

[First Reprint]

**SENATE, No. 2477**

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**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

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INTRODUCED JULY 29, 2016

**Sponsored by:**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**SYNOPSIS**

Concerns certain unused portions of tax credits issued to insurance premiums taxpayers under the Business Employment Incentive Program; exempts certain purchasers of business development incentives from certain State tax notification requirements.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on September 8, 2016, with amendments.



1 AN ACT <sup>1</sup>**[**authorizing the payment of refunds for**]** concerning<sup>1</sup>  
 2 certain unused portions of tax credits issued to insurance  
 3 premiums taxpayers under the Business Employment Incentive  
 4 Program <sup>1</sup>and exempting certain purchasers of business  
 5 development incentives from certain State tax notification  
 6 requirements<sup>1</sup>, amending P.L.1996, c.26 <sup>1</sup>, P.L.1966, c.30, and  
 7 P.L.2007, c.100<sup>1</sup>.

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

11  
 12 1. Section 6 of P.L.1996, c.26 (C.34:1B-129) is amended to  
 13 read as follows:

14 6. a. The amount of the employment incentive awarded as a  
 15 grant by the authority shall either be awarded in cash or as a tax  
 16 credit. In each case, the amount of the grant shall be not less than  
 17 10 percent and not more than 50 percent of the withholdings of the  
 18 business, or not less than 10 percent and not more than 30 percent  
 19 of the estimated tax of the partners of an eligible partnership  
 20 whether paid directly by the partner or by the eligible partnership  
 21 on behalf of the partner's account, or any combination thereof, and  
 22 shall be subject to the provisions of sections 10 and 11 of P.L.1996,  
 23 c.26 (C.34:1B-133 and C.34:1B-134). In no case shall the  
 24 aggregate amount of the employment incentive grant awarded  
 25 pursuant to a business employment incentive agreement entered into  
 26 on or after July 1, 2003 exceed an average of \$50,000 for all new  
 27 employees over the term of the grant. The employment incentive  
 28 shall be based on criteria developed by the authority after  
 29 considering the following:

- 30 (1) The number of eligible positions to be created;  
 31 (2) The expected duration of those positions;  
 32 (3) The type of contribution the business can make to the long-  
 33 term growth of the State's economy;  
 34 (4) The amount of other financial assistance the business will  
 35 receive from the State for the project;  
 36 (5) The total dollar investment the business is making in the  
 37 project;  
 38 (6) Whether the business is a designated industry;  
 39 (7) Impact of the business on State tax revenues; and  
 40 (8) Such other related factors determined by the authority.

41 b. A business may be eligible to be awarded a grant, either in  
 42 cash or in tax credits, of up to 80 percent of the withholdings of the  
 43 business or up to 50 percent of the estimated tax of the partners of  
 44 an eligible partnership if the grant promotes smart growth and the

**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:

<sup>1</sup>Senate SBA committee amendments adopted September 8, 2016.

1 goals, strategies, and policies of the State Development and  
2 Redevelopment Plan, established pursuant to section 5 of P.L.1985,  
3 c.398 (C.52:18A-200), as determined by and based upon criteria  
4 promulgated by the authority following consultation with the Office  
5 of State Planning in the Department of State.

6 c. The term of the grant shall not exceed 10 years.

7 d. At the discretion of the authority, the grant may apply to  
8 new employees or partners in eligible positions created during the  
9 base years, and during the remainder of the term of the grant.

10 e. Within 180 days of the date of enactment of P.L.2015,  
11 c.194 (C.34:1B-137.1 et al.), a business that was approved for a  
12 grant prior to the enactment of P.L.2015, c.194 (C.34:1B-137.1 et  
13 al.), may direct the authority to convert the grant to a tax credit  
14 against the tax liability otherwise due pursuant to section 5 of  
15 P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945,  
16 c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950,  
17 c.231 (C.17:32-15), or N.J.S.17B:23-5. The direction to convert the  
18 grant to a tax credit shall be irrevocable. An approved tax credit  
19 shall be issued in the manner and for the amounts as follows and  
20 may only be applied in the tax period for which they are issued and  
21 shall not be carried forward:

22 (1) For grants accrued but not paid during calendar years 2008  
23 through 2013, the tax credit shall be equal to an approved amount  
24 and shall be issued in five installments over a five-year period  
25 beginning in the 2017 tax accounting or privilege period of the  
26 business or tax credit transferee in the following percentages: in  
27 year one, five percent of the accrued amount; in year two, 20  
28 percent of the accrued amount; in year three, 25 percent of the  
29 accrued amount; in year four, 25 percent of the accrued amount; in  
30 year five, 25 percent of the accrued amount. To the extent any  
31 amount in this paragraph has not been approved by the authority by  
32 the commencement of State fiscal year 2017, the aggregate tax  
33 credit that would have been issued in State fiscal year 2017 shall be  
34 issued in the year the amount is approved and the five-year period  
35 shall commence in that fiscal year;

36 (2) For a grant accrued but not paid during calendar year 2014,  
37 the tax credit shall be equal to any approved amount and shall be  
38 issued in four equal installments over a four-year period beginning  
39 in the 2019 tax accounting or privilege period of the business or tax  
40 credit transferee;

41 (3) For a grant accrued but not paid during calendar year 2015,  
42 the tax credit shall be equal to any approved amount and shall be  
43 issued in four equal installments over a four-year period beginning  
44 in the 2019 tax accounting or privilege period of the business or tax  
45 credit transferee;

46 (4) For a grant accrued but not paid during calendar year 2016,  
47 the tax credit shall be equal to any approved amount and shall be  
48 issued in three equal installments over a three-year period

1 beginning in the 2020 tax accounting or privilege period of the  
2 business or tax credit transferee;

3 (5) For a grant accrued but not paid during calendar year 2017,  
4 the tax credit shall be equal to any approved amount and shall be  
5 issued in three equal installments over a three-year period  
6 beginning in the 2020 tax accounting or privilege period of the  
7 business or tax credit transferee;

8 (6) For a grant accrued but not paid during calendar year 2018,  
9 the tax credit shall be equal to any approved amount and shall be  
10 issued in two equal installments over a two-year period beginning  
11 in the 2022 tax accounting or privilege period of the business or tax  
12 credit transferee;

13 (7) For a grant accrued but not paid during calendar year 2019,  
14 the tax credit shall be equal to any approved amount and shall be  
15 issued in two equal installments over a two-year period beginning  
16 in the 2022 tax accounting or privilege period of the business or tax  
17 credit transferee;

18 (8) For a grant accrued but not paid during calendar year 2020,  
19 the tax credit shall be equal to any approved amount and shall be  
20 issued in two equal installments over a two-year period beginning  
21 in the 2023 tax accounting or privilege period of the business or tax  
22 credit transferee;

23 (9) For a grant accrued but not paid during calendar year 2021,  
24 the tax credit shall be equal to any approved amount and shall be  
25 issued in two equal installments over a two-year period beginning  
26 in the 2023 tax accounting or privilege period of the business or tax  
27 credit transferee;

28 (10) For a grant accrued but not paid during calendar year 2022,  
29 the tax credit shall be equal to any approved amount and shall be  
30 paid in two equal installments over a two-year period beginning in  
31 the 2023 tax accounting or privilege period of the business or tax  
32 credit transferee;

33 (11) For a grant accrued but not paid during calendar year 2023,  
34 the tax credit shall be equal to any approved amount and shall be  
35 issued in two equal installments over a two-year period beginning  
36 in the 2023 tax accounting or privilege period of the business or tax  
37 credit transferee;

38 (12) For a grant accrued but not paid during calendar year 2024,  
39 the tax credit shall be equal to any approved amount and shall be  
40 issued in the 2025 tax accounting or privilege period of the business  
41 or tax credit transferee; and

42 (13) For a grant accrued but not paid during calendar year 2025,  
43 the tax credit shall be equal to any approved amount and shall be  
44 issued in the 2025 tax accounting or privilege period of the business  
45 or tax credit transferee.

46 f. The amount of the credit allowed pursuant to this section  
47 shall be applied against the tax otherwise due under section 5 of  
48 P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945,

1 c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950,  
2 c.231 (C.17:32-15), or N.J.S.17B:23-5, prior to all other credits and  
3 payments. If the credit exceeds the amount of tax liability  
4 otherwise due from a business that pays taxes under section 5 of  
5 P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945,  
6 c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950,  
7 c.231 (C.17:32-15), or N.J.S.17B:23-5, that amount of excess shall  
8 be an overpayment for the purposes of R.S.54:49-15, provided,  
9 however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not  
10 apply.

11 g. A business that does not pay taxes under section 5 of  
12 P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945,  
13 c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950,  
14 c.231 (C.17:32-15), or N.J.S.17B:23-5 may apply to the executive  
15 director of the authority for a tax credit transfer certificate, covering  
16 one or more years. The tax credit transfer certificate, upon receipt  
17 thereof by the business from the executive director of the authority,  
18 may be sold or assigned, in full or in part, in an amount not less  
19 than \$100,000, or the amount of the refundable tax credit issued if  
20 less than \$100,000, of tax credits to any other person that may have  
21 a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-  
22 5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3),  
23 section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The  
24 tax credit transfer certificate provided to the business shall include a  
25 statement waiving the business's right to claim that amount of the  
26 credit against the taxes that the business has elected to sell or  
27 assign. The sale or assignment of any amount of a tax credit  
28 transfer certificate allowed under this section shall not be  
29 exchanged for consideration received by the business of less than  
30 75 percent of the transferred credit amount before considering any  
31 further discounting to present value which shall be permitted. Any  
32 amount of a tax credit transfer certificate used by a purchaser or  
33 assignee against a tax liability shall be subject to the same  
34 privileges, limitations, and conditions that apply to the use of the  
35 credit by the business that originally applied for and was allowed  
36 the tax credit, including treating the amount of excess as an  
37 overpayment under subsection f. of this section. The tax credit  
38 transferee may not transfer its tax credit to any other party.  
39 (cf: P.L.2016, c.9, s.1)

40

41 <sup>1</sup>2. Section 22 of P.L.1966, c.30 (C.54:32B-22) is amended to  
42 read as follows:

43 22. (a) Whenever any person required to collect tax shall fail to  
44 collect or pay over any tax, penalty or interest imposed by this act  
45 as therein provided, or whenever any customer shall fail to pay any  
46 such tax, penalty or interest, the Attorney General shall, upon the  
47 request of the director, bring or cause to be brought an action to  
48 enforce the payment of the same on behalf of the State of New

1 Jersey in any court of the State of New Jersey or of any other State  
2 or of the United States.

3 (b) As an additional or alternate remedy, the director may issue a  
4 warrant, directed to the sheriff of any county commanding him to  
5 levy upon and sell the real and personal property of any person  
6 liable for the tax, which may be found within his county, for the  
7 payment of the amount thereof, with any penalties and interest, and  
8 the cost of executing the warrant, and to return such warrant to the  
9 director and to pay to him the money collected by virtue thereof  
10 within 60 days after the receipt of such warrant. The sheriff shall  
11 within 5 days after the receipt of the warrant file with the county  
12 clerk a copy thereof, and thereupon such clerk shall enter in the  
13 judgment docket the name of the person mentioned in the warrant  
14 and the amount of the tax, penalties and interest for which the  
15 warrant is issued and the date when such copy is filed. Thereupon  
16 the amount of such warrant so docketed shall become a lien upon  
17 the title to and interest in real and personal property of the person  
18 against whom the warrant is issued. The sheriff shall then proceed  
19 upon the warrant, in the same manner, and with like effect, as that  
20 provided by law in respect to executions issued against property  
21 upon judgments of a court of record and for services in executing  
22 the warrant he shall be entitled to the same fees, which he may  
23 collect in the same manner. In the discretion of the director a  
24 warrant of like terms, force and effect may be issued and directed to  
25 any officer or employee of the Division of Taxation, and in the  
26 execution thereof such officer or employee shall have all the powers  
27 conferred by law upon sheriffs, but shall be entitled to no fee or  
28 compensation in excess of the actual expenses paid in the  
29 performance of such duty. If a warrant is returned not satisfied in  
30 full, the director may from time to time issue new warrants and  
31 shall also have the same remedies to enforce the amount due  
32 thereunder as if the State had recovered judgment therefor and  
33 execution thereon had been returned unsatisfied.

34 (c) Whenever a person required to collect tax shall make a sale,  
35 transfer, or assignment in bulk of any part or the whole of his  
36 business assets, otherwise than in the ordinary course of business,  
37 the purchaser, transferee or assignee shall at least 10 days before  
38 taking possession of the subject of said sale, transfer or assignment,  
39 or paying therefor, notify the director by registered mail of the  
40 proposed sale and of the price, terms and conditions thereof whether  
41 or not the seller, transferrer or assignor, has represented to, or  
42 informed the purchaser, transferee or assignee that he owes any tax  
43 pursuant to this act, and whether or not the purchaser, transferee, or  
44 assignee has knowledge that such taxes are owing, and whether any  
45 such taxes are in fact owing.

46 Whenever the purchaser, transferee or assignee shall fail to give  
47 notice to the director as required by the preceding paragraph, or  
48 whenever the director shall inform the purchaser, transferee or

1 assignee that a possible claim for such tax or taxes exists, any sums  
2 of money, property or choses in action, or other consideration,  
3 which the purchaser, transferee or assignee is required to transfer  
4 over to the seller, transferrer or assignor shall be subject to a first  
5 priority right and lien for any such taxes theretofore or thereafter  
6 determined to be due from the seller, transferrer or assignor to the  
7 State, and the purchaser, transferee or assignee is forbidden to  
8 transfer to the seller, transferrer or assignor any such sums of  
9 money, property or choses in action to the extent of the amount of  
10 the State's claim. For failure to comply with the provisions of this  
11 section the purchaser, transferee or assignee, in addition to being  
12 subject to the liabilities and remedies imposed under the provisions  
13 of the uniform commercial code, Title 12A of the Revised Statutes  
14 of New Jersey, shall be personally liable for the payment to the  
15 State of any such taxes theretofore or thereafter determined to be  
16 due to the State from the seller, transferrer or assignor, and such  
17 liability may be assessed and enforced in the same manner as the  
18 liability for tax under this act.

19 (d) Subsection (c) of this section shall not apply to the sale,  
20 transfer, or assignment of a grant, tax credit, or tax credit transfer  
21 certificate that has been awarded, issued, or otherwise made  
22 available to a person required to collect tax in connection with a  
23 State or local business assistance or incentive program or activity  
24 authorized by law in effect on the effective date of P.L. \_\_\_\_\_,  
25 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill).

26 For purposes of this subsection, "State or local business  
27 assistance or incentive program or activity" includes but shall not  
28 be limited to: the corporation business tax credit and insurance  
29 premiums tax credit certificate transfer program established by  
30 section 17 of P.L.2004, c.65 (C.34:1B-120.2); the Business  
31 Retention and Relocation Assistance Program established by  
32 P.L.1996, c.25 (C.34:1B-112 et seq.); the Business Employment  
33 Incentive Program established by P.L.1996, c.26 (C.34:1B-124 et  
34 al.); the Urban Transit Hub Tax Credit Program established by  
35 P.L.2007, c.346 (C.34:1B-207 et seq.); the Grow New Jersey  
36 Assistance Program established by section 3 of P.L.2011, c.149  
37 (C.34:1B-244); and the State or local Economic Redevelopment and  
38 Growth Grant program established by section 4 or section 5 of  
39 P.L.2009, c.90 (C.52:27D-489d or C.52:27D-489e).<sup>1</sup>

40 (cf: P.L.1966, c.30, s.22)

41

42 <sup>1</sup>3. Section 5 of P.L.2007, c.100 (C.54:50-38) is amended to read  
43 as follows:

44 5. a. (1) Whenever a person shall make a sale, transfer, or  
45 assignment in bulk of any part or the whole of the person's business  
46 assets except as provided by paragraph (2) of this subsection,  
47 otherwise than in the ordinary course of business, the purchaser,  
48 transferee or assignee shall, at least 10 days before taking

1 possession of the subject of the sale, transfer or assignment, or  
2 paying therefor, notify the director by registered mail, or other such  
3 method as the director may prescribe, of the proposed sale and of  
4 the price, terms and conditions thereof whether or not the seller,  
5 transferrer or assignor has represented to, or informed the  
6 purchaser, transferee or assignee that the seller, transferrer or  
7 assignor owes any State tax and whether or not the purchaser,  
8 transferee, or assignee has knowledge that such taxes are owing,  
9 and whether any such taxes are in fact owing. Within 10 days of  
10 receiving such notice, the director shall notify the purchaser,  
11 transferee or assignee by such means as the director may prescribe  
12 that a possible claim for State taxes exists and include the amount  
13 of the State's claim.

14 (2) (a) Paragraph (1) of this subsection shall not apply to the  
15 sale, transfer or assignment of a simple dwelling house if the seller,  
16 transferrer or assignor is an "individual," "estate," or "trust" as those  
17 terms are used for the purposes of the "New Jersey Gross Income  
18 Tax Act," N.J.S.54A:1-1 et seq.; paragraph (1) shall apply to the  
19 sale, transfer or assignment of a simple dwelling house if the seller,  
20 transferrer or assignor is a business entity, including but not limited  
21 to a corporation or a partnership. "Simple dwelling house" means a  
22 dwelling unit, attached or detached, and land appurtenant thereto,  
23 including but not limited to a one-family or two-family building or  
24 structure, a unit of a horizontal property regime established  
25 pursuant to the "Horizontal Property Act," P.L.1963, c.168  
26 (C.46:8A-1 et seq.), a unit in a housing cooperative as defined  
27 under "The Cooperative Recording Act of New Jersey," P.L.1987,  
28 c.381 (C.46:8D-1 et seq.), or a unit of a condominium property  
29 established pursuant to the "Condominium Act," P.L.1969, c.257  
30 (C.46:8B-1 et seq.), but does not include a structure or structures  
31 containing more than two units of dwelling space or containing,  
32 according to the records of the municipal property tax assessor,  
33 commercial property including, or in addition to, the units of  
34 dwelling space.

35 (b) Paragraph (1) of this subsection shall not apply to the sale,  
36 transfer or assignment of a seasonal rental unit or the sale, transfer  
37 or assignment of a lease for the seasonal use or rental of real  
38 property if the seller, transferrer or assignor is an "individual,"  
39 "estate," or "trust" as those terms are used for the purposes of the  
40 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.;  
41 paragraph (1) shall apply to the sale, transfer or assignment of a  
42 seasonal rental unit or the sale, transfer or assignment of a lease for  
43 the seasonal use or rental of real property if the seller, transferrer or  
44 assignor is a business entity, including but not limited to a  
45 corporation or a partnership.

46 For the purposes of this paragraph:

47 "seasonal rental unit" means



1 (i) a "timeshare estate" as that term is defined by section 2 of  
2 P.L.2006, c.63 (C.45:15-16.51); and

3 (ii) a dwelling unit rented for a term of not more than 125  
4 consecutive days for residential purposes by a person having a  
5 permanent residence elsewhere; and

6 "lease for the seasonal use or rental of real property" means

7 (i) a "timeshare use" as that term is defined by section 2 of  
8 P.L.2006, c.63 (C.45:15-16.51); and

9 (ii) the use or rental for a term of not more than 125 consecutive  
10 days for residential purposes by a person having a permanent place  
11 of residence elsewhere.

12 (3) Paragraph (1) of this subsection shall not apply to the sale,  
13 transfer, or assignment of a grant, tax credit, or tax credit transfer  
14 certificate that has been awarded, issued, or otherwise made  
15 available to a person in connection with a State or local business  
16 assistance or incentive program or activity authorized by law in  
17 effect on the effective date of P.L. , c. (C. ) (pending before  
18 the Legislature as this bill).

19 For purposes of this paragraph, "State or local business  
20 assistance or incentive program or activity" includes but shall not  
21 be limited to: the corporation business tax credit and insurance  
22 premiums tax credit certificate transfer program established by  
23 section 17 of P.L.2004, c.65 (C.34:1B-120.2); the Business  
24 Retention and Relocation Assistance Program established by  
25 P.L.1996, c.25 (C.34:1B-112 et seq.); the Business Employment  
26 Incentive Program established by P.L.1996, c.26 (C.34:1B-124 et  
27 al.); the Urban Transit Hub Tax Credit Program established by  
28 P.L.2007, c.346 (C.34:1B-207 et seq.); the Grow New Jersey  
29 Assistance Program established by section 3 of P.L.2011, c.149  
30 (C.34:1B-244); and the State or local Economic Redevelopment and  
31 Growth Grant program established by section 4 or section 5 of  
32 P.L.2009, c.90 (C.52:27D-489d or C.52:27D-489e).

33 b. If, upon receiving timely notice of a sale, transfer or  
34 assignment from a purchaser, transferee or assignee, the director  
35 fails to provide timely notice to the purchaser, transferee or  
36 assignee that a possible claim for such State tax or taxes exists, the  
37 purchaser, transferee or assignee may transfer over to the seller,  
38 transferrer or assignor any sums of money, property or choses in  
39 action, or other consideration to the extent of the amount of the  
40 State's claim. The purchaser, transferee or assignee shall not be  
41 subject to the liabilities and remedies imposed under the provisions  
42 of the uniform commercial code, Title 12A of the New Jersey  
43 Statutes, and shall not be personally liable for the payment to the  
44 State of any such taxes theretofore or thereafter determined to be  
45 due to the State from the seller, transferrer or assignor.

46 c. If the purchaser, transferee or assignee shall fail to give  
47 notice to the director as required by the preceding paragraph, or if  
48 the director shall inform the purchaser, transferee or assignee that a

1 possible claim for such State tax or taxes exists, any sums of  
2 money, property or choses in action, or other consideration, which  
3 the purchaser, transferee or assignee is required to transfer over to  
4 the seller, transferrer or assignor shall be subject to a first priority  
5 right and lien for any such State taxes theretofore or thereafter  
6 determined to be due from the seller, transferrer or assignor to the  
7 State, and the purchaser, transferee or assignee is forbidden to  
8 transfer to the seller, transferrer or assignor any such sums of  
9 money, property or choses in action to the extent of the amount of  
10 the State's claim. For failure to comply with the provisions of this  
11 section the purchaser, transferee or assignee, in addition to being  
12 subject to the liabilities and remedies imposed under the provisions  
13 of the uniform commercial code, Title 12A of the New Jersey  
14 Statutes, shall be personally liable for the payment to the State of  
15 any such taxes theretofore or thereafter determined to be due to the  
16 State from the seller, transferrer or assignor, and such liability may  
17 be assessed and enforced in the same manner as the liability for any  
18 State tax under the State Uniform Tax Procedure Law, R.S.54:48-1  
19 et seq.<sup>1</sup>

20 (cf: P.L.2011, c.124, s.1)

21

22 <sup>1</sup>**[2.] 4.**<sup>1</sup> This act shall take effect immediately; provided,  
23 however, that section 1 shall apply retroactively to January 11,  
24 2016.