

ASSEMBLY, No. 3979

STATE OF NEW JERSEY

209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

Sponsored by:

Assemblyman PAUL DIGAETANO

District 36 (Bergen, Essex and Passaic)

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

SYNOPSIS

Provides the manufacturing equipment and employment investment tax credit under the corporation business tax for electric energy and thermal energy production.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/21/2001)

1 **AN ACT** providing the manufacturing equipment and employment
 2 investment tax credit under the corporation business tax for electric
 3 energy and thermal energy production, amending P.L.1993, c.171.

4
 5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*

7
 8 1. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to
 9 read as follows:

10 2. For the purposes of this act:

11 "Control," with respect to a corporation, means ownership, directly
 12 or indirectly, of stock possessing 50% or more of the total combined
 13 voting power of all classes of the stock of the corporation entitled to
 14 vote; "control," with respect to a trust, means ownership, directly or
 15 indirectly, of 50% or more of the beneficial interest in the principal or
 16 income of the trust. The ownership of stock in a corporation, of a
 17 capital or profits interest in a partnership or association or of a
 18 beneficial interest in a trust shall be determined in accordance with the
 19 rules for constructive ownership of stock provided in subsection (c) of
 20 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
 21 s.267, other than paragraph (3) of subsection (c) of that section.

22 "Controlled group" means one or more chains of corporations
 23 connected through stock ownership with a common parent corporation
 24 if stock possessing at least 50% of the voting power of all classes of
 25 stock of each of the corporations is owned directly or indirectly by one
 26 or more of the corporations; and the common parent owns directly
 27 stock possessing at least 50% of the voting power of all classes of
 28 stock of at least one of the other corporations.

29 "Director" means the Director of the Division of Taxation in the
 30 Department of the Treasury.

31 "Full-time employee" means an employee working for the taxpayer
 32 for at least 140 hours per month at a wage not less than the State or
 33 federal minimum wage, if either minimum wage provision is applicable
 34 to the business, on a permanent basis, which does not include
 35 employment that is temporary or seasonal.

36 "Investment credit base" means the cost of qualified equipment. The
 37 cost of qualified equipment shall not include the value of equipment
 38 given in trade or exchange for the equipment purchased for business
 39 relocation or expansion. If equipment is damaged or destroyed by fire,
 40 flood, storm or other casualty, or is stolen, the cost of replacement
 41 equipment shall not include any insurance proceeds received in
 42 compensation for the loss. In the case of self-constructed equipment,
 43 the cost thereof shall be the amount properly charged to the capital

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.

1 account for depreciation in accordance with federal income tax law.
2 The cost of equipment acquired by written lease is the minimum
3 amount required by the agreement, agreements, contract or contracts
4 to be paid over the term of the lease, provided however, that the
5 minimum amount shall not include any amount required to be paid, as
6 determined by the director, after the expiration of the useful life of the
7 equipment.

8 "Number of new employees" means the increase in the average
9 number of full-time employees and full-time employee equivalents
10 residing and domiciled in this State employed at work locations in this
11 State from the employment base year to the employment measurement
12 year. The employment base year is the tax year immediately preceding
13 the tax year for which the credit pursuant to section 3 of P.L.1993,
14 c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was
15 not subject to tax and did not have a tax year immediately precede the
16 tax year for which a credit pursuant to section 3 of P.L.1993, c.171
17 (C.54:10A-5.18), was allowed the employment base year is the tax
18 year in which the credit pursuant to section 3 of P.L.1993, c.171
19 (C.54:10A-5.18), was allowed. The measurement year is the tax year
20 immediately following the tax year in which the credit pursuant to
21 section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The
22 hours of part-time employees shall be aggregated to determine the
23 number of full-time employee equivalents.

24 "Part-time employee" means an employee working for the taxpayer
25 for at least 20 hours per week for at least six months during the tax
26 year.

27 "Purchase" means any acquisition of property, including an
28 acquisition pursuant to a lease, but only if:

29 a. the property is not acquired from a person whose relationship to
30 the person acquiring it would result in the disallowance of deductions
31 under section 267 or subsection (b) of section 707 of the federal
32 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

33 b. the property is not acquired by one member of a controlled group
34 from another member of the same controlled group. The director may
35 waive this requirement if the property was acquired from a related
36 person for its then fair market value; and

37 c. the basis of the property for federal income tax purposes, in the
38 hands of the person acquiring it, is not determined:

39 (1) in whole or in part by reference to the federal adjusted basis of
40 such property in the hands of the person from whom it was acquired;
41 or

42 (2) under subsection (e) of section 1014 of the federal Internal
43 Revenue Code of 1986, 26 U.S.C. s.1014.

44 "Qualified equipment" means machinery, apparatus or equipment
45 acquired by purchase for use or consumption by the taxpayer directly
46 and primarily in the production of tangible personal property by

1 manufacturing, processing, assembling or refining, as defined pursuant
2 to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),
3 having a useful life of four or more years, placed in service in this
4 State and machinery, apparatus or equipment acquired by purchase for
5 use or consumption directly and primarily in the generation of
6 electricity as defined pursuant to subsection b. of section 25 of
7 P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the
8 grid, or in the generation of thermal energy, having a useful life of four
9 or more years, placed in service in this State. Qualified equipment does
10 not include tangible personal property which the taxpayer contracts or
11 agrees to lease or rent to another person or licenses another person to
12 use.

13 "Related person" means:

14 a. a corporation, partnership, association or trust controlled by the
15 taxpayer;

16 b. an individual, corporation, partnership, association or trust that
17 is in control of the taxpayer;

18 c. a corporation, partnership, association or trust controlled by an
19 individual, corporation, partnership, association or trust that is in
20 control of the taxpayer; or

21 d. a member of the same controlled group as the taxpayer.

22 "Tax year" means the fiscal or calendar accounting year of a
23 taxpayer.

24 (cf: P.L.1993, c.171, s.2)

25

26 2. This act shall take effect shall take effect immediately and apply
27 to tax years beginning on and after January 1 next following
28 enactment.

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STATEMENT

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33 This bill provides the manufacturing equipment and employment
34 investment tax credit under the corporation business tax for electric
35 energy and thermal energy production. This bill will provide the tax
36 credit for investment in electric generation facilities and thermal
37 energy generation facilities consistent with the tax treatment available
38 under the "Manufacturing Equipment and Employment Incentive Tax
39 Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et seq.). This
40 corporation business investment tax credit will encourage needed
41 investment in electric and thermal energy generation facilities in New
42 Jersey to further stabilize energy prices and meet the energy needs of
43 the region.

44 This investment tax credit will encourage competition in electric
45 and thermal energy generation which is needed to ensure that the State
46 continues to have an adequate supply of electric and thermal energy

- 1 generation capacity. By encouraging the construction of additional
- 2 generation capacity the State can avoid the type of energy supply crisis
- 3 recently experienced in the state of California where electric energy
- 4 demand has outpaced growth in generation capacity.