

STATE OF NEW JERSEY
CORPORATION BUSINESS TAX STUDY COMMISSION
PO Box 002
Trenton, NJ 08625-0002

December 29, 2003

To: The Honorable James E. McGreevey, Governor
The Honorable John O. Bennett, Republican Senate President
The Honorable Richard J. Codey, Democratic Senate President
The Honorable Albio Sires, General Assembly Speaker
State Treasurer, John E. McCormac

The New Jersey Corporation Business Tax Study Commission is pleased to deliver to you its Interim Report.

The New Jersey Corporation Business Tax Study Commission was established by Section 31 of P.L. 2002, c. 40, approved July 2, 2002 (the "Act") to evaluate the changes made by the Act and to address specific statutory questions. The Commission is directed to report its findings by December 30, 2003. If the report is not produced by June 30, 2004, then the Director of the Division of Taxation must suspend for tax periods beginning after December 31, 2004 the Alternate Minimum Assessment which was imposed as a part of the Act.

The Commission is unable to issue a final report by December 30, 2003. The Commission issues this Interim Report in lieu of such final report with the present intention to issue a final report before June 30, 2004.

The Commission has issued an Interim Report because it does not yet have available to it the tax return information necessary for a fair and thorough evaluation of the provisions of the Act and the statutory questions presented to the Commission. As of the date of this Interim Report, the processing, compilation and analysis of tax return information reflecting the impact of the Act have not been completed by the Divisions of Revenue and Taxation.

As directed by the Act, the Commission held three public hearings. The testimony provided to the Commission is made a part of the Interim Report.

The Commission has reaffirmed and adopted the revenue evaluation criteria adopted by the New Jersey State and Land Expenditure Revenue Policy Commission having determined the continuing vitality of those principles.

We offer our thanks to those who have contributed to our efforts to date. This Interim Report was approved and is respectfully submitted by the members of the New Jersey Corporation Business Tax Study Commission.

James B. Evans, Jr.
Chairman

cc: Commissioners

**New Jersey
Corporation Business Tax
Study Commission**

Interim Report – December 29, 2003

Summary of Interim Report

The Business Tax Reform Act, P.L. 2002, c. 40, (the “BTRA”) was approved July 2, 2002 and became effective for privilege periods beginning on or after January 1, 2002. Legislative Statements to Assembly Bill 2501 and Senate Bill 1556, the respective Assembly and Senate versions of the legislation, reflect the Legislature’s intention to reform New Jersey’s system of taxation of corporations and other business entities, through revision of the Corporation Business Tax Act (the “CBT”) and other changes of law.

Among the many changes enacted, the BTRA introduced an Alternative Minimum Assessment which imposes an alternative method for computing a taxpayer’s CBT liability. The alternative tax is based on either reported gross receipts or gross profits as its tax base. Corporations are required to pay the alternative assessment if it is greater than their regular CBT liability.

Other changes were designed to overhaul the CBT to close perceived loopholes and to defer or eliminate other corporate deductions. The BTRA also imposes new taxes on partnerships and professional corporations and increased the statutory minimum tax. Small business relief provisions were also enacted.

The Corporation Business Tax Study Commission was established by Section 31 of the BTRA (the “Commission”) to evaluate the changes made by the new law and to address specific statutory questions. The Commission is to report its findings by December 30, 2003. If the report is not produced by June 30, 2004, then the Director of the Division of Taxation must suspend the AMA for tax periods beginning after December 31, 2004.

The BTRA has resulted in substantial increases in the amount of tax revenues collected. These increases exceed the projections of the State Treasurer and the Office of Legislative Services made about the time of enactment. An analysis of CBT tax return information is expected to identify which provisions of the BTRA are contributing to the increased revenue and the reasons for the BTRA outperforming all estimates.

The Commission does not yet have available to it the tax return information necessary for a fair and thorough evaluation of the provisions of the BTRA and the statutory questions presented to the Commission. As of the date of this Interim Report, the processing, compilation and analysis of tax return information reflecting the impact of the BTRA changes have not been completed by the Divisions of Revenue and Taxation.

The Commissioners presently believe that sufficient information will be made available to the Commission to allow the issuance of its final report before June 30, 2004.

The Commission

The Business Tax Reform Act, P.L. 2002, c.40 was approved July 2, 2002. Assembly Bill 2501 and Senate Bill 1556, the respective Assembly and Senate versions of the legislation, include statements that reflect the legislature's general and specific intention in passing the bills. Generally effective for taxable years beginning on or after January 1, 2002, the BTRA is intended to reform New Jersey's system of taxation of corporations and other business entities, through revision of the Corporation Business Tax Act, N.J.S.A. 54:10A-1 *et seq.*, and other changes of law.

Section 31 of the BTRA created a nine-member, bipartisan Corporation Business Tax Study Commission. The Commission is to conduct a continuous study and evaluation of the corporate tax law reforms adopted pursuant to the BTRA, with specific reference to:

(1) Whether the CBT burden is fairly and equitably borne and distributed among corporations that are subject to the tax;

(2) Whether profitable corporations doing business in New Jersey can avoid paying their fair share of taxes by using tax minimization or avoidance strategies that may include cross-border tax avoidance such as isolation of nexus-creating activities or the transfer of certain income to holding companies in low tax or tax haven jurisdictions, intragroup corporate transfer pricing techniques, use of special deductions or exclusions that manipulate income and costs between parent-subsidiary or affiliated companies that benefit large or multinational or multistate corporations over smaller businesses operating wholly within New Jersey;

(3) Whether, without reducing anticipated revenues from that tax, the tax burden could be more fairly and equitably borne and distributed;

(4) Whether the revenue and distributional impacts of the changes to the Corporation Business Tax Act enacted pursuant to the BTRA yield the recurring revenue goals that New Jersey must achieve to bring long-term structural balance to State finances; and

(5) Whether New Jersey and its corporation business taxpayers would be better served by the use of a combined taxation under the unitary business concept.

The BTRA directs the Commission to produce and provide a final report with findings and recommendations to the Governor and the Legislature, along with any legislative bills it desires to recommend for adoption by the Legislature, no later than December 30, 2003. The Commission is authorized to issue interim reports. If the Director of the Division of Taxation determines that the final report of the Commission has not been produced and provided by June 30, 2004, then the Director shall suspend the Alternate Minimum Assessment (AMA), which was imposed under the BTRA, for privilege periods commencing after December 31, 2004. If the Commission recommends the termination of the AMA, the AMA shall not be imposed for privilege periods beginning after December 31, 2004.

For the reasons detailed below, the Commission is unable to issue a final report by December 30, 2003. The Commission issues this Interim Report in lieu of such final report with the present intention to issue a final report before June 30, 2004.

Composition of Commission

The New Jersey Corporation Business Tax Commission is composed of nine members; two members were appointed by the Presidents of the Senate; two members were appointed by the Speaker of the General Assembly; and five members were appointed by the Governor.

The BTRA requires that each member be a resident of the State having knowledge and expertise in the area of corporation income tax. Further, of the members appointed by the Governor, the BTRA requires that one be a member of the academic community, one be a certified public accountant, one be a member of the State tax bar, one represent large businesses, and one represent small businesses. The members appointed by the Speaker of the General Assembly shall not be members of the same political party, the members appointed by the Presidents of the Senate shall not be members of the same political party, and no more than three of the members appointed by the Governor shall be of the same political party.

Commissioners Appointed by the Governor

Eileen Appelbaum, PhD
Center for Women and Work
Rutgers University
New Brunswick, New Jersey

Robert Krueger, CPA
Public Service Enterprise Group
Newark, New Jersey

James B. Evans, Jr., J.D., L.L.M., CPA
Kulzer & DiPadova, PA
Haddonfield, New Jersey

John J. Pydyszewski
Johnson & Johnson
New Brunswick, New Jersey

Tami Gaines
G2 Consulting, Inc.
Montclair, New Jersey

Commissioners Appointed by the Senate Presidents

Michael Kasparian
S. Hekemian Kasparian Troast, LLC
Paramus, New Jersey

David J. Shipley, Esq.
McCarter & English, LLP
Philadelphia, Pennsylvania

Commissioners Appointed by the Speaker of the General Assembly

Kenneth K. Gershenfeld, J.D.
Managing Director
Goldman Sachs & Co.
New York, New York

Frank Huttel, III, JD, LL.M., CPA
DeCotiis FitzPatrick Cole & Wisler, L.L.C.
Teaneck, New Jersey

Commission Activities

Since its appointment, the Commission has held thirteen meetings, including three public hearings. Public notice of its meetings is provided and its meetings are open to the members of the public.

The following is a summary of the conduct of the Commission's meetings since the convening of the Commission on December 11, 2002:

December 11, 2002	Organizational meeting
January 8, 2003	Overview of Business Tax Reform Act P.L. 2002, c 40 (Part 1 of 2) <i>Division of Taxation</i>
January 28, 2003	Overview of Business Tax Reform Act P.L. 2002, c 40 (Part 2 of 2) CBT Revenue Presentation <i>Division of Taxation</i>
March 12, 2003	A Review of New Jersey's Prior Tax Review Commissions <i>Henry Coleman, Executive Director</i> <i>New Jersey State and Local Expenditure and Revenue Policy Commission</i> State Business Tax Reform - A Business Perspective <i>Doug Lindholm, Executive Director</i> <i>Council on State Taxation</i> State Business Tax Reform - A Tax Administrator's Perspective <i>Dan Bucks,</i> <i>Executive Director Multistate Tax Commission</i>
April 9, 2003	Ethical Standards – Special State Officers <i>Rita L. Strmensky, Esq., Executive Director</i> <i>Executive Commission on Ethical Standards</i>

May 13, 2003	Public hearing held in Newark Campus of Rutgers the State University of New Jersey <u>Testimony provided by:</u> <i>Arthur J. Maurice,</i> <i>New Jersey Business & Industry Association</i> <i>Stephen C. Fox, CPA</i>
May 15, 2003	Public hearing held in New Brunswick Campus of Rutgers the State University of New Jersey <u>Testimony provided by:</u> <i>E. Martin Davidoff, CPA, Esq.</i> <i>Frank Nardi, CPA, Esq.</i>
May 28, 2003	Public hearing held in Camden Campus of Rutgers the State University of New Jersey <u>Testimony provided by:</u> <i>Mary Forsberg, Senior Policy Analyst</i> <i>New Jersey Policy Perspective</i> <i>Joseph R. Crosby, Legislative Director,</i> <i>Council on State Taxation</i> <i>Kathleen Davis, Executive Vice President</i> <i>Chamber of Commerce Southern New Jersey</i>
June 11, 2003	Commission Working Session
August 13, 2003	BTRA Regulations <i>Division of Taxation</i>
September 10, 2003	Commission Working Session
November 12, 2003	Commission Working Session
December 10, 2003	Commission Working Session

Governing Principles Adopted

The Commission sought to identify principles of tax policy to guide its consideration of the CBT. Examinations of appropriate tax principles have been undertaken by numerous other commissions, public interest groups and professional organizations. The Commission was aided by these prior efforts.

The New Jersey State and Land Expenditure Revenue Policy (SLERP) Commission adopted revenue evaluation criteria that this Commission has determined to have continuing vitality. The Commission reaffirms those criteria and adopts the following as its governing principles:

- ADEQUACY refers to the ability of state and local revenue systems to provide revenues sufficient to meet current and anticipated state and local expenditure needs based on existing policies and programs.
- CERTAINTY relates to the extent to which individual taxpayers can predict future tax liabilities or recipient units of government can predict the level of aid receipts. Certainty regarding the intricacies of the tax or aid system may facilitate financial planning and decision making by businesses, households and units of government alike.
- COMPETITIVENESS refers to the advantages or disadvantages in attracting or retaining desired firms and households, which a state and local tax system has relative to tax systems in other comparable or neighboring states.
- COMPLIANCE/SIMPLICITY indicates the ease with which individual taxpayer liability can be determined, by both the taxpayer and the collection agency, and provisions of the tax code can be enforced.
- DIVERSITY measures the extent to which the base of the individual tax or the whole of the tax system is broadly defined so that it can withstand long-run declines in importance of some components while reflecting the importance of long-run growth in other components.
- ELASTICITY measures the relationship between changes in measures of economic activity or population characteristics and changes in the revenue Yield of the state and local tax system or selected taxes.
- EQUITY/FAIRNESS refers to the extent to which the revenue burdens of the state and local revenue system are distributed fairly based upon either the individual's or firm's ability to pay the tax or upon the benefits it receives from services financed by the tax.
- NEUTRALITY/EFFICIENCY indicates the extent to which government financing influences private economic decision making and behavior. In general, the less the influence, the more neutral the individual tax or tax system. However, neutrality may not always be preferable, as government may decide to encourage some activities while discouraging others. Neutrality also refers to the extent to which local jurisdictions have their priorities distorted or restructured by the imposition of limits and by the form in which aid is received.

Public Hearings

The BTRA directs the Commission to hold at least three public hearings and to solicit testimony from the public. Pursuant to that directive, the Commission held the following three public hearings:

<u>Hearing Date</u>	<u>Hearing Location</u>
May 13, 2003	Rutgers University - Newark
May 15, 2003	Rutgers University – New Brunswick
May 28, 2003	Rutgers University - Camden

Transcripts of the testimony offered to the Commission are attached as the Appendix of this Interim report.

In addition to holding the mandated public hearings, the Commission has solicited written comments from the public. A general request for comments was posted on the website of the Division of Taxation and business, professional and public interest organizations were solicited for comments. The Commission has received no written comments to date.

The Director of the Division of Taxation provided to the Commission written public comments received by the Division of Taxation in response to the special adoption and concurrent proposal of rules with respect to the BTRA.

BTRA Revenue Estimates

The BTRA established a CBT revenue target amount of \$1,823,000,000 for fiscal year 2003.¹ In establishing this target amount, baseline CBT revenues for 2002, before the changes made by the BTRA, were projected to total \$900 million. The BTRA target amount assumed additional revenue as a result of the BTRA changes of \$923 million.

No formal fiscal analysis for the BTRA was published by the Executive branch; however, the State Treasurer did provide to the Legislature revenue estimates for components of the BTRA for fiscal year 2003.

A legislative fiscal estimate was produced by the Office of Legislative Services (“OLS”) pursuant to P.L.1980, c.67.² The OLS noted that the CBT is the most difficult State revenue source to estimate and projecting the impact of the far reaching changes of the BTRA was even more challenging. The Treasurer provided to the OLS some of the aggregate data used in the formulation of his estimates. The OLS did not have access to tax return information from specific returns.

The OLS estimates did not account for behavioral changes that may occur as a result of the enactment of the BTRA. Possible behavioral changes identified by the OLS that would likely reduce the revenues estimated were:

- Some inactive corporations and partnerships may be dissolved.
- Some corporations may change their status or relocate.
- Some corporations may alter their business or accounting practices.

¹ Section 32 of the BTRA created a restricted reserve fund known as the “Corporation Business Tax Excess Revenue Fund.” The State Treasurer is to credit to the fund, on or before December 31 annually in 2003, 2004 and 2005 with the amounts, if any, by which the State revenues derived from the corporation business tax in the prior fiscal year exceeded the target amount for that fiscal year, subject to reduction if General Fund revenue for State Fiscal Year 2003 is less than the amount certified for that year.

² Legislative Fiscal Estimate, First Reprint, Assembly No. 2501, 210th Legislature - Dated: September 13, 2002

The OLS prepared its fiscal estimates for the first three fiscal years for which the BTRA changes would be effective. The Treasurer's fiscal estimates were for the first fiscal year. The estimates are as follows:

	Projected CBT Revenue Increase in \$Millions							
	Treasurer		OLS					
	FY03		FY03		FY04		FY05	
	Low	High	Low	High	Low	High	Low	High
"Loophole Closers" ³	157	220	157	220	122	172	122	172
Net Operating Loss Disallowance	180	200	234	260	126	140	0	0
Alternative Minimum Assessment	260	300	260	300	203	234	203	234
Partnership Processing Fee	50	80	40	60	28	40	28	40
Minimum Tax Increase	45	45	45	45	45	45	45	45
3Q Speed Up	100	140	100	140	0	0	0	0
TOTAL	792	985	836	1025	524	631	398	491

Preliminary BTRA Revenue Information

Fiscal Year 2003 Cash Collections

At the Commission's December 10, 2003 meeting, the Office of Revenue and Economic Analysis of the Division of Taxation presented its most recent estimates of reported CBT cash collections for fiscal year 2003. These estimates are based on preliminary analysis of 100,464 returns filed for tax years starting after December 31, 2001. These estimates reveal that the BTRA generated more additional first year revenue than was projected.

The fiscal year 2003 total CBT collections as preliminarily reported break down into the following components:

³ This category includes changes to the treatment of certain interest and royalty expenses, the exclusion of deductions for certain dividends, the "throw out rule" which changes the calculation of sales attributable to New Jersey, and rate changes for investment companies and savings and loan associations.

CBT Collections in \$Millions⁴	
Partnership Processing Fee	51
Professional Corporation Fee	4
Nonresident Tax – Individuals	110
Nonresident Tax – Corporations	126
Minimum Tax	22
Savings Institution Conversion	15
3Q Speed Up	120
December 2002 Overpayment	75
Net Operating Loss Disallowance	185
Alternative Minimum Assessment	209
Remaining CBT Collections ⁵	1697
TOTAL	2614

Fiscal year 2003 CBT cash collections totaled \$2.614 billion. Of this, \$51 million represents collections from the \$150 partnership fees plus 50% prepayment for fiscal year 2004 and \$110 million represents withholding on non-resident non-corporate owners by New Jersey tax partnerships and S corporations. These two amounts, totaling \$161 million, were initially deposited in the CBT revenue account but ultimately will be reflected as fiscal year 2003 Gross Income Tax (GIT) revenue. The CBT collections, net of the transferred GIT revenue, are \$2.453 billion.

Fiscal Year 2004 Cash Collections

On December 11, 2003, the State Treasurer announced that the CBT has generated \$594.3 million in revenue through the first five months of fiscal year 2004. This was reported to be approximately 50 percent ahead of targets for the period. The reasons for the higher than anticipated revenues are unclear. The announced CBT collection numbers do not reflect an anticipated increase in CBT refunds for businesses that may have overpaid corporate tax liabilities. The amount of anticipated refunds was not estimated.

Availability of Tax Return Information

Information necessary for the Commission to evaluate the effects of the BTRA is reflected in the CBT returns filed with the Division of Revenue for taxable periods

⁴ The fiscal year 2003 cash collections and allocations among the various BTRA revenue categories as reported by Office of Revenue and Economic Analysis are preliminary and subject to change.

⁵ This amount includes base CBT revenues before amendments made by the BTRA plus the BTRA changes not specifically identified in the table. For the reasons discussed below, information necessary to identify the contributions made to fiscal year 2003 revenue from these other BTRA changes is not yet available.

beginning after December 31, 2001.⁶ In addition to the return information routinely required of taxpayers, the Division of Taxation required the reporting of supplemental statistical information on the returns first affected by the BTRA. This additional information will assist the Commission in completing its evaluation. The Division of Taxation has announced that the failure to provide the additional statistical information may subject taxpayers to penalties.

Return information sufficient to identify and quantify the effects of the changes made by the BTRA is not presently available to the Commission. Calendar year taxpayers, the largest group of CBT return filers, are the first taxpayers to be subject to the provisions of the BTRA. While final CBT tax payments by calendar 2002 taxpayers were required to be made on or before April 15, 2003, taxpayers were allowed an extension of time for the filing of the related CBT tax returns until October 15, 2003.

A large number of CBT returns, including those of many of the State's largest corporate taxpayers, were filed under extension and were not available for processing until after October 15, 2003. The 2002 tax return information for many fiscal year taxpayers will be filed in the months following October, 2002 and may not become available in time for use by the Commission.

As of this report date, the processing, compilation and analysis of calendar year tax return information, including the additional statistical information, has not been completed by the Division of Revenue and the Division of Taxation. Accordingly, the Commission does not yet have available to it the information necessary for a fair and thorough evaluation of the provisions of the BTRA and the statutory questions presented to the Commission.

The Commissioners presently believe that sufficient information will be made available to the Commission to produce and provide a final report before June 30, 2004.

ACKNOWLEDGEMENTS

The Commission's effort in advance of this report has been primarily dedicated to the education of Commission members and the solicitation of public commentary. The Commission acknowledges the assistance of the Office of the Treasurer, the Division of Taxation, the Office of Legislative Services and the Office of Governor's Counsel for providing technical and logistical support to the Commission.

The process of data compilation and analysis and the Commissioners' deliberations leading to the recommendations in a final report is dependent upon the continued support of these offices in the absence of any appropriation to acquire these services and to provide for administrative staff support.

Also gratefully acknowledged is Rutgers University for making its facilities available for the Commission's public hearings and other meetings.

⁶ Only aggregate return information will be made available to the Commission. Return information of specific taxpayers is confidential and privileged and will not be provided to the Commission.

APPENDIX

Tab 1	May 13, 2003	Public hearing held in Newark Campus of Rutgers the State University of New Jersey <u>Testimony provided by:</u> <i>Arthur J. Maurice, New Jersey Business & Industry Association</i> <i>Stephen C. Fox, CPA</i>
Tab 2	May 15, 2003	Public hearing held in New Brunswick Campus of Rutgers the State University of New Jersey <u>Testimony provided by:</u> <i>E. Martin Davidoff, CPA, Esq.</i> <i>Frank Nardi, CPA, Esq.</i>
Tab 3	May 28, 2003	Public hearing held in Camden Campus of Rutgers the State University of New Jersey <u>Testimony provided by:</u> <i>Mary Forsberg, Senior Policy Analyst New Jersey Policy Perspective</i> <i>Joseph R. Crosby, Legislative Director, Council on State Taxation</i> <i>Kathleen Davis, Executive Vice President Chamber of Commerce Southern New Jersey</i>

1 STATE OF NEW JERSEY
 2 DEPARTMENT OF THE TREASURY
 3 CORPORATION BUSINESS TAX STUDY Commission
 4

5 IN RE: :
 6 BUSINESS REFORM TAX ACT :
 7 OF 2002 :
 8 PUBLIC HEARING :
 9 - - - - -

10 P R E S E N T:

- 11
 12 JAMES B. EVANS, JR., CHAIRMAN
 13 FRANK HUTTLE, III
 14 MICHAEL N. KASPARIAN
 15 JOHN J. PYDYSZEWSKI
 16 DAVID SHIPLEY
 17 EILEEN APPELBAUM
 18 ROBERT C. KRUEGER, JR.
 19 KENNETH K. GERSHENFELD

20
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1 Transcript of Proceedings, taken in
2 the above-entitled matter before JOANNE M.
3 OPPERMANN, a Certified Shorthand Reporter
4 (License No. 1435) and Notary Public of the
5 State of New Jersey, taken at Rutgers
6 University, Paul Robeson Campus Center, 350
7 Martin Luther King Boulevard, Newark, New
8 Jersey on May 13, 2003, commencing at 1:00 in
9 the afternoon.

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1 THE CHAIRMAN: Good afternoon. My
2 name is Jim Evans, I'm serving as the initial
3 chair to the Corporation Business Tax Study
4 Commission. I'd like to ask each of the members
5 of the Commission to introduce themselves,
6 beginning to my left.

7 MR. HUTTLE: My name is Frank
8 Huttle.

9 MR. KASPARIAN: Michael Kasparian.

10 MR. SHIPLEY: David Shipley.

11 MR. KRUEGER: Bob Krueger.

12 MR. GERSHENFELD: Ken Gershenfeld.

13 MR. PYDYSZEWSKI: John Pydyszewski.

14 THE CHAIRMAN: Eileen Appelbaum is
15 also a member of the Commission. And Tammy
16 Gaines is unable to attend this afternoon's
17 session.

18 The Commission was established
19 pursuant to Section 31 of Public Law 2002,
20 Chapter 40. The Commission is to study and
21 evaluate Corporate Tax Reform adopted pursuant
22 to the Business Tax Reform Act. This Commission
23 is to issue a report, with findings and
24 recommendations, to the governor and
25 legislature, along with any legislative bills

1 it desires, for adoption no later than December
2 30, 2003. If the Director of Division of
3 Taxation determines that the final report of
4 this Commission has not been released by June
5 30, 2004, the director shall suspend the
6 minimum assessment imposed by the act for all
7 privileged periods commencing after December
8 31, 2004. If the Commission recommends the
9 termination of the assessment, it shall not be
10 imposed for privileged periods beginning on or
11 after January 31, 2005.

12 The Act directs this Commission to
13 hold three public hearings. This hearing is the
14 first of three. They have been scheduled.

15 On behalf of the Commission, I'd
16 like to thank Rutgers University for making
17 available its facilities on the Newark, New
18 Brunswick, and Rutgers campuses. The Commission
19 Office of the Treasurer provided notice of
20 these schedules of hearings to the Secretary of
21 State. All major newspapers in the state. The
22 Commission, through the Office of the
23 Treasurer, has also notified various business,
24 tax and professional associations of the
25 schedule of these hearings.

1 There is a speaker list provided.
2 We ask each speaker to provide their name,
3 address and telephone number. Commissioners,
4 after testimony, will be afforded an
5 opportunity to question the speakers. If you
6 have written comments, you can submit them to
7 the Commission or written comments can be
8 submitted, preferably, before June 30, 2003.

9 Any comments from any of the
10 Commissioners?

11 If not, Arthur.

12 MR. ARTHUR J. MAURICE: Thank you.
13 My name is Arthur Maurice and I am First Vice
14 President with the New Jersey Business &
15 Industry Association. I have copies of the
16 written comments. I will not read the comments,
17 since I know so many of you, but I'll summarize
18 them.

19 But first I'd like to say that on
20 behalf of our 20,000 member employers, we
21 lobbied this legislation pretty hard last
22 spring. And we didn't have very high
23 expectations for the Commission, to be
24 perfectly honest. But I've got to say that each
25 of you is just phenomenally qualified, and much

1 better, in terms of appointments, than we have
2 thought we would see, so I want to congratulate
3 you.

4 We did oppose the law last spring,
5 just so you know that, and felt that enactment
6 of the BTRA was a mistake.

7 We oppose it basically because we
8 thought the legislation went well beyond the
9 stated intention closing abusive corporate tax
10 loopholes. If that was purely what this
11 legislation was about, shutting down loopholes,
12 we and other business associations would have
13 supported the legislation because, after all,
14 no business person wants to be economically at
15 a competitive disadvantage because a competitor
16 is using loopholes.

17 However, as you know, in this
18 legislation loophole closing is only a small
19 part. We argued last spring that the law would
20 raise taxes on hundreds of thousands of small
21 and medium size firms that have nothing to do
22 with loopholes, including raising taxes on many
23 small and midsize corporations that are
24 legitimately losing money. All in order to
25 reach an arbitrary revenue collection figure of

1 \$1.8 billion this fiscal year. The number that
2 was referred to countless times by the
3 administration, is a business' "fair share".

4 We estimated instead that the tax
5 increase would generate far more revenues this
6 year precisely because the money net was cast
7 so far and wide.

8 Just to quickly summarize where the
9 revenue are now, with less than two months
10 left, it looks like this tax will bring in a
11 lot more. In February the administration
12 acknowledged the CBT would generate \$2 billion,
13 not 1.8. And then, last month, the nonpartisan
14 office of our legislative services raised that
15 number from 2 billion to 2.2 billion. We
16 wouldn't be surprised, frankly, if we saw the
17 CBT bringing in 2.4 billion, a staggering 33
18 percent increase over the original BTRA-driven
19 projection.

20 Now, how is this affecting the
21 businesses of the state? Well, an early
22 indication came from our annual business
23 outlook survey. We have 20,000 employers, we do
24 a survey every winter, and this year's results,
25 we had about 1,600 responses. The third worst

1 problem facing businesses in this state, the
2 third worst, were high state business taxes.
3 Only behind health care costs, which was number
4 one, and property taxes which were number two.
5 To put this into context, business taxes have
6 never exceeded the ranking of seventh in the
7 history of the survey. And when respondents
8 were asked to rank policy initiatives that the
9 Mc Greevey administration should pursue, the
10 reduction of business taxes was the first
11 priority of 16 percent of all respondents.

12 Second, only behind health care
13 costs, interestingly listed by 44 percent of
14 respondents. You may see some of that in your
15 own work, I guess, with the clients you have.

16 So, we feel that this is an
17 excellent barometer of how business in general
18 feels. Of the 1,600 responses we think it's a
19 pretty good cross-section, about a fifth of
20 them are manufacturers, a third of them are
21 service firms, 71 percent of those respondents
22 employed less than 25 employees, seven percent
23 employed more than a hundred employees. They
24 clearly felt the BTRA was onerous and unfair.

25 Why they should see it as unfair is

1 not shocking. If you look at the fiscal note
2 that accompanied the legislation, published in
3 September, only a fifth of new tax revenues, 20
4 percent would be coming from "loophole
5 closers", things like chambers and the
6 treatment of interest, royalty expenses,
7 dividend deductions, the throw-out rule and
8 rate changes for investment companies and
9 savings and loan associations.

10 The vast majority of the BTRA
11 increases were to come from either fiscal
12 gimmicks with no policy basis, such as spending
13 and operating losses, and accelerating
14 estimated tax payments, and from the single
15 most unfair aspect of the BTRA, which I want to
16 focus the rest of my discussions on, and the
17 revenue raising champion of the law, the
18 misnamed Alternative Minimum Assessment, the
19 new gross receipts and gross profits tax.

20 The Treasurer has indicated in the
21 past that approximately a hundred thousand New
22 Jersey firms will be taxed under this new gross
23 receipt and gross profits tax.

24 Estimates of revenues range from
25 260 to \$300 million the first year. Both the

1 Legislature and Treasury agreed that the tax
2 would generate over a third of all new BTRA
3 revenues. Given the higher anticipated tax
4 revenues. We wouldn't be shocked if the AMA
5 approached \$400 million.

6 We feel the AMA terrible tax policy
7 nebulizes low-profit margin firms, service
8 companies, start-ups, firms with extraordinary
9 and unexpected expenses, doing all this by
10 taxing gross revenues without allowance for
11 customary cost of doing business. It is unfair
12 and confiscatory, but unfortunately, it is the
13 backbone of the BTRA. By FY 2005, it will
14 consist of 50 percent of all BTRA-generated
15 revenues.

16 All that New Jersey employers ask
17 is that state business tax policy be
18 predictable, applied fairly across all firms
19 and encourage business growth and expansion by
20 taxing profits in good years and understanding
21 that employers' business taxes should be
22 reduced.

23 The AMA failed on all counts. We
24 urge you to recommend its immediate repeal.

25 Thank you.

1 THE CHAIRMAN: Questions of Arthur?

2 Any questions?

3 MR. SHIPLEY: One question. In terms
4 of the AMA, your objection is not necessarily
5 to having some sort of minimum tax, but it's
6 more so the method that is used to compute the
7 tax and the magnitude of the so-called minimum
8 tax.

9 MR. MAURICE: Right. We understood
10 that the \$200 minimum hasn't been changed in
11 several years, although I guess it was indexed
12 with inflation. And if something was done
13 there, we wouldn't have complained. We looked
14 at New York State, which I guess goes up to
15 several thousand dollars. While we were never
16 happy with tax increases, I think that would
17 have met the goal of fairness and something
18 that was predictable and understandable.

19 MS. APPELBAUM: Can I ask a
20 question? We read in the newspaper of the
21 ability that companies have, I mean after Enron
22 we have all read about the ability that
23 companies have to match their profit and their
24 net, after taking ordinary business expenses.
25 How do you deal with the fairness issue in a

1 situation like that? You have large companies
2 which have access to the best advice possible
3 and we have understood now that tax planning
4 has become a profit center for some companies.

5 So, how do you address that
6 question without an alternative minimum tax?

7 MR. MAURICE: Well, I think that the
8 legislation did a couple of things. One, it
9 made it much more difficult to utilize some of
10 the revenue-shifting techniques. But it also
11 gave the Division of Taxation the ability to go
12 in, and in cases where they felt that money was
13 being shifted despite the new law, they could
14 call for an audit, I guess, within 60 to 90
15 days, and then even require filing consolidated
16 returns. We would have much rather have gone to
17 the loophole closing aspects of the law. Which
18 again I think most business associations would
19 not have opposed. Seeing what the result is,
20 looked and see how taxation used their new
21 enforcement techniques, and then revisited
22 this.

23 We just think that the costs that
24 we're seeing, in terms of the image of New
25 Jersey as being a place to expand a business

1 and relocate, the damage that's been done by
2 this law has been terrible, in this particular
3 aspect.

4 We follow all the states. One of
5 the things that was said last spring was, you
6 watch, every other state in the nation will be
7 following us. That's nonsense, absolute
8 nonsense. In California, \$35 billion deficit,
9 bigger than our entire state budget. We didn't
10 see them rushing out.

11 You know, I think that most states
12 would -- I think most governors and most
13 policymakers would acknowledge that the best
14 way to grow revenue is to have a thriving
15 economy, not raise taxes.

16 MR. KASPARIAN: Would you venture to
17 say what the estimate for revenue generation
18 would be, had it just been loopholes?

19 MR. MAURICE: Well, I can't say all
20 we have is that fiscal note. And it looked as
21 though -- I think I have it here. Have you seen
22 that fiscal note? Date of September 13th, both
23 the Executive Treasury and Office of
24 Legislative Service, given yearly as I've
25 described, they were looking at a low of 175

1 million to a high of 220 million. I dare say
2 those numbers are probably low. But that gives
3 you the range of the ballpark. The partnership
4 processing fee was 50 to 80 million. Actually,
5 our legislative was 50 to 80 million, excuse
6 me.

7 I can leave this with you if you
8 would like.

9 MR. KASPARIAN: Thank you.

10 THE CHAIRMAN: Thank you.

11 MS. APPELBAUM: Do you take any
12 position or think at all about the -- we have
13 all seen Mc Greevey's budget and we know the
14 cuts are coming, right here at Rutgers
15 University, which is facing a cut steeper than
16 what it faced during the depression. From the
17 point of view of your members, when you think
18 about location decision, what attracts
19 business, especially the high wage businesses
20 that New Jersey has been so successful in
21 attracting, what attracts them to this state is
22 the high quality of education in the state
23 university system, you know, the high quality
24 of public education in many of the school
25 districts. How do we balance these things?

1 MR. MAURICE: Well, I think that
2 you're right, that is important, and the
3 governor is doing an excellent job on that. But
4 we're in a regional, if not a national and a
5 global economy, and businesses can really move
6 different places. You can be across the river
7 in New York and across the river in
8 Pennsylvania and still get that fine work
9 force.

10 In terms of growing the budget, I
11 think what I'm hearing most from my members is
12 that, look, when we have a hard time, we've got
13 to tighten our belts. And the state's got to
14 have priorities and they should do that as
15 well.

16 That may be very simplistic, but
17 that's really how they think, it gets down out
18 of matching your own costs and setting
19 priorities.

20 I think the governor is right, he
21 certainly has made education a priority. I
22 wish -- expressing our members' view, I wish he
23 had looked at other areas to cut.

24 MR. GERSHENFLED: You mentioned that
25 you thought that New Jersey was now a business-

1 unfriendly place or something like that. Do you
2 have any statistic data to back that up,
3 companies that moved out of New Jersey,
4 companies that were going to move in that
5 didn't move out? More objective and subjective
6 information. That would be very helpful.

7 MR. MAURICE: We can give you that,
8 sure. Actually, I'll get very specific. I
9 didn't say it's a business-unfriendly state, I
10 said --

11 MR. GERSHENFELD: I'm sorry.

12 MR. MAURICE: I said it's a place
13 where many businesses are wondering whether
14 they would want to expand and relocate here.
15 And it's not just this BTRA. We could talk
16 about the BTRA, I won't, but it would go into
17 that as well.

18 We have been surveying our members
19 for probably about 15 years. And one question
20 we ask them: Is New Jersey a good place to
21 expand your business? Would you recommend
22 expanding your business in New Jersey?

23 And this number has been just
24 dropping every year. And I can actually send
25 you a copy of the survey, but I believe right

1 now we're up to -- we're down to 27 percent of
2 the members who are here now, business people
3 who are here now saying this is a good place to
4 expand.

5 MS. APPELBAUM: Are these companies
6 that were planning to expand? We're three
7 years into a business downturn in this country.

8 MR. MAURICE: Right. What we asked
9 them is: Is New Jersey a good place to expand
10 a business?

11 MS. APPELBAUM: Is anyplace a good
12 place to expand a business right now?

13 MR. MAURICE: I can tell you that
14 when we do time surveys on this, the numbers
15 are bad. Look, I can agree with you that this
16 economy has many more issues than just issues
17 government can effect, but we would argue
18 strongly that where government can't effect, it
19 shouldn't do things to the detriment of the
20 economy, it should be looking to foster it.

21 But I'll get you the economic
22 position.

23 MR. GERSHENFELD: Give us a
24 comparison, if it was 70 percent three years
25 ago, now 27 percent, that would be relevant. If

1 it's been 30 percent the last three years and
2 now dropped to 27 percent, that doesn't mean a
3 whole lot.

4 MR. MAURICE: It was up a whole 66
5 percent. Again, part of that was the expansion,
6 people felt better. Think people felt better
7 about the state's economy and the state as a
8 place to do business.

9 MS. APPELBAUM: The question was a
10 comparison between last year and this year.

11 MR. MAURICE: There's a timeline in
12 there. Sure.

13 Anything else?

14 THE CHAIRMAN: Any other questions?

15 Arthur, thank you.

16 MR. MAURICE: Good luck.

17 MR. STEPHEN C. FOX: I've given you
18 copies of my written comments. And like Arthur,
19 I won't just read the comments to you, but I
20 would like to summarize them a bit and
21 elaborate on one or two points.

22 I'm not here to lobby for massive
23 overhaul in the tax code, more for pointing out
24 some areas of technical correction that we
25 think, as a firm, are hitting our clients and

1 not hitting some of the people that were
2 targeted at.

3 The key areas of our concern are
4 first the alternative minimum assessment.
5 Secondly, the throw-out rule. And third, the
6 partnership withholding per partner fee
7 provisions.

8 The AMA seems to have been designed
9 to hit larger companies with operations in New
10 Jersey and elsewhere. And, in particular,
11 multinationals. In the press there was mention
12 of companies like Lucent and Pfizer paying not
13 a penny of New Jersey tax, despite earning
14 millions of dollars in New Jersey.

15 So, it strikes us as, I would like
16 to say, humorous, but maybe not quite so
17 humorous, that these multinationals will almost
18 all not pay a penny of alternative minimum tax
19 simply because of the way it works.

20 The AMA's a tax either on gross
21 receipts or gross income at the election of the
22 taxpayer. Gross income is not quite how we
23 accountants would define it, it is total New
24 Jersey gross receipts less apportioned cost of
25 goods sold. And it's that apportionment of the

1 cost of goods sold that results in distortions.

2 Let's take an example, and I'll use
3 this for a couple of other things too. Let's
4 assume we have "Big Co." that distributes
5 goods, has operations in Texas, Nevada and New
6 Jersey, with equal property payroll and sales
7 in those states and nothing anyplace else.

8 Before the BTRA changes this
9 summer, "Big Co's", New Jersey apportionment
10 factor, was one-third. After the changes it
11 will be either 50 percent or two-thirds under
12 the throw-out rule. I'll talk about that in a
13 moment.

14 If "Big Co." has anything but
15 obscene gross margins on the products, it's not
16 going to have any gross income in New Jersey
17 because one-third of the income will be reduced
18 by two-thirds of the cost of sales. The gross
19 income goes away, so does the AMA.

20 This is going to happen for any
21 taxpayer who has sales scattered around big
22 operations in New Jersey. This distorted effect
23 will happen for all of them.

24 Now, where is the AMA going to hit?
25 It's going to hit our client base. Our clients

1 are entirely closely-held companies, or
2 individuals, with revenues from around a
3 million to nearly a hundred million, the mid
4 market. A lot of our clients are service
5 businesses that have no cost of goods sold.

6 The AMA has a tax on gross receipts
7 for them.

8 At a fairly low level of sales,
9 under 20 million, the AMA starts kicking in if
10 their profitability is less than 1.54 percent.
11 For a larger service business, it kicks in at
12 profitability of 4.4 percent. We have some
13 clients that were profitable this year, whose
14 AMA exceeded their profits.

15 In fact, we have quite a few of
16 those. The Division of Taxation incorporated a
17 rule very recently in the regulations, that
18 carved out one piece of those clients, the
19 professional employer organizations, and others
20 with similar accounting possibilities from the
21 application of the AMA. The PEO's would have
22 structurally paid more AMA on a permanent basis
23 than their profits every year, because their
24 margins, by the nature of their business, have
25 to be very small.

1 I was speaking with the New Jersey
2 director of one of the largest PEO's a while
3 back, and he said, before those regulations
4 came out, they were considering simply
5 withdrawing from New Jersey all together,
6 stopping doing business because the state was
7 going to tax them at more than a hundred
8 percent of their profits.

9 So that's a problem with the AMA,
10 hitting service businesses. And it's an area
11 that I would like your committee to give
12 consideration to as to how we can go about
13 mitigating that for low profit service
14 businesses.

15 Another problem with AMA is the
16 rate. At some points it's more than a one
17 million percent tax rate. The gross income tax
18 works as a marginal rate, kind of like the AMA,
19 but the marginal -- the next marginal rate is
20 not applied to the entire tax base but only the
21 revenues above the point that it kicks in.
22 Where you apply any sort of a rate to
23 everything that came before, and the rate
24 increases, you get extreme distortions at
25 little points.

1 Eileen's point about tax planning
2 earlier is particularly relevant here. Clients
3 of ours will be -- if they are sufficiently
4 aware of it will be very sensitive about being
5 just a couple of dollars over that kick-in
6 point for the next rate. Certainly would make
7 our fees worthwhile for doing some fancy
8 accounting trades for those cases.

9 So I think changing the rate to
10 something that looks like the way the gross
11 income tax works, would be a very good thing.

12 While we're still close to the AMA
13 discussion, the throw-out rule that was enacted
14 as part of BTRA had the laudable goal of making
15 New Jersey businesses really pay their fair
16 share of tax based on where they were getting
17 taxed not just where they had sales.

18 A lot of states have a throw-back
19 rule that seeks to accomplish the same sort of
20 thing. Sometimes in a less equitable manner.

21 Let's go back to my case of "Big
22 Co.", that has operations in New Jersey, Texas
23 and Nevada. Since Nevada imposes no income tax,
24 Nevada sales are thrown out even though they
25 have big operations there.

1 Texas is a problematic matter.
2 Texas doesn't have an income tax, but it has a
3 franchise tax, it has an income component. So
4 it's not clear yet, and I'm sure the division
5 is going to come up with some regs to talk
6 about that, it's not clear yet whether Texas
7 gets thrown out or not.

8 But in "Big Co's" case, if Texas
9 were to be thrown out, they would go from
10 paying tax on a third of their income to New
11 Jersey, where a third of their operations are,
12 to paying tax on two-thirds of their income.

13 I'm not certain how well that would
14 survive a constitutional challenge. It won't be
15 our clients that pay for that. None of them can
16 afford the hundred thousand dollars-plus set of
17 legal fees that it takes to get to the Supreme
18 Court, and that's probably where it would have
19 to end up. It's only going to be the big guys
20 that fight that battle.

21 So, once again, the mid market
22 companies are getting slammed for something
23 that was designed to hit the big multinationals
24 and the big multinationals are escaping
25 completely free of tax.

1 One thing that was also aimed at
2 the multinationals, we think, is the
3 disallowance of deductions for interest and
4 royalties or other intangible costs. It was
5 fairly popular for years, still is, among large
6 companies, to have a Delaware finance
7 subsidiary. And you put all your finance
8 operations in Delaware, charge interest to all
9 your subs that are paying state tax, strip out
10 interest into Delaware where there is no state
11 tax. That still works, by the way, not with
12 Delaware but with offshore companies, for the
13 big multinational companies. They won't pay a
14 penny more in state tax because of either of
15 those provisions.

16 All of the national firms are
17 marketing structures that will almost guarantee
18 to get them out of paying additional tax due to
19 this provision. Who it hits is our client base,
20 the mid market companies. And we suspect this
21 wasn't considered when the law was drafted,
22 that it could hit shareholder loans, from
23 individuals to the shareholder, or to the
24 companies they own.

25 Quite a number of our clients are

1 directly impacted by this. Let's take two
2 different possibilities. S Corporation and C
3 Corporation are owned by the same person, they
4 are related parties. S Corporation loans money
5 to the C corporation. C corporation will not
6 get a deduction for that interest. And S Corp.
7 and the shareholder will pick it up as income.
8 That one is guaranteed regardless of tax rates
9 of the individual.

10 The S Corp. and individual tax
11 rates could be as little as one percentage
12 point less than the corporate tax rate.
13 There's no tax avoidance motive here because
14 there's almost no tax avoidance. This type of
15 arrangement is almost always done because the
16 money is in one place and it's needed someplace
17 else.

18 Situation number two: Individual
19 loans money to the C Corp. that he owns. He's
20 got savings, they need the money, he makes the
21 loan, they pay him interest. If he is not in
22 the top individual tax rate, the corporation
23 doesn't get a deduction for the interest, he
24 picks up the income. That's clear from the
25 regulations.

1 MR. SHIPLEY: That's because of the
2 differential between the corporate tax rate and
3 highest individual rate, if you are below that,
4 you don't have the three percent differ --

5 MR. FOX: That's right. Do all of
6 you understand the mechanism on that?

7 Okay.

8 We think this area, that just
9 wasn't considered, really needs to be
10 reconsidered. What we would recommend is that a
11 deduction be allowed if the payment is to
12 persons that are wholly taxable in New Jersey,
13 which is most of our client base.

14 There are two other partnership
15 areas related to BTRA that I'd also like to
16 discuss, and I'm not sure if those are within
17 the purview of this Commission, but perhaps you
18 can give some feedback to those that are
19 involved in it. Both of them relate to a
20 definition that just isn't in the law. The
21 partnership withholding provision and the
22 partnership \$150 fee provision both apply where
23 a partnership earns income from New Jersey
24 sources.

25 That term isn't defined in the law

1 and it wasn't terribly relevant before the
2 changes to the partnership rules.

3 Now it's very relevant.

4 Let me illustrate the problem with
5 an example. One way to try to figure out what
6 income from New Jersey sources means is to look
7 to what kind of income it is and what kind of
8 property it is. Rental real estate in New
9 Jersey obviously generates income from New
10 Jersey sources. But how about stocks and bonds?
11 General Motors stock or Citicorp CDs, what's
12 the source of that income, is it from New York
13 sources? Well both Citicorp and GM have
14 operations here, but a nonresident person,
15 receiving interest from Citicorp or dividends
16 from General Motors, doesn't pay New Jersey tax
17 as a matter of law under the gross income tax.

18 But if the partnership earns that
19 income, and the partnership has income from New
20 Jersey sources, they have to withhold on that.

21 Now, how do we figure out if the
22 partnership has nothing but those two items of
23 income? How do we figure out where the source
24 is? We don't have a rule for that.

25 If we look to whether the partners

1 get taxed on that income, you might say, okay,
2 well, that's well and good. If they're resident
3 partners, they will get taxed, if they are
4 nonresidence they don't. Does that mean if a
5 partnership had -- a non New Jersey partnership
6 has New Jersey resident partners and all the
7 income it gets is interest and dividend, it has
8 to withhold tax on the nonresident partners who
9 then will get it all back?

10 So we have a bit of a definitional
11 problem that needs to be cleared up. And that
12 will hit both under the withholding provisions
13 and under the per partner fee provisions.

14 There's another aspect of the per
15 partner fee that we consider inevitable. A lot
16 of our -- and it relates to investment
17 partnerships. A lot of our clients have family
18 limited partnerships set up as a way of
19 matching their stock and bond portfolios. Now
20 they have to pay \$150 per partner fee because
21 they have that partnership set up to match
22 their stocks and bonds. Where partnerships do
23 business in New Jersey, maybe the \$150 is fair.
24 Where it is nothing but an investment holding
25 vehicle, is that fair? We think not.

1 That pretty much concludes what I
2 want to talk about.

3 To summarize, let me suggest the
4 areas of change that we would recommend.

5 First, reduce the impact of the
6 alternative minimum assessment on service
7 businesses. They are the ones that will pay the
8 bulk of the AMA.

9 Second, change the AMA from a cliff
10 rate to a real graduated rate.

11 Third, allow deductions for all
12 interest and royalties paid to related
13 taxpayers that are wholly taxable in New
14 Jersey.

15 Next, reconsider the trigger
16 mechanism and the mechanics of the throw-out
17 rule.

18 Next, eliminate withholding on
19 nonresident partners and purely investment
20 partnerships.

21 And finally, reduce or eliminate
22 the \$150 per partner fee, especially for
23 family-owned partnerships.

24 That pretty much concludes my
25 remarks. And thank you for letting me appear.

1 THE CHAIRMAN: Thank you.

2 Questions by the Commission?

3 MS. APPELBAUM: It's probably in
4 your written testimony, but could you just
5 explain the way in which you had the one-third,
6 one-third, one-third, in a huge multinational,
7 an apportionment could be as much as a half or
8 a third -- or two-thirds?

9 MR. FOX: This will hit a New Jersey
10 only company. The way an apportionment fraction
11 works in New Jersey is a four-factor formula;
12 sales, sales, property and payroll. So sales is
13 double-weighted.

14 Under the throw-out rule, sales are
15 removed from the denominator of the sales
16 fraction if the company does not pay income tax
17 in the state to which those sales are made.

18 So, for our "Big Co." example, we
19 had one-third of our sales made in Nevada.
20 Nevada doesn't have an income tax, so Nevada
21 sales come out of the denominator.

22 If Texas income tax is not
23 considered -- or if Texas franchise tax isn't
24 considered an income tax, it comes out of the
25 denominator for the sales fraction only. So our

1 sales fraction will go from one-third to a
2 hundred percent. And with double-weighting,
3 then we have a hundred, a hundred, a third and
4 a third, which put together equals -- and
5 divided by four equals two-thirds.

6 MR. SHIPLEY: Could you go into a
7 little more depth? You had said that in that
8 example you ended up with it becoming
9 unconstitutional. I wanted to follow through
10 that analysis.

11 MR. FOX: This is a CPA way of
12 talking. The courts have generally held that
13 apportionment is permissible, though not as
14 good as really determining what income really
15 happened in each state. The reason they have
16 allowed apportionment is to prevent things like
17 Eileen suggested, manipulation as to where your
18 earnings are and realizing that the courts felt
19 that apportionment tends to end up with a fair
20 result most of the time, if you do it certain
21 ways, and will allow it.

22 Where that apportionment completely
23 falls down, as in this case, where it
24 changes -- you know, it's clear that one-third
25 of your income is really New Jersey, and

1 suddenly the apportionment is causing
2 two-thirds to be taxed, it's our feeling that
3 the courts will really have some difficulty
4 with that. Whether it will meet the complete
5 auto four-factor test, I think is really open
6 to question.

7 MR. SHIPLEY: Thus that it would be
8 taxing income out of all proportion to the
9 activities conducted in New Jersey.

10 MR. FOX: Yes. I think the out of
11 all proportion would be the least of my worries
12 in that it would be clearly unfair and fairness
13 is one of the prongs of complete auto test.
14 Clearly, taxing you on two-thirds of your
15 income, when you obviously earn only one-third
16 there, is unfair and is not fairly apportioned.

17 You know, I think it's back to the
18 drawing board time.

19 MS. APPELBAUM: I thought the
20 problem, as you described it, was the
21 multinationals, this "Big Co.", would not have
22 to pay any tax.

23 MR. FOX: Right. What's going to
24 happen with the throw-out rule if you leave it
25 alone? Well, the multinationals won't have to

1 worry about it. Our clients will. They will
2 suddenly be taxed under the throw-out rule,
3 even with the throw-out rule will face some
4 AMA, especially the service businesses. The
5 throw-out rule will tend to impact them on the
6 regular tax in profitable years. The
7 multinationals will take you to court, may end
8 up winning, but it won't do our clients any
9 good until eight to 10 years from now when they
10 finally do win.

11 So the time to get from filing a
12 tax return, to Supreme Court ruling, is a lot
13 of years.

14 MR. SHIPLEY: One other follow-up.
15 You had talked about the lack of a definition
16 of income from New Jersey sources. Do you feel
17 that the definition, which is contained in the
18 gross income tax, to the extent the application
19 was expanded beyond merely nonresidents, would
20 that be a suitable definition to apply
21 across-the-board?

22 MR. FOX: Probably so, yeah. The
23 problem with the gross income tax definition,
24 and that's why I pointed out that quite a few
25 has one resident partner and everybody else is

1 nonresident, doesn't suddenly make the
2 nonresident subject to withholding. I think you
3 need to figure out how to apply that at the
4 partnership level rather than the partner level
5 attributing back to the partnership.

6 Perhaps a good way to do it, since
7 investment income in the way of dividends and
8 interest, regular dividends, is not taxable to
9 nonresident partners, might simply be to define
10 income from New Jersey sources for that
11 purpose, to exclude dividends and interest.
12 That would go a long way toward clarifying
13 things. Perhaps that could be done in regs.

14 MR. GERSHENFELD: Have you thought
15 about a method or a way to reduce the impact of
16 the AMA on service businesses other than just
17 reducing the rate? I mean is that just --

18 MR. FOX: Some foreign jurisdictions
19 have come up with alternative tax bases for
20 some kinds of businesses. I used to be in the
21 oil patch many years ago and Singapore and
22 Indonesia both came up with an alternative tax
23 base on a deemed profit on revenues for service
24 businesses. So mainly from a simplicity
25 standpoint.

1 And perhaps for a service business
2 allowing some sort of deemed cost of sales or
3 allowing recharacterizing certain operating
4 costs, as deductible against gross receipts,
5 would be a way to go. I'm afraid I don't have a
6 good solution for that.

7 MR. GERSHENFELD: Let me ask the
8 question a different way, which is basically
9 most of your suggestions seem to reduce -- we
10 can argue significantly, very significant, if
11 the revenue of the state were reduced. What
12 would you recommend how to make that up? In
13 other words, a certain amount of revenue,
14 what's the other side of this to sort of -- a
15 \$100 million, making up a number, how would you
16 recommend that the state increase a \$100
17 million?

18 MR. FOX: There are a lot of
19 politically unpopular ways to do that. Taxing
20 one segment of the population and not another,
21 though, strikes me as inherently unfair.

22 I think some of the provisions
23 here, especially of the AMA, are tending to tax
24 the mid market company, and the mid market
25 company that is owned by people who vote, and

1 not taxing the big, evil multinationals who
2 don't vote. And I suspect some of these
3 provisions were designed to do exactly the
4 opposite. It just didn't quite work right.

5 THE CHAIRMAN: Any other questions?

6 MS. APPELBAUM: How do you define
7 mid market when you talk about it? Is this a
8 company with just one location or is it less
9 than a certain number of employees?

10 MR. FOX: Generally, most
11 definitions look to revenues. And it depends on
12 who you ask, what mid market is. Clearly a
13 company with \$25 million in revenues is a mid
14 market company, same with one with 50. When you
15 hit a hundred, is it still mid market? Yeah,
16 probably. At 300 million, probably not.

17 MS. APPELBAUM: A hundred five
18 million?

19 MR. FOX: At a million, no, it's
20 still mom-and-pop.

21 MS. APPELBAUM: Between a hundred
22 and 300 million?

23 MR. FOX: Generally tend to be 125
24 to 200 is what most people tend to look at. In
25 other words, the typical prosperous, growing,

1 not-yet-public company.

2 MS. APPELBAUM: So not-yet-public
3 would be another --

4 MR. FOX: Yes, none of our clients
5 are publicly traded.

6 THE CHAIRMAN: Questions of anyone
7 else?

8 Thank you.

9 MR. FOX: Thank you for the
10 opportunity.

11 THE CHAIRMAN: Thank you. I
12 appreciate your help.

13 Are there any other witnesses or
14 speakers at this point? If not, I would
15 suggest that, it's about 2:00, we'll adjourn
16 for a few moments.

17

18 (45-minute adjournment.)

19

20 45 minutes elapsed since our last
21 speaker. No other notices or intent to speak
22 were received, so we'll adjourn this initial
23 meeting at approximately 3 PM. The Commission
24 will meet again on Thursday, May 15th, at 1:00,
25 on the campus of Rutgers University New

1 Brunswick.

2 (Whereupon, the proceedings
3 concluded at 3:00 PM.)

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C E R T I F I C A T E

I, JOANNE M. OPPERMANN, a Certified
Shorthand Reporter and Notary Public of the
State of New Jersey, do hereby state that the
foregoing is a true and accurate transcript of
my stenographic notes of the within
proceedings, to the best of my ability.

/s/ JOANNE M. OPPERMANN

JOANNE M. OPPERMANN, C.S.R.
License No. XI01435

1 NEW JERSEY CORPORATION BUSINESS
2 TAX COMMISSION
3 PUBLIC HEARING

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IN RE: :

CORPORATION BUSINESS TAX STUDY :

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TAKEN: THURSDAY, MAY 15, 2003

BEFORE: CORPORATE BUSINESS TAX COMMISSION

HELD AT: LABOR EDUCATION CENTER

50 Labor Center Way

New Brunswick, New Jersey 08901

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GUY J. RENZI & ASSOCIATES

- 1 COMMISSION MEMBERS:
- 2 JAMES B. EVANS, JR., ESQ., Chairman
- 3 TAMI GAINES, Member
- 4 KEN GERSHENFELD, Member
- 5 FRANK HUTTLE, III, ESQ., Member
- 6 MICHAEL N. KASPARIAN, Member
- 7 ROBERT KRUEGER, Member
- 8 JOHN J. PYDYSZEWSKI, Member
- 9 DAVID J. SHIPLEY, ESQ., Member

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1 I N D E X

2	SPEAKER	PAGE
3	E. MARTIN DAVIDOFF, CPA, ESQ.	6
4	FRANK NARDI, CPA, ESQ.	25

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10 E X H I B I T S

11	ID.	DESCRIPTION	PAGE
12	NONE MARKED		

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1 MR. EVANS: Good afternoon. My name
2 is Jim Evans. I serve as the initial chair of
3 the "Corporation Business Tax Study Commission.
4 " I'm an attorney in Haddonfield, New Jersey.

5 Before we begin, I'd ask the members
6 of the commission to introduce themselves. We'll
7 start on my left.

8 MR. KASPARIAN: Michael Kasparian.

9 MR. PYDYSZEWSKI: John Pydyszewski.

10 MR. SHIPLEY: David Shipley.

11 MR. KRUEGER: Bob Krueger.

12 MR. HUTTLE: Frank Huttle.

13 MS. GAINES: Tami Gaines.

14 MR. GERSHENFELD: Ken Gershenfeld.

15 MR. EVANS: Eileen Applebaum is also
16 a member of the commission, and is unable to
17 attend the hearing.

18 This commission is established
19 pursuant to Section 31 of Public Law 2002,
20 Chapter 40, designated to Business Tax Reformat.
21 This commission is the study and evaluate the
22 corporate tax law reforms adopted pursuant to the
23 act.

24 The commission is to issue a report
25 with findings and recommendations to the governor

1 and the legislature, along with any legislative
2 bills it desires to recommend for adoption by the
3 legislature, no later than December 30, 2003.

4 If the director of the Division of
5 Taxation determines that a final report has not
6 been issued by the commission by June 30, 2004,
7 the director shall suspend the alternate minimum
8 assessment imposed by the act for all privilege
9 periods commencing after December 31, 2004.

10 If this commission recommends the
11 termination after alternate minimum assessment,
12 the assessment shall not be imposed for
13 privileged periods beginning on or after
14 January 1, 2005.

15 The Business Tax Reform Act directs
16 this commission to hold at least three public
17 hearings. This public hearing is this second of
18 three scheduled public hearings.

19 On behalf of each member of the
20 commission, I thank Rutgers University for making
21 available to the commission its facilities on the
22 Newark, New Brunswick, and Camden campuses.

23 The commission, through the Office
24 of the Treasurer, provided notice of these
25 hearings of the commission to the Secretary of

1 State, and to all major newspapers. The
2 commissions through the Office of Treasurer has
3 notified various business tax and professional
4 associations of these public hearings.

5 The commission will accept written
6 copies of testimony, in addition to an oral
7 presentation. Members unable to -- or persons
8 unable to attend the hearings can submit written
9 testimony to the commission through the Office of
10 the Treasurer until June 30, 2003.

11 At this point, I'd ask Mr. Davidoff,
12 our first speaker, to begin his testimony.

13 Thank you.

14 MR. DAVIDOFF: Thank you very much
15 Mr. Evans, and thank you very much, commission
16 members.

17 My name is E. Martin Davidoff. I'm
18 a CPA, and a tax attorney, practicing out of
19 Dayton, New Jersey.

20 In your folders, you have three
21 documents. One is a copy of today's testimony,
22 the one that starts out, "Scope of Commission's
23 Responsibilities." The others are an article
24 from Business News New Jersey that really was
25 also incorporated to my testimony last year

1 before the Assembly Budget Committee. And I've
2 given that to you by, more as means of
3 background, but I do ask that it be incorporated
4 into the record.

5 As you very well know, the statute
6 under which you have been formed asks that you
7 evaluate --

8 By the way, I'm not going to read
9 all of my testimony. I'm going to read certain
10 parts.

11 MR. EVANS: Thank you.

12 MR. DAVIDOFF: As all of you well
13 know, the statute under which you've formed asks
14 that you evaluate the corporate law tax reforms
15 adopted by Public Law 2002, Chapter 40.

16 The statute goes on to present five
17 specific questions to you. However, I ask you to
18 consider the initial wording in the statute,
19 wherein you were asked to evaluate the corporate
20 tax law reforms.

21 To that end, I ask you to interpret
22 that phrase, in broad terms, to include all of
23 the taxes imposed by Chapter 40, under what I
24 would call the guise of making companies pay
25 their fair share.

1 Specifically, I'm asking to include
2 in your report, a position \$150 processing fees
3 imposed on many partnerships. Although this is
4 not technically a corporate tax, it is certainly
5 one of the major revenue raises last year on
6 business, and it's really one of the most
7 devastating to our state citizens.

8 Basically, my testimony is going to
9 cover three areas. Two of which I'm sure you're
10 very familiar with; the third, you may not be,
11 and, hopefully, I will be bringing to your
12 attention.

13 The ones that are familiar to you
14 are the \$150 processing fee on partnerships,
15 advocating that that be repealed.

16 And the other item that I think
17 you're familiar is to reduce the corporate
18 minimum tax back from the 500 to the \$210 that it
19 was scheduled to be.

20 The third area is requesting you to
21 add relief provisions on the suspension of net
22 operating losses for those companies selling the
23 bulk of their assets as part of a plan of
24 liquidation.

25 In essence, what's happening is,

1 companies are selling their assets, getting a big
2 gain, going out of business, and never getting to
3 use those carry forward losses. And that's
4 causing them an undue hardship. They're
5 basically losing it forever.

6 Repeal of the new processing fee on
7 partnerships. Basically, this is neither a tax
8 on income, nor is it one on wealth. It was
9 nothing more than a tax in the vein of, "if it
10 moves, let's tax it."

11 I was actually involved in some of
12 the preliminary discussions with the treasurer's
13 office. And then, one day, when they cut off
14 involving business groups, I was there on behalf
15 of the N.F.I.B. Today I'm here on behalf of
16 myself.

17 But, you know, I got a call from
18 Mitchell Loster (Ph.) one day, and Michelle said,
19 What do you think of this \$150 per partner
20 charge? And I said, I think it's a terrible
21 idea. You're going to have a lot of small
22 investment clubs, and you're going to have a lot
23 of people.

24 And, frankly, when Jim Evans and
25 I -- I didn't use that name at the time. But Jim

1 and I were on the ADHOC tax force to put together
2 the S Corporation law, back in 1993. And one of
3 the things we added to that, as a fund-raiser,
4 was the filing of partnership returns. Up until
5 then, there were no partnerships returns.

6 And we added a requirement that
7 partnership returns be filed, and with the
8 purpose that you would then fine people, and get
9 money from them.

10 So, here, the absurdity of
11 requesting a \$150 fee for the processing, quote,
12 unquote, of returns, is absurd. It doesn't cost
13 the state to process insurance. What's happening
14 is, they're making money because of the returns
15 that are required, and this is nothing more than
16 a grab for money.

17 I'm turning now -- if you're
18 following along a little bit. I'm now page two.
19 I'm going to talk about the suspension of net
20 operating losses.

21 These provisions need some tweaking.
22 You know, for the most part, for most companies,
23 these are not going to hurt people, two-year
24 suspensions, it's just going to defer their
25 ability to use it.

1 However, what happens in the case of
2 an enterprise which terminates its operations?
3 This has happened at least to one of my clients,
4 who had it -- who had suspended its operations
5 prior to the passage of the legislation. And, in
6 February of 2002, sold its real estate and
7 inventory at a substantial gain.

8 They had a about a \$600,000 net
9 operating loss carried forward, and as a result
10 of sales, they had about a \$300,000 gain. They
11 ended up having to fork over \$27,000.

12 Under the new law, it was unable to
13 carry forward its net operating losses. The loss
14 is simply suspended and lost for -- it's not
15 simply suspended, it's lost forever.

16 What could be more unfair?

17 At the time of the transaction,
18 their loss could be utilized. I mean, it's even
19 more unfair, in this particular case, because the
20 transaction was done before the law was even
21 passed. However, the retroactivity of the law
22 has unfairly cost them substantial dollars.

23 And I'm not looking for you just to
24 correct this in the case of a retroactive
25 instance. Which, clearly, is one that should be

1 remedied. But also, if somebody's going to
2 terminate their company in this two-year period
3 because they have a good offer --

4 I mean, we should not -- the tax law
5 should not be affecting economic decisions too
6 much. You know, it's always going to have some
7 affect, but it shouldn't affect it too much.

8 So, basically, I put here, the
9 two-year suspension of net operating losses
10 should not apply to years in which the companies
11 sell substantially all of their assets as part of
12 a plan of liquidation. Instead of a deferral of
13 operating losses, these companies would suffer
14 the total elimination of their net operating
15 losses.

16 And the two-year suspension, if you
17 try and look for even a clearer rule, should not
18 apply to the last or next to last year of the
19 corporation's operation.

20 And you might ask, How do we know
21 when the next to last year is? Well, you know
22 because the guys amend the returns, and say, here
23 was my last year, and now I'm asking the law to
24 be used the year before.

25 MR. SHIPLEY: What's the theory for

1 applying it to the next to last year?

2 MR. DAVIDOFF: Often, what happens
3 is, it's in the next to last year that they
4 actually do the sale. And by the time they
5 formally liquidate, the Secretary of State,
6 you've drooped over into another year.

7 I've had many cases where I'll adopt
8 a plan of liquidation in January, I'll liquidate
9 the last asset in November, I don't get the final
10 return in until January, and then the secretary
11 -- the Secretary of State, or Division of
12 Taxation says, We want a next year's return. So,
13 technically, there would be another year's
14 return.

15 MR. SHIPLEY: So it would merely be
16 the year in which the gain and liquidation were
17 recognized?

18 MR. DAVIDOFF: That's where I'm
19 looking.

20 MR. SHIPLEY: It technically could.
21 Even be depending on how long it takes to
22 liquidate, you could have three tax years or it
23 could be one.

24 MR. DAVIDOFF: Sometimes, yes.

25 MR. SHIPLEY: So it just would be

1 targeted to the year in which the gain was
2 recognized?

3 MR. DAVIDOFF: That would be
4 certainly appropriate. Yes. Yes. That could
5 work.

6 MR. SHIPLEY: Is there a reason that
7 this should only apply to just total liquidation,
8 or would partial liquidation be covered, also?

9 MR. DAVIDOFF: I'm with you. The
10 only reason that -- why it's more urgent for a
11 total liquidation, at least, if you have a
12 partial liquidation, presumably, you have an
13 operating business going forward that could use
14 up the losses. But, certainly, in a total
15 liquidation there's a more compelling argument.

16 In this particular case, with this
17 particular company -- sometimes it just pulls at
18 your heart strings. It tugs a little bit.

19 You had a company that was in
20 business for 75 years here, in New Jersey, and --
21 you know, three generations. And here, right at
22 the end --

23 They did everything exactly the way
24 they were supposed to, and then, you know, when
25 we're preparing the tax returns, Oh, you owe

1 \$27,000.

2 The corporate minimum tax, you'll
3 see in my testimony, it's too high, it's too
4 high, it's too high. Even California, which
5 charges \$800, at least gives the first two years.
6 They give you a break. They don't charge you the
7 minimum tax. New York, in certain
8 circumstances -- and probably, some of you know
9 this better than I -- charges \$100, in many
10 cases.

11 And basically, what's happening
12 is -- and I've listed in my testimony how people
13 are reacting. You know, the merging into limited
14 liability companies, they've decided to actually
15 do business in other states.

16 Sometimes -- I've had this happen a
17 couple times -- they incorporate out of state
18 thinking that they're going -- even they're doing
19 business here in New Jersey, thinking that
20 they're going to avoid the tax.

21 And you may be losing some ground
22 where people like me tell them, no, no, no,
23 that's not going to work. They may actually just
24 not file in New Jersey, thinking they're okay,
25 and do business in New Jersey.

1 They've abandoned their
2 corporations. Some have, you know, just walked
3 away, and said, I'm not paying it. You had a lot
4 of inactive corporations. And they point it out
5 as one of the reasons to increase the minimum
6 tax. We have all these inactive corporations,
7 you know.

8 I was part of the group, in 1993,
9 again, that, you know, as part of the
10 negotiations between the governor, which, at the
11 time, was a democratic governor, and the
12 legislature which was predominantly republican,
13 there was discussion about, Let's increase the
14 minimum tax from \$25. And we phased it into
15 \$200.

16 And we actually put an automatic
17 provision, that every five years, take 75 percent
18 of the cost of living, and let's increase it
19 automatically so that the legislature would never
20 again have to vote an increase in the minimum
21 tax. Because they thought it was going to be
22 a -- to vote an increase in taxes would be very
23 difficult for the legislature to ever do. We
24 found differently in the last year.

25 MR. SHIPLEY: And have you found

1 that there's a significant number of fines paying
2 the \$500 minimum tax as opposed to AMA?

3 MR. DAVIDOFF: Oh, yeah.

4 Absolutely. You had an overwhelming number of
5 companies paying the minimum tax before.

6 MR. SHIPLEY: Basically, the
7 companies you're referring to are ones that fall
8 below the AMA's minimum?

9 MR. DAVIDOFF: Absolutely. Yes.
10 I'm talking about companies like --

11 I had one that had three
12 transactions a year, buying office supplies. I
13 had a company that was an office supply company,
14 that bought office supplies, and sold it to me
15 and a couple of other CPA firms, and, you know,
16 it was -- and now, the \$500, you know, puts me
17 into a \$300 deficit each year. So we ended up
18 merging that company into an LLC.

19 I have a lot of very small
20 corporations. Some that are just there to hold
21 the name, some that are just there awaiting for
22 something. And I have the same problem with
23 limited liability companies.

24 I had -- one of my clients had a
25 three-person LLC, and got hit by the \$450

1 assessment. And they had tried something, and
2 they said, Well, should I stay here or should I
3 go? And they said, This is just pushing me over
4 the line. Why do I need to be paying this? I
5 might as well just give up on the business. I
6 don't want to pay this money.

7 Now, it's not a lot of money. It
8 may not be a lot of money to me, it may not be a
9 lot of money to you. But, basically, when you're
10 looking at where you allocate resource. If it's
11 \$200, people could accept that. \$500, that
12 becomes significant money.

13 And, you know, certainly, a lot of
14 people were surprised, as much publicity with the
15 law. A lot of people didn't know, until March
16 15th or April 15th, that the LLC taxes.
17 Particularly, the withholding on out-of-state
18 people. A lot of people got surprised by that.

19 And the corporate tax, it's just --
20 you know, for the small ones is where I'm seeing
21 it. The relatively inactive ma and pa little
22 businesses, doing anywhere from zero to a couple
23 hundred thousand dollars a year. If you're doing
24 a couple hundred thousand dollars a year, you're
25 not going to squawk a lot about \$500 tax.

1 But a lot of these companies were
2 inactive, had very little activity. And, you
3 know, for those, it just doesn't make sense.

4 Now, you know, you might -- I
5 haven't even thought of it. But thinking out
6 loud with you today, and with the questions
7 raised, you might think about, well, we could
8 have a minimum tax grant, you know, to be \$200 if
9 you have less than 200,000 of gross revenue, or
10 less than this, and less than that. And much
11 like New York had something where their minimum
12 tax racks up based upon activity. And that --
13 you know, that may be something you may want to
14 consider as a recommendation.

15 Here's the tough part. Okay. Most
16 people come in here, and say, Let's reduce the
17 taxes. I'm going to come up here, and give you a
18 couple ideas on how to raise the revenue to
19 offset those reductions.

20 Obviously, we know, one way is,
21 you've gotten more money than you expected. Not
22 you, but in the State Treasury. From the
23 corporate taxes.

24 And that's a good thing because it
25 may allow you to give some relief in some of

1 these areas. And, again, I put all these in
2 writing in my testimony.

3 But basically, you know -- and I
4 encourage you to continue to close loopholes that
5 still may be available to multi-national
6 corporations, and specifically ask you to
7 consider a unitary business concept.

8 This is fair, in light of the fact
9 that 2002 legislation placed an unfair burden on
10 small businesses. Due, in large part, to
11 organizations lobbying heavily on behalf of the
12 largest corporations doing business in New
13 Jersey.

14 MR. SHIPLEY: What loopholes would
15 you be referring to?

16 Because we have been trying to
17 determine if there are any other loopholes out
18 there.

19 Is there anything specific you had
20 in mind?

21 MR. DAVIDOFF: No. I really don't.
22 I don't work enough in that area, that I -- you
23 know --

24 I think, when the debate was going
25 through, there were certain things that were

1 backed off on from bigger corporations. I think,
2 if you look to the legislative history, and see
3 what things were proposed, and backed off on, you
4 might want to take another look at some of those
5 items. And I don't remember them, offhand, right
6 now.

7 But I will tell you this, with the
8 New Jersey Chamber of Commerce that recommended
9 the increase from -- to \$500 in the minimum tax
10 because of, they wanted relief in other areas for
11 the larger corporations.

12 I'd also -- you know. Again, if
13 you're taking a look at -- you know, how do we
14 substitute? I'm not suggesting you do this
15 alone. But if you say, How do we give the relief
16 to the smaller, and, yet, collect the same
17 revenue?

18 New York has a tax on capital. All
19 right. Which is a very low tax if you're a very
20 small business. And you might want to consider,
21 you know, at a very minimal level, thinking of
22 that to replace it. Again, I think you have
23 better alternatives, but, you know, there are a
24 lot of things.

25 One of the items is, as you well

1 know, the federal tax rules allow only 50 percent
2 of your meals and entertainment.

3 New Jersey has, what I would call, a
4 complicating factor. In that, anything different
5 from the federal laws is a complication. They
6 actually give additional benefit by saying, We'll
7 give you a hundred percent.

8 Well, take that money, link up to
9 the federal law in there, and take that money and
10 provide it for relief on the minimum tax, provide
11 it for relief on the \$150 processing fee. Maybe
12 even formalize the exemption on investment clubs.
13 Right now, it is an informal \$60,000 a year.

14 So, you know, that's one area that
15 you can provide simplification. And most -- I
16 don't think you'll get a lot of squawks about
17 that because, you know, you're following the
18 federal law.

19 Much has been said, particularly
20 this year, more than last year, about all of us
21 joining in and sharing the burden of New Jersey's
22 budget deficits. However, that has not been the
23 reality at all.

24 Instead, at every turn, businesses
25 of every type have been attacked and burdened by

1 additional tax. Since taxes have been assessed
2 through an unfair amalgamation of new taxes.

3 Ideally, what should have taken
4 place as an across-the-board increase to
5 everyone, coupled with an couple true loopholes.
6 That's what should have happened.

7 Now, last year, I proposed that we
8 all share the burden. To that end, I proposed a
9 surtax as a fair, simplest solution to our budget
10 deficit.

11 We had an \$8 billion, approximately,
12 individual gross income tax. Many of the people
13 who pay the minimum tax and the \$150 processing
14 fee are in this category. And those specific
15 proposals are outlined in last year's testimony.

16 In this manner, everyone would be
17 coming together to close our budget deficit.
18 Those who paid very little would have very little
19 increase. What's a 5 percent increase if you're
20 only paying \$200 in tax. It's \$10. But if
21 you're paying 6,000 in tax, it's \$300.

22 Everybody's coming together to close
23 our budget deficit. The most burden falls
24 equitably on everyone across the board, and a
25 proportion to their current tax burdens.

1 You have unique opportunities over
2 the coming months to provide your expertise and
3 knowledge of the tax laws and tax policy to
4 recommend gutsy legislation, to eliminate the
5 three problems I have discussed today.

6 Quite simply: The \$150 tax
7 processing fee in a wholly inappropriate tax and
8 should be repealed; the suspension of net
9 operating loss has unintended effects which needs
10 to be corrected; and the minimum tax of \$500 per
11 year is too high.

12 Correct these inequities, and you
13 will have done New Jersey a huge service.

14 I would like to thank Dan Levine for
15 the support that he provides you today, and the
16 leadership he provided ten years when we worked
17 together, along with Jim, on the S Corporation
18 tax legislation.

19 I'd also like to thank each of you
20 for your time that you have committed to this
21 process. You should be congratulated for your
22 zest for public service and your commitment to
23 the integrity of the process.

24 I'm open to any other questions,
25 comments.

1 MR. EVANS: Questions of the
2 commission?

3 (No Response.)

4 MR. EVANS: Thank you very much. We
5 appreciate your time and your thoughts.

6 MR. DAVIDOFF: There's an extra blue
7 folder for the person who didn't show up.

8 MR. EVANS: Are there any other
9 persons that wish to speak at this time?

10 MR. NARDI: I'd just like to make a
11 few comments.

12 MR. EVANS: Why don't you come to
13 the table, give your name and spelling to assist
14 the reporter.

15 MR. NARDI: Frank Nardi, N-A-R-D-I.
16 I don't have anything formally prepared. I'll
17 just give you a little background of myself; I'm
18 a CPA, I'm also an attorney; I run a solo
19 practice in Newark, New Jersey.

20 Currently, I'm the vice-president of
21 the New Jersey Association of Public Accountants.
22 They asked me to come down here today and just
23 listen to the testimony. But as I listened to
24 Mr. Davidoff, I just wanted to say a few
25 comments, and discuss something that's been going

1 on with our organization.

2 When we found out that the minimum
3 tax was going to be increased to \$500, a lot of
4 us deal with small mom and pop organizations,
5 sole proprietors, with a corporate structure.

6 In speaking with the state of New
7 Jersey, I found that the state feels as though
8 maybe those people shouldn't be corporations.

9 And I'm getting a sense, from my
10 small corporations, which I have about a hundred
11 different corporations, small clients, that this
12 \$500 increase has really hurt them in the
13 pocketbook, and they're not willing to continue
14 as a corporation.

15 As Mr. Davidoff has said, that a lot
16 of the clients didn't realize that the fee would
17 be \$500 until March. And they were willing to
18 make it their final years corporate business tax
19 returns, and switch back to a sole proprietor,
20 provided that they didn't have to pay another
21 \$500 fee.

22 And I know this is going outside the
23 CB tax structure a little bit, and going into the
24 division of commercial reporting. Dissolution
25 process in New Jersey, right now, to get these

1 corporations back to sole proprietors is very,
2 very difficult and costly for these people.

3 This year my CBT clients looked a
4 \$750 tax liability as opposed to a \$200 tax
5 liability. The reason being, it was 500, plus an
6 additional 250 as the estimated tax for next
7 year. My clients are asking me, How would I go
8 about dissolving?

9 I inform them that they would
10 additionally have to pay another \$500 for 2003
11 because their corporation wouldn't be dissolved
12 in that year, of 2002; I told them that the
13 requirement to dissolve the corporation, through
14 New Jersey, takes over 90 days; and that the
15 attorney's fee for something like that is
16 typically somewhere between 750 to \$1,500 on the
17 low end.

18 So these people are faced with \$750
19 in 2002, an additional 250 for 2003, and another
20 \$1,500 in attorneys fees. Costing them \$2,500 to
21 dissolve their corporation.

22 And the reason why I bring it to
23 your that attention is, I understand a lot of you
24 don't deal with small companies. But in the
25 past, attorneys, not myself, but others attorneys

1 have told people, don't pay your annual report
2 fee, and the corporation will dissolve itself, by
3 statute.

4 And I understand, that if you didn't
5 have the annual report filed for three years, the
6 corporation will dissolve, under state statute.

7 The Division of Taxation doesn't
8 recognize that dissolution. They require a tax
9 clearance certificate, and a formal dissolution
10 process.

11 As I said, there's a lot of
12 corporations sitting on the state records right
13 now. It's a waste of time, from the State of New
14 Jersey's viewpoint, resources and correspondence.

15 I always get delinquency notices
16 from corporations that haven't been in business
17 for years, and they're looking for that \$200 a
18 year CBT tax. That's accumulated up to a large
19 amount of money if they haven't dissolved.

20 I'd like the commission, here, to
21 pretty much, try and find a simplified way to
22 dissolve corporations for inactive companies that
23 have been around for years.

24 And the reason why this has become
25 larger concern is, there was mention that I found

1 that the CBT franchise tax may become a personal
2 tax liability.

3 In the past, they could not go after
4 the corporate officers for the CBT tax. The
5 corporate officers would only be responsible for
6 sales and use tax, and GIT tax. The trust fund
7 monies.

8 Now, with this law coming into
9 place, the State of New Jersey would be basically
10 chasing companies that haven't been in business
11 for years for thousands of dollars.

12 I'd like the commission to possibly
13 take a look at states like New York and Florida.
14 I understand New York basically dissolves a
15 corporation with a phone call. We don't have
16 that luxury in New Jersey. And, in fact, the
17 process extends beyond 90 days sometimes. And I
18 just want to go into that process for one second.

19 If a client wanted to dissolve in
20 2002, you had to have your application in to the
21 State of New Jersey by September 30. If you
22 tried to dissolve in October, November, or
23 December, for the most part, your dissolution
24 would not be effective for 2002, and you have to
25 go back to your client, and tell them that they

1 would have to file a CBT tax return for 2003.

2 Clients don't want to hear that.

3 There's a very negative stance
4 towards the state, at that point. Why do they
5 have to have the state take 90 days to dissolve
6 their corporation?

7 The state did accept a few
8 dissolutions after October, and gave you an
9 opportunity to have it resolved in 2002. But
10 those were few and far in between.

11 The other problem that I've come
12 across is reinstatements of corporations that
13 have lost their corporate charter. Reasons why
14 companies have lost their corporate charter is
15 failure to file a CBT return or an annual report.

16 In the past, a corporation was not
17 advised that their annual report was not received
18 and filed. Sometimes the attorneys would receive
19 that annual report, and not forward it to the
20 client.

21 I had one client that was
22 inactive -- or lost their corporate charter back
23 in '84, and didn't find out about it until a year
24 ago.

25 In trying to dissolve that

1 corporation, formally, I was faced with the fact
2 that I had to reinstate the company, which costs
3 over \$375, bring that past due CBT tax and annual
4 report fees back into existence, and then take
5 the time to dissolve the corporation.

6 You're going to -- the state is
7 going to be basically wasting a lot of time and
8 effort and money trying to track down these small
9 corporations that shouldn't have been
10 corporations, possibly. And all I'm asking is,
11 if there's a possibility of streamlining the
12 process, making some type of amnesty provisions
13 to dissolve old corporations so that they're not
14 affected by the penalty periods and interest.
15 Maybe just a one flat sum. To try and get some
16 of these corporations that the state is wasting
17 their time trying to track down.

18 I appreciate your time on that.
19 Thank you very much. I'm sorry I didn't have
20 anything formal. But I wish that you would
21 consider the small taxpayer out there, and try
22 and make some type of provision to reduce the
23 amount of tax and costs in dissolving the
24 corporation in order to bring him back to a place
25 where he could be sole proprietor, and not incur

1 this additional tax.

2 Thank you.

3 MR. EVANS: Thank you, Mr. Nardi.

4 Are there any questions of the commission?

5 (No Response.)

6 MR. EVANS: Thank you. Any other
7 persons wish speak with the commission this
8 morning?

9 (No response.)

10 MR. EVANS: If not, the next
11 scheduled public hearing of the commission is
12 May 29, on the Rutgers campus in Camden, New
13 Jersey. It's scheduled to begin at 1 p.m.

14 With no other comments from the
15 commission, or any commissioner, we'll conclude
16 this hearing.

17 Thank you.

18 (HEARING ADJOURNED AT 2:18 P.M.)

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C E R T I F I C A T E

I, MIRIAM RIOS (License No. XIO2031), a
Certified Shorthand Reporter and Notary Public of
the State of New Jersey, do hereby certify the
foregoing to be a true and accurate transcript of
my original stenographic notes taken at the time
and place hereinbefore set forth.

/s/ MIRIAM RIOS

MIRIAM RIOS, CSR
(XIO0203100)

Dated: June 18, 2003

1 STATE OF NEW JERSEY
2 DEPARTMENT OF TREASURY
3 CORPORATION BUSINESS TAX STUDY COMMISSION

4
5 PUBLIC HEARING

6
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9
10 AT: RUTGERS UNIVERSITY
11 Student Center
12 311 North 5th Street
13 Camden, New Jersey
14 DATE: THURSDAY, MAY 29, 2003
15 TIME: 1:21 P.M. TO 2:38 P.M.

16
17
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19
20
21
22 ESSEX-UNION REPORTING SERVICE
23 425 Eagle Rock Avenue
24 Roseland, New Jersey 0768
25 973-228-3118

1 P A N E L M E M B E R S :

2

3 JAMES B. EVANS, Jr., Esq., Chairman

4

5 TAMI C. GAINES

6

7 KEN GERSHENFELD

8

9 JOHN J. PYDYSZEWSKI, State Tax Manager

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11 DAVID J. SHIPLEY

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(NO EXHIBITS WERE MARKED.)

R E Q U E S T S

(NO REQUESTS WERE MADE.)

1 CHAIRMAN EVANS: Good afternoon, my name
2 is Jim Evans. I serve as the current chair of
3 the Corporation Business Study Tax Commission.
4 Today we have Ken Gershenfeld and John
5 Pydyszewski of the Commission attending this
6 hearing as well.

7 The Commission was established
8 pursuant to Section 31 of Public Law 2002 Chapter
9 40 designated to the Business Tax Reform Act.
10 This advisory commission is to study and evaluate
11 the corporate tax law reforms adopted pursuant to
12 the act. This Commission is to issue a report
13 with findings and recommendation to the governor
14 and legislature along with any legislative bills
15 and desires to recommend for adoption by the
16 legislature no later than December 3, 2003.

17 If the director of the Division of
18 Taxation determines that the final report of this
19 Commission has not been released by June 30,
20 2004, the director shall suspend the alternate
21 minimum assessment imposed by the act for all
22 privilege periods commencing after December 31,
23 2004. If this Commission recommends the
24 termination of the alternate minimum assessment,
25 the assessment shall not be imposed for privilege

1 periods beginning on or after January 1, 2005.

2 The Business Tax Reform Act directs
3 this Commission to hold at least three public
4 hearings. This hearing is the last of three
5 scheduled public hearings. On behalf of each
6 member of the Commission, I thank Rutgers
7 University for making available to the Commission
8 its facilities in the Newark, New Brunswick, and
9 Camden Campuses.

10 The Commission through the office of
11 the Treasurer provided notice of these scheduled
12 hearings of the Commission to the Secretary of
13 State, all major papers throughout the state.
14 The Commission through the Office of the
15 Treasurer also notified various business, tax,
16 and professional associations of these public
17 hearings.

18 With that, we'll have the first
19 speaker, Mary Forsberg.

20 Thank you, Mary.

21 MS. FORSBERG: Mary Forsberg.

22 (David Shipley, Commission member,
23 arrives.)

24 CHAIRMAN EVANS: Before you start, I
25 guess David Shipley has also joined the

1 Commission, a Commission member who joined us
2 today.

3 Mary, thank you. Go ahead.

4 MS. FORSBERG: Thank you for the
5 opportunity to testify before you today. My name
6 is Mary Forsberg. I am a senior policy analyst
7 at New Jersey Policy Perspective. New Jersey
8 Policy Perspective is a nonpartisan and nonprofit
9 research and educational organization established
10 in 1997 with the mission of promoting broad
11 debate about the important issues facing the
12 people of New Jersey.

13 Before talking a job with New Jersey
14 Policy Perspective, I was an analyst at the
15 nonpartisan Office of Legislative Services. I
16 have spent more than 20 years analyzing taxes,
17 budgets and public sector programs.

18 Earlier this year, I wrote a report,
19 A Question of Balance, which attempted to explain
20 the New Jersey business tax and the reforms that
21 took place last year. My purpose in writing this
22 report was to increase awareness about the
23 corporate business tax so that people who are not
24 CEOs, lawyers, CPAs, lobbyists or employees at
25 the New Jersey Division of Taxation can have an

1 informed opinions about the way we tax
2 corporations.

3 Information that came out last year
4 prior to the CBT reforms showed that the
5 corporate business tax in New Jersey was not
6 working.

7 Although corporate profits doubled
8 from 15.6 billion in 1990 to 31.2 billion in
9 2000, corporate tax revenues were stagnant.

10 Seventy-seven percent of
11 New Jersey's 262,000 corporations paid only \$200
12 in corporate business taxes and 30 of the 50
13 largest employers in New Jersey were among these
14 corporations.

15 The 50 largest employers in
16 New Jersey combined to pay \$345 million in
17 corporate business taxes in 1999 but 10 of these
18 companies paid \$314 million or 91 percent of the
19 revenue, while 30 collectively paid a total of
20 \$6,000 -- only \$200 per company.

21 A simple comparison of three grocers
22 at a legislative hearing last June showed how
23 inequitable the New Jersey corporate business tax
24 was. The giant multi-state A&P chain, one of
25 New Jersey's 50 largest employers pay, paid \$200

1 in corporate business taxes while a smaller
2 New Jersey-based QuickChek paid \$210,000; and the
3 smallest of all, a single store, Pagano's paid
4 \$3,000.

5 Prior to the reform, certain
6 corporations were not subject to the New Jersey
7 franchise tax if they solicited orders and
8 delivered goods in New Jersey but did not have an
9 office or employees in the state. This put
10 New Jersey-based businesses subject to the
11 franchise tax at a comparative disadvantage to
12 other corporations if they were not subject to
13 the New Jersey franchise tax.

14 Some of the changes made to the
15 corporate business tax in 200032 were an effort
16 to address a projected shortfall in the fiscal
17 year 2003 budget and were expected to provide a
18 one time, one fiscal year benefit. I know you
19 know all of this but I would like to highlight
20 three key changes that I think may have a longer
21 term impact.

22 The first is the Alternative Minimum
23 Assessment and Loophole Closing Proposals. The
24 AMA was designed to measure a company's economic
25 activity in New Jersey in situations where the

1 traditional corporate business tax is not a fair
2 measure. It is levied on either gross receipts
3 or gross profits at graduated rates and allows no
4 deductions or exemptions. Every corporation with
5 gross receipts above \$2 million or gross profits
6 above \$1 million must calculate its liability
7 under the revised old system and under the AMA
8 and pay whichever is highest.

9 Two types of income are expected to
10 be captured by the AMA.

11 The first is the situation where a
12 large New Jersey corporation is able to use
13 loopholes in the tax code to transfer valuable
14 assets to another state in order to reduce its
15 taxable liability in New Jersey. The tax reform
16 has made it more difficult to transfer these
17 assets. Absent mandatory combined reporting for
18 all multi-state corporations, the AMA is expected
19 to improve the distribution of the tax burden
20 between multi-state corporations and
21 New Jersey-only corporations.

22 The AMA also applies to out-of-state
23 companies that sell products in New Jersey but
24 have no office or employees. Because it is a tax
25 on gross receipts or gross profits not income,

1 New Jersey expects it will be able to collect
2 taxes from every corporation that earns money in
3 the state. It is expected that this will level
4 the playing field between New Jersey companies
5 and untaxed out-of-state companies.

6 Tax Rates. All corporations with
7 incomes over \$100,000 and over 50,000 continue to
8 be taxed at the respective rates of 9 percent and
9 7.5 percent. Beginning in 2002, a new reduced
10 rate of 6.5 percent is applied to corporations
11 with net incomes of \$50,000 or less. The obvious
12 impact of this is to tax smaller corporations
13 less heavily.

14 The minimum corporate business tax.
15 The new law increase the minimum corporate
16 business tax from \$210 to \$500 annually.
17 According to the Division of Taxation, two types
18 of corporations are likely to pay this tax. One
19 group is the 60,000 or so mostly inactive
20 corporations that had no economic activity but
21 remain incorporated for a variety of legal and
22 business reasons; the other are the 100,000
23 New Jersey corporations that will not be subject
24 to the AMA either because their gross receipts or
25 their gross profits are below the 2 million and

1 1 million.

2 This past Tuesday Treasurer McCormac
3 told the Assembly Budget Committee that in FY
4 2003 the state expects to collect over \$2.4
5 billion in taxes from corporations who do
6 business in this state. He acknowledged that
7 approximately \$500 million of these revenues are
8 due to one time speed up provisions. Even
9 discounting the \$500 million, this is
10 significantly more than what would have been
11 collected without the reforms.

12 Although it is obvious that
13 corporations are paying more tax, the underlying
14 source of the new revenue is not yet
15 understood -- and won't be understood for
16 months -- obviously, as you know, because many
17 corporations file preliminary returns and pay
18 their tax in April but do not file a final return
19 until October.

20 As someone interested in taxes and
21 equity I would like to analyze and be able to
22 understand who pays the state corporate business
23 tax. Because of privacy issues, however,
24 anecdotal information is all that is available --
25 interesting for the story but is not necessarily

1 the most accurate or appropriate basis for public
2 policy.

3 Sixteen years ago was the last time
4 that the New Jersey Division of Taxation
5 published information on corporate tax returns.
6 This information actually shows the overall
7 structure of the corporate business tax has
8 change little. In 1987, 69 percent of
9 New Jersey's 216,572 corporations paid \$200 or
10 less in corporate taxes and 1467 paid more than
11 \$100,000. This is not unlike the information
12 Governor McGreevey released in his budget last
13 year.

14 But neither then nor now do we have
15 information on the companies who are paying that
16 tax. What we have are anecdotal stories like the
17 story I told earlier about the three grocers. In
18 New Jersey it is possible to have open
19 discussions about property taxes, income taxes
20 and sales taxes because we have information
21 available to us. Property tax records are
22 publicly available to everyone. Substantial
23 information about the income tax data is also
24 available to the public because the state
25 publishes that data annually. No where is

1 corporate income tax data made available and this
2 is bad public policy.

3 I would like to close with a
4 selection of the recommendations I made in
5 A Questions of Balance, which I assume some of
6 you had read, which I believe would improve
7 public awareness and accountability.

8 The first is I believe the state
9 should mandate combined reporting. I am not an
10 expert on this but tax practitioners who
11 represent the public not corporations agree that
12 mandatory combined reporting is perhaps the
13 single most important measure any state can act
14 to simplify corporate tax administration and
15 limit the tax strategies that companies use to
16 minimize their tax liabilities in individual
17 states. Mandatory combined reporting is
18 considered one of the best ways to minimize
19 corporations' ability to shift income to lower
20 tax jurisdictions. This leads me to my second
21 recommendation.

22 The state should consider making the
23 Alternative Minimum Assessment permanent. As you
24 know, the AMA is scheduled to expire in 2006 for
25 most companies. The state believes the measures

1 it has taken to limit loophole abuses will reduce
2 the need for this alternative tax.

3 It is very important for the state
4 to do a very thorough job of analyzing who is
5 paying the AMA; how much they are paying; and
6 what they would pay under the corporate business
7 tax. The state should not allow the AMA to
8 sunset until it is absolutely certain tax
9 shifting strategies have been eliminated.

10 The state should also require
11 corporations to make public the amount of tax
12 they pay in each state just as they disclose the
13 amount of federal tax they pay. Since
14 corporations are creatures of the law and it is
15 in the public interest for citizens to know
16 whether the standards of law are being met,
17 New Jersey should require corporations to provide
18 the public with clear detailed information on
19 their taxes. This should include a
20 straightforward statement of what they paid in
21 state taxes and the reasons why those taxes
22 differ from the statutory 9 percent, 7.5 percent
23 or 6.5 percent corporate rates now in effect in
24 New Jersey. Without information there can be no
25 accountability.

1 New Jersey officials should also
2 support the creation of a nationwide accounting
3 database which would show how corporate taxable
4 income gets divided across state lines and to
5 which states corporations pay taxes.

6 The state should also report how
7 much tax revenue is given up by providing
8 incentives to businesses and should establish
9 rigorous criteria for the future use of such
10 credits. A number of states, including Maine,
11 Minnesota, Texas, Connecticut and West Virginia,
12 have enacted disclosure laws that require
13 companies to make public the value of subsidies
14 they receive each year. Some states also have
15 started to respond to subsidy abuse through
16 "clawback" laws that reclaim taxes and subsidies
17 if a company does not fulfill all aspects of the
18 incentives provided.

19 Tuesday at the Assembly Budget
20 hearing, legislators wanted to know whether this
21 commission had met and whether you had prepared
22 any reports yet. There is obviously great
23 interest in the impact of these reforms.

24 I, for one, am very interested in
25 your analysis and recommendations and look

1 forward to learning more about the corporate tax
2 burden in New Jersey.

3 Thank you for your time and
4 consideration.

5 CHAIRMAN EVANS: Thank you, Mary.

6 Questions of Mary?

7 MR. GERSHENFELD: I have lots.

8 Well, Mary, first of all, I went to
9 your presentation you made on A Question of
10 Balance. I thought it was great. I think you
11 really -- your report was very interesting
12 reading and it gave me a very good springboard to
13 start understanding, so we appreciate that.

14 MS. FORSBERG: Thank you.

15 MR. GERSHENFELD: A couple of
16 interesting things, which I don't know and I'm
17 going to sort of -- you talk about -- on one
18 hand, you say that, for example, let's talk about
19 combined reporting which you know it's single.
20 Personally, I think the combined reporting may be
21 something which we would consider as one of the
22 questions.

23 The question that we heard from a
24 lot of people is there's a real question with
25 combined reporting as to you may agree that

1 theoretically it works, but what you do after the
2 first three or four years? The state has no idea
3 how much revenue it will bring in or not bring in
4 and it could be a lot more, a lot less. And the
5 major threshold is one from a practicality which
6 is as far as the state knows, it might just be a
7 billion dollars less in the first year.

8 And maybe the answer is in good
9 years it could have switched very easily and no
10 one would have worried. But in years where it's
11 financially troubling, they can't take any risk
12 of not having the revenue or predict what the
13 revenue will be without any good estimate.

14 What do you think about that?

15 MS. FORSBERG: I'm not an expert on
16 this, I have to admit. But I talked to someone
17 at the Division of Taxation about this, and I
18 note that, I was told that the administration
19 considered combined reporting and backed off
20 because they thought they might lose money. And
21 the person I talked to at the Division of
22 Taxation said, "Well, you know, who knows." But
23 he actually didn't really feel that the state
24 would lose money.

25 MR. GERSHENFELD: But it's not even

1 losing money, they just have no idea how to
2 project what the number's going to be.

3 MS. FORSBERG: Oh.

4 MR. GERSHENFELD: In other words,
5 it's got no -- it's not -- if they knew it was
6 going to cost them \$500 million, they'd say
7 "Fine, we could budget that. We'll do it." The
8 real question is they just don't have a clue as
9 to what the number will be.

10 MS. FORSBERG: Interests of doing
11 revenue checks.

12 MR. GERSHENFELD: That's exactly
13 right.

14 MS. FORSBERG: Oh, okay.

15 MR. GERSHENFELD: But two or three
16 years they're just sort of in the dark. If you
17 could tell them exactly what the number would be,
18 we could then say "Here is the number, let's work
19 on it. Here's close to the number." But they
20 just don't have a clue. They're smart guys.
21 They've been working on it. They've been
22 thinking about it. It's not like they're --

23 MR. SHIPLEY: I don't think it's a
24 matter that they don't have the information to
25 upon which to actually to come up with a

1 projection.

2 MS. FORSBERG: Right.

3 MR. SHIPLEY: That may be a more
4 accurate statement.

5 MS. FORSBERG: Well, you know, when
6 I worked at the Office of Legislative Services,
7 for a couple of years I was part of the group
8 that did revenue estimating. And there were all
9 sorts of -- I mean, we always worked in the dark
10 because we didn't have as much information as
11 anybody else had. And I so, you know, part of it
12 is a guess. But I know with a lot of those tax
13 assignments we really didn't have much of a clue
14 and had to go along with what the administration
15 believed the estimate was going to be, and I
16 believe they were guessing a lot of the time,
17 too.

18 MR. GERSHENFELD: It's also
19 interesting to me that you -- you know, we had
20 some people from the state tax and they both
21 thought that sort of you look around the state
22 and you don't find gross receipts anywhere. And
23 that really if you had your intertidal (ph)
24 reporting or combined reporting, that would sort
25 of put everyone on an equal footing and then

1 there was really no purpose for the AMA other
2 than to raise revenue.

3 It's interesting that you connect
4 the two and you think that even if you have
5 combined reporting, the AMA is still something
6 that should be permanent. It seems to me that if
7 the AMA would sort of tax people fairly, you go
8 to combined reporting, then the AMA is not really
9 needed unless you need to raise revenue. I mean,
10 that should be a revenue question not a fairness
11 question.

12 MS. FORSBERG: Right. Right.

13 MR. GERSHENFELD: Unless you believe
14 that --

15 MS. FORSBERG: Well, I think it
16 doesn't have to be the two together. I think
17 what I was saying was that unless the state feels
18 really strongly that -- what is it -- that it's
19 not mandatory combined reporting, it's suggested
20 mandatory reporting in New Jersey now -- unless
21 the state feels that they are capturing all of
22 the income. That's what's I think the AMA should
23 continue.

24 MR. GERSHENFELD: But doesn't it
25 combine with what they automatically do? I mean,

1 basically there's nowhere else to hide anything,
2 if you know what I mean.

3 MS. FORSBERG: It does. But if the
4 state enacts combined reporting, which I don't
5 think there's any evidence the state is
6 necessarily going to do --

7 MR. GERSHENFELD: That's one of the
8 questions before them.

9 MS. FORSBERG: Right, yeah, I know
10 that. I know that. Then I think that the AMA
11 should stay.

12 But the other thing is that nobody
13 knows what the impact of the AMA is going to be.
14 And you obviously are going to be doing an
15 analysis of that. And it seems to me that if the
16 AMA turns out to be a good source of revenue and
17 not draconian to small business and to businesses
18 that would be subject to it, I don't see any
19 reason to get rid of it. I mean, I think
20 corporations should pay more than \$200 and more
21 than \$500 a year if they are making money.

22 MR. SHIPLEY: But doesn't the AMA
23 apply even if you're not making money? I mean
24 corporations can have receipts but not have
25 income. And therefore, start-up companies like

1 biotechnology companies, companies which have
2 fallen on hard times are going to be technically
3 losing money but still paying a substantial tax
4 based on their receipts.

5 MS. FORSBERG: I mean, technically
6 that's true, but I don't know that that -- you
7 know, I don't know how this is going to work out.
8 I don't know exactly how the AMA will be, how
9 much corporations will end up paying as a result
10 of the AMA.

11 MR. PYDYSZEWSKI: I think that's a
12 good point you make. I mean, you stated in your
13 testimony that you would like to be able to
14 analyze and understand who pays the CBT. And I
15 think all of us on the Commission would like to
16 do that as well. I mean, that's part of our
17 problem here. But to say that the state should
18 make the AMA permanent when we don't know what
19 the impact of it is, seems to me to be somewhat
20 of a contradiction.

21 MS. FORSBERG: Well, I think maybe I
22 didn't make myself clear. I think what I meant
23 to say was that if the AMA is a good source of
24 revenue and is not -- is not a burdensome tax for
25 business in New Jersey, I think it should be

1 permanent. If it is a problem then -- I think
2 you need more information. But I think you have
3 to make sure to do the analysis, to know exactly
4 who's paying the AMA.

5 MR. GERSHENFELD: I have a question
6 which is -- maybe this is one of the problems I
7 have with the Commission in general, so it's not,
8 you know -- in that you were looking at the tip
9 of the iceberg. Which when you look at a
10 corporation, you shouldn't just be looking at the
11 CBT it pays. You should be looking at the
12 property tax that it pays, the sales tax it pays,
13 the personal income tax that employees pay.

14 And, you know, to a certain degree,
15 if you're attracting -- this has influenced me --
16 if you're attracting corporations from New York
17 City, and even if it pays no corporate tax even
18 though property tax but it's paying \$50 million
19 sales tax and \$25 million in property tax, and
20 you've got a thousand employees that are making a
21 \$100 million paying personal income tax, that's a
22 net, huge positive for the state of New Jersey.
23 And I feel like it's not just the CBT but don't
24 you have to look in sort of the entire view of
25 what's coming -- is that a right analysis or is

1 that something -- I mean, you thought about this
2 a lot.

3 I just feel like looking at the CBT
4 by itself, all you know A&P is paying -- you
5 know, in your example, A&P is paying \$50 million
6 in property taxes, it's hiring 20,000 employees
7 and paying taxes -- you know, withholding taxes
8 and everything else, that the A&P food chain is
9 in effect having -- I don't know, I'm making up a
10 number -- \$200 million of taxes paid to the State
11 of New Jersey, while QuickCheck may pay 210, but
12 they pay another \$5 million. And in reality A&P
13 is paying 200 million versus QuickCheck which is
14 5.2, and Pagano's is paying -- see, I mean, is
15 that the wrong analysis? I don't know.

16 MS. FORSBERG: I mean, I've seen
17 those analyses.

18 MR. GERSHENFELD: Oh, you have.

19 MS. FORSBERG: Yeah. I looked at
20 one not too long ago that was making the case
21 that corporations do pay all sorts of taxes.
22 When they pay property taxes, they are
23 responsible for collecting sales tax and employee
24 taxes. But, you know, that's true of everybody.
25 I mean, everybody pays property tax in New Jersey

1 whether you own property or not. You live in an
2 apartment, you pay property taxes through your
3 rent. And we all pay withholding tax.

4 So I think that -- I'm not sure that
5 it's fair to -- it's fair to include all of the
6 different taxes that corporations pay unless you
7 do the same thing with individuals. And -- I
8 mean, I know a lot of people that do analyses
9 that talk about the tax burden and whether
10 corporations are moving to or leaving New Jersey
11 and New Jersey Policy Perspective is one of the
12 organizations involved in a thing called the
13 Fairness Alliance, which I don't know if you know
14 what it is, but it's a group of I think 110
15 organizations now that want to raise the income
16 tax, personal income tax, on people earning
17 \$400,000 or more.

18 And people make the argument that if
19 you do that, all the rich people will leave the
20 state. They'll move someplace where it's cheaper
21 to live. We looked at IRS data of where people
22 moved based -- it was based on income and all
23 these other things. And there was no correlation
24 between -- in fact, when the property -- when the
25 income tax was raised in New Jersey, more people

1 moved to New Jersey than before. So there
2 doesn't seem to be a correlation between raising
3 income taxes and where people live and where they
4 move. I don't think you can make the argument
5 that corporations only move to a state because of
6 the taxes that they pay there.

7 MR. SHIPLEY: That clearly would be
8 a factor in their analysis.

9 MS. FORSBERG: It would be a factor,
10 yeah, but I don't think it's the absolute most
11 important factor. I think the services that are
12 supplied in a state by the taxes that people pay
13 are the things that make a place desirable, I
14 think, for corporations. And if you have a
15 well-educated workforce, and that comes from the
16 taxes that individuals and corporations pay, and
17 you have a good transportation system, I don't
18 think that raising the income tax on corporations
19 a little bit is going to make that much
20 difference.

21 CHAIRMAN EVANS: Mary, on your AMA
22 proposal, just to be clear, are you proposing
23 that it remain as it is inactive or that it not
24 sunset with respect to certain New Jersey
25 taxpayers?

1 MS. FORSBERG: I am recommending
2 that it remain as inactive.

3 CHAIRMAN EVANS: So that it sunsets
4 with respect to companies that are inside
5 New Jersey but only --

6 MS. FORSBERG: Oh, no, no.

7 CHAIRMAN EVANS: I'm sorry.

8 MS. FORSBERG: Depending on what the
9 analysis shows that it not sunset for New Jersey
10 corporations.

11 CHAIRMAN EVANS: As it's presently
12 proposed to sunset in any event.

13 MS. FORSBERG: But it depends on
14 what the analysis of it shows.

15 CHAIRMAN EVANS: What would you be
16 looking to make that kind of determination?

17 MS. FORSBERG: I'm not sure what is
18 draconian about the tax is for a corporation. I
19 mean, at the last hearing, Martin Davidson was
20 talking about \$500 as being an outrageous amount
21 for people to be paying. I mean, I don't think
22 that's an outrageous amount.

23 So I guess, you know, somebody has
24 to make a determination -- and I guess it would
25 be you -- what is a reasonable amount of tax for

1 people to pay. I mean, I wouldn't have a problem
2 with the rates changing, you know, going up,
3 going down. But, you know, New Jersey has taxed
4 utilities as a gross receipts tax for years and
5 years and years. And it's a tax that works okay.

6 MR. SHIPLEY: But isn't there a
7 difference in taxing utilities on a gross
8 receipts tax where each utility has a specific
9 rate tailored to that utility, as opposed to
10 taking a broad swap of all the corporations and
11 taxing them on one or two bases regardless of
12 whether a corporation is a high-margin or a
13 low-margin corporation, which means that some
14 corporations are going to fair better on a gross
15 receipts method or on a gross profits methods,
16 other corporations are going to fair worse. And
17 we've heard a lot of issues arising from certain
18 corporations that are very high volume. And a
19 large amount of receipts do not have significant
20 cost of goods sold and therefore are paying a
21 substantially higher tax than a corporation
22 that's similarly situated in another industry.
23 So...

24 MS. FORSBERG: You know, that's
25 information I don't have. That's the kind of

1 information I'd really like to see. I think that
2 that's a kind of analysis not anecdotal analysis,
3 but I think that's the kind of analysis that
4 needs to be done and I haven't seen that and --

5 MR. GERSHENFELD: The only
6 information we have is in the Treasury. The
7 Department of Taxation has said that at least 35
8 or 50 different industries have come in and said
9 to them "We need to be taxed differently than the
10 AMA." Because we -- you know, every group in
11 New Jersey has come in to them and said "We're
12 special because..."

13 MS. FORSBERG: We're special, yeah.

14 MR. GERSHENFELD: So that's the only
15 anecdotal in effect that we have.

16 MR. PYDYSZEWSKI: One, I think
17 that's how the Washington business and occupation
18 tax has evolved over time as well is that they
19 have different rates for different industries
20 specifically because you have different margins
21 and different industries.

22 But I just wanted to touch back on
23 one thing you said, I don't want to take that out
24 of context or anything, but you said if the state
25 you were talking about if the state -- you were

1 talking about whether taxes are a decision-maker
2 in where a company locates, you said that you
3 don't think that raising taxes a little bit would
4 have that effect. And I think that if the state
5 had just raised taxes a little bit, this
6 Commission would not have been put in place, no
7 one would have objected to taxes being raised a
8 little bit. I think the problem is that that
9 they were raised a lot and, you know, we need to
10 understand why. And I think we need to
11 understand better if the fact they were raised a
12 lot is effecting where companies locate, and I
13 don't think we can know that at this point.

14 MS. FORSBERG: Right, yeah. No, I
15 agree with that, and I don't think anybody knows
16 that. And I know that when the Treasurer came in
17 to talk about the revenues that are coming in,
18 everybody's been surprised that they're coming in
19 faster than anyone expected. But \$500 million of
20 that is the acceleration part of it and so I
21 think you're talking about basically a doubling
22 in taxes. But the department doesn't know, the
23 state doesn't know whether there's going to be a
24 lot of refunds are going to be paid out from
25 that.

1 So, you know, if it turns out that
2 instead of collecting \$700 million, which was the
3 initial amount that the state was going to
4 collect, if the state's collecting \$1.4 million,
5 I guess it depends who's paying that tax whether
6 it really got raised a lot.

7 MR. GERSHENFELD: You're talking
8 about other states -- just to follow up on John's
9 question -- I sort of -- maybe because I'm a
10 New Jerseyan, I think of New Jersey as being a
11 unique state and it's got sort of a border with
12 New York and a border with Pennsylvania. And
13 there seems to be lots, I wouldn't say fighting,
14 or attempt to get businesses to move from
15 New York to New Jersey or from Pennsylvania to
16 New Jersey. And therefore in my mind, you know,
17 maybe in other states, I don't know, Kansas or
18 whatever, it doesn't make a big difference
19 because the state's got to move 500 miles, but
20 here it's a move of five miles across the river
21 or whatever it is and there maybe things make a
22 bigger difference.

23 I just think of New Jersey as being
24 a unique state where every little bit makes a
25 difference, if you know what I'm saying. I don't

1 know if other states are like that, if that's
2 common in other states. Do you have any sense of
3 that?

4 MS. FORSBERG: I lived in Minnesota
5 for five years and Minnesota was always talking
6 about how everybody was moving to Iowa and
7 everybody was moving to Wisconsin because
8 Minnesota was too expensive to live in. So, you
9 know -- and I went to Connecticut to talk to the
10 legislature up there because there was a group
11 that was pushing for some of these reforms in
12 Connecticut. And one of the legislators up there
13 said Well, you know, now New Jersey has priced
14 itself out of the business market, what do you
15 think we should do in order to lure all the
16 business up to Connecticut. And, you know, I
17 don't think that all the businesses are going to
18 leave New Jersey as a result of this.

19 A friend of mine who has a small
20 business, it's an S corporation just outside of
21 Chicago was looking at expanding his business,
22 and I think they have two locations in
23 New Jersey, Edison, and I think Piscataway, and
24 they were looking at a third, and they looked in
25 Trenton, Hamilton, and a couple of other places,

1 and they ended up in Allentown. And I asked him
2 if it had anything to do with the taxes in New
3 Jersey, and he said it actually didn't, but
4 New Jersey was a difficult place to do business
5 in. Now, I don't know exactly what that means,
6 he's from New Jersey. But he said it really
7 didn't, the income tax situation was not
8 something that concerned him.

9 So I know it's like I'm hoping that
10 you can inform me about all of this because I'm
11 curious, I'm interested. I think with the AMA I
12 think it's an interesting new development in
13 taxes. And if it turns out that New Jersey is
14 able to collect taxes from, you know, businesses
15 that don't have physical presence in the state,
16 other states will look to do this, I think.

17 MR. PYDYSZEWSKI: They haven't yet.

18 MS. FORSBERG: Well, it hasn't been
19 very long. I mean, there's been talk of other
20 states doing what New Jersey has done. I mean,
21 Missouri and Michigan and Massachusetts and
22 Connecticut. And a lot of things have been
23 enacted, but that doesn't necessarily -- you know
24 legislatures don't move really fast on things.
25 And when other states see that New Jersey's

1 making so much money off the taxes, the
2 alternative to not raising the corporate business
3 tax was to cut another billion or more out of the
4 state budget. And, you know, where are you going
5 to cut that? You're going to cut it out of the
6 schools? You're going to cut it out of the --
7 it's a decision. Somebody has to pay the bill.

8 CHAIRMAN EVANS: Any other questions
9 from the Commission?

10 Mary, thank you very much for your
11 time and I appreciate the presentation you gave
12 earlier in the year and your presentation here
13 today before the Commission. Thank you.

14 MS. FORSBERG: And as you know more
15 I'd love to know more on what you're learning.

16 CHAIRMAN EVANS: Thank you.

17 The next speaker will be Joseph
18 Crosby.

19 MR. CROSBY: Thank you,
20 Mr. Chairman, and members of the Committee. I
21 appreciate the opportunity to address you today
22 on COST views on the changes that were made last
23 year in the corporation business tax. I know
24 that the COST president and executive director
25 Doug Lindholm appeared before you earlier this

1 year. And actually, I've limited my comments. I
2 feel like you've already got a good discussion
3 going. You've already touched on a number of the
4 issues that I intended to address. I'm going to
5 go through them briefly, but I encourage
6 questions as we go along.

7 For those who aren't aware COST is
8 nonprofit trade association based in Washington
9 D.C. We were formed in 1969. We have
10 approximately 550 members who are all businesses
11 that do business in multiple states. The
12 overwhelming majority of these businesses do
13 conduct business here in New Jersey employing its
14 citizens and paying a large percentage of the tax
15 that come from multi-jurisdictional business
16 entities.

17 The CBT Study Commission was created
18 in part -- and Mary addressed this in her
19 comments -- from the fact there wasn't a lot of
20 data last year. There was really a legislative
21 rush to fill a budget shortfall and very little
22 to no consideration of the longer term economic
23 policy objectives of the state and how the
24 changes that were brought through the legislation
25 would effect those policies. It was called the

1 "Business Tax Reform Act."

2 But one of questions that was
3 already raised alluded to the fact that it only
4 really touched one aspect of business taxation,
5 the corporate business tax. It didn't effect any
6 of the other taxes that businesses pay. There
7 were many accusations levied last year about
8 businesses and whether or not they're paying
9 their fair share. There was a lot of discussion
10 about the fact -- and Mary just raised this
11 again -- that 30 of the 50 largest employers in
12 the state pay the minimum tax of \$200. I'm not
13 sure that data tells us anything.

14 It reflects a complete
15 misunderstanding of taxation and a separate
16 return environment, the fact that the business
17 trade name that's reported in the press in terms
18 of how many employees they have many have no
19 relevance whatsoever to the legal entity that's
20 actually paying tax in the state. It doesn't
21 tell you anything about all the taxes the
22 businesses are paying. In fact, it provides
23 almost no information that one would hope to base
24 a reasonable policy discussion on before reaching
25 tax reform conclusions.

1 I would hope that the Committee
2 takes a broader and more empirical approach and
3 looks at all the tax the business pays. If we're
4 looking at business tax reform and we're trying
5 to help policy-makers determine whether or not
6 businesses pay their fair share, it seems that at
7 a minimum you'd want to know how much business
8 pays right now.

9 Mary indicated that it might not be
10 relevant to look at property taxes and sales
11 taxes and those sorts of things. I think
12 policy-makers when they're asking if business
13 pays a fair share are taking a relatively simple
14 look at things, much like any of us would do.

15 How much revenue does the state
16 collect right now? What is it -- let's say it's
17 \$10 billion. Of that \$10 billion, how much comes
18 from business? That was not discussed at all
19 last year. COST does not have state specific
20 data, however, I think you've been provided with
21 the study we did at the national level which
22 demonstrated that businesses pay on average
23 nationally 46 percent of all state and local
24 taxes, property taxes, sales taxes, excise taxes,
25 worker's compensation, unemployment insurance, et

1 cetera.

2 This doesn't include any tax that
3 businesses collect from someone else like an
4 employee or a patron of a retail establishment
5 and then pass on to the state or the local
6 government. This just taxes that they pay
7 themselves. I think that sort of data is
8 critical for policy-makers to determine whether
9 or not someone is paying a fair share. I can't
10 tell you what a fair share is. It's something
11 that only the political process, our legislators
12 and ultimately their constituents can decide, but
13 clearly that information is necessary.

14 Unfortunately, John Pydyszewski just
15 before the hearing today you weren't appropriated
16 any funds. So now I understand my request might
17 be a bit unreasonable to expect you to develop
18 this data. But clearly, you know, I think that
19 one of the Commissions recommendations might be
20 that the state endeavor to develop such data and
21 provide that to the legislature if it is
22 interested in continuing a discussion of business
23 tax reforms.

24 And then the second thing I wanted
25 to talk about is, What are other states doing?

1 Mary's correct that it's been only a little less
2 than a year since New Jersey enacted its statute
3 and other legislatures may not have had a lot of
4 time to respond. However, operating in this
5 environment for a long time, I know that
6 especially in fiscal crisis like we are now,
7 legislators are more than willing to listen to
8 any potential solution any other state might
9 have.

10 Just four weeks ago I was in Boston
11 for a meeting of the National Conference of State
12 Legislators. Senator Wayne Bryant was there at a
13 meeting, a roundtable discussion much like this
14 one, with the fiscal chairs from 35 other state
15 legislators. The chairs are the folks that sit
16 on the tax writing committees and the revenue
17 committees. And they went around the room,
18 talked about the problems their states were
19 having, budget deficits much like they're
20 occurring here in New Jersey and what their
21 solutions were, and not one of them talked about
22 business tax increases.

23 At the end of the meeting Senator
24 Bryant finally chimed up and said, "You know,
25 I've got to share with you, we did this thing

1 last year. We were projected to raise \$1 billion
2 in corporate business tax. The changes that we
3 enacted raised that projection to 1.8 billion.
4 And I'm here to tell you today it looks like
5 we're going to get 2.6. billion."

6 Now, whether that number is accurate
7 or not, that's what he reported at the meeting.
8 And we do follow what goes on in other states.
9 They are talking about what's happening in
10 New Jersey. In fact, going into this year, we
11 expected the changes that were made here in
12 New Jersey would be substantially discussed in a
13 lot of other states. For whatever reason that
14 really hasn't happened.

15 I think the most unusual part of the
16 taxes changes that were made here were the
17 alternative minimum tax. Only one other state
18 discussed that last year and that was Indiana.
19 And Indiana discussed it in the context it had a
20 gross receipts tax and it repealed it because
21 they thought it was bad for business and economic
22 development.

23 MR. SHIPLEY: At the same time they
24 increased their corporate taxes. In other words,
25 they had both a income tax and a gross receipts

1 tax. They repealed the gross receipts and
2 increase the rate of the income tax.

3 MR. CROSBY: And the total net
4 change was a business tax reduction. If you look
5 at the whole package, that was part of a much
6 broader reform package. You're correct. The net
7 was a business tax reduction.

8 MR. SHIPLEY: But your point is they
9 moved away from --

10 MR. CROSBY: They moved away from
11 gross receipts type tax. They also had a
12 supplementary income tax and they kind of
13 consolidated all these taxes into just a plain
14 income tax statute, correct.

15 MR. SHIPLEY: In other words,
16 getting rid of three taxes, having one tax where
17 the net effect is actually a reduction in tax and
18 you have tax (unintelligible) and a reduction in
19 tax.

20 MR. CROSBY: Correct.

21 Kentucky Governor Patton called for
22 a new "Business Activity Tax." Lots of states
23 come up with different names, but it was
24 essentially a gross receipts tax. Fortunately or
25 unfortunately for him, the press began to report

1 on his extra-marital affairs and that quickly
2 died and did not get any consideration of the
3 legislature.

4 Governor Tap (ph) in Ohio proposed a
5 very broad tax reform package. It was 80
6 different points. Twenty points dealt with the
7 corporate tax. That package is foundering. But
8 sort of in its place, the chairwoman of the House
9 Ways and Means Committee proposed a factorial
10 base tax. Which, again, similar to a gross
11 receipts tax, that proposal has died, and I have
12 not heard of any other state considering or
13 enacting anything of the like.

14 Accelerated tax payments, I'm not
15 aware of any other states doing that for
16 corporate taxes. There have been some states
17 that have done that for sales taxes.

18 "Throwout" rule. Maryland Governor
19 Erlik (ph) just last week vetoed legislation
20 which would have done that. North Carolina
21 rejected it last year, although they're
22 considering it again. And I can't really hazard
23 to guess at this point what its legislative
24 chances are.

25 These are just a few. I'm not going

1 to go through everything that's in the bill. But
2 a couple of them that are more salient,
3 limitations on dividends received deduction. No
4 other state has proposed or enacted such a
5 change.

6 I'm going to skip over the related
7 part expense because I want to say a little bit
8 more about that.

9 Forced combined reporting at the
10 Division of Taxation's discretion. No other
11 state has done that. Maryland discussed combined
12 reporting, rejected it before it got to the
13 governor's desk. Massachusetts has a combined
14 reporting proposal. But I think that the chances
15 of it being enacted are highly unlikely at best.

16 New partnership fees. I'm not aware
17 of any state doing that right now.

18 So a lot of the things that were
19 done in last year's bill not only have not been
20 enacted on other states but have not been
21 considered in other states for whatever reason.
22 I can draw some conclusions if you like --

23 MR. SHIPLEY: In fairness to the
24 Division of Taxation, the throwout rule I think
25 also existed previously in, I believe, in one

1 state, West Virginia.

2 MR. CROSBY: West Virginia. I did
3 not attempt to do analysis of what existed prior,
4 but I am happy to talk about that.

5 MR. SHIPLEY: But some of these due
6 to related party expense limitations, Ohio,
7 Connecticut had similar provisions. The forced
8 combined reporting, New York had a similar
9 provision.

10 MR. CROSBY: Right.

11 MR. SHIPLEY: For related party
12 expenses, Connecticut and Ohio previously had
13 provisions. And for forced combined reporting,
14 New York previously had a similar provision to
15 what was enacted in New Jersey.

16 MR. CROSBY: I'm going to talk about
17 the related party expense. I would say under
18 forced combined reporting, the New York statute
19 is much narrower than the statute here in New
20 Jersey and requires a substantial inquiry into
21 facts and circumstances as to whether or not it's
22 appropriate to combine. It also allows companies
23 to combine if they believe that this is the right
24 result, which I don't believe the New Jersey
25 legislation -- I know what's introduced to talk

1 about having that. But as enacted it's a one-way
2 street. Whether that stands up under litigation
3 is something that remains to be seen over the
4 next, I don't know, probably decade or two
5 depending on how things go.

6 Related party --

7 MR. GERSHENFELD: Before you do, if
8 you could wait one second.

9 MR. CROSBY: Sure.

10 MR. GERSHENFELD: Our 16 states now
11 have it?

12 MR. CROSBY: That's my next comment.
13 I think that fits into related party expense.

14 MR. GERSHENFELD: You're saying
15 those states have recently changed combined
16 reporting and two states have recently rejected
17 it?

18 MR. SHIPLEY: Force combined.

19 MR. GERSHENFELD: Do we know why
20 those states have rejected it could we get --

21 MR. CROSBY: Yes. I mean, the last
22 state to enact combined reporting was Florida
23 1983 and they repealed it six months later.
24 Since then it's been considered in Tennessee,
25 Wisconsin, Alabama, Louisiana, Massachusetts,

1 Maryland; New Jersey, which rejected it in terms
2 of having it mandatory for everyone. In most
3 cases, the state legislatures have looked at it
4 and said this is different from what our other
5 sister states do. We don't think it's going to
6 be an economic development incentive. We think
7 it's going to brand us as unfavorable to
8 business.

9 And it's complicated. I think you
10 brought it up earlier. We don't really know what
11 it's going to do for us. And it's one of those
12 things that comes up more frequently when the
13 fiscal condition is pretty bad. And many states
14 have feared that they were going to actually lose
15 revenue by doing it. So --

16 MR. GERSHENFELD: I'm going to segue
17 into your next --

18 MR. CROSBY: Sure.

19 MR. GERSHENFELD: Given where states
20 are with this, with the related party expense,
21 would these states or corporations look upon
22 combined reporting more friendly now? In other
23 words, maybe in the old world, but if you have
24 all these dates and have all these related party
25 expense wars, which are let's say whatever, maybe

1 combined reporting would be viewed as a blessing
2 not a detriment.

3 MR. SHIPLEY: Or even more
4 specifically, in terms of New Jersey, would
5 combined reporting be a step in for the better
6 considering all of the other changes that were
7 there if we were to replace that with combined
8 reporting.

9 MR. CROSBY: COST has no position on
10 combined reporting and never has. Part of that
11 is because it helps some people and hurts others.
12 My own personal view based on what New Jersey has
13 done, I'm sure if you eliminated all those and
14 went to combined reporting, which we can say
15 these changes were all made because there's
16 loopholes and the loopholes need to be brought
17 out of the system. We know that's not true. The
18 changes were made. The rationale for them was
19 the loopholes, but the reality was that we needed
20 money in New Jersey.

21 And if you went to combined
22 reporting, which Rick Palm (ph), Michael Masura
23 (ph), you know bring in the tax policy expert to
24 tell you that this doesn't get the loopholes out
25 of the system. You can get the loopholes out of

1 the system. We all know it's complicated to
2 administer. It will lead to the Division of
3 Taxation requiring a sort of to educate its
4 employees in a different way to audit
5 differently. It will create a whole new host of
6 litigation.

7 If you replace what you have now
8 with just combined reporting, I'm sure the state
9 will lose a significant amount of money over what
10 it's collecting this year.

11 So if that's the litmus test for
12 corporations, how much actually comes out of
13 their bottom line, I'm sure for most corporations
14 under the new system, combined reporting would be
15 viewed as a favorable change. But that's just my
16 own sort of personal guess. I haven't had that
17 on any authority.

18 But really, you know, when we look
19 at the loop hole closing, it's the related party
20 expense issue that is the only example that's
21 brought out as a loop hole and then all of these
22 changes follow behind that. So 16 states have
23 addressed the related party expense issue through
24 combined reporting. Ohio in 1992; Connecticut in
25 1997 and 1999; Mississippi, Alabama,

1 North Carolina in 2001; New Jersey in 2002;
2 Massachusetts and New York this year. And the
3 separate return environments have addressed it
4 with specific legislation.

5 Here, however, New Jersey's
6 legislation here in this area is among the most
7 restrictive in that it captures lots of
8 transactions at least on the face value of the
9 statute that have nothing to do with tax
10 avoidance.

11 For example, Ordinary Treasury
12 Management System. Every large corporation,
13 every large organization, even the State of
14 New Jersey centralizes cash management functions.
15 Each executive branch department doesn't get to
16 keep its money overnight. So the State of
17 New Jersey sweeps it up to get the best rates of
18 interest it can on the market. Those things
19 aren't tax motivated necessarily. There are a
20 number of states which have recognized that.
21 New York in the legislation they just passed
22 specifically includes a safe harbor for
23 transactions where the taxpayer can establish
24 they were created for business purpose and they
25 have economic substance. Those sorts of things

1 don't exist in the New Jersey statute.

2 So even in the area of related party
3 transactions, which is one area where New Jersey
4 made a change, where other states really are
5 looking hard at this at enacting legislation, the
6 legislation in New Jersey stands out at one end
7 of the spectrum in terms of it's punitive effect
8 on taxpayers. It happened to engage in business
9 in multiple states. It happened to be large
10 enough to have multiple entities.

11 COST recognizes this is one of the
12 most challenging fiscal environments the states
13 have ever gone through. I talk frequently on
14 just how bad it is out there right now. We
15 recognize that business has a role to play in it.
16 I encourage you to look at the entire spectrum of
17 business taxes in projecting information to
18 legislature on what business tax reform ought to
19 mean and what a fair share might be.

20 We'd happy to assist you as you go
21 forward in anyway we can, and I'll answer more
22 questions if you have them.

23 MR. GERSHENFELD: Can I ask say a
24 miraculous disaster, McGreevey retires or resigns
25 and you become the governor. You're faced with a

1 \$5 billion fiscal crisis in the tax system, which
2 clearly, you know, there are much huge loopholes
3 that corporations are taking advantage of whether
4 they're loopholes or not. There's some gray
5 areas for people, clearly, what do you do?

6 MR. CROSBY: It's a good question.
7 The loopholes, I tend to consider them a
8 consequence of the Federal system. We all know
9 it's not so much a hole in the New Jersey's Tax
10 Code as it is the fact we have a quilt of 50
11 different states who happen to have very
12 different tax policies.

13 MR. GERSHENFELD: There was some
14 aspects of New Jersey that were pretty -- I mean,
15 they limit -- I work for a major corporation. We
16 all pitched out, if we found too aggressive, we
17 didn't do them.

18 MR. CROSBY: Right. They were
19 there.

20 MR. GERSHENFELD: They were there,
21 yeah, and they were New Jersey specific. They
22 weren't in any state.

23 MR. CROSBY: I stayed out of
24 elective politics my entire life and elected to
25 do so. But, you know, it's a difficult question.

1 A lot of states have addressed it simply with
2 budget cuts. They've just cut recognizing that
3 voters went the poles in Missouri and Virginia
4 and other states and projected it. In Missouri,
5 they went to the pole and rejected a cigarette
6 tax increase. Now, that's the easiest tax
7 increase in the world. The voter sentiment out
8 there does not appear to be in favor of tax
9 increase.

10 On the other hand, if I was elected
11 by a party that expect services not to be cut
12 significantly, I'd be in a bit of a bind. I
13 can't say exactly what I would have done in
14 Mr. McGreevey's place because I don't think I
15 would have been in his place.

16 As Henry Kissinger would say "I
17 don't deal with hypotheticals."

18 It doesn't really answer the
19 question, but I can't in my professional capacity
20 give an answer.

21 MR. GERSHENFELD: You want to give
22 us your personal capacity?

23 MR. CROSBY: I think dealing with
24 related party transactions, that specific one
25 makes a lot of sense. COST has developed some

1 model language that we've worked with other folks
2 on. If the problem is Toys R Us setting up a
3 Delaware holding company, shifting it's
4 trademarks claiming that the New Jersey company
5 makes no profit and the Delaware company makes
6 all the money, that's a sort of narrow issue that
7 I think can be solved with fairly crafted
8 legislation.

9 In New Jersey that was used as the
10 political front for a major tax increase. Again,
11 COST has no position on the level of business
12 taxes. The tax changes that were made here in
13 certain areas seem to be particularly egregious
14 in their violation of any economist's standard
15 for fair and equitable taxation. I mean, a gross
16 receipts tax is never at the top of any
17 economist's list. Michigan, Mary mentioned, was
18 looking at changes. They have a single business
19 tax. I mean, it's a completely different system.
20 The loopholes that they've talked about there are
21 loopholes like were originally talked about here
22 such as the net operating loss is a loophole. I
23 mean, those things, no economist would ever say
24 that. That's a political question.

25 And so I probably would have looked

1 at where the real abuse is taking place. Those
2 are easy to do. And the others are broader
3 policy questions of what services the state
4 wants, the people want in New Jersey.

5 MR. SHIPLEY: To the extent you're
6 dealing with whether real abuse is taking place.
7 You feel that there should have been more clear
8 safe harbors for the related party transactions
9 where there were certain types of transactions as
10 to the treasury management function. And that
11 additionally there should have been additional
12 protection where if a taxpayer could prove that
13 there was a legitimate business purpose and
14 adequate substance that these transactions should
15 not be taken in with a broad sweep of the related
16 party provisions.

17 MR. CROSBY: I think so. We can
18 also look at certain transactions that are
19 entered into arguably for business purposes, but
20 those arguments might not hold up.

21 There are clearly other transactions
22 that related parties enter into everyday which
23 are for legitimate business purposes. And it may
24 be you may have a regulated entity and a
25 nonregulated entity. By law they have to deal

1 with arm's length and they have to enter certain
2 transactions because the unregulated entity can't
3 do certain things. Does it make sense that that
4 regulated entity which has cash and wants to set
5 up an unregulated subsidiary should have to go
6 out to the market to borrow money when it can
7 finance it internally at a much lower rate?

8 I mean, that's not tax motivated.
9 There may or may not be tax benefit to it and I
10 don't know. Again, it's facts and circumstances.
11 And that's really the problem.

12 Corporate taxes are extraordinarily
13 complex. Oddity corporations is extremely
14 difficult because corporations are complex and
15 corporate income taxes are complex. This
16 basically says, "We know everyone's cheating. We
17 don't know exactly how. So we're going to
18 institute an alternative minimum tax and tax
19 everybody based on their gross receipts and we'll
20 let the market sort it out. Some will fail, some
21 will not. Some will move, some will not." As
22 Mary says it's all anecdotal.

23 I think many corporations after the
24 very public spat federated department stores had
25 with Governor McGreevey will not be forthcoming

1 in terms of the moves that they're making in
2 response to the corporate business tax changes.
3 I know that some are, but I don't think they're
4 willing to share that information because it
5 didn't prove forth while the first time around.

6 CHAIRMAN EVANS: Other questions of
7 the speaker?

8 (Tami Gaines, Commission member,
9 arrives.)

10 Tami Gaines of the Commission has
11 joined us now.

12 Thank you, Tami.

13 MR. CROSBY: Thank you,
14 Mr. Chairman.

15 MR. GERSHENFELD: Can I ask a
16 question?

17 MR. CROSBY: Sure.

18 MR. GERSHENFELD: Everyone's got
19 their view and it's totally subjective. How much
20 do you think the taxation of the changes of the
21 New Jersey tax will effect economical development
22 in New Jersey?

23 MR. CROSBY: It's a marginal issue.
24 I mean marginal sort of in an academic sense. I
25 think as you mentioned it does effect things

1 substantially at the margins. If you have an
2 opportunity to locate in Pennsylvania or
3 New Jersey because you're right at the border,
4 you know, there those decisions have a marginal
5 difference.

6 I represent the very largest
7 corporations in the world. They generally have
8 facilities all across the countries and in many
9 different countries. So when their divisions
10 compete internally for capital, these costs get
11 factored in. So it's not a question of does the
12 building you drive by every day now with the big
13 corporate logo on there, is that going to go
14 away? It's a question of where the next
15 investment is going to be.

16 Unfortunately, I can't give names
17 because these were given to me in confidence.
18 One corporation that had planned to create 600
19 new jobs in New Jersey, shortly after the changes
20 last year, created those jobs in Florida instead.
21 One company had moved 400 very well compensated
22 white-collar jobs in New Jersey in 2000 and moved
23 them late last year back to Massachusetts.

24 You know, these sorts of things are
25 going to be anecdotal. They don't jive with the

1 political sector. The changes are not over ten
2 years or 20 years. It's a marginal issue, but it
3 matters at the margins. And I don't think any
4 economist unfortunately can say with any
5 precision what it's going to do.

6 New Jersey is different now. The
7 tax community all across the country is talking
8 more about New Jersey than about all the other
9 states combined. Whether that's a good or bad
10 thing I leave to you to decide. When I go
11 places, people want to know about New Jersey.

12 MR. PYDYSZEWSKI: Do you think,
13 Joe -- and I guess just for full disclosure I
14 should point out that I'm a member of the Board
15 of Directors of COST.

16 But my question is, do you think
17 that right now there is a credibility issue with
18 the State of New Jersey in terms of the changes
19 that were made last year, the discussions about
20 the beef this year that -- you do think there's
21 an attitude that will achieve -- you know, we can
22 look at the way New Jersey is today, but is that
23 the way it's going to be tomorrow? Can we rely
24 on what's here?

25 MR. CROSBY: I think the Division of

1 Taxation is well respected by the national tax
2 community and has been for some time. And I
3 think their representation has been really
4 unscathed from this entire process. So in terms
5 of the fairness of the administrative process in
6 New Jersey, I think there's still high confidence
7 that the Division of Taxation tends to deal with
8 taxpayers in a fair and evenhanded manner.

9 MR. PYDYSZEWSKI: I would agree with
10 that.

11 MR. CROSBY: In terms of the
12 political process, I think there is a clear --
13 it's clear that corporations were made the
14 scapegoat for the fiscal crisis. At least that's
15 the perception in the business community.
16 Whether that's accurate or not, that's how folks
17 think about it. And there was a provision placed
18 in the law which would have access funds reverted
19 to a special account to be distributed back to
20 taxpayers. And I know there was discussion this
21 year of removing that. Clearly, no business that
22 I've spoken with has any trust in the political
23 process except for trust perhaps that they will
24 be made scapegoat again before this is all said
25 and done. And I hope that answers the question.

1 I think the Division of Taxation is
2 still highly regarded, but the state as a whole
3 has taken a turn that most business would view as
4 anti-business.

5 CHAIRMAN EVANS: Any questions?

6 Thank you. We appreciate your
7 comments.

8 MR. CROSBY: Thank you very much.

9 MS. DAVIS: I do have a request if
10 it would be okay. Would it be all right if we
11 took a photo of while I'm testifying so we can
12 include it in our newsletter as evidence that we
13 were here? I have to show this to my boss when
14 we get back.

15 CHAIRMAN EVANS: Perhaps you ought
16 to take a picture of us so we have evidence we
17 were here.

18 MS. DAVIS: You need a map of South
19 Jersey behind you, though.

20 MR. GERSHENFELD: Do you want him to
21 give you a note?

22 MR. SHIPLEY: See what you need to
23 get is one of those blue screens there where you
24 can have massive people listening to you.

25 MS. DAVIS: Well, good afternoon.

1 My name is Kathleen Davis and I'm Executive Vice
2 President of the Chamber of Commerce Southern New
3 Jersey. Thank you for the opportunity to present
4 information on the impacts of the corporation
5 Business Tax increase on businesses including our
6 members. The Chamber represents approximately
7 2,000 member companies from the seven southern
8 counties, as well as Greater Philadelphia and
9 Northern Delaware.

10 Now, after hearing the preceding
11 people that testified, I am not a tax expert, but
12 what I would like to do instead is to offer you
13 general comments and to convey the information
14 that we have received from our members as to the
15 impacts on the tax changes.

16 Just by way of background our
17 Chamber was intimately involved in the debate and
18 shaping this legislation that made such major
19 changes to the structure of the CBT. We are not
20 the Chamber nor are we related to the Chamber
21 that ran the Save Sally's Job ads. We work
22 directly with Assemblyman Louis Greenwald,
23 chairman of the assembly budget committee, who
24 met several times with a number of our board
25 members. We formed a special ad hoc committee

1 of our board of directors who were specifically
2 charged with analyzing the impacts of the
3 corporation business tax. And also to come up
4 with less onerous ways to make this tax increase
5 happen, I guess, as painlessly as possible. And
6 I will tell you that the discussion started with
7 we are getting \$1.8 billion dollars from the
8 business community. The question is how are we
9 going to do it. So that was our starting point.
10 At the time they were getting about 900,000 so
11 we're talking about doubling with the business
12 tax.

13 And while we recognize the fiscal
14 crisis in the state and while we recognize that
15 the role that the business community could play
16 in helping to reduce that reduce that crisis
17 somewhat, we did not support the CBT increase
18 then and we don't support it now. What we try to
19 do is offer meaningful amendments to the
20 legislation, politically recognizing that
21 something was going to happen so let's at the
22 very least make it something that we could live
23 with.

24 But we commend the Commission for
25 starting this process now when so many companies

1 have become aware of how they're going to be
2 impacted by the tax changes. And we also thank
3 you for holding the hearing here in Southern
4 New Jersey. We -- the Chamber strongly
5 recommended the formation of this Commission, and
6 we were certainly pleased when the language was
7 included in the bill to create the Commission
8 because your work is very important and we offer
9 our support and assistance and the expertise of
10 our staff and the members of your work.

11 The concerns that we had a year ago
12 are the same ones that we have today. Of course,
13 we're very concerned about the impact of the CBT
14 increase on our members and it certainly is
15 having an impact on the business community.

16 I'm sure you're all familiar with
17 the Rutgers University Bloustein School of
18 Planning & Public Policy's study on the impact of
19 the Corporation Business Tax changes on
20 New Jersey's economy. The study concluded that
21 the increased CBT will reduce anticipated job
22 growth, increase unemployment, depress growth in
23 personal income and diminish growth in the gross
24 State product. And I hope that Rutgers shared
25 that report with you.

1 profitability is even farther away for this
2 company, that has recently laid off a number of
3 its workers to make ends meet.

4 Yet another manufacture that employs
5 about 500 people so their tax liability increased
6 from the minimum, which they paid because they
7 operated at a loss to \$1.9 million under the AMA,
8 that's a 9,125 percent increase.

9 A service business in Southern New
10 Jersey that employs about 1,700 people saw its
11 tax liability nearly double from about \$270,000
12 in 2001 to about \$500,000 under the new tax act,
13 an increase of 85 percent.

14 Another major manufacturer in
15 Souther New Jersey that employs close to 5,000
16 people saw its taxes increase five-fold from
17 \$836,000 to \$4.2 million.

18 A sampling of smaller companies
19 serviced by a member tax accounting firm shows
20 the impacts of the CBT on LLCs, S Corporations
21 and small C Corporations. The total taxes paid
22 by this sampling of companies increased by two
23 and one-half times this year. And For these
24 companies, the partner tax and the tax on
25 licensed professionals were the main drivers of

1 the increases.

2 And the increased taxes paid by
3 these companies weren't because so-called
4 "loopholes" were eliminated. They're due to a
5 total recreation of the tax, primarily the
6 Alternate Minimum Tax, which you all have been
7 speaking about for some time now, and also the
8 professional fees and partner taxes, and among
9 other changes as well.

10 How these increased tax liabilities
11 impact our State? Well, our members tell us that
12 there is less money for capital investment in
13 their companies, less money to invest in the
14 community, including our chamber, and the impact
15 on their workforce is inevitable, including
16 reduced benefits, postponing or not providing
17 salary increases, and cutting the workforce.

18 And there were unforeseen
19 consequences to the CBT increase, as well.

20 The first is the increased
21 compliance costs for businesses. Companies have
22 had to pay dearly to tax planners to analyze
23 whether their AMA should be based on gross
24 receipts or gross profits. This requires careful
25 planning, as a company is locked into its choice

1 for five years. Further, many companies have
2 paid accounting firms simply to analyze the
3 impacts on their company so that they could
4 figure out how to absorb these unplanned tax
5 increases. Companies have spent up to \$10,000 on
6 these analyses. One accounting firm estimates
7 that clients have spent three times more on tax
8 services simply to comply with the new,
9 complicated, and at times unclear tax act.

10 And smaller companies are unfairly
11 impacted because they don't have the resources to
12 pay for the valuable advice that tax firms can
13 provide. So, while accounting companies are the
14 winners here, it's not a win that is sweet for
15 them. Clients have reacted with anger and
16 frustration over their unexpectedly high tax
17 bills, and accountants have found themselves on
18 the losing end of a "shoot the messenger"
19 response by clients.

20 Another unforeseen consequence is
21 the complicated nature of implementing the new
22 Corporation Business Tax Act. There's still a
23 good deal of confusion when attempting to
24 interpret the statute. For example, the add-back
25 provision -- and again, I don't know the

1 intricacies of this. From what I'm hearing from
2 our tax accountants, it's very complex.

3 Discussions during the debate over
4 the bill raised the North Carolina model for
5 add-backs, which is much simpler to implement.
6 But this was rejected and we're faced again with
7 a very complicated model. Passing such sweeping
8 changes in the tax act have resulted in language
9 that is sometimes circuitous, but almost always
10 with the State ensuring that it receives the most
11 amount of revenue possible from companies, with
12 "fairness" taking a back seat to the dire need of
13 the State for more money.

14 The Alternate Minimum Assessment has
15 had the most dire impacts on companies, the most
16 serious of which is on service companies. And,
17 it's doubtful that some companies will ever be
18 able to use the 50 percent credit in future tax
19 years. Companies that will have enough income to
20 generate enough tax in the future will be able to
21 take advantage of that tax credit. However,
22 companies that don't generate income, and
23 therefore, not much in taxes, may not ever be
24 able to fully use their tax credit.

25 MR. SHIPLEY: So what you're saying

1 is that some companies could be paying the AMA
2 year after year after year regardless of the
3 economic change just because of the way the AMA's
4 structure?

5 MS. DAVIS: Well, I believe in
6 future years there's a tax credit back.

7 MR. SHIPLEY: You told me that it is
8 not profitable.

9 MS. DAVIS: Exactly.

10 MR. SHIPLEY: If it becomes
11 profitable in the future year, they can use the
12 AMA as credit. But, however, there are some
13 companies that due to their circumstances are
14 going to continually be paying this AMA and they
15 won't get any credit.

16 MS. DAVIS: Correct, correct.

17 And finally, perhaps the most unfair
18 part of this law, after all is said and done,
19 according to our experts, is the suspension of
20 Net Operating Losses carry-forward. The NOL
21 carry -forward was not a "loophole"; it was a way
22 to ensure that companies on the verge of making a
23 profit had an even greater chance for survival.
24 NOLs are real economic losses to companies. The
25 suspension of NOLs has driven the effective tax

1 rate for these companies "through the roof," as
2 described by one accountant.

3 So how are companies dealing with
4 the increased tax liability brought about by last
5 year's CBT increase? Many companies simply
6 cannot afford to move out of the State. The cost
7 of moving would outweigh the benefits for several
8 years. The strategy now is for companies simply
9 to shift operations out of the state to decrease
10 their apportionment. One New Jersey company is
11 shifting operations to Mexico and North Carolina,
12 and is not producing its product in New Jersey
13 anymore or plans not to. Another company is
14 changing the nature of its operations in the
15 State, and shifting more operations abroad. And
16 this, of course, means fewer jobs in our State.

17 Accounting firms with national
18 clients looking to expand operations somewhere in
19 the U.S. are being steered away from New Jersey
20 because of its unfavorable tax climate, not to
21 mention what is being perceived as a business
22 unfriendly State.

23 I know you've heard from our good
24 friends at New Jersey Business & Industry on
25 their 2003 Business Outlook Survey, but these

1 results bear repeating. Forty-two percent of
2 businesses responding to the survey ranked
3 New Jersey fair or poor as a site for business
4 expansion. Further, 70 percent of respondents
5 said that New Jersey's attitude toward business
6 was worse than other states; 68 percent said
7 we're worse than other states in attracting
8 business; and nearly 60 percent said we're worse
9 at promoting economic development than other
10 states. Certainly, the impact of last year's tax
11 increase is turning the business community sour.

12 My final point is on the CBT numbers
13 released on Tuesday by the Treasurer and OLS. As
14 we expected, the State collected significantly
15 more than the so-called "fair share" business
16 tax, which was determined to be \$1.823 billion.
17 OLS says the state will collect 2.5 billion, the
18 Treasurer says 2.4 billion. So, as it turns out,
19 it's not just a doubling of the tax on business,
20 it's a 170 percent increase over the 2001 tax
21 liability. And we don't know how much that
22 collection figure is going to go up because a lot
23 of business have postponed their filing and won't
24 pay until September.

25 Those figures demonstrated why our

1 Chamber insisted last year on an amendment that
2 was ultimately included in the bill. And I sure
3 hope that it's not true that it's going to be --
4 looking to be taken out. That the
5 over-collections over that target amount of
6 \$1.823 billion be returned to the business tax
7 payers starting in 2006.

8 We recommend to the Commission
9 eliminating the AMA, fixing the NOL provision to
10 ensure that companies can continue to carry
11 forward their losses in the next and future tax
12 years, and joining us in ensuring that the tax
13 over-collections from this and future years be
14 returned to business taxpayers.

15 And I thank you for the opportunity
16 to offer our perspective on the impacts of the
17 CBT increase on our members.

18 CHAIRMAN EVANS: Thank you,
19 Kathleen.

20 Any questions?

21 Thank you very much.

22 MS. DAVIS: Thank.

23 CHAIRMAN EVANS: Are there any other
24 persons who wishes to speak to the Commission?

25 If not, then we will close this

1 session of the hearings. This is the last of the
2 scheduled and required public hearings. The
3 Commission will end the meeting.

4 Do I have any other comments from
5 Commission members?

6 The meeting is adjourned.

7 Thank you.

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11 (HEARING CONCLUDED AT 2:38 P.M.)

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C E R T I F I C A T E

I, LINDA P. CALAMARI, a Notary Public of the State of New Jersey, do hereby certify the foregoing to be a true and accurate transcript of my original stenographic notes taken at the time and place hereinbefore set forth.

/s/ LINDA P. CALAMARI

LINDA P. CALAMARI

Dated: JULY 1, 2003.