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ROCKLAND ELECTRIC COMPANY, Plaintiff, v. DIRECTOR, DIVISION, OF TAXATION, Defendant.	:	TAX COURT OF NEW JERSEY DOCKET NO.: 008111-2016 Approved for Publication In the New Jersey Tax Court Reports

Decided: April 30, 2018

Alysse McLoughlin for plaintiff (McDermott Will & Emery LLP, attorneys).

Michael J. Duffy for defendant (Gurbir Grewal, Attorney General of New Jersey, attorneys).

BIANCO, J.T.C.

This letter opinion constitutes the court's decision with respect to a motion for summary judgment filed by plaintiff, Rockland Electric Company ("Rockland"), and a Cross-Motion for Summary Judgment filed by defendant, Director, Division of Taxation ("Director"). Rockland argues that it is not required to add-back the New Jersey Transitional Energy Facility Assessment ("TEFA") in determining its entire net income for New Jersey Corporation Business Tax ("CBT") because, the plain language of N.J.S.A. 54:10A-4.1 ("the TEFA add-back provision") ties the addition of the TEFA to entire net income for CBT purposes under N.J.S.A. 54:10A-4(k)(2)(C), ("the CBT add-back provision") which does not apply to *New Jersey* taxes other than the CBT. Assuming *arguendo* that the provision could apply to other New Jersey taxes, Rockland contends that the TEFA is not a tax "on or measured by profits or income, or business presence or business activity." According to Rockland, the TEFA is not required to be added back because (1) it

temporarily replaced the tax revenue from the gross receipts tax, which was not subject to add-back, and because (2) doing so would put New Jersey Utilities on an unequal footing with multistate utilities, and (3) Rockland maintains that if there is a doubt as to the interpretation of the statute it should be resolved in favor of the taxpayer.

Conversely, the Director argues that the plain language of the TEFA add-back provision requires Rockland to add-back the TEFA when calculating the entire net income base for CBT purposes; the TEFA add-back provision is a stand-alone provision with its own legislative history; and the TEFA add-back provision is not discriminatory as to both New Jersey and Multistate utilities that are doing business in New Jersey.

For the reasons set forth herein, Rockland's Motion for Summary Judgment is denied, and the Director's Cross-Motion for Summary Judgment is granted.

BACKGROUND, FACTS, AND PROCEDURAL HISTORY

The following facts are not materially in dispute. Rockland is organized as a corporation under the laws of New Jersey, and is engaged in the retail distribution of electrical energy only in New Jersey. During the year in dispute, Rockland was subject to both the CBT and the TEFA. In order to determine its TEFA liability, Rockland multiplied the number of kilowatt-hours of electricity sold to New Jersey customers in that year by the applicable TEFA unit rate surcharge. For the taxable period of January 1, 2008 through December 31, 2011, Rockland calculated its CBT by multiplying its entire net income by the applicable tax rate, and then timely filed its CBT return. In order to calculate Rockland's entire net income, Rockland first took the taxable income reported on its United States corporate income tax returns and then added back the CBT and TEFA liability that was deducted on the federal returns. Rockland then alleged that it had made a mistake in adding back the TEFA to its entire net income, and timely filed amended CBT returns to reflect

this alleged mistake. The amended CBT returns reflected a refund of $2,258,493, which the Director denied in letters dated February 11, 2015, and March 17, 2015. The Director stated the reason for denying the return is because Rockland's TEFA liability must be added back to determine its entire net income for CBT purposes. In a response to the Director's denial of the refund, Rockland filed written protests and requested a conference with the Division of Taxation's Conference and Appeals Branch in letters dated May 7, 2015 and May 12, 2015. This conference was held on October 21, 2015 and the Director notified Rockland in a letter dated February 5, 2016 that its final determination is to deny the refund to Rockland. Rockland timely filed a complaint with the Tax Court of New Jersey, contesting the final determination, and subsequently moved for Summary Judgment. The Director then filed an answer and a cross-motion for Summary Judgment. Oral argument was heard on the cross-motions. The issue here is one of first impression before the Tax Court.

APPLICABLE LAW

A. SUMMARY JUDGMENT

The purpose of summary judgment procedure is to "provide a prompt, businesslike and inexpensive method of disposing of any cause which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at trial." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 530 (1995) (quoting Ledley v. William Penn Life Ins., Co., 138 N.J. 627, 641-42 (1995) (quoting Judson v. Peoples Bank & Trust Co., of Westfield, 17 N.J. 67, 74 (1954)).

When deciding a motion for summary Judgment under R. 4:46-2, courts must determine whether:

> [T]here exists a genuine issue with respect to a material fact challenged [that] requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the nonmoving party.
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> [Brill, 142 N.J. at 523.]

Moreover, "[t]he 'judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 249 (1986)).

In Brill, the New Jersey Supreme Court adopted a less stringent summary judgment standard. The Brill Court synthesized the summary judgment standard with the directed verdict standard found in R. 4:40-2. The Court explained that "[t]he essence of the inquiry in each [summary judgment, R. 4:37-2(b), R. 4:40-1 and R. 4:40-2] is the same: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Id. at 536 (quoting Anderson, 477 U.S. at 251-52). In sum, the Brill Court emphasized that the "thrust of [the] decision is to encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves." Id. at 541.

When the movant demonstrates a right to summary judgment, the burden shifts to the opponent of the motion to show by competent evidence that a genuine issue of material fact exists. See Robbins v. City of Jersey City, 23 N.J. 229, 241 (1957); James Talcott, Inc. v. Shulman, 82 N.J. Super. 438, 443 (App. Div. 1964).

The court finds that the present case is ripe for decision by summary judgment because there is no genuine issue as to a material fact in the matter. The sole question before the court is one of "statutory interpretation which can be determined by application of the law to the

undisputed facts." PPL Elec. Utilities Corp. v. Dir., Div. of Taxation, 28 N.J. Tax 128, 133 (Tax 2014). As a matter of first impression, the court must determine here the interplay between the TEFA add-back provision and the CBT add-back provision in order to determine whether or not the TEFA must be added back to determine entire net income for CBT purposes.

B. STATUTORY CONSTRUCTION

1. N.J.S.A. 54:10A-4(k)(2)(C); CBT Add-Back Provision

In order to determine whether Rockland must add-back TEFA to its entire net income when determining its CBT the court must first look to the CBT add-back provision, N.J.S.A. 54:10A-4(k)(2)(C).

As a starting point, the CBT imposes a tax on each *non-exempt* domestic corporation and foreign corporation:

> [F]or the privilege of having or exercising its corporate franchise in this State, or for the privilege of deriving receipts from sources within this State, or for the privilege of engaging in contacts within this State, or for the privilege of doing business, employing or owning capital or property, or maintaining an office in this state.
>
> [N.J.S.A. 54:10A-2]

The tax that is imposed on the corporation is determined by their "entire net income" which is defined as follows:

> Entire net income shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets.
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> [N.J.S.A. 54:10A-4(k).]

Entire net income is then limited to line 28 of the federal income tax return by the subsequent paragraph in N.J.S.A. 54:10A-4(k):

> For the purpose of [the CBT] … act, the amount of a taxpayer's entire net income shall be deemed *prima facie* to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report . . . to the United States Treasury Department for the purpose of computing its federal income tax . . .
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> [Id.]

The statute then continues to "add-back" certain "exclusions, deductions, and credits" to entire net income that were allowed for federal tax purposes. N.J.S.A. 54:10A-4(k)(2). Several exceptions are outlined in the statute, however the exception at issue here is N.J.S.A. 54:10A-4(k)(2)(C) (the CBT add-back provision):

> (2) Entire net income shall be determined without the exclusion, deduction or credit of:
> . . .
> (C) Taxes paid or accrued to . . . a state . . . on or measured by profits or income, or business presence or business activity, or the tax imposed by this act . . .
>
> [Id.]

The Tax Court has found that the add-back provision was a part of a 1993 amendment to the CBT, which "was enacted to stop the tax rate discrimination that existed prior to the amendment." Ross Fogg Fuel Oil Co. v. Dir., Div. of Taxation, 22 N.J. Tax 372, 376 (Tax 2005). The "clear purpose of the statute was to put taxpayers, subject only to CBT on equal footing with taxpayers subject to CBT and equivalent net corporate income taxes in other States." Duke Energy Corp. v. Dir., Div. of Taxation, 28 N.J. Tax 226, 235 (Tax 2014). As Rockland points out, our case law has established that this amendment requires corporations to add-back, other than the tax imposed by this act (the CBT), taxes paid to *other* States. Ross Fogg, 22 N.J. Tax at 378. Furthermore the taxes paid to other states must be "on or measured by profits or income," as discussed in Amerada Hess Corp. v. Dir., Div. of Taxation, 107 N.J. 307, 313 (Tax 1987) or "business presence or business activity" according to N.J.A.C. 18:7-8.7(f).

2. N.J.S.A. 54:30A-100; The TEFA

This court finds that while it is important to understand the legislative intent of the CBT add-back provision, for the issue at hand, it is far more important to understand the intent behind the TEFA and why the legislature incorporated the TEFA add-back provision into the CBT. The TEFA was enacted and codified under N.J.S.A. 54:30A-100, in 1997, as part of L. 1997, c. 162 ("the Bill"). TEFA was part of the Legislature's plan to "implement a transition to competition by utilities resulting from recent regulatory developments on both the Federal and State levels . . . ." Assembly Policy and Regulatory Oversight Comm. Statement to A. 2825 1 (June 12, 1997). During this transition the Legislature remained cognizant of the fact that "New Jersey's taxes are among the highest in the nation, constraining the State's economic growth." Ibid. The Bill was the Legislature's answer to the issue of economic erosion; it placed regulated and unregulated utility companies on the equal footing in terms of taxation. Id. at 1-2.

In order "to prevent the continued erosion of future tax revenues for annual distribution," the Bill simultaneously eliminated the collection of gross receipt and franchise taxes by utilities, and in their place subjected all utilities to the collection of CBT, Sales and Use Tax, and the TEFA. Ibid. The Bill became effective in 1998 and the TEFA unit rate surcharges were "calculated as the total of each remitter's base year[1] liability less the sales and use taxes collected and the CBT booked for the privilege period ending in calendar year 1998 . . . ." L. 1997, c. 162, § 67. The remitter's base year liability for TEFA unit rate surcharges were to be reduced in each of the following years until completely phased out.[2] Id. In concert with the Bill, the Legislature added

[1] "Base Year" means the calendar year 1996.

[2] The TEFA was originally intended to be phased out over a five year period, however the legislature extended the TEFA until it finally expired in 2013. N.J.S.A. 54:30A-102.

a statutory provision to the CBT which is referred to as the TEFA add-back provision, which is at issue in this case. See N.J.S.A. 54:10A-4.1.

3. N.J.S.A. 54:10A-4.1; TEFA Add-Back Provision

The language of the TEFA add-back provision (entitled TEFA as State Tax) can be split into three parts; (i) "Notwithstanding the use of the term assessment, the [TEFA] is a State tax within the meaning of . . . 26 U.S.C. [§] 164, [3]" (ii) "pursuant to which a deduction is allowed in arriving at federal taxable income for the taxable year within which it is paid or accrued," (iii) "and such amount shall be added back to entire net income pursuant to . . . [the CBT add-back provision]." N.J.S.A. 54:10A-4.1. The statutory analysis before the court centers upon whether part (iii) of the TEFA add-back provision requires Rockland to add-back to its entire net income the amount of TEFA excluded from its federal taxable income.

ANALYSIS

The court initially rejects Rockland's argument that all doubt concerning the statutory construction of the TEFA add-back provision, in conjunction with the CBT add-back provision, should be resolved in favor of the taxpayer. Rockland misguidedly relies on the Tax Court's holding in Fedders Fin. Corp. v. Dir., Div. of Taxation, 96 N.J. Tax 376, 385 (Tax 1984) *to wit*, "when interpretation of a taxing provision is in doubt, and there is no legislative history that dispels that doubt, the court should construe the statute in favor of the taxpayer." Id. The court finds the rationale of Justice Stone appropriate here:

> We are not impressed by the argument that, as the question here decided is doubtful, all doubts should be resolved in favor of the taxpayer. It is the function and duty of the courts to resolve doubts.

[3] Section 164 is the general rule for "taxes that shall be allowed as a deduction for the taxable year within which paid or accrued," such as "real property," "personal property," and "income" taxes paid to a state. 26 U.S.C. [§] 164.

> We know of no reason why that function should be abdicated in a tax case more than in any other where the rights of suiters turn on the construction of a statute and it is our duty to decide what the construction fairly should be.
>
> [White v. United States, 305 U.S. 281, 292 (1938).]

Moreover, the court is satisfied, as more fully addressed below, that there is legislative intent that dispels any doubt as to the interpretation of the TEFA add-back provision in conjunction with the CBT add-back provision in this matter. See e.g. Oberhand v. Dir., Div. of Taxation, 193 N.J. 558, 570 (2008) (where "the legislative history dispels any doubt in the interpretation of the statute, we find no reason to apply Fedders").

The statutory construction of the TEFA add-back provision in conjunction with the CBT add-back provision, begins with an understanding of how our courts have traditionally brought to life the meaning of a statute. Courts continually struggle with the literal meanings of the words in a statute, and what the Legislature intended those words to mean. The wisdom of Judge Learned Hand provides useful guidance in that regard: "there is no surer way to misread any document than to read it literally." Guiseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944) (Hand, J. concurring) aff'd *sub nom* Gemsco v. Walling, 324 U.S. 244 (1945). New Jersey's Supreme Court found in Caputo v. Best Foods, 17 N.J. 259 (1955), that statutory construction "emerges from the spirit and policy of the statute rather than the literal sense of particular items." Id. at 264. Justice Handler added in Unemployed-Employed Council of N.J., Inc. v. Horn, 85 N.J. 646 (1981) that "statutory language must be read perceptively and sensibly with a view toward fulfilling the legislative intent." Id. at 655.

Furthermore:

> The plain language of a statute must be given effect by the courts. A statute should be interpreted in accordance with its plain meaning if it is clear and unambiguous on its face and admits only one interpretation. The best approach to the meaning of a tax statute is

> to give to the words used by the Legislature their generally accepted meaning, unless another or different meaning is expressly indicated. The duty of . . . this court is to give meaning to the wording of the statute and, where the words used are unambiguous, apply its plain meaning in the absence of a legislative intent to the contrary.
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> [New Cingular Wireless PCS, LLC v. Dir., Div. of Taxation, 28 N.J. Tax 1, 14-15 (Tax 2014)(citations omitted).]

and:

> [A] statutory enactment cannot be deemed as a meaningless exercise by our Legislature and must be interpreted to have some purpose. See Flexx Petroleum Corp. v. Dir., Div. of Taxation, 12 N.J. Tax 1, 12 (Tax 1991) (court must avoid any interpretation 'that will render any part of a statute inoperative, superfluous or meaningless' or 'attribute to the Legislature a deliberate attempt to make a meaningless change').
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> [Fields v. Trustees of Princeton University, 28 N.J. Tax 547, 587 (Tax 2015)]

This court is further influenced by the established "principle that the Director's interpretation of tax statutes is entitled to a presumption of validity." Duke Energy Corp., 28 N.J. Tax at 232.

> Courts have recognized the Director's expertise in the highly specialized and technical area of taxation. The scope of judicial review of the Director's decision with respect to the imposition of a tax "is limited." The Supreme Court has directed the courts to accord "great respect" to the Director's application of tax statutes, "so long as it is not plainly unreasonable." Generally, courts accord substantial deference to the interpretation an agency gives to a statute that the agency is charged with enforcing. However, judicial deference is not absolute. An administrative agency's interpretation of the law that is plainly at odds with the statute will not be upheld.
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> [Ibid. (citations omitted).]

In an effort to give meaning to the words of the TEFA add-back provision, the court looks into the spirit and policy behind that provision at the time it was put into effect. This allows the court to read the TEFA add-back provision perceptively and sensibly, fulfilling the intent of the

Legislature in their inclusion of, "such amount shall be added back to entire net income *pursuant to* . . . [the CBT add-back provision]," into the TEFA add-back provision (emphasis added).

Accordingly, this court must first distinguish the TEFA from its predecessors, the gross receipts and franchise tax. The Bill was passed with an economic back drop that spelled disaster for the future of New Jersey utilities. Tax rates were too high for regulated utilities, causing unregulated entities, and out of state providers to take to the market. See, Office of the Governor News Release, Gov. Whitman Signs Legislation Reforming Energy Tax, Lowering Consumer Rates and Continuing Municipal Property Tax Revenue (July 1997). Accordingly, in an effort to equalize the playing field for all utility providers, and to retain and attract utility providers to the State of New Jersey, the Legislature undertook a massive overhaul into how utility companies are taxed. Id. This overhaul included the removal of the gross receipts and franchise taxes imposed on regulated utilities, and the imposition of CBT and sales and use tax on all utilities. This alone, however, would have caused a massive loss to New Jersey's tax revenue. The Legislature responded by temporarily implementing the TEFA.[4]

The TEFA was enacted to essentially wean New Jersey off of the pre-1998 tax revenue from regulated entities.[5] When looking to the calculation of the TEFA unit rate surcharge, it acts as a replacement to the revenue received from the gross receipts and franchise taxes imposed prior

[4] "The five year phase-out of the TEFA will result in a decline in net revenues from the replacement taxes over the first five years, masking the underlying increases in the permanent taxes the will become apparent in the sixth year." Assembly Appropriations Comm. Statement to A. 2825 (June 19, 1997).

[5] "The purpose of the TEFA is to cushion the General Fund impact of the overall tax reduction provided in the bill . . . . The bill provides that the total amount of taxes paid by the energy utilities in 1998 will be at least the same amount as the amount paid in calendar year 1997." Fiscal Note to A. 2825 2 (June 24, 1997).

to 1998, and then further deducts the CBT and sales and use tax estimated to be paid by the utility. This additional deduction from the unit rate surcharge is the distinguishing feature of the TEFA, because it acts as a bridge between the tax revenue lost during the transition. Accordingly, this court concludes that rather than the TEFA being a gross receipt and franchise tax *replacement*, the TEFA is a CBT and sales and use tax *supplement*, bridging the anticipated loss in tax revenue post transition.

Furthermore, the court concludes that the addition of the TEFA add-back provision into the CBT further drives the intent of the legislature to interpret the TEFA as a supplement to the CBT rather than a separate tax. The case law dictates that the CBT add-back provision only applies to "the tax imposed by this act" (i.e. the CBT) and taxes paid to other states "on or measured by profits or income," or "business presence or business activity." With this in mind this court concludes, when reading the TEFA add-back provision in conjunction with the CBT add-back provision, the TEFA in essence is a "tax imposed by this act." Unlike other New Jersey taxes, which are not subject to the CBT add-back provision, the TEFA add-back provision, given its specific incorporation into the CBT, ensures that the TEFA will be treated as the Legislature intended, and added back to entire net income for CBT purposes.

Therefore, when looking to spirit and policy of the Bill at the time it was passed, and how the TEFA is calculated, coupled with the addition of the TEFA add-back provision directly into the CBT statute, it is clear to the court that the Legislature intended for the TEFA to be added back to entire net income for CBT purposes. Additionally, the rules of statutory interpretation preclude the court from accepting Rockland's interpretation of the TEFA add-back provision, as it would render the provision superfluous. see Flexx Petroleum, 12 N.J. Tax at 12. Therefore, the court may not read "pursuant to the CBT add-back provision" to mean *only if* the TEFA satisfies the

CBT add-back provision, rather the court must read this section as a *cross-reference* to the CBT add-back provision, directing the add-back of the TEFA as a "tax imposed by this act." Accordingly, the court finds the Director's interpretation of the TEFA add-back provision to be reasonable, and *not* at odds with N.J.S.A. 54:10A-4.1.

The court further rejects Rockland's argument that by not amending N.J.S.A. 54:10A-4(k)(2), to specifically require the TEFA to be added back to entire net income (as it did with the Sales and Use Tax),[6] the Legislature intended *not* to add-back the TEFA. As in Amerada Hess, the court here also finds that "the doctrine of probable legislative intent [is] more reliable than the so-called doctrine of legislative inaction." Amerada Hess, 107 N.J. at 322.[7] In fact this court's interpretation of the TEFA add-back provision in conjunction with the CBT add-back provision, parallels the finding by the trial court in Amerada Hess, which the Supreme Court adopted, *to wit*, the Court was "entirely satisfied from the ordinary meaning of [the] words and from the public perception of the purpose of the [tax at issue] that the legislators would have been reassured that no amendment of the statutory language was needed to protect the State's revenue source." 107 N.J. at 322.

Finally, the court rejects Rockland's contention that by requiring the add-back of the TEFA to entire net income, the legislative intent of the 1993 amendment to the CBT add-back provision

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[6] The New Jersey Sales and Use Tax is specifically added back to entire net income under N.J.S.A. 54:10A-4(k)(2)(H).

[7] "Legislative inaction has been called a 'weak reed upon which to lean' and a 'poor beacon to follow' in construing a statute." Amerada Hess, 107 N.J. at 322, citing 2A Sutherland, Statutory Construction, § 49.10 (4th Ed. 1984)

would be frustrated.[8] This court determined above that the legislature included the TEFA in the Bill to act as a temporary supplement to the CBT, due to the nature of the TEFA unit rate surcharge calculation, coupled with the TEFA add-back provision. The TEFA ensures that New Jersey will receive at least as much tax revenue as it did prior to 1998, by subtracting the estimated CBT and sales and use tax from the calculation of the TEFA unit rate surcharge, and then adding all three taxes back to entire net income for CBT purposes. Clearly this matter would not be before the court had the Legislature temporarily raised the CBT rate to achieve the same result. The court is satisfied that the TEFA add-back provision will not put corporate taxpayers, subject only to CBT

[8] The court in Ross Fogg found that the amendment to the CBT add-back provision, was intended to "stop the tax rate discrimination that existed prior to the amendment." 22 N.J. Tax at 376-77. This discrimination was caused by the "allowance of the deduction of taxes of other jurisdictions, causing corporations which do business in several states to pay a lower effective rate of tax on their New Jersey activities than do corporations which only do business in New Jersey." Id. at 377 (citing Joint Legislative Comm. on Economic Recovery Statement to Assembly Comm. Substitute for A. 273 and 1870 (June 2, 1993)). The court held that the purpose of this amendment was not to "expand the scope" of the CBT add-back provision to include other *New Jersey* taxes, but rather to "eradicate the tax rate discrimination against New Jersey corporations with solely in-state activity" by "capturing out-of-state income that had not previously been subject to the add-back." Ross Fogg, 22 N.J. Tax 377-78. The TEFA in this matter is distinguishable from the tax at issue in Ross Fogg. Unlike the petroleum gross receipts tax at issue there, the TEFA brings with it specific legislative history that points to the Legislature's clear intent to add-back the TEFA, to temporarily cushion the General Fund impact after the Bill removed the gross receipts and franchise taxes. Furthermore, the Legislature specifically tied the TEFA add-back provision to the CBT add-back provision, which drives this court's conclusion that the TEFA is "a tax imposed by this act." Due to the nature of the TEFA and the TEFA add-back provision, this court finds it unnecessary to discuss whether or not the TEFA is "on or measured by profits or income" or "business presence or business activity," as this only applies to taxes of other states in the contemplation of whether or not they should be added-back to entire net income for CBT purposes. Accordingly, the TEFA is distinguishable from any other similar New Jersey tax, and from the rationale of Ross Fogg which limits the add-back of New Jersey taxes only to the CBT.

and the TEFA, on unequal footing with taxpayers subject to CBT, TEFA, and equivalent net corporate income taxes in *other* States.

CONCLUSION

The court finds that there is no genuine issues of material fact which precludes the resolution of this matter in a summary fashion. Accordingly, for the reasons set forth above, Rockland's motion for summary judgment is denied, and the Director's cross motion for summary judgment is granted. The court's order consistent with this opinion has been uploaded to eCourts.