

[First Reprint]

ASSEMBLY, No. 4455

STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED JUNE 3, 2024

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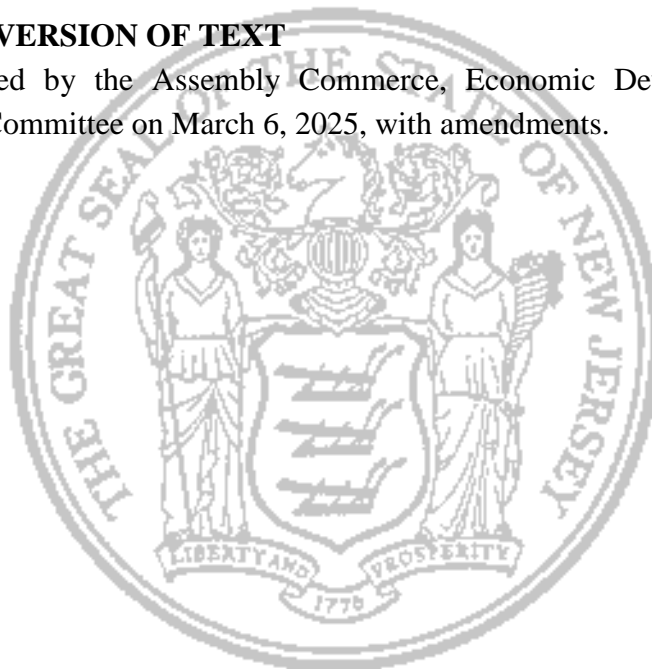
Assemblyman Atkins and Assemblywoman Drulis

SYNOPSIS

Allows deduction from New Jersey gross income of certain capital gains from sale or exchange of New Jersey qualified small business stock held for more than five years.

CURRENT VERSION OF TEXT

As reported by the Assembly Commerce, Economic Development and Agriculture Committee on March 6, 2025, with amendments.



(Sponsorship Updated As Of: 3/20/2025)

1 AN ACT allowing a deduction from New Jersey gross income of
 2 certain capital gains from sale or exchange of New Jersey
 3 qualified small business stock held for more than five years,
 4 supplementing Title 54A of the New Jersey Statutes.

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

8
 9 1. a. Notwithstanding the provisions of N.J.S.54A:5-1, a
 10 taxpayer who is an individual shall be allowed to deduct from the
 11 taxpayer's gross income ¹[in a] , for any¹ taxable year ¹beginning
 12 on or after the effective date of P.L. , c. (C.) (pending
 13 before the Legislature as this bill),¹ the eligible gain from the sale
 14 or exchange of New Jersey qualified small business stock held for
 15 more than five years ¹, in accordance with the maximum allowable
 16 deductions established pursuant to the schedule in subsection b. of
 17 this section¹.

18 b. (1) If the taxpayer has eligible gain for the taxable year from
 19 one or more dispositions of ¹qualified small business¹ stock
 20 ¹[issued by any corporation]¹, the aggregate amount of the gain
 21 from dispositions of stock issued by the corporation which may be
 22 taken into account ¹[under subsection a.]¹ for the taxable year shall
 23 not exceed the greater of either of the following¹]:

24 (a) Ten million dollars (\$10,000,000)]¹ dollar amounts or
 25 aggregate adjusted basis amounts identified in the following
 26 schedule, which amounts are applicable to the percentage of the
 27 corporation's payroll, as measured by total dollar value, attributable
 28 to employment located within this State. The applicable dollar
 29 amount shall be¹ reduced by the aggregate amount of eligible gain
 30 taken into account by the taxpayer under subsection a. for prior
 31 taxable years and attributable to dispositions of stock issued by the
 32 corporation. ¹The applicable

33 [(b) Ten times the]¹ aggregate adjusted ¹[bases] basis¹ of
 34 qualified small business stock ¹shall be a multiple of the aggregate
 35 adjusted basis of qualified small business stock¹ issued by the
 36 corporation and disposed of by the taxpayer during the taxable year
 37 ¹[. For purposes of this subparagraph (b), the adjusted basis of any
 38 stock shall be determined] ,¹ without regard to any addition to basis
 39 after the date on which the stock was originally issued.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACE committee amendments adopted March 6, 2025.

<u>¹Percentage payroll attributable to employment within State:</u>	<u>Dollar Amount:</u>	<u>Aggregate Adjusted Basis Amount:</u>
<u>100%</u>	<u>\$10,000,000</u>	<u>10 times</u>
<u>At least 90% but less than 100%</u>	<u>\$9,000,000</u>	<u>9 times</u>
<u>At least 80% but less than 90%</u>	<u>\$8,000,000</u>	<u>8 times</u>
<u>At least 70% but less than 80%</u>	<u>\$7,000,000</u>	<u>7 times</u>
<u>At least 60% but less than 70%</u>	<u>\$6,000,000</u>	<u>6 times</u>
<u>At least 50% but less than 60%</u>	<u>\$5,000,000</u>	<u>5 times</u>
<u>At least 40% but less than 50%</u>	<u>\$4,000,000</u>	<u>4 times</u>
<u>At least 30% but less than 40%</u>	<u>\$3,000,000</u>	<u>3 times</u>
<u>At least 20% but less than 30%</u>	<u>\$2,000,000</u>	<u>2 times</u>
<u>At least 10% but less than 20%</u>	<u>\$1,000,000</u>	<u>1 time</u>
<u>Less than 10%</u>	<u>\$0</u>	<u>0¹</u>

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(2) For purposes of this subsection ¹**[(b.)¹]**, the term “eligible gain” means any gain from the sale or exchange of qualified small business stock held for more than five years.

(3) (a) In the case of a married individual filing a separate return, ¹**[(subparagraph (a) of paragraph (1) of)]** the maximum deduction allowed pursuant to¹ this subsection shall be ¹[(five million dollars (\$5,000,000))] the greater of: 50 percent of the dollar value allowed; or 50 percent of the aggregate adjusted basis allowed, pursuant to this subsection¹.

(b) In the case of a married taxpayer filing a joint return, the amount of gain taken into account under ¹**[(subsection a.)] this subsection¹** shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

c. As used in this section:

(1) “Qualified small business stock” means any stock in a C corporation which is originally issued ¹on or¹ after ¹[(the effective date of P.L. , c. (C.) (pending before the Legislature as this bill)] January 1, 2015¹, if both of the following apply:

(a) As of the date of issuance, the corporation is a qualified small business.

1 (b) Except as provided in subsections e. and g., the stock is
2 acquired by the taxpayer at its original issue ¹[()] directly or
3 through an underwriter ¹[()] in either of the following manners:

4 (i) ¹[In] in exchange for money or other property ¹[()] not
5 including stock ¹[()] ; or¹

6 (ii) ¹[As] as compensation for services provided to the
7 corporation ¹[()] other than services performed as an underwriter
8 of the stock ¹[()]¹.

9 (2) (a) Stock in a corporation shall not be treated as qualified
10 small business stock unless, during substantially all of the
11 taxpayer's holding period for the stock, the corporation meets the
12 active business requirements of subsection d. of this section and the
13 corporation is a C corporation.

14 (b) (i) Notwithstanding subsection d. of this section, a
15 corporation shall be treated as meeting the active business
16 requirements of subsection d. ¹of this section¹ for any period during
17 which the corporation qualifies as a specialized small business
18 investment company.

19 (ii) For purposes of ¹[subsubparagraph] sub-subparagraph¹ (i)
20 of this subparagraph, the term "specialized small business
21 investment company" means any eligible corporation ¹[(as defined
22 in] , pursuant to¹ paragraph (4) of subsection d. of this section¹[()]
23 ¹ that is licensed to operate under Section 301(d) of the federal
24 Small Business Investment Act of 1958 ¹[()] as in effect on May
25 13, 1993¹[()]¹.

26 (3) (a) Stock acquired by the taxpayer shall not be treated as
27 qualified small business stock if, at any time during the four-year
28 period beginning on the date two years before the issuance of the
29 stock, the corporation issuing the stock purchased ¹[()] directly or
30 indirectly ¹[()] any of its stock from the taxpayer or from a
31 related person to the taxpayer. For the purposes of this
32 subparagraph, "related person" means a corporation, partnership,
33 association ¹ or trust controlled by the taxpayer; an individual,
34 corporation, partnership, association ¹ or trust that is in the control
35 of the taxpayer; a corporation, partnership, association ¹ or trust
36 controlled by an individual, corporation, partnership, association or
37 trust that is in the control of the taxpayer; or a member of the same
38 controlled group as the taxpayer.

39 (b) Stock issued by a corporation shall not be treated as
40 qualified small business stock if, during the two-year period
41 beginning on the date one year before the issuance of the stock, the
42 corporation made one or more purchases of its stock with an
43 aggregate value ¹[()] as of the time of the respective purchases
44 ¹[()] exceeding five percent of the aggregate value of all of its
45 stock as of the beginning of the two-year period.

1 (c) If any transaction is treated under section 304(a) of the
2 Internal Revenue Code (26 U.S.C. s.304(a)) as a distribution in
3 redemption of the stock of any corporation, for purposes of
4 subparagraphs (a) and (b) ¹of this paragraph¹, the corporation shall
5 be treated as purchasing an amount of its stock equal to the amount
6 treated as a distribution in redemption of the stock of the
7 corporation under section 304(a) of the Internal Revenue Code (26
8 U.S.C. s.304(a)).

9 (4) “Qualified small business” means any domestic corporation
10 ¹**[()] ¹ as defined in section 7701(a)(4) of the Internal Revenue
11 Code (26 U.S.C. s.7701(a)(4)) ¹**[()] ¹ which is a C corporation, if
12 all of the following apply:****

13 (a) The aggregate gross assets of the corporation ¹**[()] ¹ or any
14 predecessor thereof ¹**[()] ¹ at all times on or after the effective date
15 of P.L. , c. (C.) (pending before the Legislature as this bill),
16 and before the issuance did not exceed \$50,000,000;****

17 (b) The aggregate gross assets of the corporation immediately
18 after the issuance ¹**[()] ¹ determined by taking into account
19 amounts received in the issuance ¹**[()] ¹ do not exceed
20 \$50,000,000, where “aggregate gross assets” mean the amount of
21 cash and the aggregate adjusted basis of other property held by the
22 corporation, but the adjusted basis of any property contributed to
23 the corporation ¹**[()] ¹ or other property with a basis determined in
24 whole or in part by reference to the adjusted basis of property so
25 contributed ¹**[()] ¹ shall be determined as if the basis of the
26 property contributed to the corporation immediately after the
27 contribution was equal to its fair market value as of the time of the
28 contribution; and********

29 (c) ¹**[Has]** The corporation has¹ fewer than 225 employees and
30 at least ¹**[80]** ¹10¹ percent of the corporation’s payroll, as measured
31 by total dollar value, is attributable to employment located within
32 this State.

33 ¹**[Provided, however, that]** (d) For the purposes of this
34 subsection,¹ all corporations which are members of the same parent-
35 subsidiary controlled group shall be treated as one corporation for
36 purposes of this subsection, where “parent-subsidary controlled
37 group” means any controlled group of corporations as defined in
38 section 1563(a)(1) of the Internal Revenue Code (26 U.S.C.
39 s.1563(a)(1)), except that ¹**[that]**¹ percentages of ownership and
40 value that control shall exist in situations involving at least 50
41 percent of ownership and value as otherwise provided involving at
42 least 80 percent required by section 1563(a)(1) (26 U.S.C.
43 s.1563(a)(1)), and section 1563(a)(4) of the Internal Revenue Code
44 (26 U.S.C. s.1563(a)(4)) shall not apply.

1 d. (1) The active business requirements of ¹¶(2) of
2 this¹ subsection ¹¶(c) shall be met by a corporation for any period
3 if during that period:

4 (a) ¹¶(a) at least 80 percent ¹¶(b) of the assets of the
5 corporation ¹, by value,¹ are used by the corporation in the active
6 conduct of one or more qualified trades or businesses; and

7 (b) ¹¶(b) The the¹ corporation is a domestic corporation, but
8 ¹¶(b) shall¹ not ¹¶(b) include including¹ any of the following: (i) a
9 domestic international sales corporation (DISC) or former DISC;
10 (ii) ¹¶(b) A corporation with respect to which an election under section
11 936 of the Internal Revenue Code (26 U.S.C. s.936) is in effect or
12 which has a direct or indirect subsidiary with respect to which the
13 election is in effect; (iii) ¹¶(b) a regulated investment company, real
14 estate investment trust (REIT), or real estate mortgage investment
15 conduit (REMIC); or ¹¶(b) (iv) A (iii) a¹ cooperative.

16 (2) ¹¶(2) For purposes of this paragraph (2), if, Assets used in the
17 following activities of a corporation¹ in connection with any future
18 qualified trade or business, ¹¶(2) a corporation is engaged in shall be
19 treated as used in the active conduct of a qualified trade or business,
20 whether or not a corporation has any gross income from those
21 activities at the time of a determination pursuant to this paragraph,
22 including¹ :

23 (a) ¹¶(a) Startup startup¹ activities described in section
24 195(c)(1)(A) of the Internal Revenue Code (26 U.S.C.
25 s.195(c)(1)(A)) ¹¶(a) ,¹

26 (b) ¹¶(b) Activities activities¹ resulting in the payment or
27 incurring of expenditures which may be treated as research and
28 experimental expenditures under section 174 of the Internal
29 Revenue Code (26 U.S.C. s.174) ¹¶(b) ,¹ or

30 (c) Activities with respect to in-house research expenses
31 described in section 41(b)(4) of the Internal Revenue Code (26
32 U.S.C. s.41(b)(4)) ¹¶(c), then assets used in those activities shall be
33 treated as used in the active conduct of a qualified trade or business.
34 Any determination under this paragraph (1) shall be made without
35 regard to whether a corporation has any gross income from those
36 activities at the time of the determination¹.

37 (3) For purposes of this subsection ¹¶(d), “qualified trade or
38 business” means any trade or business other than any of the
39 following:

40 (a) ¹¶(a) Any any¹ trade or business involving the performance of
41 services in the fields of health, law, engineering, architecture,
42 accounting, actuarial science, performing arts, consulting, athletics,
43 financial services, brokerage services, or any trade or business
44 where the principal asset of the trade or business is the reputation or
45 skill of one or more of its employees ¹¶(a) ,¹

1 (b) **Any** any banking, insurance, financing, leasing,
2 investing, or similar business **].** ;

3 (c) **Any** any farming business **[(** , including the business
4 of raising or harvesting trees **].** ;

5 (d) **Any** any business involving the production or extraction
6 of products of a character with respect to which a deduction is
7 allowable under section 613 or 613A of the Internal Revenue Code
8 (26 U.S.C. s.613 or s.613A) **].** ; or

9 (e) **Any** any business of operating a hotel, motel, restaurant,
10 or similar business.

11 (4) (a) For purposes of this subsection **[d.]**, stock and debt in
12 any subsidiary corporation shall be disregarded and the parent
13 corporation shall be deemed to own its ratable share of the
14 subsidiary's assets, and to conduct its ratable share of the
15 subsidiary's activities.

16 (b) A corporation shall be treated as failing to meet the
17 requirements of paragraph (1) of this subsection **[d.]** for any
18 period during which more than 10 percent of the value of its assets
19 **[(** , in excess of liabilities **)]** , consists of stock or securities in
20 other corporations which are not subsidiaries of the corporation
21 **[(** , other than assets described in paragraph (5) of this
22 subsection **)]**.

23 (c) For purposes of this paragraph **[(4)]**, a corporation shall
24 be considered a subsidiary if the parent owns more than 50 percent
25 of the combined voting power of all classes of stock entitled to
26 vote, or more than 50 percent in value of all outstanding stock, of
27 the corporation.

28 (5) **(a)** For purposes of subparagraph (a) of paragraph (1) of
29 this subsection **[d.]**, the following assets shall be treated as used
30 in the active conduct of a qualified trade or business:

31 **[(a) Assets]** (i) assets that are held as a part of the reasonably
32 required working capital needs of a qualified trade or business of
33 the corporation **].** ; and

34 **[(b) Assets]** (ii) assets that are held for investment and are
35 reasonably expected to be used within two years to finance research
36 and experimentation in a qualified trade or business or increases in
37 working capital needs of a qualified trade or business.

38 **(b)** For periods after the corporation has been in existence for
39 at least two years, in no event may more than 50 percent of the
40 assets of the corporation qualify as used in the active conduct of a
41 qualified trade or business by reason of this paragraph.

42 (6) A corporation shall not be treated as meeting the
43 requirements of paragraph (1) of this subsection **[d.]** for any
44 period during which more than 10 percent of the total value of its
45 assets consists of real property that is not used in the active conduct
46 of a qualified trade or business. For purposes of **[the preceding**

1 sentence] this paragraph¹ the ownership of, dealing in, or renting
2 of, real property shall not be treated as the active conduct of a
3 qualified trade or business.

4 (7) For purposes of paragraph (1) of this subsection, rights to
5 computer software that produces active business computer software
6 royalties ¹[()]¹ within the meaning of section 543(d)(1) of the
7 Internal Revenue Code (26 U.S.C. s.543(d)(1)) ¹[()]¹ shall be
8 treated as an asset used in the active conduct of a trade or business.

9 e. If any stock in a corporation is acquired solely through the
10 conversion of other stock in the corporation that is qualified small
11 business stock in the hands of the taxpayer, the stock so acquired
12 shall be treated as qualified small business stock in the hands of the
13 taxpayer and the stock so acquired shall be treated as having been
14 held during the period during which the converted stock was held.

15 f. (1) If any amount included in gross income by reason of
16 holding an interest in a pass-through entity meets the requirements
17 of paragraph (2) of this subsection ¹[(f.)]¹, the following shall apply:

18 (a) ¹[(The) the]¹ amount shall be treated as gain described in
19 subsection a. of this section; and

20 (b) ¹[(For) for]¹ purposes of applying subsection b. of this
21 section, the amount shall be treated as gain from a disposition of
22 stock in the corporation issuing the stock disposed of by the pass-
23 through entity and the taxpayer's proportionate share of the
24 adjusted basis of the pass-through entity in the stock shall be taken
25 into account.

26 (2) An amount shall meet the requirements of paragraph (1) of
27 this subsection ¹[(f.)]¹ if:

28 (a) ¹[(The) the]¹ amount is attributable to gain on the sale or
29 exchange by the pass-through entity of stock that is qualified small
30 business stock in the hands of the entity ¹[()]¹ determined by
31 treating the entity as an individual ¹[()]¹ and that was held by that
32 entity for more than five years; and

33 (b) ¹[(The) the]¹ amount is includable in the gross income of the
34 taxpayer by reason of the holding of an interest in the entity that
35 was held by the taxpayer on the date on which the pass-through
36 entity acquired the stock and at all times thereafter before the
37 disposition of the stock by the pass-through entity.

38 ¹[(Provided however, that)] (3) Notwithstanding any provision of
39 law to the contrary,¹ paragraph (1) of this subsection ¹[(f.)]¹ shall
40 not apply to any amount to the extent the amount exceeds the
41 amount to which that paragraph ¹[(1)]¹ would have applied if the
42 amount was determined by reference to the interest the taxpayer
43 held in the pass-through entity on the date the qualified small
44 business stock was acquired. ¹[(Provided further, that)]

1 (4) For purposes of this subsection,¹ “pass-through entity”
2 means any of the following: a partnership; an S corporation; a
3 regulated investment company; or a common trust fund.

4 g. For purposes of this section:

5 (1) In the case of a transfer described in paragraph (2) of this
6 subsection, the transferee shall be treated as **‘[meeting] having**¹
7 both: **‘[having]**¹ acquired the stock in the same manner as the
8 transferor; and **‘[having]**¹ held the stock during any continuous
9 period immediately preceding the transfer during which it was held
10 **‘[(] ,**¹ or treated as held **‘[under this subdivision)] ,**¹ by the
11 transferor.

12 (2) A transfer **‘[is] , as**¹ described in this subsection **‘[if the] ,**
13 shall include any¹ transfer **‘[is any of the following] made**¹:

14 (a) **‘[By] by**¹ gift **‘[.] ;**¹

15 (b) **‘[At] at**¹ death **‘[.] ; or**¹

16 (c) **‘[From] from**¹ a partnership to a partner of stock with
17 respect to which requirements similar to the requirements of
18 subsection f. of this section are met at the time of the transfer **‘[(] ,**¹
19 without regard to the five-year holding period requirement **‘[)]**¹.

20 (3) Rules similar to the rules of section 1244(d)(2) of the
21 Internal Revenue Code (26 U.S.C. s.1244(d)(2)) shall apply for
22 purposes of this section.

23 (4) (a) In the case of a transaction described in section 351 of
24 the Internal Revenue Code (26 U.S.C. s.351) or a reorganization
25 described in section 368 of the Internal Revenue Code (26 U.S.C.
26 s.368), if qualified small business stock is exchanged for other stock
27 that would not qualify as qualified small business stock but for this
28 paragraph **‘[(4)]**¹, the other stock shall be treated as qualified small
29 business stock acquired on the date on which the exchanged stock
30 was acquired.

31 (b) This subsection **‘[e.]**¹ shall apply to gain from the sale or
32 exchange of stock treated as qualified small business stock by
33 reason of subparagraph (a) of this paragraph only to the extent of
34 the gain that would have been recognized at the time of the transfer
35 described in subparagraph (a) of this paragraph if section 351 or
36 368 of the Internal Revenue Code (26 U.S.C. s.351 or s.368) had
37 not applied at that time. The preceding sentence shall not apply if
38 the stock that is treated as qualified small business stock by reason
39 of subparagraph (a) of this paragraph is issued by a corporation that
40 **‘[(] ,**¹ as of the time of the transfer described in that subparagraph
41 **‘[)]**¹ is a qualified small business.

42 (c) For purposes of this paragraph **‘[(4)]**¹, stock treated as
43 qualified small business stock under subparagraph (a) **‘of this**
44 paragraph¹ shall be so treated for subsequent transactions or
45 reorganizations, except that the limitation of subparagraph (b) **‘of**
46 this paragraph¹ shall be applied as of the time of the first transfer to

1 which the limitation applied ¹[() ,¹ determined after the application
2 of the second sentence of subparagraph (b) ¹[()] of this paragraph¹.

3 (d) In the case of a transaction described in section 351 of the
4 Internal Revenue Code (26 U.S.C. s.351), this paragraph shall apply
5 only if immediately after the transaction the corporation issuing the
6 stock owns directly or indirectly stock representing control ¹[() ,¹
7 within the meaning of section 368(c) of the Internal Revenue Code
8 (26 U.S.C. s.368(c)) ¹[()] ,¹ of the corporation whose stock was
9 exchanged.

10 h. For purposes of this section:

11 (1) In the case in which the taxpayer transfers property ¹[() ,¹
12 other than money or stock ¹[()] ,¹ to a corporation in exchange for
13 stock in the corporation, the stock shall be treated as having been
14 acquired by the taxpayer on the date of the exchange and the basis
15 of the stock in the hands of the taxpayer shall in no event be less
16 than the fair market value of the property exchanged.

17 (2) If the adjusted basis of any qualified small business stock is
18 adjusted by reason of any contribution to capital after the date on
19 which the stock was originally issued, in determining the amount of
20 the adjustment by reason of the contribution, the basis of the
21 contributed property shall in no event be treated as less than its fair
22 market value on the date of the contribution.

23 i. (1) If the taxpayer has an offsetting short position with
24 respect to any qualified small business stock, subsection a. ¹of this
25 section¹ shall not apply to any gain from the sale or exchange of the
26 stock unless the stock was held by the taxpayer for more than five
27 years as of the first day on which there was such a short position
28 and the taxpayer elects to recognize gain as if the stock was sold on
29 that first day for its fair market value.

30 (2) For purposes of paragraph (1) of this subsection, the
31 taxpayer shall be treated as having an offsetting short position with
32 respect to any qualified small business stock if any of the following
33 apply:

34 (a) ¹[(The) the¹ taxpayer has made a short sale of substantially
35 identical property ¹[()] ;¹

36 (b) ¹[(The) the¹ taxpayer has acquired an option to sell
37 substantially identical property at a fixed price ¹[()] ; or¹

38 (c) ¹[(To) to¹ the extent provided in regulations, the taxpayer
39 has entered into any other transaction that substantially reduces the
40 risk of loss from holding the qualified small business stock. For
41 purposes of the preceding sentence, any reference to the taxpayer
42 shall be treated as including a reference to any person who is related
43 ¹[()] ,¹ within the meaning of section 267(b) or 707(b) of the
44 Internal Revenue Code (26 U.S.C. s.267(b) or s.707(b)) ¹[()] ,¹ to
45 the taxpayer.

1 j. A corporation that issues qualified small business stock
2 agrees to submit reports to the Director of the Division of Taxation
3 in the Department of the Treasury and to its shareholders as the
4 director may require to carry out the purposes of this section.

5
6 2. The Director of the Division of Taxation in the Department
7 of the Treasury shall prescribe regulations pursuant to the provision
8 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
9 1 et seq.) as may be appropriate to carry out the purposes of this act,
10 including any regulations that may conform to those regulations
11 promulgated by the Secretary of the Treasury under section 1202(k)
12 of the Internal Revenue Code (26 U.S.C. s.1202(k)) that shall apply
13 to the extent that those regulations do not conflict with this act, and
14 such further regulation that shall include but be not limited to
15 regulations to prevent the avoidance of the purposes of this act
16 through splitups, shell corporations, partnerships, or otherwise.

17
18 3. This act shall take effect immediately ¹and shall apply to
19 taxable years beginning on or after the date of enactment¹.