 c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 shall on April 20,
23 1999, and on or before April 20 of each year thereafter, return to the
24 director a statement showing, as shall apply:

25 (1) The estimated sales and use tax to be remitted for that year and
26 the assumptions upon which that estimate is based; and

27 (2) The estimated corporation business tax liability for that year
28 and the assumptions upon which that estimate is based.

29 c. (1) Every remitter that was subject to the provisions of
30 P.L.1940, c.4 (C.54:30A-16 et seq.) on April 1, 1997 shall on or
31 before June 20, 1998 return to the director a statement showing the
32 amount of estimated corporation business tax remitted pursuant to
33 section 15 of P.L.1945, c.162 (C.54:10A-15) as of June 20, 1998.

34 (2) Every remitter that was subject to the provisions of P.L.1940,
35 c.4 (C.54:30A-16 et seq.) on April 1, 1997 shall on or before April 20,
36 1999 and on or before April 20 of each year thereafter return to the
37 director a statement showing the estimated corporation business tax
38 liability for that year and the assumptions upon which that estimate is
39 based.

40 d. The statements herein provided for shall be subscribed and
41 sworn to by the president, a vice-president or chief officer of the
42 corporation making such return. Any remitter refusing or neglecting
43 to make the statements herein provided for shall forfeit and pay to the
44 State of New Jersey the sum of \$100 per day for each day of such
45 refusal or neglect, to be recovered in an action at law in the name of
46 the State and which, when recovered, shall be paid into the State

1 Treasury. It shall be the duty of the director to certify any such
2 default to the Attorney General of the State who, thereupon, shall
3 prosecute an action at law for such penalty.

4 e. The director shall audit and verify the statements filed by
5 remitters whenever and in such respects as the director shall deem
6 necessary or advisable. The director may require any remitter to
7 supply additional data and information in such form and detail as the
8 director shall request, whenever the director may deem it necessary or
9 helpful, for the proper performance of the director's duties under this
10 act.

11 f. The director may, by regulation, additionally require that all
12 filings required for the calculation and certification of assessments to
13 be paid by remitters established pursuant to this act shall be made in
14 an electronic form. The form and content of the electronic filing
15 message, the circumstances under which an electronic filing shall serve
16 as a substitute for the filing of another return, and the means by which
17 remitters shall be determined to be subject to this electronic filing
18 requirement shall be prescribed by the director.

19 For the purpose of this act "electronic filing" or "electronic filings"
20 means any message that is initiated through an electronic terminal,
21 telecommunication device, or computer for the purpose of fulfilling the
22 reporting responsibilities set forth hereinabove.

23
24 55. (New section) The Director of the Division of Taxation shall
25 annually on or before June 23, 1998, and on or before May 10 of each
26 year thereafter, calculate and certify to each remitter of the assessment
27 the uniform transitional utility assessment to be paid by each remitter.
28 All payments shall be made in full on an annual basis to the State on
29 June 25, 1998 and on May 15 of each year thereafter as long as this
30 tax shall remain in effect.

31
32 56. (New section) a. Upon making the computation of the
33 assessments under this act, the Director of the Division of Taxation
34 shall certify the amount of such assessments. If for any reason the
35 making and delivering of a certificate of assessments shall be delayed
36 until after May 15, 1999 and after May 15 in any year thereafter, then
37 all of the assessments for such year affected by such certificate of
38 assessment shall become due and payable 10 days after the date of
39 such certification of assessment. The administration collection and
40 enforcement of the assessments payable by each remitter under this act
41 shall be subject to the provisions of the State Tax Uniform Procedure
42 Law, R.S.54:48-1 et seq., to the extent that the provisions of that law
43 are not inconsistent with the provisions of this act.

44 b. The director may, by regulation, require that any payment of
45 assessment made on or before the date established therefore pursuant
46 to this act shall be by electronic funds transfer to such depositories as

1 the State Treasurer shall designate pursuant to section 1 of P.L.1956,
2 c.174 (C.52:18-16.1). A payment by electronic funds transfer shall be
3 deemed to be made on the date the payment is received by the
4 designated depository. The manner, form, and content of the
5 electronic funds transfer message, the circumstances under which an
6 electronic funds transfer shall serve as a substitute for the filing of
7 another form of return, the means by which taxpayers will be provided
8 with acknowledgments of payments, and the classes of taxpayers
9 subject to the electronic funds transfer requirement shall be as
10 prescribed by the director.

11 c. For the purposes of this section "electronic funds transfer"
12 means any transfer of funds, other than a transaction originated by
13 check, draft, or similar paper instrument, that is initiated through an
14 electronic terminal, telecommunication device, or computer for the
15 purpose of ordering, instructing or authorizing a financial institution
16 to debit or credit an account.

17

18 57. (New section) The Director of the Division of Taxation in
19 making the assessment imposed by this act on any remitter for any year
20 shall deduct from or add to the assessment for that year any deduction
21 or addition to the extent and in the manner which may heretofore have
22 been or may hereafter be ordered or decreed by any judgment of the
23 Tax court or any court by reason of any error or omission in
24 connection with the assessment such remitter in any prior year.

25

26 58. (New section) The Director of the Division of Taxation in the
27 Department of the Treasury shall promulgate such rules and
28 regulations applicable to remitters subject to this act as may be
29 necessary to effectuate the purposes and provisions of this act.

30

31 59. (New section) a. Nothing in P.L. , c. (C.) (now
32 pending before the Legislature as this bill) shall be construed to alter
33 any terms or conditions of any contract for the duration of the
34 contract, for the retail sale of electricity to an end user that establishes
35 a customer-specific tax classification and that was approved by
36 separate written order of the Board of Public Utilities prior to January
37 1, 1998, notwithstanding any changes in the laws under which those
38 contracts were established.

39 b. Amounts billed by a utility pursuant to subsection a. of this
40 section shall be remitted to the Division of Taxation in the Department
41 of the Treasury on or before April 1, 1998 and on or before April 1 of
42 each year thereafter.

43

44 60. R.S.54:4-1 is amended to read as follows:

45 54:4-1. All property real and personal within the jurisdiction of this
46 State not expressly exempted from taxation or expressly excluded

1 from the operation of this chapter shall be subject to taxation annually
2 under this chapter. Such property shall be valued and assessed at the
3 taxable value prescribed by law. Land in agricultural or horticultural
4 use which is being taxed under the "Farmland Assessment Act of
5 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), shall be valued and
6 assessed as provided by that act. An executory contract for the sale
7 of land, under which the vendee is entitled to or does take possession
8 thereof, shall be deemed, for the purpose of this act, a mortgage of
9 said land for the unpaid balance of purchase price. Personal property
10 taxable under this chapter shall include, however, only the machinery,
11 apparatus or equipment of a petroleum refinery that is directly used to
12 manufacture petroleum products from crude oil in any of the series of
13 petroleum refining processes commencing with the introduction of
14 crude oil and ending with refined petroleum products, but shall
15 exclude items of machinery, apparatus or equipment which are located
16 on the grounds of a petroleum refinery but which are not directly used
17 to refine crude oil into petroleum products and the tangible goods and
18 chattels, exclusive of inventories, used in business of local exchange
19 telephone, telegraph and messenger systems, companies, corporations
20 or associations that were subject to tax as of April 1, 1997 under
21 P.L.1940, c.4 (C.54:30A-16 et seq.) as amended, and shall not include
22 any intangible personal property whatsoever whether or not such
23 personalty is evidenced by a tangible or intangible chose in action
24 except as otherwise provided by R.S.54:4-20 . As used in this
25 section, "local exchange telephone company" means a
26 telecommunications carrier providing dial tone and access to
27 [substantially all] 51% of a local telephone exchange. Property
28 omitted from any assessment may be assessed by the county board of
29 taxation, or otherwise, within such time and in such manner as shall be
30 provided by law. Real property taxable under this chapter means all
31 land and improvements thereon and includes personal property affixed
32 to the real property or an appurtenance thereto, unless:

33 a. (1) The personal property so affixed can be removed or severed
34 without material injury to the real property;

35 (2) The personal property so affixed can be removed or severed
36 without material injury to the personal property itself; and

37 (3) The personal property so affixed is not ordinarily intended to be
38 affixed permanently to real property; or

39 b. The personal property so affixed is machinery, apparatus, or
40 equipment used or held for use in business and is neither a structure
41 nor machinery, apparatus or equipment the primary purpose of which
42 is to enable a structure to support, shelter, contain, enclose or house
43 persons or property. For purposes of this subsection, real property
44 shall include pipe racks, and piping and electrical wiring up to the
45 point of connections with the machinery, apparatus, or equipment of
46 a production process as defined in this section.

1 Real property, as defined herein, shall not be construed to affect any
2 transaction or security interest provided for under the provisions of
3 chapter 9 of Title 12A of the New Jersey Statutes (N.J.S.12A:9-101
4 et seq.). The provisions of this section shall not be construed to repeal
5 or in any way alter any exemption from, or any exception to, real
6 property taxation or any definition of personal property otherwise
7 provided by statutory law.

8 The Director of the Division of Taxation in the Department of the
9 Treasury may adopt rules and regulations pursuant to the provisions
10 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
11 et seq.) as may be deemed necessary to implement and administer the
12 provisions of this act.

13 (cf: P.L.1992, c.24, s.3)

14
15 61. R.S.48:3-7.8 is amended to read as follows:

16 48:3-7.8. a. Every public utility shall at all times keep within this
17 State all records, books, accounts, documents and other writings
18 relating to contracts entered into, transactions had, services rendered,
19 business done and property within this State, and shall at no time
20 remove any of such records, books, accounts, documents or writings
21 from this State without the consent in writing of the board first had
22 and obtained.

23 b. The board may by order in writing grant consent and permission
24 under such regulations and conditions as it may see fit to impose for
25 the keeping of any such records, books, accounts, documents and
26 other writings outside of the State in such cases as the board may
27 determine that such consent or permission so granted may be of
28 financial advantage to the customers of the public utility within this
29 State. Such consent or permission so granted may be revoked by the
30 board at any time without notice. A public utility granted such
31 consent or permission shall on the notice in writing of the board
32 produce such records, books, accounts, documents and other writings
33 at such time and place within this State as the board may designate.

34 c. A natural gas or electric vendor shall maintain an office within
35 the State and shall keep such records pertaining to the sale as the
36 board determines by order in writing to be necessary to protect the
37 interest of consumers in the State.

38 d. A public utility as defined in R.S.48:2-13 shall not enter into a
39 contract with a natural gas or electric vendor unless it first certifies to
40 the board that the vendor is in compliance with subsection c. of this
41 section and with R.S.48:3-7.9.

42 e. For the purpose of this section and R.S.48:3-7.9, "vendor"
43 means and includes an individual, firm, joint venture, partnership,
44 corporation, association, state, county, municipality, public agency or
45 authority, cooperation association, or joint stock association, or any
46 trustee, receiver, assignee, or personal representative thereof that is

1 not a public utility as defined in R.S.48:2-13, but sells natural gas or
2 electric power not for resale to a customer within this State.

3 (cf: R.S.48:3-7.8)

4
5 62. R.S.48:3-7.9 is amended to read as follows:

6 48:3-7.9. Every public utility and every natural gas vendor and
7 electric vendor subject to subsection c. of R.S.48:3-7.8, shall [within
8 fourteen days after March twelfth, one thousand nine hundred and
9 thirty-five,] file with the board a designation in writing of an agent,
10 resident of this State who shall have custody of such records, books,
11 accounts, documents and other writings, and upon whom process for
12 the production of the same may be served. Such designation shall set
13 out the name of such agent, his place of residence within this State and
14 his place of business. [Every] A public utility or vendor filing such
15 designation may at any time revoke such designation, provided, that
16 simultaneously with the revocation of such designation, a substituted
17 designation be filed by it with board.

18 (cf: R.S.48:3-7.9)

19
20 63. (New section) The Board of Public Utilities may adopt,
21 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
22 (C.52:14B-1 et seq.), such rules as it deems necessary to implement
23 the provisions of this act.

24
25 64. (New section) On or before January 1, 2002, the State
26 Treasurer shall review and evaluate the administration and revenue
27 impact of the imposition of the sales and use tax on energy and utility
28 services pursuant to this act and shall advise the Legislature
29 accordingly.

30
31 65. (New section) The Board of Public Utilities shall have authority
32 and shall pass along the tax and related savings realized under P.L. ,
33 c. , (C.)(now pending before the Legislature as this bill) to
34 consumers when making rate calculations.

35
36 66. (New section) a. For State budgetary purposes, the State
37 Treasurer shall direct that all tax monies collected pursuant to
38 contracts executed pursuant to tariff rate schedules and associated
39 gross receipts and franchise unit tax classes approved by separate
40 written orders of the Board of Public Utilities prior to the effective
41 date of this act shall be deposited in the State General Fund.

42 b. For State budgetary purposes, the collection of billings from
43 customers of a utility for natural gas, electricity and utility service
44 provided on and after January 1, 1998 and before the issuance by the
45 Board of Public Utilities of a written order approving, upon either an
46 interim or final basis, the rate filing of that utility required pursuant to

1 section 67 of this act, except for sales exempt as of December 31,
2 1997 from gross receipts and franchise taxes imposed pursuant to
3 P.L.1940, c.5 (C.54:30A-49 et seq.) and sales to which section 59 of
4 this act shall apply, shall be deemed to include the collection of the full
5 amount of sales and use tax that otherwise would have been due and
6 owing for the billing as if the sales and use tax was imposed pursuant
7 to P.L.1966, c.30 (C.54:32B-1 et seq.) and P.L. , c. (C.)
8 (now pending before the Legislature as this bill) at the time that the
9 natural gas, electricity or utility service was actually provided.

10

11 67. (New section) a. As used in this section:

12 "Base rates" means the rates, including minimum bills, charged for
13 utility commodities or service subject to the board's jurisdiction, other
14 than the rates charged under a utility's levelized energy adjustment
15 clause, hereinafter "LEAC," or levelized gas adjustment clause,
16 hereinafter "LGAC," or equivalent rate provision;

17 "Base year" means the calendar year 1996;

18 "Board" means the Board of Public Utilities;

19 "Sales and use tax" means the sales and use tax liability computed
20 on sales and use of energy and utility service as defined in section 2 of
21 P.L.1966, c.30 (C.54:32B-2);

22 "Utility" means a public utility subject to regulation by the board
23 pursuant to Title 48 of the Revised Statutes; and

24 "Utility service" means the supply, transmission, distribution or
25 transportation of electricity, natural gas or telecommunications
26 services or any combination of such commodities, processes or
27 services.

28 b. No later than 60 days after the date this act is enacted, each
29 electric, gas and telecommunications utility subject to the provisions
30 of this act shall file with the board, and shall simultaneously provide
31 copies to the Director of the Division of the Ratepayer Advocate,
32 revised tariffs and such other supporting schedules, narrative and
33 documentation required by this act, as set forth in this section, to
34 reflect in the utility's rates the changes in tax liability effected pursuant
35 to this act. No later than 90 days after the date of the utility's filing,
36 and after determining that the filing and the rate changes provided for
37 therein are in compliance with the provisions of this act, the board
38 shall approve the utility's filing and associated rates for billing to the
39 utility's customers, effective for utility service rendered on and after
40 January 1, 1998. If the board determines that the utility's filing and
41 the associated rate changes provided for therein are not in compliance
42 with the provisions of this act, the board shall require the utility to
43 amend or otherwise modify its filing to render it in compliance. The
44 board may also permit the rates provided for in the utility's filing to be
45 implemented on an interim basis pending the board's final
46 determination in the event the board, in its discretion, determines that

1 due to the filing's complexity, or for other valid reasons, including but
2 not limited to the enactment of this act after June 30, 1997, additional
3 time is needed for the board to complete its review of the filing. If the
4 rates approved by the board upon its final determination are less than
5 the rates implemented on an interim basis, the difference shall be
6 refunded to the utility's customers with interest computed in
7 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
8 implemented pursuant to this act shall not constitute a fixing of rates
9 pursuant to R.S.48:2-21 and shall not be subject to the hearing
10 requirements set forth in that section.

11 c. As of the effective date of the rate changes implemented
12 pursuant to this act, and except for rates applicable to sales that were
13 exempt from the unit-based energy taxes formerly imposed pursuant
14 to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates applicable to sales to
15 which section 59 of this act applies, the board shall remove from the
16 base rates of each electric public utility and gas public utility the unit
17 tax rates included therein for the recovery of those unit-based energy
18 taxes, and include therein provision for the recovery of corporation
19 business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
20 seq.), and additionally shall authorize the collection of the sales and
21 use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as
22 follows:

23 (1) The base rates of each gas and electric utility shall be reduced
24 by the amount of the unit-based energy taxes per kilowatthour or per
25 therm included therein.

26 (2) The provision for corporation business tax initially included in
27 the base rates of each gas and electric utility shall be based on the
28 utility's after-tax net income earned in the base year as booked, unless
29 the board determines, in its discretion, that such income as booked is
30 unusually high or low or otherwise unrepresentative of the utility's
31 prospective net income, in which case the utility's base year net income
32 shall be adjusted as determined by the board.

33 To permit the board to make this determination, in addition to
34 including in its filing schedules showing its net income earned in the
35 base year as booked, the utility shall include adjustments to such
36 booked income to eliminate the effect of revenues, expenses and
37 extraordinary or other charges that are non-recurring, atypical, or
38 both, including, but not limited to an adjustment to eliminate the effect
39 of unusually hot or cold weather, and that would otherwise make the
40 utility's base year net income unusually high or low or otherwise
41 unrepresentative of the utility's prospective net income. If the
42 adjustment is being made to eliminate the effect of unusually hot or
43 cold weather, associated revenue and expense adjustments shall also
44 be made. Subject to the board's approval, such adjusted income shall
45 be the basis for the calculation of the initial provision for corporation
46 business tax to be included in the utility's base rates.

1 The utility shall also include a calculation of its rate of return on
 2 common equity achieved in the base year, both as booked and as
 3 adjusted in accordance with the foregoing. The calculation shall be
 4 made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1,
 5 and shall separately show the effect of reflecting adjustments to the
 6 calculation, if any, that may have been employed historically in
 7 establishing the utility's rate of return on common equity allowed for
 8 ratemaking purposes. The utility's filing shall also include copies of its
 9 audited financial statements for the base year and associated quarterly
 10 and other reports filed with the Securities and Exchange Commission.

11 To reflect the provision for corporation business tax in base rates,
 12 the demand charges, or charges per kilowatt, decatherm or million
 13 cubic feet; the energy charges, or charges per kilowatthour or per
 14 therm; and the customer charges, or charges other than demand and
 15 energy charges, set forth in each base rate schedule, and the floor price
 16 employed in parity rate schedules, included in the utility's tariff filed
 17 with and approved by the board shall be increased by amounts
 18 determined by multiplying such charges by the adjustment factor, "A
 19 e, g" derived below:

20

$$21 \quad A_{e, g} = \left(\frac{I_{e, g} \times [Rs/(1-Re)]}{Br_{e, g}} \right)$$

22

23

24 where:

25

26 "A e, g" means the adjustment factor
 27 applicable to electric base rates
 28 (e), gas base rates (g), or both,
 29 other than rates applicable to
 30 sales that were exempt from unit-
 31 based energy taxes formerly
 32 imposed pursuant to P.L.1940,
 33 c.5 (C.54:30A-49 et seq.) or to
 34 which section 59 of this act
 35 applies;

36

37 "I e, g" means the utility's base year
 38 after-tax net income from electric
 39 or gas sales, or both, and
 40 transportation service subject to
 41 the board's jurisdiction and other
 42 operating revenue if such
 43 revenue is reflected in the utility's
 44 cost of service for ratemaking
 45 purposes, adjusted as approved
 46 by the board;

47

48

1	"Br e, g"	means the utility's base year
2		revenue from base rates
3		applicable to electric or gas sales,
4		or both, and transportation
5		service subject to the board's
6		jurisdiction, but excluding sales
7		that were exempt from unit-
8		based energy taxes formerly
9		imposed pursuant to P.L.1940,
10		c.5 (C.54:30A-49 et seq.) or to
11		which section 59 of this act
12		applies;
13		
14	"Rs"	means the corporation business
15		tax rate, expressed as a decimal;
16		
17	"Rf"	means the applicable federal
18		corporation income tax rate
19		expressed as a decimal; and
20		
21	"Re"	equals $R_s + R_f(1-R_s)$.
22		
23		

24 The utility shall account for the changes in tax liability provided for
25 by this act effective January 1, 1998. Such accounting shall include
26 the recording on the utility's income statement and balance sheet of
27 deferred corporation business tax defined, for book accounting
28 purposes, as differences in corporation business tax expense arising
29 from timing differences in the recognition of revenue and expenses for
30 book and tax purposes.

31 (3) When billed to the utility's customers, the adjusted base rate
32 charges determined pursuant to paragraphs (1), (2), and (4) of this
33 subsection, and the charges determined pursuant to the utility's
34 levelized energy adjustment clause, levelized gas adjustment clause, or
35 both, as determined both upon the effective date of the rate changes
36 authorized by this act and as revised prospectively in accordance with
37 the utility's tariff filed with and approved by the board, and the
38 transitional energy facility assessment unit rate surcharges, hereinafter,
39 "TEFA unit rate surcharges," determined in accordance with
40 subsection d. of this section, shall be increased by an amount
41 determined by multiplying such charges by the sales and use tax rate
42 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the
43 utility's rates for service included in its tariff, for informational
44 purposes the tariff shall include such rates after application of the sales
45 and use tax authorized by this section.

46 (4) The utility's filing with the board to implement the rate changes
47 provided for by this act shall include an analysis, description, and
48 quantification of the effect of the changes in rates and tax payments
49 implemented pursuant to this act on the utility's requirement for cash
50 working capital, and if such requirement is less than the cash working

1 capital allowed for the collection and payment of unit-based energy
2 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
3 seq.) in determining the utility's base rates in effect prior to the rate
4 changes implemented pursuant to this act, and to the extent the
5 working capital reduction is not offset by a reduction in net deferred
6 taxes as provided for below, such base rates shall be reduced by the
7 reduction in the utility's revenue requirement associated with the
8 remaining reduction in the working capital requirement not so offset,
9 if any. The reduction in working capital shall be determined by using
10 the same methodology employed in establishing the working capital
11 allowance related to unit-based energy taxes reflected in the utility's
12 base rates in effect prior to the rate changes implemented pursuant to
13 this act. The reduction in the utility's revenue requirement associated
14 with the reduced working capital requirement shall be calculated using
15 the utility's last overall rate of return allowed by the board, including
16 provision for federal income taxes and the corporation business tax
17 implemented pursuant to this act payable on the equity portion of the
18 return, and shall be implemented on the effective date of the rate
19 changes provided for, and in the manner set forth in paragraph (2) of
20 this subsection.

21 If the utility's requirement for cash working capital is increased as
22 a result of the changes in rates and tax payments implemented pursuant
23 to this act, the utility may accrue carrying costs, calculated at its last
24 overall rate of return allowed by the board and applied on a simple
25 annual interest basis without compounding, on the increased working
26 capital requirement and request recovery of such carrying costs in a
27 rate proceeding before the board.

28 The working capital-related base rate changes and carrying cost
29 accruals shall be subject to the board's approval, and shall not be
30 included in the determination of the TEFA unit tax surcharges
31 provided for in subsection d. of this section.

32 The utility's filing with the board to implement the rate changes
33 provided for by this act shall also include an analysis, description and
34 quantification of net deferred taxes. For the purposes of this section,
35 "net deferred taxes" means deferred corporation business taxes, net of
36 federal deferred income taxes, associated with the tax and rate changes
37 implemented pursuant to this act, including deferred corporation
38 business tax recorded in accordance with section 4 of P.L.1945, c.162
39 (C.54:10A-4), projected for the calendar year in which this act takes
40 effect and for each year of the tax life of the asset giving rise to the
41 deferred corporation business taxes pursuant to section 4 of P.L.1945,
42 c.162 (C.54:10A-4).

43 If the change in such net deferred taxes projected for the calendar
44 year in which the rate changes implemented pursuant to this act takes
45 effect is negative and if the utility's requirement for working capital is
46 reduced as a result of the changes in rates and tax payments

1 implemented pursuant to this act, the working capital-related rate
2 reduction that otherwise would have been implemented pursuant to
3 this subsection shall be treated as set forth in subparagraph (a) or (b)
4 of this paragraph. For the purposes of this act, a change in net
5 deferred taxes is considered negative when it reduces an existing
6 deferred tax liability or creates a deferred tax asset on the utility's
7 balance sheet. An appropriate rate adjustment for the working capital
8 impacts of this act, reflecting all relevant facts and circumstances at
9 the time of the adjustment, shall be made in the year when the earlier
10 of the following events occur:

11 (a) The year in which the reduction in carrying costs assumed for
12 the rate reduction for working capital that would have been made but
13 for this paragraph is no longer required to offset, on a present value
14 basis, the annual carrying costs calculated on the accumulated balance
15 of negative net deferred taxes projected to be recorded by the utility,
16 its successors and assigns, over the tax life of the single asset account
17 giving rise to such net deferred taxes pursuant to section 4 of
18 P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph
19 (a):

20 (i) Carrying costs and present values are to be computed using the
21 weighted average after-tax rate of return approved by the board in the
22 utility's last base rate proceeding.

23 (ii) The accumulated balance of such negative net deferred taxes
24 shall include net deferred taxes associated with all assets and liabilities
25 originally placed in service by the utility and held by the utility or a
26 company affiliated with the utility regardless of whether or not such
27 assets continue to be subject to regulation by the New Jersey Board of
28 Public Utilities.

29 (b) The year in which both an appropriate working capital
30 adjustment and the accumulated balance of negative deferred taxes, as
31 described in (ii) of subparagraph (a) of this paragraph (4), are reflected
32 in the utility's rate base in a rate proceeding before the board. It is the
33 intent of this section to fully compensate utilities on a present value
34 basis, for the carrying costs associated with negative net deferred taxes
35 arising as a result of this act, and to remit to ratepayers any credit due
36 them as a result of any overcompensation as may have occurred due
37 to the treatment of working capital and deferred taxes as set forth
38 herein or in subparagraph (a) of this paragraph (4). At the time the
39 above rate base adjustment is made, an analysis shall be made to
40 determine if such carrying costs have been or will be fully recovered
41 pursuant to the intent of this provision and any additional credit or
42 charge to ratepayers to adjust for ratepayer overpayments or
43 underpayments, if any shall be addressed.

44 If the change in net deferred taxes is positive, the increase shall be
45 added to, or increase, the reduction in the utility's requirement for
46 working capital if the requirement is reduced as a result of the rate and

1 tax payment changes implemented pursuant to this act, or subtracted
2 from the working capital requirement if it is increased, and the
3 resultant net working capital requirement shall be reflected in rates or
4 accrue carrying costs in the same manner as prescribed for changes in
5 the utility's requirement for working capital above.

6 The deferred tax-related rate changes or carrying cost accruals shall
7 be subject to the board's approval and shall not be included in the
8 determination of the TEFA unit rate surcharges provided for in
9 subsection d. of this section.

10 d. (1) Electric and gas utilities shall file, for the board's review and
11 approval, initial TEFA unit rate surcharges determined by deducting
12 from each unit-based energy tax unit tax rate effective January 1, 1997
13 the following: (a) An amount per kilowatthour or per therm
14 determined by multiplying the total revenue received in the base year
15 from sales to which that unit tax rate would have been applicable by
16 the factor $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed
17 under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
18 dividing the result by the kilowatthours or therms billed in that unit tax
19 rate class in the base year; and (b) An amount per kilowatthour or per
20 therm determined by dividing the revenue that would have been
21 received in the base year from the inclusion, in the manner prescribed
22 in paragraph (2) of subsection c. of this section, of the corporation
23 business tax in the rates applicable to sales billed in that unit tax rate
24 class by the kilowatthours or therms billed in that rate class. In each
25 case, the determination shall reflect the effect of adjustments that
26 affect the level of sales and revenue, if any, as provided in subsection
27 c. of this section. Of the resultant rate per kilowatthour or per therm,
28 the portion for recovery of the utility's transitional energy facilities
29 assessment liability shall be determined by multiplying such rate by the
30 factor $(1 - R_s)$, where R_s is the corporation business tax rate expressed
31 as a decimal. The TEFA unit rate surcharges shall constitute non-
32 bypassable wires and/or mains charges of the utility, and shall be
33 applied to all sales within the customer classes to which they apply,
34 regardless of whether such customers are purchasing bundled or
35 unbundled services from the utility, but shall not be applied to sales
36 that were exempt from unit-based energy taxes formerly imposed
37 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
38 59 of this act applies.

39 If, following the effective date of this act, a customer taking
40 bundled service from the utility shall elect to obtain its requirements
41 from another supplier and take transportation or wheeling service from
42 the utility, the TEFA unit rate surcharge applicable to the bundled
43 service shall continue to apply to the transportation or wheeling
44 service. The TEFA components of the unit rate surcharges determined
45 pursuant to this subsection (the components of the surcharges
46 remaining after deducting the provision for corporation business tax

1 included therein) shall be used to determine the transitional energy
 2 facility assessment liability pursuant to sections 36 through 49 of P.L.
 3 , c. (C.) (now pending before the Legislature as this bill).

4 (2) Unless reduced pursuant to paragraph (3) of this subsection,
 5 the initial TEFA unit rate surcharges are to be reduced annually on
 6 January 1, 1999 through January 1, 2003 by the following percentages:

7	January 1, 1999	20%
8	January 1, 2000	40%
9	January 1, 2001	60%
10	January 1, 2002	80%
11	January 1, 2003	100%

12
 13 (3) For each year beginning with calendar year 1998 and
 14 ending with calendar year 2002, the TEFA surcharge adjustment shall
 15 be determined as the difference between

16 (a) The sum of the estimated, or actual when known, (i)
 17 TEFA liabilities, as defined in section 43 of this act, and sales and use
 18 taxes collected and corporation business taxes, for the year 1998 by
 19 the gas and electric utilities and other entities subject to the TEFA
 20 provisions of this act (the year 1998 liability), and (ii) the TEFA
 21 liabilities of those utilities and entities in all years following the year
 22 1998 through the year in which a determination is being made pursuant
 23 to this subsection (the determination year); and

24 (b) The sum of (i) the total of each remitter's base year
 25 liability, as defined in section 37 of this act, and (ii) the cumulative
 26 TEFA obligation, defined as the sum through the determination year
 27 of the amounts calculated by multiplying the percentage in the second
 28 column of the following table for the applicable year:

29		% of
30	Determination Year	Year 1998
31		TEFA
	-----	-----
32	1999	80%
33	2000	60%
34	2001	40%
35	2002	20%

36
 37 by the Year 1998 TEFA,
 38 where the Year 1998 TEFA is calculated as the total of each remitter's
 39 base year liability less the sales and use taxes collected and the
 40 corporation business taxes booked for the privilege period ending in
 41 calendar year 1998 by the gas and electric utilities and other entities
 42 subject to the TEFA provisions of this act. For purposes of this
 43 subsection, the amounts assumed for the determination year, including

1 the year 1998 liability when first determined for the purposes of this
2 subsection, shall be estimates based on nine months of actual data
3 through and including the month of September, and three months of
4 data forecast for the months of October through December.

5 (4) If the TEFA surcharge adjustment determined for the
6 determination year is positive (that is, if the amount determined
7 pursuant to subparagraph (a) of paragraph (3) of this subsection is
8 greater than the amount determined pursuant to subparagraph (b) of
9 paragraph (3) of this subsection), no reduction shall be made in the
10 reduction in the TEFA unit rate surcharges provided for in paragraph
11 (2) of this subsection for the year following the determination year.
12 If the TEFA surcharge adjustment is negative, the reduction in the
13 TEFA unit rate surcharges that otherwise would have been
14 implemented on January 1 of the year following the determination year
15 pursuant to paragraph (2) of this subsection shall be reduced by an
16 amount (by percentage points) equal to the percentage the TEFA
17 surcharge adjustment is of the total of the base year transitional energy
18 facility assessment of all remitters, as defined in section 37 of this act,
19 provided however, that such reduction in the reduction in the TEFA
20 unit rate surcharges shall not exceed the percentage shown in
21 paragraph (2) of this subsection for that year; and provided further
22 that in the first two years, that such reduction shall not exceed 10
23 percentage points for each year.

24 e. The utility's filing with the board to implement the rate
25 changes provided for by this act shall include proof of revenue
26 schedules that show for each rate schedule included in the utility's
27 tariff, aggregated by unit-based energy tax unit tax classes, the number
28 of customers billed under the rate schedule, the billing determinants of
29 such customers (i.e. the kilowatts of billing demand and kilowatthours
30 of electric energy consumed, and the million cubic feet/deca-therm
31 subject to gas capacity-related charges and deca-therm of gas
32 consumed) and the associated revenue, both as booked in the base year
33 and on a pro forma basis reflecting the rate changes implemented
34 pursuant to this act. The proof of revenue shall additionally show the
35 amount of unit-based energy taxes included in the base year revenue
36 as booked, the unit-based energy taxes that would have been collected
37 at the unit-based energy tax unit tax rates effective January 1, 1997,
38 if different, as well as the corporation business tax, sales and use tax
39 and transitional energy facility assessment revenue that would have
40 been collected or received on a pro forma basis if the rates
41 implemented pursuant to this act had been in effect in the base year.

42 f. The board may, in its discretion, permit the rate changes
43 provided for this act to be implemented as part of a pending base rate
44 case or other proceeding in which the utility's rates are to be changed,
45 provided that the effective date of the changes is not delayed beyond
46 the date on which the changes would have been implemented under

1 subsection c. of this section. The board may also, pursuant to its
2 powers provided by law, permit or require further modifications in the
3 implementation of this section to address unforeseen consequences
4 arising out of the implementation of this act.

5 g. Customers of the utility who are exempt from the sales and
6 use tax imposed on sales of gas and/or electricity or as a result of rate
7 changes occurring prior to the effective date of this act or for other
8 valid reasons are due a refund of sales or use tax inadvertently
9 imposed on such customers as a result of implementing the rate
10 changes provided for by this act shall file with the State Treasurer to
11 obtain such refunds. The State Treasurer shall promptly notify the
12 utility of customers granted refunds under this provision in order to
13 prevent additional collections of the sales and use tax from such
14 customers.

15 h. Public utilities providing telecommunications service
16 regulated by the board shall file for the board's review and approval
17 revised tariffs that eliminate from the rates applicable to such service
18 the excise tax liability included therein pursuant to P.L.1940, c.4
19 (C.54:30A-16 et seq.), and shall include therein the corporation
20 business tax calculated using the same methodology as set forth in
21 paragraph (2) of subsection c. of this section for gas and electric
22 utilities. Telecommunications utilities shall comply with all other
23 applicable provisions of this section.

24 i. (1) The board shall not adjust the rates of a public utility,
25 as provided in subsections c. and d. of this section, for a purchase by
26 a cogenerator of natural gas and the transportation of that gas, that is
27 exempt from sales and use tax pursuant to paragraph (2) of subsection
28 b. of section 26 of this act. The board shall not allocate, in any future
29 rate case, any sales and use tax, corporation business tax, or
30 transitional energy facility assessment to rates for this purpose.

31 (2) The board shall adjust the rates, as provided in subsection
32 c. of this section, for a purchase by a cogenerator of any quantity of
33 natural gas and the transportation of that gas that is not exempt from
34 sales and use tax pursuant to paragraph (2) of subsection b. of section
35 26 of this act.

36 (3) For the purposes of this section, "cogenerator" means a
37 person or business entity that owns or operates a cogeneration facility
38 in the State of New Jersey, which facility is a plant, installation or
39 other structure whose primary purpose is the sequential production of
40 electricity and steam or other forms of useful energy which are used
41 for industrial, commercial, heating or cooling purposes, and which is
42 designated by the Federal Energy Regulatory Commission, or its
43 successor, as a "qualifying facility" pursuant to the provisions of the
44 "Public Utility Regulatory Policies Act of 1978," Pub.L. 95-617.

45

46 68. (New section) Notwithstanding the use of the term

1 assessment, the transitional energy facility assessment tax is a State tax
2 within the meaning of section 164 of federal Internal Revenue Code of
3 1986, 26 U.S.C. §164, pursuant to which a deduction is allowed in
4 arriving at federal taxable income for the taxable year within which it
5 is paid or accrued and such amount shall be added back to entire net
6 income pursuant to subparagraph (c) of paragraph (2) of subsection
7 (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).

8
9 69. (New section) a. No municipal, regional, or county
10 governmental agency may impose any fees, taxes, levies or
11 assessments in the nature of a local franchise, right of way, or gross
12 receipts fee, tax, levy or assessment against energy or
13 telecommunication companies subject to a public utility tax
14 immediately prior to January 1, 1998. Nothing in this section shall be
15 construed as a bar to fees for services made by any municipal, regional
16 or county governmental agency.

17 b. Nothing in this section shall be construed to limit
18 municipal taxation of real or personal property pursuant to R.S.54:4-1
19 of local exchange telephone, telegraph and messenger systems,
20 companies, corporations or associations that were subject to tax under
21 P.L.1940, c.4 (C.54:30A-16 et seq.) as of April 1, 1997.

22
23 70. (New section) Nothing in this act shall be construed to
24 limit municipal taxation of real estate pursuant to R.S.54:4-1 of
25 current or former remitters of the transitional energy facility
26 assessment, or of a corporate or non-corporate legal successor or
27 assignee of a current or former remitter of the transitional energy
28 facility assessment whether through any reorganization, sale,
29 bankruptcy, consolidation, merger or other transaction or occurrence
30 of any kind without limitation. As used in this section, "real estate"
31 means lands and buildings, but shall not include items of the type as set
32 forth in the list of scheduled property for gas systems and electric
33 light, heat and power systems in section 10 of P.L.1940, c.5
34 (C.54:30A-58) prior to January 1, 1998. As provided in that list,
35 railways, tracks, ties, lines, wires, cables, poles, pipes, conduits,
36 bridges, viaducts, dams and reservoirs (except that the lands upon
37 which dams and reservoirs are situated shall be included as real
38 estate), machinery, apparatus or equipment, notwithstanding any
39 attachment thereof to lands or buildings owned by current or former
40 remitters of the transitional energy facility assessment, or of a
41 corporate or non-corporate legal successor or assignee of a current or
42 former remitter of the transitional energy facility assessment whether
43 through any reorganization, sale, bankruptcy, consolidation, merger or
44 other transaction or occurrence of any kind without limitation, are not
45 real estate.

1 71. (New section) Notwithstanding any other provision of
2 law to the contrary, for the period from January 1, 1998 through the
3 date the utility rate changes provided for in this act are implemented
4 as set forth in section 67 of this act, the sales and use tax imposed
5 pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) as amended and
6 supplemented by P.L. , c. (C.)(now pending before the
7 Legislature as this bill), upon sales and use of energy and utility
8 service that were subject to regulated rates that included unit-based
9 energy taxes imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.)
10 during that period, shall be imposed upon the utility vendors of energy
11 and utility service in this State and shall not be imposed upon the
12 purchasers thereof. The amount of tax due under this section shall be
13 payable by a utility vendor to satisfy the utility vendor's tax liability on
14 those sales and use of energy and utility service under this section.

15

16 72. The following are repealed:

17 Section 2 of P.L.1983, c.95 (C.48:2-29.37);

18 P.L.1940, c.4 (C.54:30A-16 through 54:30A-29);

19 Sections 6 and 8 of P.L.1963, c.41 (C.54:30A-18.1 and
20 54:30A-18.2);

21 Section 2 of P.L.1971, c.109 (C.54:30A-18.1a);

22 Sections 1 and 2 of P.L.1979, c.35 (C.54:30A-18.4 and
23 54:30A-18.5);

24 Sections 2, 10, 11, 12 and 24 of P.L.1991, c.184 (C.54:30A-
25 18.6, 54:30A-54.6, 54:30A-54.7, 54:30A-54.8 and 54:30A-18.7);

26 Section 2 of P.L.1980, c.10 (C.54:30A-24.1);

27 Section 5 of P.L.1989, c.2 (C.54:30A-24.2);

28 Sections 25 and 27 of P.L.1991, c.184 (C.54:30A-24.3 and
29 54:30A-24.4);

30 P.L.1961, c.91 (C.54:30A-51.1 through 54:30A-51.5);

31 Section 5 of P.L.1940, c.5 (C.54:30A-53);

32 Sections 8 through 13 of P.L.1940, c.5 (C.54:30A-56 through
33 54:30A-61);

34 Section 4 of P.L.1980, c.11 (C.54:30A-61.1);

35 Sections 19, 26 and 28 of P.L.1991, c.184 (C.54:30A-61.2
36 through 54:30A-61.4);

37 Sections 16, 17, 19 and 20 of P.L.1940, c.5 (C.54:30A-64
38 through 54:30A-67); and

39 Section 30 of P.L.1991, c.184 (C.54:30A-68).

40

41 73. This act shall take effect January 1, 1998, except that this
42 section and sections 49, 58, 63 and 67 shall take effect immediately.

43

44

STATEMENT

45

46 This bill implements a transition to competition by utilities

1 resulting from recent regulatory developments on both the federal and
2 State levels, including the unbundling of energy products and services.
3 Although traditionally New Jersey's energy consumers, including
4 natural gas and electric power consumers, have been served by
5 regulated monopolies, there is now a move to competition and the free
6 market. This new business environment has altered the way energy
7 producers do business in this State and the way energy consumers buy
8 and consume energy products.

9 The Board of Public Utilities is charged with the supervision
10 and regulation of public utilities to ensure that they furnish safe,
11 adequate, and proper service as well as to maintain their property and
12 equipment in such condition as to enable them to do so. New Jersey
13 has a legitimate State interest in the regulation of energy suppliers to
14 protect public health and safety. Accordingly, the Board of Public
15 Utilities already requires that the books and records of public utilities
16 must be kept within this State for in-State inspection. This bill
17 requires that all energy suppliers maintain such books and records as
18 shall be required by regulation of the Board of Public Utilities in an in-
19 State office, in order that the Board of Public Utilities may be ensured
20 of access to all relevant information such that the board may ensure
21 the adequate operation of energy suppliers in this State and ensure an
22 adequate supply of gas and electricity for New Jersey consumers.

23 New Jersey's current energy taxes are among the highest in
24 the nation constraining the State's economic growth and causing
25 companies doing business or deciding to relocate into the State to
26 consider states with lower energy costs. In order to reduce the
27 adverse economic effect of high energy taxation rates on all
28 consumers, to prevent continued erosion of future tax revenues for
29 annual distribution to municipalities due to changes in the natural gas
30 and electric markets and promote economic development and job
31 growth in the State, this bill, effective for 1998, eliminates the gross
32 receipts and franchise tax currently collected by electric, gas and
33 telecommunications utilities. In its place, electric, gas and
34 telecommunications utilities will be subject to the State's corporation
35 business tax. The State's existing sales and use tax, with certain
36 exceptions, will be applied to retail sales of electric and natural gas,
37 and a transitional energy facility assessment will be applied for a
38 limited time on electric and gas utilities. The assessment will be
39 phased out over a five year period.

40 Under a companion bill, municipalities will be guaranteed,
41 beginning in State fiscal year 1997, an annual State aid distribution of
42 at least \$730,000,000 from these replacement revenues. These
43 revenues will be credited to the "Energy Tax Receipts Property Tax
44 Relief Fund," established in the State Treasury as a special dedicated
45 fund. Of the \$730,000,000, a portion approximating \$700,000,000
46 will be allocated annually to provide each municipality with an amount

1 not less than the largest annual amount it received from the
2 distribution of \$685,000,000 from the proceeds of the public utilities
3 franchise and gross receipts taxes and unit-based energy taxes under
4 P.L.1940, c.4 (C.54:30A-16 et seq.) and P.L.1940, c.5 (C.54:30A-49
5 et seq.) in calendar year 1994, 1995 or 1996, or initially proposed for
6 distribution in 1997.

7 It is the intent of the Legislature that the Board of Public
8 Utilities, when determining electric and natural gas rates, pass along
9 to consumers all tax savings realized by utilities as a result of this bill.

10

11

12

13

14 Revises taxation of gas, electric and telecommunications public
15 utilities and sales of electricity, natural gas and energy transportation
16 service under transitions to competitive markets.