

# ASSEMBLY, No. 4342

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED NOVEMBER 28, 2011

**Sponsored by:**

**Assemblywoman PAMELA R. LAMPITT**  
**District 6 (Camden)**

**Co-Sponsored by:**

**Assemblyman Fuentes**

**SYNOPSIS**

Extends certain business tax credit programs to the gross income tax.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/9/2011)**

1 AN ACT extending certain business tax credit programs to the gross  
2 income tax, amending various parts of the statutory law and  
3 supplementing Title 54A of the New Jersey Statutes.

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.1996, c.25 (C.34:1B-113) is amended to  
9 read as follows:

10 2. As used in this act:

11 “Affiliate” means an entity that directly or indirectly controls, is  
12 under common control with, or is controlled by the business.  
13 Control exists in all cases in which the entity is a member of a  
14 controlled group of corporations as defined pursuant to section 1563  
15 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the  
16 entity is an organization in a group of organizations under common  
17 control as defined pursuant to subsection (b) or (c) of section 414 of  
18 the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity  
19 may establish by clear and convincing evidence, as determined by  
20 the Director of the Division of Taxation in the Department of the  
21 Treasury, that control exists in situations involving lesser  
22 percentages of ownership than required by those statutes;

23 “Authority” means the New Jersey Economic Development  
24 Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

25 “Business retention or relocation grant of tax credits” or “grant  
26 of tax credits” means a grant which consists of the value of  
27 corporation business tax credits against the liability imposed  
28 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or credits  
29 against liability imposed pursuant to the "New Jersey Gross Income  
30 Tax Act," N.J.S.54A:1-1 et seq., or credits against the taxes  
31 imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et  
32 al.), section 1 of P.L.1950, c.231 (C.17:32-15), and N.J.S.17B:23-5,  
33 provided to fund a portion of retention and relocation costs pursuant  
34 to P.L.1996, c.25 (C.34:1B-112 et seq.);

35 “Business” means an employer located in this State that has  
36 operated continuously in the State, in whole or in part, in its current  
37 form or as a predecessor entity for at least 10 years prior to filing an  
38 application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and  
39 which is subject to the provisions of R.S.43:21-1 et seq. and may  
40 include a sole proprietorship, a partnership, or a corporation that  
41 has made an election under Subchapter S of Chapter One of Subtitle  
42 A of the Internal Revenue Code of 1986, or any other business  
43 entity through which income flows as a distributive share to its  
44 owners, limited liability company, nonprofit corporation, or any  
45 other form of business organization located either within or outside

**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 the State. A business shall include an affiliate of the business if that  
2 business applies for a credit based upon any capital investment  
3 made by an affiliate or based upon retained full-time jobs of an  
4 affiliate;

5 “Capital investment” means expenses that the business incurs  
6 following its submission of an application to the authority pursuant  
7 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the  
8 Capital Investment Completion Date, as shall be defined in the  
9 project agreement, for: (1) the site preparation and construction,  
10 renovation, improvement, equipping of, or obtaining and installing  
11 fixtures and machinery, apparatus or equipment in, a newly  
12 constructed, renovated or improved building, structure, facility, or  
13 improvement to real property in this State; and (2) obtaining and  
14 installing fixtures and machinery, apparatus or equipment in a  
15 building, structure, or facility in this State. Provided however, that  
16 “capital investment” shall not include soft costs such as financing  
17 and design, furniture or decorative items such as artwork or plants,  
18 or office equipment if the office equipment is property with a  
19 recovery period of less than five years. The recovery period of any  
20 property, for purposes of this section, shall be determined as of the  
21 date such property is first placed in service or use in this State by  
22 the business, determined in accordance with section 168 of the  
23 federal Internal Revenue Code of 1986 (26 U.S.C. s.168);

24 “Certificate of compliance” means a certificate issued by the  
25 authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);

26 “Chief executive officer” means the chief executive officer of the  
27 New Jersey Economic Development Authority;

28 “Commitment duration” means the tax credit term and five years  
29 from the end of the tax credit term specified in the project  
30 agreement entered into pursuant to section 5 of P.L.1996, c.25  
31 (C.34:1B-116);

32 “Designated industry” means an industry identified by the  
33 authority as desirable for the State to maintain, which may be  
34 designated and amended via the promulgation of rules by the  
35 authority to reflect changing market conditions;

36 “Designated urban center” means an urban center designated in  
37 the State Development and Redevelopment Plan adopted by the  
38 State Planning Commission;

39 “Eligible position” means a full-time position retained by a  
40 business in this State for which a business provides employee health  
41 benefits under a group health plan as defined under section 14 of  
42 P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined  
43 under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or  
44 contract of health insurance covering more than one person issued  
45 pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey  
46 Statutes;

47 “Full-time employee” means a person employed by the business  
48 for consideration for at least 35 hours a week, or who renders any

1 other standard of service generally accepted by custom or practice,  
2 as determined by the authority, as full-time employment, or a  
3 person who is employed by a professional employer organization  
4 pursuant to an employee leasing agreement between the business  
5 and the professional employer organization, in accordance with  
6 P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or  
7 who renders any other standard of service generally accepted by  
8 custom or practice, as determined by the authority, as full-time  
9 employment, and whose wages are subject to withholding as  
10 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1  
11 et seq. or an employee who is a resident of another State but whose  
12 income is not subject to the “New Jersey Gross Income Tax Act,”  
13 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
14 for the partnership for at least 35 hours a week, or who renders any  
15 other standard of service generally accepted by custom or practice,  
16 as determined by the authority, as full-time employment, and whose  
17 distributive share of income, gain, loss, or deduction, or whose  
18 guaranteed payments, or any combination thereof, is subject to the  
19 payment of estimated taxes, as provided in the “New Jersey Gross  
20 Income Tax Act,” N.J.S.54A:1-1 et seq. “Fulltime employee” shall  
21 not include any person who works as an independent contractor or  
22 on a consulting basis for the business;

23 “New business location” means the premises to which a business  
24 will relocate that the business has either purchased or built or for  
25 which the business has entered into a purchase agreement or a  
26 written lease for a period of no less than the commitment duration  
27 or eight years, whichever is greater, from the date of relocation. A  
28 “new business location” also means the business’s current location  
29 or locations if the business makes a capital investment equal to the  
30 total value of the business retention or relocation grant of tax credits  
31 to the business at that location or locations;

32 “Program” means the Business Retention and Relocation  
33 Assistance Grant Program created pursuant to P.L.1996, c.25  
34 (C.34:1B-112 et seq.);

35 “Project agreement” means an agreement between a business and  
36 the authority that sets the forecasted schedule for completion and  
37 occupancy of the project, the date the commitment duration shall  
38 commence, the amount and tax credit term of the applicable grant of  
39 tax credits, and other such provisions which further the purposes of  
40 P.L.1996, c.25 (C.34:1B-112 et seq.);

41 “Retained full-time job” means an eligible position that currently  
42 exists in New Jersey and is filled by a full-time employee but  
43 which, because of a potential relocation by the business, is at risk of  
44 being lost to another state or country. For the purposes of  
45 determining a number of retained full-time jobs, the eligible  
46 positions of an affiliate shall be considered the eligible positions of  
47 the business;

1       “Tax credit term” means the period of time commencing with the  
2 first issuance of tax credits and continuing during the period in  
3 which the recipient of a grant of tax credits is eligible to apply the  
4 tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3);  
5 and

6       “Yearly tax credit amount” means \$1,500 times the number of  
7 retained full-time jobs. “Yearly tax credit amount” does not include  
8 the amount of any bonus award authorized pursuant to section 5 of  
9 P.L.2004, c.65 (C.34:1B-115.1).  
10 (cf: P.L.2010, c.123, s.1)

11

12       2. Section 14 of P.L.2004, c.65 (C.34:1B-120.1) is amended to  
13 read as follows:

14       14. The authority is authorized to pursue, and shall adopt rules  
15 for, the recapture of all, or a portion of, the grant of tax credits,  
16 based on criteria established by the authority pursuant to regulation  
17 or under the terms of the project agreement. The rules shall allow  
18 for the authority to pursue the full or partial recapture or, in its  
19 discretion, to notify the Director of the Division of Taxation in the  
20 Department of the Treasury, who shall issue a recapture assessment  
21 which shall be based upon the proportionate value of the grant of  
22 tax credits that corresponds to the amount and period of  
23 noncompliance, in which case, the recapture of funds shall be  
24 subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et  
25 seq. Recaptured funds shall be deposited in the General Fund of the  
26 State, except that recaptured funds from the grant of a tax credit  
27 against the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et  
28 seq., shall be deposited into the Property Tax Relief Fund.  
29 (cf: P.L.2010, c.123, s.13)

30

31       3. Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is amended to  
32 read as follows:

33       17. a. The authority shall establish a corporation business tax  
34 credit, gross income tax credit, and insurance premiums tax credit  
35 certificate transfer program to allow businesses in this State with  
36 unused amounts of tax credits issued under P.L.1996, c.25  
37 (C.34:1B-112 et seq.), and otherwise allowable, that cannot be  
38 applied by the business to which originally issued before the  
39 expiration of the credit, to surrender those tax credits for use by  
40 other corporation business, gross income tax, and insurance  
41 premiums taxpayers in this State. The tax credits may be used on  
42 the corporation business tax, gross income tax, and insurance  
43 premiums tax returns to be filed by those taxpayers in exchange for  
44 private financial assistance to be provided by the corporation  
45 business taxpayer, gross income taxpayer, or insurance premiums  
46 taxpayer that is the recipient of the [corporation business tax credit  
47 certificate or insurance premiums] tax credit certificate to assist in  
48 the funding of costs incurred by the relocating business.

1       b. Businesses may apply to the authority and the Director of the  
2 Division of Taxation for a tax credit transfer certificate, covering  
3 one or more years. Upon receipt thereof, the business may sell or  
4 assign the tax credit certificate in exchange for private financial  
5 assistance to be made by the purchaser in an amount equal to at  
6 least 75% of the amount of the surrendered tax credit of a business  
7 relocating in the State. The private financial assistance shall assist  
8 in funding expenses incurred in connection with the operation of the  
9 business in the State, including but not limited to the expenses of  
10 fixed assets, such as the construction and acquisition and  
11 development of real estate, materials, start-up, tenant fitout,  
12 working capital, salaries, research and development expenditures  
13 and any other expenses determined by the authority to be necessary  
14 to carry out the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.).

15       c. The authority shall establish procedures to facilitate such  
16 transfers and encourage liquidity and simplicity in the market for  
17 the purchase and sale of such certificates, including, in the  
18 authority's discretion, coordinating the applications for surrender  
19 and acquisition of unused but otherwise allowable tax credits  
20 pursuant to this section in a manner that can best stimulate and  
21 encourage the extension of private financial assistance to businesses  
22 in this State.

23       d. The authority shall, in consultation with the Director of the  
24 Division of Taxation, develop criteria for the approval or  
25 disapproval of applications.  
26 (cf: P.L.2010, c.123, s.14)

27  
28       4. Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to  
29 read as follows:

30       2. As used in this act:

31       "Affiliate" means an entity that directly or indirectly controls, is  
32 under common control with, or is controlled by the business.  
33 Control exists in all cases in which the entity is a member of a  
34 controlled group of corporations as defined pursuant to section 1563  
35 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the  
36 entity is an organization in a group of organizations under common  
37 control as defined pursuant to subsection (b) or (c) of section 414 of  
38 the Internal Revenue Code of 1986 (26 U.S.C. s.414). A taxpayer  
39 may establish by clear and convincing evidence, as determined by  
40 the Director of the Division of Taxation in the Department of the  
41 Treasury, that control exists in situations involving lesser  
42 percentages of ownership than required by those statutes. An  
43 affiliate of a business may contribute to meeting either the qualified  
44 investment or full-time employee requirements of a business that  
45 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-  
46 209).

47       "Authority" means the New Jersey Economic Development  
48 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

1 "Business" means a corporation that is subject to the tax imposed  
2 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a  
3 corporation that is subject to the tax imposed pursuant to sections 2  
4 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of  
5 P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a sole  
6 proprietorship, partnership, an S corporation, or a limited liability  
7 corporation company. A business shall include an affiliate of the  
8 business if that business applies for a credit based upon any capital  
9 investment made by or full-time employees of an affiliate. A  
10 business shall also include an entity whose owners' income in  
11 respect of the entity is, or may be, subject to the "New Jersey Gross  
12 Income Tax Act," N.J.S.54A:1-1 et seq.

13 "Capital investment" in a qualified business facility means  
14 expenses incurred after, but before the end of the eighth year after,  
15 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a.  
16 the site preparation and construction, repair, renovation,  
17 improvement, equipping, or furnishing of a building, structure,  
18 facility or improvement to real property; and b. obtaining and  
19 installing furnishings and machinery, apparatus or equipment for  
20 the operation of a business in a building, structure, facility or  
21 improvement to real property.

22 "Eligible municipality" means a municipality: (1) which qualifies  
23 for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or  
24 which was continued to be a qualified municipality thereunder  
25 pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of  
26 the value of real property was exempt from local property taxation  
27 during tax year 2006. The percentage of exempt property shall be  
28 calculated by dividing the total exempt value by the sum of the net  
29 valuation which is taxable and that which is tax exempt.

30 "Full-time employee" means a person employed by the business  
31 for consideration for at least 35 hours a week, or who renders any  
32 other standard of service generally accepted by custom or practice  
33 as full-time employment, or a person who is employed by a  
34 professional employer organization pursuant to an employee leasing  
35 agreement between the business and the professional employer  
36 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et  
37 seq.) for at least 35 hours a week, or who renders any other standard  
38 of service generally accepted by custom or practice as full-time  
39 employment, and whose wages are subject to withholding as  
40 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
41 et seq. or an employee who is a resident of another State but whose  
42 income is not subject to the "New Jersey Gross Income Tax Act,"  
43 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
44 for the partnership for at least 35 hours a week, or who renders any  
45 other standard of service generally accepted by custom or practice  
46 as full-time employment, and whose distributive share of income,  
47 gain, loss, or deduction, or whose guaranteed payments, or any  
48 combination thereof, is subject to the payment of estimated taxes, as

1 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
2 et seq. "Full-time employee" shall not include any person who  
3 works as an independent contractor or on a consulting basis for the  
4 business.

5 "Mixed use project" means a project comprising both a qualified  
6 business facility and a qualified residential project.

7 "Partnership" means an entity classified as a partnership for  
8 federal income tax purposes.

9 "Professional employer organization" means an employee leasing  
10 company registered with the Department of Labor and Workforce  
11 Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

12 "Qualified business facility" means any building, complex of  
13 buildings or structural components of buildings, and all machinery  
14 and equipment located within a designated urban transit hub in an  
15 eligible municipality, used in connection with the operation of a  
16 business.

17 "Qualified residential project" shall have the meaning ascribed to  
18 that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

19 "Residential unit" means a residential dwelling unit such as a  
20 rental apartment, a condominium or cooperative unit, a hotel room,  
21 or a dormitory room.

22 "Urban transit hub" means:

23 a. property located within a 1/2 mile radius surrounding the mid  
24 point of a New Jersey Transit Corporation, Port Authority Transit  
25 Corporation or Port Authority Trans-Hudson Corporation rail  
26 station platform area, including all light rail stations, and property  
27 located within a one mile radius of the mid point of the platform  
28 area of such a rail station if the property is in a qualified  
29 municipality under the "Municipal Rehabilitation and Economic  
30 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.);

31 b. property located within a 1/2 mile radius surrounding the mid  
32 point of one of up to two underground light rail stations' platform  
33 areas that are most proximate to an interstate rail station;

34 c. property adjacent to, or connected by rail spur to, a freight rail  
35 line if the business utilizes that freight line at any rail spur located  
36 adjacent to or within a one mile radius surrounding the entrance to  
37 the property for loading and unloading freight cars on trains;

38 which property shall have been specifically delineated by the  
39 authority pursuant to subsection e. of section 3 of P.L.2007, c.346  
40 (C.34:1B-209).

41 A property which is partially included within the radius shall  
42 only be considered part of the urban transit hub if over 50 percent  
43 of its land area falls within the radius.

44 "Rail station" shall not include any rail station located at an  
45 international airport.

46 (cf: P.L.2011, c.89, s.1)



1       5. Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to  
2 read as follows:

3       3. a. (1) A business, upon application to and approval from the  
4 authority, shall be allowed a credit of 100 percent of its capital  
5 investment, made after the effective date of P.L.2007, c.346  
6 (C.34:1B-207 et seq.) but prior to its submission of documentation  
7 pursuant to subsection c. of this section, in a qualified business  
8 facility within an eligible municipality, pursuant to the restrictions  
9 and requirements of this section. To be eligible for any tax credits  
10 authorized under this section, a business shall demonstrate to the  
11 authority, at the time of application, that the State's financial  
12 support of the proposed capital investment in a qualified business  
13 facility will yield a net positive benefit to both the State and the  
14 eligible municipality. The value of all credits approved by the  
15 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall  
16 not exceed \$1,500,000,000.

17       (2) A business, other than a tenant eligible pursuant to paragraph  
18 (3) of this subsection, shall make or acquire capital investments  
19 totaling not less than \$50,000,000 in a qualified business facility, at  
20 which the business shall employ not fewer than 250 full-time  
21 employees to be eligible for a credit under this section. A business  
22 that acquires a qualified business facility shall also be deemed to  
23 have acquired the capital investment made or acquired by the seller.

24       (3) A business that is a tenant in a qualified business facility, the  
25 owner of which has made or acquired capital investments in the  
26 facility totaling not less than \$50,000,000, shall occupy a leased  
27 area of the qualified business facility that represents at least  
28 \$17,500,000 of the capital investment in the facility at which the  
29 tenant business and up to two other tenants in the qualified business  
30 facility shall employ not fewer than 250 full-time employees in the  
31 aggregate to be eligible for a credit under this section. The amount  
32 of capital investment in a facility that a leased area represents shall  
33 be equal to that percentage of the owner's total capital investment in  
34 the facility that the percentage of net leasable area leased by the  
35 tenant is of the total net leasable area of the qualified business  
36 facility. Capital investments made by a tenant shall be deemed to be  
37 included in the calculation of the capital investment made or  
38 acquired by the owner, but only to the extent necessary to meet the  
39 owner's minimum capital investment of \$50,000,000. Capital  
40 investments made by a tenant and not allocated to meet the owner's  
41 minimum capital investment threshold of \$50,000,000 shall be  
42 added to the amount of capital investment represented by the  
43 tenant's leased area in the qualified business facility.

44       (4) A business shall not be allowed tax credits under this section  
45 if the business participates in a business employment incentive  
46 grant relating to the same capital and employees that qualify the  
47 business for this credit, or if the business receives assistance  
48 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is

1 allowed a tax credit under this section shall not be eligible for  
2 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et  
3 al.). A business shall not qualify for a tax credit under this section,  
4 based upon capital investment and employment of full-time  
5 employees, if that capital investment or employment was the basis  
6 for which a grant was provided to the business pursuant to the  
7 “InvestNJ Business Grant Program Act,” P.L.2008, c.112 (C.34:1B-  
8 237 et seq.).

9 (5) Full-time employment for an accounting or privilege period  
10 shall be determined as the average of the monthly full-time  
11 employment for the period.

12 (6) The capital investment of the owner of a qualified business  
13 facility is that percentage of the capital investment made or  
14 acquired by the owner of the building that the percentage of net  
15 leasable area of the qualified business facility not leased to tenants  
16 is of the total net leasable area of the qualified business facility.

17 (7) A business shall be allowed a tax credit of 100 percent of its  
18 capital investment, made after the effective date of P.L.2011, c.89  
19 but prior to its submission of documentation pursuant to subsection  
20 c. of this section, in a qualified business facility that is part of a  
21 mixed use project, provided that (a) the qualified business facility  
22 represents at least \$17,500,000 of the total capital investment in the  
23 mixed use project, (b) the business employs not fewer than 250 full-  
24 time employees in the qualified business facility, and (c) the total  
25 capital investment in the mixed use project of which the qualified  
26 business facility is a part is not less than \$50,000,000. The  
27 allowance of credits under this paragraph shall be subject to the  
28 restrictions and requirements, to the extent that those are not  
29 inconsistent with the provisions of this paragraph, set forth in  
30 paragraphs (1) through (6) of this subsection, including but not  
31 limited to the requirement that the business shall demonstrate to the  
32 authority, at the time of application, that the State's financial  
33 support of the proposed capital investment in a qualified business  
34 facility will yield a net positive benefit to both the State and the  
35 eligible municipality.

36 (8) In determining whether a proposed capital investment will  
37 yield a net positive benefit, the authority shall not consider the  
38 transfer of an existing job from one location in the State to another  
39 location in the State as the creation of a new job, unless (a) the  
40 business proposes to transfer existing jobs to a municipality in the  
41 State as part of a consolidation of business operations from two or  
42 more other locations that are not in the same municipality whether  
43 in-State or out-of-State, or (b) the business's chief executive officer,  
44 or equivalent officer, submits a certification to the authority  
45 indicating that the existing jobs are at risk of leaving the State and  
46 that the business's chief executive officer, or equivalent officer, has  
47 reviewed the information submitted to the authority and that the  
48 representations contained therein are accurate, and the business

1 intends to employ not fewer than 500 full-time employees in the  
2 qualified business facility. In the event that this certification by the  
3 business's chief executive officer, or equivalent officer, is found to  
4 be willfully false, the authority may revoke any award of tax credits  
5 in their entirety, which revocation shall be in addition to any other  
6 criminal or civil penalties that the business and the officer may be  
7 subject to. When considering an application involving intra-State  
8 job transfers, the authority shall require the company to submit the  
9 following information as part of its application: a full economic  
10 analysis of all locations under consideration by the company; all  
11 lease agreements, ownership documents, or substantially similar  
12 documentation for the business's current in-State locations; and all  
13 lease agreements, ownership documents, or substantially similar  
14 documentation for the potential out-of-State location alternatives, to  
15 the extent they exist. Based on this information, and any other  
16 information deemed relevant by the authority, the authority shall  
17 independently verify and confirm, by way of making a factual  
18 finding by separate vote of the authority's board, the business's  
19 assertion that the jobs are actually at risk of leaving the State,  
20 before a business may be awarded any tax credits under this section.

21 b. A business shall apply for the credit within five years after  
22 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and  
23 shall submit its documentation for approval of its credit amount  
24 within eight years after the effective date of P.L.2007, c.346  
25 (C.34:1B-207 et seq.).

26 c. (1) The amount of credit allowed shall, except as otherwise  
27 provided, be equal to the capital investment made by the business,  
28 or the capital investment represented by the business' leased area, or  
29 area owned by the business as a condominium, and shall be taken  
30 over a 10-year period, at the rate of one-tenth of the total amount of  
31 the business' credit for each tax accounting or privilege period of  
32 the business, beginning with the tax period in which the business is  
33 first approved by the authority as having met the investment capital  
34 and employment qualifications, subject to any reduction or  
35 disqualification as provided by subsection d. of this section as  
36 determined by annual review by the authority. In conducting its  
37 annual review, the authority may require a business to submit any  
38 information determined by the authority to be necessary and  
39 relevant to its review.

40 The credit amount for any tax period ending after the date eight  
41 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et  
42 seq.) during which the documentation of a business' credit amount  
43 remains unapproved shall be forfeited, although credit amounts for  
44 the remainder of the years of the 10-year credit period shall remain  
45 available to it. The credit amount that may be taken for a tax period  
46 of the business that exceeds the final liabilities of the business for  
47 the tax period may be carried forward for use by the business in the  
48 next 20 successive tax periods, and shall expire thereafter, provided

1 that the value of all credits approved by the authority against tax  
2 liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any  
3 fiscal year shall not exceed \$150,000,000. The amount of credit  
4 allowed for a tax period to a business that is a tenant in a qualified  
5 business facility shall not exceed the business' total lease payments  
6 for occupancy of the qualified business facility for the tax period.

7 (2) A business that is a partnership shall not be allowed a credit  
8 under this section directly, but the amount of credit of an owner of a  
9 business shall be determined by allocating to each owner of the  
10 partnership that proportion of the credit of the business that is equal  
11 to the owner of the partnership's share, whether or not distributed,  
12 of the total distributive income or gain of the partnership for its tax  
13 period ending within or with the owner's tax period, or that  
14 proportion that is allocated by an agreement, if any, among the  
15 owners of the partnership that has been provided to the Director of  
16 the Division of Taxation in the Department of the Treasury by such  
17 time and accompanied by such additional information as the  
18 director may require.

19 (3) The amount of credit allowed may be applied against the tax  
20 liability otherwise due pursuant to section 5 of P.L.1945, c.162  
21 (C.54:10A-5), pursuant to N.J.S.54A:1-1 et seq., pursuant to  
22 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3),  
23 pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant  
24 to N.J.S.17B:23-5.

25 d. (1) If, in any tax period, fewer than 200 full-time employees  
26 of the business at the qualified business facility are employed in  
27 new full-time positions, the amount of the credit otherwise  
28 determined pursuant to final calculation of the award of tax credits  
29 pursuant to subsection c. of this section shall be reduced by 20  
30 percent for that tax period and each subsequent tax period until the  
31 first period for which documentation demonstrating the restoration  
32 of the 200 full-time employees employed in new full-time positions  
33 at the qualified business facility has been reviewed and approved by  
34 the authority, for which tax period and each subsequent tax period  
35 the full amount of the credit shall be allowed; provided, however,  
36 that for businesses applying before January 1, 2010, there shall be  
37 no reduction if a business relocates to an urban transit hub from  
38 another location or other locations in the same municipality. For the  
39 purposes of this paragraph, a "new full-time position" means a  
40 position created by the business at the qualified business facility  
41 that did not previously exist in this State.

42 (2) If, in any tax period, the business reduces the total number of  
43 full-time employees in its Statewide workforce by more than 20  
44 percent from the number of full-time employees in its Statewide  
45 workforce in the last tax accounting or privilege period prior to the  
46 credit amount approval under this section, then the business shall  
47 forfeit its credit amount for that tax period and each subsequent tax  
48 period, until the first tax period for which documentation

1 demonstrating the restoration of the business' Statewide workforce  
2 to the threshold levels required by this paragraph has been reviewed  
3 and approved by the authority, for which tax period and each  
4 subsequent tax period the full amount of the credit shall be allowed.

5 (3) If, in any tax period, (a) the number of full-time employees  
6 employed by the business at the qualified business facility located  
7 in an urban transit hub within an eligible municipality drops below  
8 250, or (b) the number of full-time employees, who are not the  
9 subject of intra-State job transfers, pursuant to paragraph (8) of  
10 subsection a. of this section, employed by the business at any other  
11 business facility in the State, whether or not located in an urban  
12 transit hub within an eligible municipality, drops by more than 20  
13 percent from the number of full-time employees in its workforce in  
14 the last tax accounting or privilege period prior to the credit amount  
15 approval under this section, then the business shall forfeit its credit  
16 amount for that tax period and each subsequent tax period, until the  
17 first tax period for which documentation demonstrating the  
18 restoration of the number of full-time employees employed by the  
19 business at the qualified business facility to 250 or an increase  
20 above the 20 percent reduction has been reviewed and approved by  
21 the authority, for which tax period and each subsequent tax period  
22 the full amount of the credit shall be allowed.

23 (4) (i) If the qualified business facility is sold in whole or in part  
24 during the 10-year eligibility period the new owner shall not acquire  
25 the capital investment of the seller and the seller shall forfeit all  
26 credits for the tax period in which the sale occurs and all subsequent  
27 tax periods, provided however that any credits of tenants shall  
28 remain unaffected.

29 (ii) If a tenant subleases its tenancy in whole or in part during the  
30 10-year eligibility period the new tenant shall not acquire the credit  
31 of the sublessor, and the sublessor tenant shall forfeit all credits for  
32 the tax period of its sublease and all subsequent tax periods.

33 e. (1) The Executive Director of the New Jersey Economic  
34 Development Authority, in consultation with the Director of the  
35 Division of Taxation in the Department of the Treasury, shall adopt  
36 rules in accordance with the "Administrative Procedure Act,"  
37 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement  
38 this act, including but not limited to: examples of and the  
39 determination of capital investment; the enumeration of eligible  
40 municipalities; specific delineation of urban transit hubs; the  
41 determination of the limits, if any, on the expense or type of  
42 furnishings that may constitute capital improvements; the  
43 promulgation of procedures and forms necessary to apply for a  
44 credit, including the enumeration of the certification procedures and  
45 allocation of tax credits for different phases of a qualified business  
46 facility or mixed use project; and provisions for credit applicants to  
47 be charged an initial application fee, and ongoing service fees, to  
48 cover the administrative costs related to the credit.

1 (2) Through regulation, the Economic Development Authority  
2 shall establish standards based on the green building manual  
3 prepared by the Commissioner of Community Affairs pursuant to  
4 section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of  
5 renewable energy, energy-efficient technology, and non-renewable  
6 resources in order to reduce environmental degradation and  
7 encourage long-term cost reduction.

8 (cf: P.L.2011, c.89, s.2)

9  
10 6. Section 33 of P.L.2009, c.90 (C.34:1B-209.1) is amended to  
11 read as follows:

12 33. A business may apply to the Director of the Division of  
13 Taxation in the Department of the Treasury and the executive  
14 director of the authority for a tax credit transfer certificate, covering  
15 one or more years, in lieu of the business being allowed any amount  
16 of the credit against the tax liability of the business. The tax credit  
17 transfer certificate, upon receipt thereof by the business from the  
18 director and the executive director of the authority, may be sold or  
19 assigned, in full or in part, to any other person that may have a tax  
20 liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),  
21 pursuant to N.J.S.54A:1-1 et seq., pursuant to sections 2 and 3 of  
22 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1  
23 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.  
24 The certificate provided to the business shall include a statement  
25 waiving the business's right to claim that amount of the credit  
26 against the taxes that the business has elected to sell or assign. The  
27 sale or assignment of any amount of a tax credit transfer certificate  
28 allowed under this section shall not be exchanged for consideration  
29 received by the business of less than 75 percent of the transferred  
30 credit amount. Any amount of a tax credit transfer certificate used  
31 by a purchaser or assignee against a tax liability shall be subject to  
32 the same limitations and conditions that apply to the use of the  
33 credit by the business that originally applied for and was allowed  
34 the credit.

35 (cf: P.L.2009, c.90, s.33)

36  
37 7. Section 54 of P.L.2002, c.43 (C.52:27BBB-53) is amended  
38 to read as follows:

39 54. As used in this section and section 55 of P.L.2002, c.43  
40 (C.52:27BBB-54):

41 a. "Business facility" means any factory, mill, plant, refinery,  
42 warehouse, building, complex of buildings or structural components  
43 of buildings, and all machinery, equipment and personal property  
44 located within a qualified municipality, used in connection with the  
45 operation of the business of a taxpayer subject to the "New Jersey  
46 Gross Income Tax Act," N.J.S.54A:1-1 et seq., or corporation that  
47 is subject to the tax imposed pursuant to section 5 of P.L.1945,  
48 c.162 (C.54:10A-5) or the tax imposed pursuant to sections 2 and 3

1 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of  
2 P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, or an entity  
3 whose owners are subject to one or more of those taxes and all  
4 facility preparation and start-up costs of the taxpayer for the  
5 business facility which it capitalizes for federal income tax  
6 purposes.

7 b. "Business relocation or business expansion property" means  
8 improvements to real property and tangible personal property, but  
9 only if that improvement or personal property is constructed or  
10 purchased and placed in service or use by the taxpayer, for use as a  
11 component part of a new business facility or expanded business  
12 facility located in a qualified municipality.

13 (1) Business relocation or business expansion property shall  
14 include only:

15 (a) improvements to real property placed in service or use as a  
16 business facility by the taxpayer on or after the notification of the  
17 Governor by the commissioner pursuant to section 4 of P.L.2002,  
18 c.43 (C.52:27BBB-4) that the municipality in which the property is  
19 situated fulfills the definition of a qualified municipality;

20 (b) tangible personal property placed in service or use by the  
21 taxpayer on or after the notification of the Governor by the  
22 commissioner pursuant to section 4 of P.L.2002, c.43  
23 (C.52:27BBB-4) that the municipality in which the property is  
24 situated fulfills the definition of a qualified municipality, with  
25 respect to which depreciation, or amortization in lieu of  
26 depreciation, is allowable for federal income tax purposes and  
27 which has a remaining recovery period of three or more years at the  
28 time the property is placed in service or use in a qualified  
29 municipality; or

30 (c) tangible personal property owned and used by the taxpayer at  
31 a business location outside a qualified municipality which is moved  
32 into a qualified municipality on or after the notification of the  
33 Governor by the commissioner pursuant to section 4 of P.L.2002,  
34 c.43 (C.52:27BBB-4) that the municipality in which the property is  
35 situated fulfills the definition of a qualified municipality, for use as  
36 a component part of a new or expanded business facility located in  
37 the qualified municipality; provided that the property is depreciable  
38 or amortizable personal property for income tax purposes, and has a  
39 remaining recovery period of three or more years at the time the  
40 property is placed in service or use in a qualified municipality.

41 (2) Property purchased for business relocation or expansion shall  
42 not include:

43 (a) repair costs, including materials used in the repair, unless for  
44 federal income tax purposes, the cost of the repair must be  
45 capitalized and not expensed;

46 (b) airplanes;

47 (c) property which is primarily used outside a qualified  
48 municipality with that use being determined based upon the amount

1 of time the property is actually used both within and without the  
2 qualified municipality;

3 (d) property which is acquired incident to the purchase of the  
4 stock or assets of the seller.

5 (3) Property shall be deemed to have been purchased prior to a  
6 specified date only if:

7 (a) the physical construction, reconstruction or erection of the  
8 property was begun prior to the specified date, or such property was  
9 constructed, reconstructed, erected or acquired pursuant to a written  
10 contract as existing and binding on the purchase prior to the  
11 specified date; or

12 (b) the machinery or equipment was owned by the taxpayer prior  
13 to the specified date, or was acquired by the taxpayer pursuant to a  
14 binding purchase contract which was in effect prior to the specified  
15 date.

16 c. "Business relocation or business expansion" means capital  
17 investment in a new or expanded business facility in a qualified  
18 municipality.

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

27 e. "Director" means the Director of the Division of Taxation in  
28 the Department of the Treasury.

29 f. "Expanded business facility" means any business facility,  
30 other than a new business facility, resulting from acquisition,  
31 construction, reconstruction, installation or erection of  
32 improvements or additions to existing property if such  
33 improvements or additions are purchased on or after the effective  
34 date of rehabilitation and economic recovery.

35 g. "Incentive payment" means: the amount of tax owed by a  
36 taxpayer for a privilege period or reporting period, as computed  
37 pursuant to N.J.S.54A:1-1 et seq., section 5 of P.L.1945, c.162  
38 (C.54:10A-5) or section 7 of P.L.2002, c.40 (C.54:10A-5a), or  
39 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), or  
40 section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5,  
41 multiplied for each privilege period or reporting period by a  
42 fraction, the numerator of which is the average value of the  
43 taxpayer's business relocation or business expansion property  
44 within a qualified municipality during the period covered by its  
45 report, and the denominator of which is the average value of all the  
46 taxpayer's real and tangible personal property, excluding  
47 improvements made after the date of a taxpayer's first acquisition of  
48 business relocation or business expansion property in the qualified



1 municipality to business facilities in existence on that date outside  
2 of the qualified municipality, in New Jersey during such period  
3 which result is multiplied by 96 percent; provided, however, that for  
4 the purpose of determining average value for a taxpayer that is a  
5 corporation, the provisions with respect to depreciation as set forth  
6 in subparagraph (F) of paragraph (2) of subsection (k) of section 4  
7 of P.L.1945, c.162 (C.54:10A-4) shall be taken into account for  
8 arriving at such value whether the corporation is subject to the tax  
9 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), the  
10 tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132  
11 (C.54:18A-2 and 54:18A-3), the tax imposed pursuant to section 1  
12 of P.L.1950, c.231 (C.17:32-15) or the tax imposed pursuant to  
13 N.J.S.17B:23-5; and provided further that the value of a leasehold  
14 interest in realty located within a qualified municipality shall be  
15 based on no less than the fair market value of its rent; and provided  
16 further that incentive payments shall be made for a period not to  
17 exceed 10 years, commencing on the date of a taxpayer's first  
18 acquisition of business relocation or business expansion property in  
19 the qualified municipality following the notification of the  
20 Governor by the commissioner pursuant to section 4 of P.L.2002,  
21 c.43 (C.52:27BBB-4) that the municipality in which the property is  
22 situated fulfills the definition of a qualified municipality.

23 h. "New business facility" means a business facility which:

24 (1) is employed by a taxpayer in the conduct of a business which  
25 is or will be taxable under N.J.S.54A:1-1 et seq., P.L.1945, c.162  
26 (C.54:10A-1 et seq.) or pursuant to sections 2 and 3 of P.L.1945,  
27 c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231  
28 (C.17:32-15) or N.J.S.17B:23-5. A business facility shall not be  
29 considered a new business facility in the hands of a taxpayer if the  
30 taxpayer's only activity with respect to the facility is to lease it to  
31 another person;

32 (2) is purchased by a taxpayer and is placed in service or use on  
33 or after the effective date of rehabilitation and economic recovery;

34 (3) was not purchased by a taxpayer from a related person; and

35 (4) was not in service or use during the 90-day period  
36 immediately prior to transfer of the title to the facility.

37 i. "Partnership" means a syndicate, group, pool, joint venture or  
38 other unincorporated organization through or by means of which  
39 any business, financial operation or venture is carried on, and which  
40 is not a trust or estate, a corporation or a sole proprietorship. The  
41 term "partner" includes a member in such a syndicate, group, pool,  
42 joint venture or organization.

43 j. "Purchase" means, with respect to the determination of  
44 whether business relocation or business expansion property was  
45 purchased, any acquisition of property, including an acquisition  
46 pursuant to a lease, and an acquisition pursuant to a lease under  
47 which the lessee or affiliates of the lessee are the primary occupants  
48 under a lease of ten years or more, but only if:

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

5 (2) the property is not acquired by one member of a controlled  
6 group from another member of the same controlled group; and

7 (3) the basis of the property for federal income tax purposes, in  
8 the hands of the person acquiring it, is not determined:

9 (a) in whole or in part by reference to the federal adjusted basis  
10 of such property in the hands of the person from whom it was  
11 acquired; or

12 (b) under subsection (e) of section 1014 of the federal Internal  
13 Revenue Code of 1986, 26 U.S.C. s.1014.

14 k. "Related person" means:

15 (1) a corporation, partnership, association or trust controlled by  
16 the taxpayer;

17 (2) an individual, corporation, partnership, association or trust  
18 that is in control of the taxpayer;

19 (3) a corporation, partnership, association or trust controlled by  
20 an individual, corporation, partnership, association or trust that is in  
21 control of the taxpayer; or

22 (4) a member of the same controlled group as the taxpayer.

23 (cf: P.L.2003, c.194, s.1)

24  
25 8. Section 55 of P.L.2002, c.43 (C.52:27BBB-54) is amended  
26 to read as follows:

27 55. a. There is established in the authority the "Qualified  
28 Municipality Open for Business Incentive Program," the purpose of  
29 which is to foster business investment in qualified municipalities.  
30 Businesses that locate or expand in a qualified municipality during  
31 the period that the municipality is under rehabilitation and  
32 economic recovery shall be eligible to receive a rebate from the  
33 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.,  
34 "Corporation Business Tax Act (1945)," P.L.1945, c.162  
35 (C.54:10A-1 et seq.), or the tax imposed on insurers pursuant to  
36 P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231  
37 (C.17:32-15) and N.J.S.17B:23-5 as provided herein.

38 b. For each year in which a taxpayer is eligible for a rebate of a  
39 portion of the incentive payment, the Director of the Division of  
40 Taxation shall certify to the State Treasurer (1) that the taxpayer's  
41 corporation business tax return, gross income tax return, or  
42 insurance premiums tax return has been filed; (2) that the taxpayer's  
43 entire corporation business tax obligation, gross income tax, or  
44 insurance premiums tax obligation has been satisfied; and (3) the  
45 amount of the taxpayer's incentive payment entitlement. Upon such  
46 certification, the treasurer shall certify to the executive director of  
47 the authority the amount of the taxpayer's incentive payment and,  
48 subject to the approval of the Director of the Division of Budget

1 and Accounting, transfer that incentive payment to the fund  
2 established with the proceeds of those funds appropriated pursuant  
3 to subsection b. of section 73 of P.L.2002, c.43.

4 c. The executive director of the authority shall rebate to the  
5 taxpayer up to 75% of the incentive payment paid by the taxpayer  
6 and placed by the treasurer into a fund established using those funds  
7 appropriated pursuant to subsection b. of section 73 of P.L.2002,  
8 c.43 if the taxpayer applies for a rebate within two years of deposit  
9 of the incentive payment into the fund and establishes to the  
10 satisfaction of the executive director of the authority that the  
11 taxpayer will utilize those monies for business relocation or  
12 business expansion property that will be placed in service or use by  
13 the taxpayer after the date of the rebate application. The authority  
14 may rebate to the taxpayer up to 100% of the incentive payment  
15 paid by the taxpayer and placed by the treasurer into a fund  
16 established using those funds appropriated pursuant to subsection b.  
17 of section 73 of P.L.2002, c.43 if the taxpayer applies for a rebate  
18 and the authority determines that a particular business relocation or  
19 business expansion will more effectively contribute to the  
20 municipal rehabilitation and economic recovery in a qualified  
21 municipality as sought by the Legislature through the enactment of  
22 P.L.2002, c.43. In making this determination the authority shall  
23 consider: 1) the amount of private investment, 2) the number of jobs  
24 concerned, 3) the projected average salary of the employees, 4)  
25 whether the investment has the potential to attract additional  
26 investment, 5) the impact to the State Treasury, and 6) any other  
27 factors that uniquely contribute to the municipal rehabilitation and  
28 economic recovery of the qualified municipality. The taxpayer may  
29 apply for this incentive prior to its undertaking of the business  
30 relocation or business expansion and upon approval the authority  
31 may establish a rebate schedule for the incentive payment for a  
32 period not to exceed ten years, subject to the taxpayer's continued  
33 satisfaction of the criteria of this act and to annual appropriation.  
34 The cumulative amount of monies distributed to the taxpayer  
35 pursuant to this section shall not exceed the amount paid or to be  
36 paid by the taxpayer for the business relocation or business  
37 expansion property. In the event that the taxpayer does not  
38 establish its eligibility for a rebate of a portion of the incentive  
39 payment within two years of its deposit into the fund, the fund shall  
40 retain any remaining amount of the incentive payment, except that  
41 incentive payment deposits of a gross income taxpayer that failed to  
42 establish eligibility for a rebate shall be remitted to the Property  
43 Tax Relief Fund.

44 (cf: P.L.2003, c.194, s.2)

45  
46 9. Section 56 of P.L.2002, c.43 (C.52:27BBB-55) is amended  
47 to read as follows:

1       56. a. A taxpayer engaged in the conduct of business within a  
2 qualified municipality and who is not receiving a benefit under the  
3 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
4 (C.52:27H-60 et seq.), may apply to receive a tax credit against the  
5 amount of tax otherwise imposed under the "New Jersey Gross  
6 Income Tax Act," N.J.S.54A:1-1 et seq., "Corporation Business Tax  
7 Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the tax  
8 imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et  
9 seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-  
10 5, equal to: \$2,500 for each new full-time position at that location  
11 in credit year one and \$1,250 for each new full-time position at that  
12 location in credit year two.

13       b. (1) The credit pursuant to subsection a. of this section for  
14 credit year one shall be allowed for the privilege period or reporting  
15 period in which or with which credit year one ends; the credit  
16 pursuant to subsection a. of this section for credit year two shall be  
17 allowed for the privilege period or reporting period in which or with  
18 which credit year two ends.

19       (2) An unused credit may be carried forward, if necessary, for  
20 use in the privilege periods or reporting periods following the  
21 privilege period or reporting period for which the credit is allowed.

22       (3) The order of priority of the application of the credit allowed  
23 under this section and any other credits allowed by law shall be as  
24 prescribed by the Director of the Division of Taxation. The amount  
25 of the credit applied under this section against the tax imposed  
26 pursuant to N.J.S.54A:1-1 et seq. for a reporting period and section  
27 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, together  
28 with any other credits allowed by law, shall not exceed 50% of the  
29 tax liability otherwise due [and]. The amount of the credit applied  
30 under this section against the tax imposed pursuant to section 5 of  
31 P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with  
32 any other credits allowed by law, shall not reduce the tax liability to  
33 an amount less than the statutory minimum provided in subsection  
34 (e) of section 5 of P.L.1945, c.162.

35       c. (1) Notwithstanding the provisions of subsection b. of this  
36 section to the contrary, the credit allowed for credit year one may  
37 be refundable at the close of the privilege period or reporting period  
38 in which or with which credit year two ends, pursuant to the  
39 requirements and limitations of this subsection.

40       (2) That amount of the credit received for credit year one  
41 remaining, if any, after the liabilities for the privilege period or  
42 reporting period in which or with which credit year two ends and  
43 for any prior period have been satisfied, multiplied by the sustained  
44 effort ratio, shall be an overpayment for the purposes of section  
45 R.S.54:49-15 or N.J.S.54A:9-7 for the period in which or with  
46 which credit year two ends; that amount of the credit received for  
47 credit year one remaining, if any, that is not an overpayment

1 pursuant to this paragraph may be carried forward pursuant to  
2 subsection b. of this section.

3 d. The burden of proof shall be on the taxpayer to establish by  
4 clear and convincing evidence that the taxpayer is entitled to the  
5 credits or refund allowed pursuant to this section. The director  
6 shall by regulation establish criteria for the determination of when  
7 new or expanded operations have begun at a location. No taxpayer  
8 shall be allowed more than a single 24-month continuous period in  
9 which credits shall be allowed for activity at a location within a  
10 qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et  
11 al.).

12 e. For the purposes of this section:

13 "Credit year one" means the first twelve calendar months  
14 following initial or expanded operations at a location within a  
15 qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et  
16 al.).

17 "Credit year two" means the twelve calendar months following  
18 credit year one.

19 "Employee of the taxpayer" does not include an individual with  
20 an ownership interest in the business, that individual's spouse or  
21 dependants, or that individual's ancestors or descendants.

22 "Full time position" means a position filled by an employee of  
23 the taxpayer for at least 140 hours per month on a permanent basis,  
24 which does not include employment that is temporary or seasonal.

25 "New full time position" means a position that did not exist prior  
26 to credit year one. New full time positions shall be measured by the  
27 increase, from the twelve-month period preceding credit year one to  
28 the measured credit year, in the average number of full-time  
29 positions and full-time position equivalents employed by the  
30 taxpayer at the location within a qualified municipality pursuant to  
31 P.L.2002, c.43 (C.52:27BBB-1 et al.). The hours of employees  
32 filling part-time positions shall be aggregated to determine the  
33 number of full-time position equivalents.

34 "Part-time position" means a position filled by an employee of  
35 the taxpayer for at least 20 hours per week for at least three months  
36 during the credit year.

37 "Sustained effort ratio" means the proportion that the credit year  
38 two new full-time positions bears to the credit year one new full-  
39 time positions, not to exceed one.

40 (cf: P.L.2003, c.194, s.3)

41

42 10. Section 3 of P.L.2001, c.415 (C.52:27D-492) is amended to  
43 read as follows:

44 3. A business entity shall be eligible for a certificate for  
45 neighborhood revitalization State tax credits if it has provided  
46 funding for a qualified project that has been approved in accordance  
47 with sections 4 and 5 of P.L.2001, c.415 (C.52:27D-493 and  
48 C.52:27D-494).

- 1       a. Credits may be granted in an amount up to 100 percent of  
2 the approved assistance provided to a nonprofit organization to  
3 implement a qualified neighborhood preservation and revitalization  
4 project.
- 5       b. The credit may be applied by the business entity receiving  
6 the certificate as credit against tax imposed on business related  
7 income[, other than tax imposed under the New Jersey Gross  
8 Income Tax,] including, but not limited to, business income subject  
9 to the provisions of the Corporation Business Tax Act (1945),  
10 P.L.1945, c.162 (C.54:10A-1 et al.), "New Jersey Gross Income  
11 Tax Act," N.J.S.54A:1-1 et seq., ["The Savings Institution Tax  
12 Act," P.L.1973, c.31 (C.54:10D-1 et seq.),] the tax imposed on  
13 marine insurance companies pursuant to R.S.54:16-1 et seq., the tax  
14 imposed on insurers generally, pursuant to P.L.1945, c.132  
15 (C.54:18A-1 et seq.), the sewer and water utility excise tax imposed  
16 pursuant to section 6 of P.L.1940, c.5 (C.54:30A-54) and the  
17 petroleum products gross receipts tax imposed pursuant to section 3  
18 of P.L.1990, c.42 (C.54:15B-3).
- 19       c. The credit allowed to a business entity under this section  
20 may not exceed for any taxable year \$1,000,000 or the total amount  
21 of tax otherwise payable by the business entity for the taxable year  
22 and, in addition, shall not exceed limitations placed on the amounts  
23 of credits or carryforward credits allowed, if any, under the relevant  
24 statute as enumerated in subsection b. of this section concerning the  
25 tax for which a credit is being claimed.
- 26       d. Credit shall not be allowed for activities for which the  
27 business entity is receiving credit under any other provision against  
28 any tax on business related income [other than the New Jersey  
29 Gross Income Tax,] including, but not limited to, the [corporate]  
30 corporation business tax, New Jersey gross income tax, corporate  
31 income tax, insurance premiums tax, petroleum products gross  
32 receipts tax, public utilities franchise tax, public utilities gross  
33 receipts tax, public utility excise tax, and the railroad franchise  
34 tax[, and the saving institution tax].
- 35       e. The tax credit shall be awarded only for assistance provided  
36 within the same year in which the commissioner issued the  
37 certificate, or if the commissioner approved assistance for more  
38 than one year, within the year in which payment was scheduled and  
39 made. The provisions of this subsection may be waived for good  
40 cause shown.
- 41       f. The total tax credits certified for all qualified projects  
42 proposed in a fiscal year shall not exceed \$10,000,000.  
43 (cf: P.L.2007, c.89, s.1)  
44
- 45       11. Section 18 of P.L.1983, c.303 (C.52:27H-77) is amended to  
46 read as follows:

1 18. Enterprise zone employee tax credits or enterprise zone  
2 investment tax credits provided under section 19 of [this act]  
3 P.L.1983, c.303 (C.52:27H-78) shall not reduce a taxpayer's tax  
4 liability under the "New Jersey Gross Income Tax Act,"  
5 N.J.S.54A:1-1 et seq., or the "Corporation Business Tax Act  
6 (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) in any tax year by  
7 more than 50% of the amount otherwise due, but either employee  
8 tax credits or investment tax credits remaining and unused in a tax  
9 year may be carried forward by the taxpayer to the next succeeding  
10 tax year and applied against 50% of the amount of tax otherwise  
11 due in that succeeding tax year.

12 (cf: P.L.1988, c.93, s.8)

13  
14 12. Section 19 of P.L.1983, c.303 (C.52:27H-78) is amended to  
15 read as follows:

16 19. Any qualified business subject to the provisions of the "New  
17 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or the  
18 "Corporation Business Tax Act (1945)," P.L.1945, c.162  
19 (C.54:10A-1 et seq.), as actively engaged in the conduct of business  
20 from a location within an enterprise zone designated pursuant to  
21 [this act] the "New Jersey Urban Enterprise Zones Act," P.L.1983,  
22 c.303 (C.52:27H-60 et seq.), which business at that location  
23 consists primarily of manufacturing or other business which is not  
24 retail sales or warehousing oriented, shall receive an enterprise zone  
25 employee tax credit against the amount of tax imposed under the  
26 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or  
27 "Corporation Business Tax Act (1945)," P.L.1945, c.162  
28 (C.54:10A-1 et seq.), as hereinafter provided:

29 a. A one-time credit of \$1,500.00 for each new full-time,  
30 permanent employee employed at that location who is a resident of  
31 the qualifying municipality in which the designated enterprise zone  
32 is located, or any other qualifying municipality in which an urban  
33 enterprise zone is located, and who immediately prior to  
34 employment by the taxpayer was unemployed for at least 90 days,  
35 or was dependent upon public assistance as the primary source of  
36 income;

37 b. A one-time credit of \$500.00 for each new full-time,  
38 permanent employee employed at that location who is a resident of  
39 a qualifying municipality in which a designated enterprise zone is  
40 located, or any other qualifying municipality in which an urban  
41 enterprise zone is located, who does not meet the requirements of  
42 subsection a. of this section, and who was not, immediately prior to  
43 employment by the taxpayer, employed at a location within the  
44 qualifying municipality;

45 c. A qualified business which is not entitled to an employee tax  
46 credit under this section, but meets the eligibility criteria pursuant  
47 to the provisions of subsection c. of section 27 of P.L.1983, c.303  
48 (C.52:27H-86), shall receive a one-time credit in an amount equal

1 to 8% of each new investment made by the qualified business in the  
2 enterprise zone under an agreement approved by the authority.

3 This credit shall be applied against the taxpayer's gross income  
4 tax or corporation business tax liability subject to the limitations  
5 and carry forward provisions set forth in section 18 of P.L.1983,  
6 c.303 (C.52:27H-77); provided, however, that a qualified business  
7 shall not claim an employee tax credit and an investment tax credit  
8 authorized pursuant to this subsection in the same year regardless of  
9 whether those credits were earned for the tax year or carried  
10 forward from a previous year.

11 d. The enterprise zone employee tax credit shall be allowed in  
12 the tax year immediately following the tax year in which the new  
13 full-time, permanent employee was first employed by the taxpayer,  
14 and shall be permitted in any tax year of a 20 year period from the  
15 date of designation of the enterprise zone, or of a period of 20 tax  
16 years from the date within that designation period upon which the  
17 taxpayer is first subject to the provisions of the "New Jersey Gross  
18 Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation  
19 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.),  
20 whichever date is later and the termination of the designation of an  
21 enterprise zone at the end of a 20 year designation period shall not  
22 terminate the eligibility period provided under this section;

23 e. A tax credit shall be permitted under this section only for  
24 those new full-time, permanent employees who have been  
25 employed for at least six continuous months by the taxpayer during  
26 the tax year for which the tax credit is claimed.

27 f. A newly employed employee shall not be deemed a new full-  
28 time, permanent employee for the purposes of this section unless  
29 the total number of full-time, permanent employees, including the  
30 newly employed employee, employed by the employer in the zone  
31 during the calendar year exceeds the greatest number of full-time,  
32 permanent employees employed in the zone by the employer during  
33 any prior calendar year during the period commencing with the date  
34 of zone designation.

35 (cf: P.L.1988, c.93, s.4)

36  
37 13. Section 6 of P.L.1993, c.171 (C.54:10A-5.21) is amended to  
38 read as follows:

39 6. The Director of the Division of Taxation shall prepare and  
40 transmit to the Governor[,], and the Legislature[,], and the State  
41 Revenue Forecasting Advisory Commission] pursuant to section 2  
42 of P.L.1991, c.164 (C.52:14-19.1) on or before the September 1  
43 next following the January 1 next following enactment of this  
44 section and annually on or before each September 1 thereafter, a  
45 report concerning the revenue cost and distributional impact of  
46 [this act] sections 2 through 5 of P.L.1993, c.171 (C.54:10A-5.17  
47 through 54:10A-5.20) and sections 14 through 17 of P.L. , c.  
48 (C. ) (pending before the Legislature as this bill) in such a



1 manner as to facilitate an evaluation of its costs in State tax revenue  
2 forgone and its benefits in new job creation. To facilitate an  
3 understanding of the gross amount and percentage of credits  
4 claimed in relation to the size, number and income of corporations  
5 and the number of new employees, the report shall include  
6 statistical analyses of the number and value of credits granted and  
7 anticipated to be granted, and the number of new employees. To  
8 facilitate an understanding of the distinction between the number of  
9 new employees resulting from the availability of the credits and the  
10 number of new employees not resulting from availability of the  
11 credits, the report shall include statistics concerning the mean cost,  
12 in State tax revenue forgone, of providing the credits resulting in  
13 employment of a single full-time employee in specific industries,  
14 the relative rate of increase in the number of new employees  
15 between **【corporations】** taxpayers using the credit and those not  
16 using the credit, and increases in employment in the State and the  
17 region. The director shall include in the report such further  
18 observations and recommendations about the use or administration  
19 of the credit as the director deems appropriate.

20 **【The State Revenue Forecasting Advisory Commission shall**  
21 **prepare and transmit to the Governor and Legislature, on or before**  
22 **the November 1 next following the January 1 next following the**  
23 **enactment of this section and biennially on or before each second**  
24 **November 1 thereafter, a report providing a cost-benefit analysis of**  
25 **the credits provided under this act and the retention and stimulation**  
26 **of employment in the manufacturing sector, together with its**  
27 **recommendations as to whether the credits provided under this act**  
28 **should remain permanent.】**

29 (cf: P.L.1993, c.171, s.6)

30

31 14. (New section) As used in sections 14 through 17 of P.L. , c.  
32 (C. ) (pending before the Legislature as this bill):

33 "Control," with respect to a corporation, means ownership,  
34 directly or indirectly, of stock possessing 50% or more of the total  
35 combined voting power of all classes of the stock of the corporation  
36 entitled to vote; "control," with respect to a trust, means ownership,  
37 directly or indirectly, of 50% or more of the beneficial interest in  
38 the principal or income of the trust. The ownership of stock in a  
39 corporation, of a capital or profits interest in a partnership or  
40 association or of a beneficial interest in a trust shall be determined  
41 in accordance with the rules for constructive ownership of stock  
42 provided in subsection (c) of section 267 of the federal Internal  
43 Revenue Code of 1986 (26 U.S.C. s.267(c)), other than paragraph  
44 (3) of subsection (c) of that section.

45 "Controlled group" means one or more chains of corporations  
46 connected through stock ownership with a common parent  
47 corporation if stock possessing at least 50% of the voting power of  
48 all classes of stock of each of the corporations is owned directly or

1 indirectly by one or more of the corporations; and the common  
2 parent owns directly stock possessing at least 50% of the voting  
3 power of all classes of stock of at least one of the other  
4 corporations.

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

10 "Investment credit base" means the cost of qualified equipment.  
11 The cost of qualified equipment shall not include the value of  
12 equipment given in trade or exchange for the equipment purchased  
13 for business relocation or expansion. If equipment is damaged or  
14 destroyed by fire, flood, storm or other casualty, or is stolen, the  
15 cost of replacement equipment shall not include any insurance  
16 proceeds received in compensation for the loss. In the case of self-  
17 constructed equipment, the cost thereof shall be the amount  
18 properly charged to the capital account for depreciation in  
19 accordance with federal income tax law. The cost of equipment  
20 acquired by written lease is the minimum amount required by the  
21 agreement, agreements, contract or contracts to be paid over the  
22 term of the lease, provided however, that the minimum amount shall  
23 not include any amount required to be paid, as determined by the  
24 director, after the expiration of the useful life of the equipment.

25 "Number of new employees" means the increase in the average  
26 number of full-time employees and full-time employee equivalents  
27 residing and domiciled in this State employed at work locations in  
28 this State from the employment base year to the employment  
29 measurement year. The employment base year is the taxable year  
30 immediately preceding the taxable year for which the credit  
31 pursuant to sections 14 through 17 of P.L. , c. (C. ) (pending  
32 before the Legislature as this bill), is allowed, provided that if the  
33 taxpayer was not subject to tax and did not have a taxable year  
34 immediately precede the taxable year for which a credit pursuant to  
35 sections 14 through 17 of P.L. , c. (C. ) (pending before the  
36 Legislature as this bill), was allowed the employment base year is  
37 the taxable year in which the credit pursuant to sections 14 through  
38 17 of P.L. , c. (C. ) (pending before the Legislature as this  
39 bill), was allowed. The measurement year is the taxable year  
40 immediately following the taxable year in which the credit pursuant  
41 to sections 14 through 17 of P.L. , c. (C. ) (pending before  
42 the Legislature as this bill), was allowed. The hours of part-time  
43 employees shall be aggregated to determine the number of full-time  
44 employee equivalents.

45 "Part-time employee" means an employee working for the  
46 taxpayer for at least 20 hours per week for at least six months  
47 during the taxable year.

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

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

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

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

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

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

18 "Qualified equipment" means machinery, apparatus or equipment  
19 acquired by purchase for use or consumption by the taxpayer  
20 directly and primarily in the production of tangible personal  
21 property by manufacturing, processing, assembling or refining, as  
22 defined pursuant to subsection a. of section 25 of P.L.1980, c.105  
23 (C.54:32B-8.13), having a useful life of four or more years, placed  
24 in service in this State and machinery, apparatus or equipment  
25 acquired by purchase for use or consumption directly and primarily  
26 in the generation of electricity as defined pursuant to subsection b.  
27 of section 25 of P.L.1980, c.105 (C.54:32B-8.13) to the point of  
28 connection to the grid, or in the generation of thermal energy,  
29 having a useful life of four or more years, placed in service in this  
30 State. Qualified equipment does not include tangible personal  
31 property which the taxpayer contracts or agrees to lease or rent to  
32 another person or licenses another person to use.

33 "Related person" means:

34 a. a corporation, partnership, association or trust controlled by  
35 the taxpayer;

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

38 c. a corporation, partnership, association or trust controlled by an  
39 individual, corporation, partnership, association or trust that is in  
40 control of the taxpayer; or

41 d. a member of the same controlled group as the taxpayer.  
42

43 15. (New section) a. A taxpayer shall be allowed a credit  
44 against the tax otherwise due for the taxable year under the "New  
45 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount  
46 equal to 2% of the investment credit base of qualified equipment  
47 placed in service in the taxable year, up to a maximum allowed  
48 credit for the taxable year of \$1,000,000; provided however, that if

1 a taxpayer has 50 or fewer employees (an average number of full-  
2 time employees and full-time employee equivalents of 50 or less)  
3 and taxable income of less than \$5,000,000 for the taxable year, the  
4 taxpayer shall be allowed a credit against the tax otherwise due for  
5 the taxable year under the "New Jersey Gross Income Tax Act,"  
6 N.J.S.54A:1-1 et seq., in an amount equal to 4% of the investment  
7 credit base of qualified equipment placed in service in the taxable  
8 year, up to a maximum allowed credit for the taxable year of  
9 \$1,000,000.

10 b. The tax imposed for the taxable year pursuant to  
11 N.J.S.54A:1-1 et seq., shall first be reduced by the amount of any  
12 credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-  
13 78), then by any credit allowed pursuant to section 12 of P.L.1985,  
14 c.227 (C.55:19-13), prior to applying any credits allowable pursuant  
15 to this section. Credits allowable pursuant to this section shall be  
16 applied in the order of the credits' taxable years. The amount of the  
17 credits applied under this section and section 16 of P.L. , c.  
18 (C. ) (pending before the Legislature as this bill), against the  
19 tax imposed pursuant to N.J.S.54A:1-1 et seq., for a taxable year  
20 shall not exceed 50% of the tax liability otherwise due.

21 c. The amount of taxable year credit otherwise allowable under  
22 subsection a. of this section which cannot be applied for the taxable  
23 year due to the limitations of subsection b. of this section may be  
24 carried over, if necessary, to the seven taxable years following a  
25 credit's taxable year.

26 d. (1) With respect to equipment that is three-year property, as  
27 described in subsection (e) of section 168 of the federal Internal  
28 Revenue Code of 1986 (26 U.S.C. s.168), which is disposed of or  
29 ceases to be qualified equipment prior to the end of the 36-month  
30 period following being placed in service in this State, the amount of  
31 credit allowed shall be that portion of the credit provided for in  
32 subsection a. of this section which represents the ratio which the  
33 months of qualified use bear to 36, and the difference between the  
34 credit taken and the credit allowed for actual use shall be forfeited.  
35 Additionally, except when the property is damaged or destroyed by  
36 fire, flood, storm or other casualty, or is stolen, the taxpayer shall  
37 redetermine the amount of credit allowed for the taxable year of the  
38 credit by reducing the investment credit base by the cost of the  
39 amount of the disposed or disqualified equipment. If the  
40 redetermination of the credit results in an increase in final liability  
41 for any taxable year in which the credit was applied, then,  
42 notwithstanding the three year limitation of N.J.S.54A:9-4, the  
43 amount of unpaid liability, if any, shall be considered a deficiency.  
44 The amount of credit allowed for actual use shall be determined by  
45 multiplying the original credit by the ratio which the months of  
46 qualified use bear to 36.

47 (2) With respect to property other than that described in  
48 subparagraph (1) of this subsection which is disposed of or ceases

1 to be qualified equipment prior to the end of the 60-month period  
2 following being placed in service in this State, the amount of credit  
3 allowed shall be that portion of the credit provided for in subsection  
4 a. of this section which represents the ratio which the months of  
5 qualified use bear to 60, and the difference between the credit taken  
6 and the credit allowed for actual use shall be forfeited.  
7 Additionally, except when the property is damaged or destroyed by  
8 fire, flood, storm or other casualty, or is stolen, the taxpayer shall  
9 redetermine the amount of credit allowed for the taxable year of the  
10 credit by reducing the investment credit base by the cost of the  
11 amount of the disposed or disqualified equipment. If the  
12 redetermination of the credit results in an increase in final liability  
13 for any taxable year in which the credit was applied, then,  
14 notwithstanding the three year limitation of N.J.S.54A:9-4, the  
15 amount of unpaid liability, if any, shall be considered a deficiency.  
16 The amount of credit allowed for actual use shall be determined by  
17 multiplying the original credit by the ratio which the months of  
18 qualified use bear to 60.

19  
20 16. (New section) a. A taxpayer allowed a credit under section  
21 15 of P.L. , c. (C. ) (pending before the Legislature as this  
22 bill), with respect to the investment credit base, shall be allowed a  
23 credit for the increase in employment by the taxpayer determined by  
24 the number of new employees for each of the two taxable years next  
25 succeeding the taxable year for which the credit under section 15 of  
26 P.L. , c. (C. ) (pending before the Legislature as this bill), is  
27 allowed, in an amount equal to 3% of the investment credit base,  
28 not to exceed a maximum allowed amount for each of the two  
29 taxable years of \$1,000 multiplied by the number of new  
30 employees.

31 b. The tax imposed for the taxable year pursuant to  
32 N.J.S.54A:1-1 et seq., shall first be reduced by the amount of any  
33 credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-  
34 78), then by any credit allowed pursuant to section 12 of P.L.1985,  
35 c.227 (C.55:19-13), and then by any credit allowed pursuant to  
36 section 15 of P.L. , c. (C. ) (pending before the Legislature  
37 as this bill), prior to applying any credits allowable pursuant to this  
38 section. Credits allowable pursuant to this section shall be applied  
39 in the order of the taxable year of the credit allowed pursuant to  
40 section 15 of P.L. , c. (C. ) (pending before the Legislature  
41 as this bill), to which the credit under this section relates and then  
42 by the order of the credits' taxable years. The amount of the credits  
43 applied under this section and section 15 of P.L. , c. (C. )  
44 (pending before the Legislature as this bill), against the tax imposed  
45 pursuant to N.J.S.54A:1-1 et seq., for a taxable year shall not  
46 exceed 50% of the tax liability otherwise due.

47 c. The amount of taxable year credit otherwise allowable under  
48 subsection a. of this section which cannot be applied for the taxable

1 year due to the limitations of subsection b. of this section may be  
2 carried over, if necessary, to the seven taxable years following a  
3 credit's taxable year.

4 d. (1) With respect to equipment that is three-year property, as  
5 described in subsection (e) of section 168 of the federal Internal  
6 Revenue Code of 1986 (26 U.S.C. s.168), which is disposed of or  
7 ceases to be qualified equipment prior to the end of the 36-month  
8 period following being placed in service in this State, the amount of  
9 credit allowed shall be that portion of the credit provided for in  
10 subsection a. of this section which represents the ratio which the  
11 months of qualified use bear to 36, and the difference between the  
12 credit taken and the credit allowed for actual use shall be forfeited.  
13 Additionally, except when the property is damaged or destroyed by  
14 fire, flood, storm or other casualty, or is stolen, the taxpayer shall  
15 redetermine the amount of credit allowed for the taxable year of the  
16 credit by reducing the investment credit base by the cost of the  
17 amount of the disposed or disqualified equipment. If the  
18 redetermination of the credit results in an increase in final liability  
19 for any taxable year in which the credit was applied, then,  
20 notwithstanding the three year limitation of N.J.S.54A:9-4, the  
21 amount of unpaid liability, if any, shall be considered a deficiency.  
22 The amount of credit allowed for actual use shall be determined by  
23 multiplying the original credit by the ratio which the months of  
24 qualified use bear to 36.

25 (2) With respect to property other than that described in  
26 subparagraph (1) of this subsection which is disposed of or ceases  
27 to be qualified equipment prior to the end of the 60-month period  
28 following being placed in service in this State, the amount of credit  
29 allowed shall be that portion of the credit provided for in subsection  
30 a. of this section which represents the ratio which the months of  
31 qualified use bear to 60, and the difference between the credit taken  
32 and the credit allowed for actual use shall be forfeited.  
33 Additionally, except when the property is damaged or destroyed by  
34 fire, flood, storm or other casualty, or is stolen, the taxpayer shall  
35 redetermine the amount of credit allowed for the taxable year of the  
36 credit by reducing the investment credit base by the cost of the  
37 amount of the disposed or disqualified equipment. If the  
38 redetermination of the credit results in an increase in final liability  
39 for any taxable year in which the credit was applied, then,  
40 notwithstanding the three year limitation of N.J.S.54A:9-4, the  
41 amount of unpaid liability, if any, shall be considered a deficiency.  
42 The amount of credit allowed for actual use shall be determined by  
43 multiplying the original credit by the ratio which the months of  
44 qualified use bear to 60.

45  
46 17. (New section) a. A taxpayer that claims credit under  
47 sections 14 through 16 of P.L. , c. (C. ) (pending before the

1 Legislature as this bill) shall maintain sufficient records to establish  
2 the following facts for each item of qualified equipment:

- 3 (1) its identity;
- 4 (2) its actual or reasonably determined cost;
- 5 (3) its useful depreciation life;
- 6 (4) the month and taxable year in which it was placed in service;
- 7 (5) the amount of credit taken; and
- 8 (6) the date it was disposed of or otherwise ceased to be  
9 qualified equipment.

10 b. A taxpayer that does not keep records required for  
11 identification of qualified equipment shall be treated as having  
12 disposed of, during the taxable year, any qualified equipment which  
13 the taxpayer cannot establish was still on hand in this State at the  
14 end of that year.

15 c. If a taxpayer cannot establish when qualified equipment  
16 reported for purposes of claiming this credit during a taxable year  
17 was placed in service, the taxpayer shall be treated as having placed  
18 it in service in the most recent prior taxable year in which similar  
19 property was placed in service unless the taxpayer can establish that  
20 the property placed in service in the most recent taxable year is still  
21 on hand. In that event, the taxpayer shall be treated as having  
22 placed the property in service in the next most recent taxable year.

23 d. The burden of proof shall be on a taxpayer to establish by a  
24 preponderance of the evidence that the taxpayer is entitled to the  
25 credit allowed pursuant to sections 14 through 16 of P.L. , c.  
26 (C. ) (pending before the Legislature as this bill).

27  
28 18. Section 1 of P.L.2001, c.321 (C.54:10A-5.31) is amended to  
29 read as follows:

30 1. a. (1) A taxpayer who in a privilege period purchases  
31 treatment equipment or conveyance equipment for use exclusively  
32 within this State, shall be allowed a credit as provided herein  
33 against the tax imposed for that privilege period pursuant to section  
34 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 50% of  
35 the cost of the treatment equipment or conveyance equipment less  
36 the amount of any loan received pursuant to section 5 of P.L.1981,  
37 c.278 (C.13:1E-96) and excluding the amount of any sales and use  
38 tax paid pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), provided  
39 that the Commissioner of the Department of Environmental  
40 Protection has issued a determination under subsection b. of this  
41 section that the operation of the system of equipment and the reuse  
42 of wastewater effluent that results therefrom are or will be  
43 beneficial to the environment. The amount of the credit claimed for  
44 the privilege period in which the purchase of treatment equipment  
45 or conveyance equipment is made, and the amount of credit claimed  
46 therefor in each privilege period thereafter, shall not exceed 20% of  
47 the amount of the total credit allowable, shall not, together with any  
48 other credits allowed by law, exceed 50% of the tax liability which

1 would be otherwise due, and shall not reduce the amount of tax  
2 liability to less than the statutory minimum provided in subsection  
3 (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). An unused credit  
4 amount may be carried forward, if necessary, for use in future  
5 privilege periods. Notwithstanding any other provision of law, the  
6 order of priority in which the credit allowed under this section and  
7 any other credits allowed by law may be taken shall be as  
8 prescribed by the director.

9 A taxpayer who, in a privilege period, purchased treatment  
10 equipment or conveyance equipment, but who did not receive  
11 approval of an application for determination pursuant to subsection  
12 b. of this section before filing a return for that privilege period,  
13 may, in accordance with the provisions of the State Tax Uniform  
14 Procedure Law, R.S.54:48-1 et seq., and subject to the provisions of  
15 this section, file with the director a claim for the credit for that  
16 privilege period and any subsequent privilege period, as  
17 appropriate.

18 For the purposes of this section, "treatment equipment" means  
19 any equipment that is used exclusively to treat effluent from a  
20 primary wastewater treatment facility, which effluent would  
21 otherwise have been discharged into the waters of the State, for  
22 purposes of reuse in an industrial process thereafter, and  
23 "conveyance equipment" means any equipment that is used  
24 exclusively to transport that effluent to the facility in which the  
25 treatment equipment has been or is to be installed and to transport  
26 the product of that further treatment to the site of that reuse.

27 (2) **【If a person who purchases treatment equipment or**  
28 **conveyance equipment for which the Commissioner of the**  
29 **Department of Environmental Protection has issued a determination**  
30 **of environmentally beneficial operation pursuant to subsection b. of**  
31 **this section is a partnership, limited liability company, or other**  
32 **person classified as a partnership for federal tax purposes and not**  
33 **subject to the tax imposed pursuant to section 5 of P.L.1945, c.162**  
34 **(C.54:10A-5), a portion of the amount of the credit otherwise**  
35 **allowed to the purchaser pursuant to paragraph (1) of this**  
36 **subsection shall be allowed to each owner of that purchaser that is**  
37 **subject to the tax in proportion to the owner's share of the income of**  
38 **the purchaser. The purchaser shall be treated as the taxpayer for the**  
39 **purpose of administering the provisions of this section】 Deleted by**  
40 **amendment, P.L. , c. ) (pending before the Legislature as this**  
41 **bill).**

42 b. In order to qualify for the tax credit pursuant to subsection a.  
43 of this section, the taxpayer shall apply for a determination from the  
44 Commissioner of the Department of Environmental Protection that  
45 the equipment with respect to which the credit is sought (1)  
46 qualifies as treatment equipment or conveyance equipment as  
47 defined in subsection a. of this section, and (2) is or will be in its  
48 operation, considered in conjunction with the reuse of the further



1 treated wastewater effluent that results from that operation,  
2 beneficial to the environment. The application shall be submitted in  
3 writing in a form as the commissioner shall prescribe and shall  
4 specifically include; the date or anticipated date of purchase of the  
5 equipment, a physical and functional description of the equipment,  
6 the cost, the name and address or location of each primary  
7 wastewater treatment facility from which effluent is or is to be  
8 received for further treatment, the name and address or location of  
9 each facility to which the effluent is or is to be conveyed after the  
10 further treatment for reuse, the nature of the reuse, the location of  
11 any site at which the wastewater that has been or is to be further  
12 treated is being or is to be discharged either prior to or after reuse,  
13 the volume of such wastewater that is or is to be reused, the portion  
14 of that volume that is or is to be consumed in that reuse and the  
15 portion thereof that is or is to be discharged thereafter, and the  
16 taxpayer's explanation of how the operation of the system and the  
17 reuse of the wastewater effluent that has been further treated are or  
18 will be beneficial to the environment. The application shall also  
19 include the taxpayer's affidavit that, to the best of the taxpayer's  
20 knowledge, the equipment has not previously qualified for a credit  
21 pursuant to this section either for the taxpayer or other owner or for  
22 a previous owner.

23 Upon approval of the application, the Commissioner of the  
24 Department of Environmental Protection shall submit a copy of the  
25 determination of equipment qualification and environmentally  
26 beneficial operation to the taxpayer and the Director of the Division  
27 of Taxation. When filing a tax return that includes a claim for a  
28 credit pursuant to this section, the taxpayer shall include a copy of  
29 the determination and the taxpayer's affidavit that the treatment  
30 equipment or conveyance equipment is or will be used exclusively  
31 in New Jersey. Any credit shall be initially allowed for the  
32 privilege period in which the equipment is purchased, and any  
33 unused portion thereof may be carried forward into subsequent  
34 privilege periods as provided in subsection a. of this section.

35 The Commissioner of the Department of Environmental  
36 Protection, in consultation with the Director of the Division of  
37 Taxation, shall adopt rules and regulations establishing technical  
38 and administrative requirements for the qualification of treatment  
39 equipment and conveyance equipment, and for the determination  
40 that the operation of a system of such equipment and the reuse of  
41 wastewater effluent that has been treated thereby are beneficial to  
42 the environment, for the purpose of establishing a taxpayer's  
43 eligibility for a credit pursuant to this section. In the development  
44 and adoption of the rules and regulations prescribed under this act  
45 and of any procedure for making application for a credit under  
46 subsection a. of this section, the commissioner, in consultation with  
47 the director, shall to the greatest extent possible ensure that they are  
48 consolidated or consistent with any corresponding rules,

1 regulations, and procedures established under [P.L. , c. (C. )  
2 (now pending before the Legislature as Senate Bill No. 1210 (1R)  
3 and Assembly Bill No. 2695 of 2000) and] P.L.2001, c.322.

4 c. No amount of cost included in calculation of the credit  
5 allowed under this section shall be included in the costs for  
6 calculation of any other credit against the tax imposed pursuant to  
7 section 5 of P.L.1945, c.162 (C.54:10A-5).

8 d. On or before January 31 of each year, the Commissioner of  
9 the Department of Environmental Protection shall submit a report to  
10 the Governor, the State Treasurer, and the Legislature, in  
11 accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1),  
12 setting forth the number of taxpayer applications under subsection  
13 b. of this section and subsection b. of section 19 of P.L. , c.  
14 (C. ) (pending before the Legislature as this bill) that were  
15 approved during the preceding calendar year and the cost of each  
16 type of equipment which has been determined to qualify for the  
17 credit.

18 (cf: P.L.2001, c.321, s.1)

19  
20 19. (New section) a. A taxpayer who in a taxable year purchases  
21 treatment equipment or conveyance equipment for use exclusively  
22 within this State, shall be allowed a credit as provided herein  
23 against the tax imposed for that taxable year pursuant to  
24 N.J.S.54A:1-1 et seq., in an amount equal to 50% of the cost of the  
25 treatment equipment or conveyance equipment less the amount of  
26 any loan received pursuant to section 5 of P.L.1981, c.278  
27 (C.13:1E-96) and excluding the amount of any sales and use tax  
28 paid pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), provided that  
29 the Commissioner of the Department of Environmental Protection  
30 has issued a determination under subsection b. of this section that  
31 the operation of the system of equipment and the reuse of  
32 wastewater effluent that results therefrom are or will be beneficial  
33 to the environment. The amount of the credit claimed for the  
34 taxable year in which the purchase of treatment equipment or  
35 conveyance equipment is made, and the amount of credit claimed  
36 therefor in each taxable year thereafter, shall not exceed 20% of the  
37 amount of the total credit allowable, shall not, together with any  
38 other credits allowed by law, exceed 50% of the tax liability which  
39 would be otherwise due. An unused credit amount may be carried  
40 forward, if necessary, for use in future taxable years.  
41 Notwithstanding any other provision of law, the order of priority in  
42 which the credit allowed under this section and any other credits  
43 allowed by law may be taken shall be as prescribed by the director.

44 A taxpayer who, in a taxable year, purchased treatment  
45 equipment or conveyance equipment, but who did not receive  
46 approval of an application for determination pursuant to subsection  
47 b. of this section before filing a return for that taxable year, may, in  
48 accordance with this section, file with the director a claim for the

1 credit for that taxable year and any subsequent taxable year, as  
2 appropriate.

3 For the purposes of this section, "treatment equipment" means  
4 any equipment that is used exclusively to treat effluent from a  
5 primary wastewater treatment facility, which effluent would  
6 otherwise have been discharged into the waters of the State, for  
7 purposes of reuse in an industrial process thereafter, and  
8 "conveyance equipment" means any equipment that is used  
9 exclusively to transport that effluent to the facility in which the  
10 treatment equipment has been or is to be installed and to transport  
11 the product of that further treatment to the site of that reuse.

12 b. In order to qualify for the tax credit pursuant to subsection a.  
13 of this section, the taxpayer shall apply for a determination from the  
14 Commissioner of the Department of Environmental Protection that  
15 the equipment with respect to which the credit is sought (1)  
16 qualifies as treatment equipment or conveyance equipment as  
17 defined in subsection a. of this section, and (2) is or will be in its  
18 operation, considered in conjunction with the reuse of the further  
19 treated wastewater effluent that results from that operation,  
20 beneficial to the environment. The application shall be submitted in  
21 writing in a form as the commissioner shall prescribe and shall  
22 specifically include; the date or anticipated date of purchase of the  
23 equipment, a physical and functional description of the equipment,  
24 the cost, the name and address or location of each primary  
25 wastewater treatment facility from which effluent is or is to be  
26 received for further treatment, the name and address or location of  
27 each facility to which the effluent is or is to be conveyed after the  
28 further treatment for reuse, the nature of the reuse, the location of  
29 any site at which the wastewater that has been or is to be further  
30 treated is being or is to be discharged either prior to or after reuse,  
31 the volume of such wastewater that is or is to be reused, the portion  
32 of that volume that is or is to be consumed in that reuse and the  
33 portion thereof that is or is to be discharged thereafter, and the  
34 taxpayer's explanation of how the operation of the system and the  
35 reuse of the wastewater effluent that has been further treated are or  
36 will be beneficial to the environment. The application shall also  
37 include the taxpayer's affidavit that, to the best of the taxpayer's  
38 knowledge, the equipment has not previously qualified for a credit  
39 pursuant to this section either for the taxpayer or other owner or for  
40 a previous owner.

41 Upon approval of the application, the Commissioner of the  
42 Department of Environmental Protection shall submit a copy of the  
43 determination of equipment qualification and environmentally  
44 beneficial operation to the taxpayer and the Director of the Division  
45 of Taxation. When filing a tax return that includes a claim for a  
46 credit pursuant to this section, the taxpayer shall include a copy of  
47 the determination and the taxpayer's affidavit that the treatment  
48 equipment or conveyance equipment is or will be used exclusively

1 in New Jersey. Any credit shall be initially allowed for the privilege  
2 period in which the equipment is purchased, and any unused portion  
3 thereof may be carried forward into subsequent privilege periods as  
4 provided in subsection a. of this section.

5 The Commissioner of the Department of Environmental  
6 Protection, in consultation with the Director of the Division of  
7 Taxation, shall adopt rules and regulations establishing technical  
8 and administrative requirements for the qualification of treatment  
9 equipment and conveyance equipment, and for the determination  
10 that the operation of a system of such equipment and the reuse of  
11 wastewater effluent that has been treated thereby are beneficial to  
12 the environment, for the purpose of establishing a taxpayer's  
13 eligibility for a credit pursuant to this section. In the development  
14 and adoption of the rules and regulations prescribed under this  
15 section and of any procedure for making application for a credit  
16 under subsection a. of this section, the commissioner, in  
17 consultation with the director, shall to the greatest extent possible  
18 ensure that they are consolidated or consistent with any  
19 corresponding rules, regulations, and procedures established under  
20 P.L.2001, c.321 and P.L.2001, c.322.

21 c. No amount of cost included in calculation of the credit  
22 allowed under this section shall be included in the costs for  
23 calculation of any other tax credit.

24

25 20. (New section) a. A taxpayer, upon application to the  
26 Director of the Division of Taxation in the Department of the  
27 Treasury and the New Jersey Economic Development Authority,  
28 shall be allowed a credit against the tax imposed pursuant to section  
29 N.J.S.54A:1-1 et seq., in an amount up to 20 percent, as determined  
30 by the authority, of the qualified digital media content production  
31 expenses of the taxpayer during a taxable year commencing after  
32 the effective date of P.L. , c. (C. ) (pending before the  
33 Legislature as this bill), provided that at least \$2,000,000 of the  
34 total digital media content production expenses of the taxpayer will  
35 be incurred for services performed and goods used or consumed in  
36 New Jersey and at least a significant percentage, as determined by  
37 the authority, of the qualified digital media content production  
38 expenses of the taxpayer will include wages and salaries paid to one  
39 or more new full-time employees in New Jersey. For purposes of  
40 this subsection, "new full-time employee" means a person  
41 employed by the taxpayer for consideration for at least 35 hours a  
42 week, or who renders any other standard of service generally  
43 accepted by custom or practice as full-time employment, whose  
44 wages are subject to withholding as provided in the "New Jersey  
45 Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a partner  
46 of a taxpayer that is an eligible partnership, who works for the  
47 partnership for at least 35 hours a week, or who renders any other  
48 standard of service generally accepted by custom or practice as full-

1 time employment, and whose distributive share of income, gain,  
2 loss, or deduction, or whose guaranteed payments, or any  
3 combination thereof, is subject to the payment of estimated taxes, as  
4 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1  
5 et seq., and who is determined by the authority to work in a newly  
6 created permanent position according to criteria it develops.

7 “New full-time employee” shall not include any person who  
8 works as an independent contractor or on a consulting basis for the  
9 taxpayer. In determining the amount of any grant of tax credits  
10 made pursuant to this subsection, the authority shall consider the  
11 number of new full-time positions created by the taxpayer as well as  
12 the quality of the full-time positions created, including but not  
13 limited to the salaries and benefits provided to new full-time  
14 employees. The authority, in consultation with the Division of  
15 Taxation, shall establish rules for the recapture of all, or a portion  
16 of, the grant of tax credits pursuant to this subsection in the event  
17 the taxpayer fails to maintain the new full-time positions that were  
18 included in calculating the qualified digital media content  
19 production expenses of the taxpayer.

20 b. The amount of the credit applied under this section against the  
21 tax imposed pursuant to N.J.S.54A:1-1 et seq., for a taxable year,  
22 when taken together with any other credits allowed against the tax  
23 imposed pursuant to N.J.S.54A:1-1 et seq., shall not exceed 50  
24 percent of the tax liability otherwise due. The priority in which  
25 credits allowed pursuant to this section and any other credits shall  
26 be taken shall be as determined by the Director of the Division of  
27 Taxation. The amount of the credit otherwise allowable under this  
28 section which cannot be applied for the taxable year due to the  
29 limitations of this subsection or under other provisions of  
30 N.J.S.54A:1-1 et seq. may be carried over, if necessary, to the seven  
31 taxable years following the taxable year for which the credit was  
32 allowed.

33 c. A taxpayer may, with an application for a credit provided for  
34 in subsection a. of this section, apply to the director and the  
35 executive director of the authority for a tax credit transfer certificate  
36 in lieu of the taxpayer being allowed any amount of the credit  
37 against the tax liability of the taxpayer. The director and the  
38 executive director of the authority may consult with the New Jersey  
39 Motion Picture and Television Development Commission in  
40 consideration of any application for approval of a tax credit or tax  
41 credit transfer certificate under this section. The tax credit transfer  
42 certificate, upon receipt thereof by the taxpayer from the director  
43 and the authority, may be sold or assigned, in full or in part, to any  
44 other taxpayer that may have a tax liability under P.L.1945, c.162  
45 or N.J.S.54A:1-1 et seq., in exchange for private financial  
46 assistance to be provided by the purchaser or assignee to the  
47 taxpayer that has applied for and been granted the credit. The  
48 certificate provided to the taxpayer shall include a statement

1     waiving the taxpayer's right to claim that amount of the credit  
2     against the tax imposed pursuant to N.J.S.54A:1-1 et seq., that the  
3     taxpayer has elected to sell or assign. The sale or assignment of any  
4     amount of a tax credit transfer certificate allowed under this section  
5     shall not be exchanged for consideration received by the taxpayer of  
6     less than 75% of the transferred credit amount. Any amount of a tax  
7     credit transfer certificate used by a purchaser or assignee against a  
8     tax liability under N.J.S.54A:1-1 et seq., shall be subject to the  
9     same limitations and conditions that apply to the use of a credit  
10    pursuant to subsection b. of this section. Any amount of a tax credit  
11    transfer certificate obtained by a purchaser or assignee under  
12    subsection a. of this section may be applied against the purchaser's  
13    or assignee's tax liability under P.L.1945, c.162 and shall be subject  
14    to the same limitations and conditions that apply to the use of a  
15    credit pursuant to section 1 of P.L.2005, c.345, (C.54:10A-5.39).

16    d. As used in this section:

17    “Digital media content” means any data or information that is  
18    produced in digital form, including data or information created in  
19    analog form but reformatted in digital form, text, graphics,  
20    photographs, animation, sound and video content. “Digital media  
21    content” does not mean content offerings generated by the end user  
22    (including postings on electronic bulletin boards and chat rooms);  
23    content offerings comprised primarily of local news, events,  
24    weather or local market reports; public service content; electronic  
25    commerce platforms (such as retail and wholesale websites);  
26    websites or content offerings that contain obscene material as  
27    defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or  
28    content that are produced or maintained primarily for private,  
29    industrial, corporate or institutional purposes; or digital media  
30    content acquired or licensed by the taxpayer for distribution or  
31    incorporation into the taxpayer’s digital media content.

32    “Qualified digital media content production expenses” means an  
33    expense incurred in New Jersey for the production of digital media  
34    content. Qualified digital media content production expenses shall  
35    include but shall not be limited to wages and salaries of individuals  
36    employed in the production of digital media content on which the  
37    tax imposed by the "New Jersey Gross Income Tax Act,"  
38    N.J.S.54A:1-1 et seq. has been paid or is due; the costs of computer  
39    software and hardware, data processing, visualization technologies,  
40    sound synchronization, editing, and the rental of facilities and  
41    equipment. Qualified digital media content production expenses  
42    shall not include expenses incurred in marketing, promotion or  
43    advertising digital media or other costs not directly related to the  
44    production of digital media content. Costs related to the acquisition  
45    or licensing of digital media content by the taxpayer for distribution  
46    or incorporation into the taxpayer’s digital media content shall not  
47    be qualified digital media content production expenses.

1 "Total digital media content production expenses" means costs  
2 for services performed and property used or consumed in the  
3 production of digital media content.

4 e. The Director of the Division of Taxation in the Department of  
5 the Treasury, in consultation with the New Jersey Motion Picture  
6 and Television Development Commission and the New Jersey  
7 Economic Development Authority, shall adopt rules in accordance  
8 with the "Administrative Procedure Act," P.L.1968, c.410  
9 (C.52:14B-1 et seq.), as are necessary to implement this section  
10 including examples of digital media content production expenses  
11 and the procedures and forms to apply for a credit and for a tax  
12 credit transfer certificate necessary for a taxpayer to sell or assign  
13 an amount of tax credit under this section. The tax credit transfer  
14 certificate program shall be administered pursuant to the rules and  
15 limitations of subsection f. of section 1 of P.L.2005, c.345  
16 (C.54:10A-5.39) and subsection f. of section 2 of P.L.2005, c.345  
17 (C.54A:4-12).

18 f. For the purpose of determining eligibility for or the amount of  
19 any grant of tax credits pursuant to this section, the authority shall  
20 not include any job that is included in the calculation of a business  
21 employment incentive grant pursuant to the provisions of P.L.1996,  
22 c.26 (C.34:1B-124 et al.) or a business retention and relocation  
23 grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.).  
24

25 21. (New section) a. A taxpayer shall be allowed a credit,  
26 subject to the provisions of subsection b. of this section, against the  
27 tax imposed pursuant to the "New Jersey Gross Income Tax Act,"  
28 N.J.S.54A:1-1 et seq., in an amount equal to

29 (1) 10% of the excess of the qualified research expenses for the  
30 taxable year over the base amount; and

31 (2) 10% of the basic research payments for the taxable year  
32 determined in accordance with section 41 of the federal Internal  
33 Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30,  
34 1992, and provided that subsection (h) of 26 U.S.C. s.41 relating to  
35 termination shall not apply. Provided however, that the terms  
36 "qualified research expenses," "base amount," "qualified  
37 organization base amount period," "basic research" and any other  
38 terms determined by the Director of the Division of Taxation to  
39 affect the calculation of the credit shall include only expenditures  
40 for research conducted in this State.

41 b. No credit shall be allowed under this section for property or  
42 expenditures for which another credit is allowed under any other  
43 section of N.J.S.54A:1-1 et seq.

44 The order of priority of the application of the credit allowed  
45 pursuant to this section and any other credits allowed by law shall  
46 be as prescribed by the director. Credits allowable pursuant to this  
47 section shall be applied in the order of the taxable years for which  
48 the credits were allowed.

1       The amount of credit otherwise allowable under this section  
2       which cannot be applied for the taxable year due to the limitations  
3       of this subsection may be carried over, if necessary, to the seven  
4       taxable years following a credit's taxable year.

5       c. Notwithstanding the provisions of subsections a. and b. of this  
6       section to the contrary, a taxpayer that has acquired a gross income  
7       tax benefit certificate pursuant to the provisions of section 1 of  
8       P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a  
9       research and development tax credit carryover shall attach that  
10      certificate to any return the taxpayer is required to file under  
11      N.J.S.54A:1-1 et seq., and shall otherwise apply the credit carryover  
12      as evidenced by the certificate according to the provisions of  
13      subsection a. and b. of this section and any rules or regulations the  
14      director may adopt to carry out the provisions of this section.

15      A new or expanding emerging technology or biotechnology  
16      business that has surrendered an unused research and development  
17      tax credit carryover pursuant to the provisions of section 1 of  
18      P.L.1997, c.334 (C.34:1B-7.42a), shall not be allowed a research  
19      and development tax credit carryover based upon the right to such a  
20      credit carryover as evidenced by the gross income tax benefit  
21      certificate and shall attach a copy of the certificate to any return the  
22      taxpayer is required to file under N.J.S.54A:1-1 et seq.

23      d. Notwithstanding the provisions of subsections a. and b. of this  
24      section to the contrary, a taxpayer that has been allowed a credit  
25      pursuant to subsections a. and b. of this section for the taxable year  
26      in which the qualified research expenses have been incurred, and  
27      basic research payments have been made, for research conducted in  
28      this State in the fields of advanced computing, advanced materials,  
29      biotechnology, electronic device technology, environmental  
30      technology, and medical device technology, shall be allowed to  
31      carry over the amount of the taxable year credit which cannot be  
32      applied for the taxable year to each of the 15 taxable years  
33      following the credit's taxable year.

34      e. As used in this section:

35      "Advanced computing" means a technology used in the  
36      designing and developing of computing hardware and software,  
37      including innovations in designing the full spectrum of hardware  
38      from hand-held calculators to super computers, and peripheral  
39      equipment;

40      "Advanced materials" means materials with engineered  
41      properties created through the development of specialized  
42      processing and synthesis technology, including ceramics, high  
43      value-added metals, electronic materials, composites, polymers, and  
44      biomaterials;

45      "Biotechnology" means the continually expanding body of  
46      fundamental knowledge about the functioning of biological systems  
47      from the macro level to the molecular and sub-atomic levels, as  
48      well as novel products, services, technologies and sub-technologies



1 developed as a result of insights gained from research advances  
2 which add to that body of fundamental knowledge;

3 "Electronic device technology" means a technology involving  
4 microelectronics, semiconductors, electronic equipment, and  
5 instrumentation, radio frequency, microwave, and millimeter  
6 electronics, and optical and optic-electrical devices, or data and  
7 digital communications and imaging devices;

8 "Environmental technology" means assessment and prevention of  
9 threats or damage to human health or the environment,  
10 environmental cleanup, or the development of alternative energy  
11 sources; and

12 "Medical device technology" means a technology involving any  
13 medical equipment or product (other than a pharmaceutical product)  
14 that has therapeutic value, diagnostic value, or both, and is  
15 regulated by the federal Food and Drug Administration.

16  
17 22. Section 1 of P.L.1997, c.334 (C.34:1B-7.42a) is amended to  
18 read as follows:

19 1. a. The New Jersey Economic Development Authority shall  
20 establish within the New Jersey Emerging Technology and  
21 Biotechnology Financial Assistance Program established pursuant  
22 to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a **【corporation business】**  
23 tax benefit certificate transfer program to allow new or expanding  
24 emerging technology and biotechnology **【companies】** businesses in  
25 this State with unused amounts of research and development tax  
26 credits otherwise allowable which cannot be applied for the credit's  
27 tax year due to the limitations of subsection b. of section 1 of  
28 P.L.1993, c.175 (C.54:10A-5.24) or subsection b. of section 21 of  
29 P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the Legislature as this bill)  
30 and unused net operating loss carryover pursuant to subparagraph  
31 (B) of paragraph (6) of subsection (k) of section 4 of P.L.1945,  
32 c.162 (C.54:10A-4), to surrender those tax benefits for use by other  
33 **【corporation business】** taxpayers in this State, provided that the  
34 taxpayer receiving the surrendered tax benefits is not affiliated with  
35 **【a corporation】** the taxpayer that is surrendering its tax benefits  
36 under the program established under P.L.1997, c.334. For the  
37 purposes of this section, the test of affiliation is whether the same  
38 entity directly or indirectly owns or controls 5% or more of the  
39 voting rights or 5% or more of the value of all classes of stock of  
40 both the taxpayer receiving the benefits and a corporation that is  
41 surrendering the benefits or a related taxpayer pursuant to section  
42 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. 267).  
43 The tax benefits may be used on the corporation business tax or  
44 gross income tax returns to be filed by those taxpayers in exchange  
45 for private financial assistance to be provided by the corporation  
46 business taxpayer or gross income taxpayer that is the recipient of  
47 the **【corporation business】** tax benefit certificate to assist in the

1 funding of costs incurred by the new or expanding emerging  
2 technology and biotechnology **[company]** business.

3 b. The authority, in cooperation with the Division of Taxation in  
4 the Department of the Treasury, shall review and approve  
5 applications by new or expanding emerging technology and  
6 biotechnology **[companies]** businesses in this State with unused but  
7 otherwise allowable carryover of research and development tax  
8 credits pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) or  
9 section 21 of P.L. , c. (C. ) (pending before the Legislature  
10 as this bill), and unused but otherwise allowable net operating loss  
11 carryover pursuant to paragraph (6) of subsection (k) of section 4 of  
12 P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits in  
13 exchange for private financial assistance to be made by the  
14 corporation business taxpayer or gross income taxpayer that is the  
15 recipient of the **[corporation business]** tax benefit certificate in an  
16 amount equal to at least 80% of the amount of the surrendered tax  
17 benefit. Provided that the amount of the surrendered tax benefit for  
18 a surrendered research and development tax credit carryover is the  
19 amount of the credit, and provided that the amount of the  
20 surrendered tax benefit for a surrendered net operating loss  
21 carryover is the amount of the loss multiplied by the new or  
22 expanding emerging technology or biotechnology **[company's]**  
23 business' anticipated allocation factor, as determined pursuant to  
24 section 6 of P.L.1945, c.162 (C.54:10A-6) or the regulations  
25 adopted pursuant to N.J.S.54A:5-7, as appropriate, for the tax year  
26 in which the benefit is transferred and subsequently multiplied by  
27 the maximum corporation business tax rate provided pursuant to  
28 subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) or the  
29 maximum tax rate provided by N.J.S.54A:2-1, as appropriate. The  
30 authority shall be authorized to approve the transfer of no more than  
31 \$60,000,000 of tax benefits in a State fiscal year. If the total amount  
32 of transferable tax benefits requested to be surrendered by approved  
33 applicants exceeds \$60,000,000 for a State fiscal year, the authority,  
34 in cooperation with the Division of Taxation in the Department of  
35 the Treasury, shall not be authorized to approve the transfer of more  
36 than \$60,000,000 for that State fiscal year and shall allocate the  
37 transfer of tax benefits by approved companies using the following  
38 method:

39 (1) an eligible applicant with \$250,000 or less of transferable tax  
40 benefits shall be authorized to surrender the entire amount of its  
41 transferable tax benefits;

42 (2) an eligible applicant with more than \$250,000 of transferable  
43 tax benefits shall be authorized to surrender a minimum of  
44 \$250,000 of its transferable tax benefits;

45 (3) (Deleted by amendment, P.L.2009, c.90.)

46 (4) an eligible applicant with more than \$250,000 shall also be  
47 authorized to surrender additional transferable tax benefits  
48 determined by multiplying the applicant's transferable tax benefits

1 less the minimum transferable tax benefits that **【company】** business  
2 is authorized to surrender under paragraph (2) of this subsection by  
3 a fraction, the numerator of which is the total amount of  
4 transferable tax benefits that the authority is authorized to approve  
5 less the total amount of transferable tax benefits approved under  
6 paragraphs (1), (2), and (5) of this subsection and the denominator  
7 of which is the total amount of transferable tax benefits requested to  
8 be surrendered by all eligible applicants less the total amount of  
9 transferable tax benefits approved under paragraphs (1), (2), and (5)  
10 of this subsection;

11 (5) The authority shall establish the boundaries for three  
12 innovation zones to be geographically distributed in the northern,  
13 central, and southern portions of this State. Of the \$60,000,000 of  
14 transferable tax benefits authorized for each State fiscal year,  
15 \$10,000,000 shall be allocated for the surrender of transferable tax  
16 benefits exclusively by new and expanding emerging technology  
17 and biotechnology companies that operate within the boundaries of  
18 the innovation zones, except that any portion of the \$10,000,000  
19 that is not so approved shall be available for that State fiscal year  
20 for the surrender of transferable tax benefits by new and expanding  
21 emerging technology and biotechnology **【companies】** businesses  
22 that do not operate within the boundaries of an innovation zone.

23 If the total amount of transferable tax benefits that would be  
24 authorized using the above method exceeds \$60,000,000 for a State  
25 fiscal year, then the authority, in cooperation with the Division of  
26 Taxation in the Department of the Treasury, shall limit the total  
27 amount of tax benefits authorized to be transferred to \$60,000,000  
28 by applying the above method on an apportioned basis.

29 For purposes of this section transferable tax benefits include an  
30 eligible applicant's unused but otherwise allowable carryover of net  
31 operating losses multiplied by the applicant's anticipated allocation  
32 factor as determined pursuant to section 6 of P.L.1945, c.162  
33 (C.54:10A-6) or the regulations adopted pursuant to N.J.S.54A:5-7,  
34 as appropriate, for the tax year in which the benefit is transferred  
35 and subsequently multiplied by the maximum corporation business  
36 tax rate as provided in subsection (c) of section 5 of P.L.1945, c.162  
37 (C.54:10A-5) or the maximum tax rate provided by N.J.S.54A:2-1,  
38 as appropriate, plus the total amount of the applicant's unused but  
39 otherwise allowable carryover of research and development tax  
40 credits. An eligible applicant's transferable tax benefits shall be  
41 limited to net operating losses and research and development tax  
42 credits that the applicant requests to surrender in its application to  
43 the authority and shall not, in total, exceed the maximum amount of  
44 tax benefits that the applicant is eligible to surrender.

45 No application for a **【corporation business】** tax benefit transfer  
46 certificate shall be approved in which the new or expanding  
47 emerging technology or biotechnology company (1) has  
48 demonstrated positive net operating income in any of the two

1 previous full years of ongoing operations as determined on its  
2 financial statements issued according to generally accepted  
3 accounting standards endorsed by the Financial Accounting  
4 Standards Board; or (2) is directly or indirectly at least 50 percent  
5 owned or controlled by another corporation that has demonstrated  
6 positive net operating income in any of the two previous full years  
7 of ongoing operations as determined on its financial statements  
8 issued according to generally accepted accounting standards  
9 endorsed by the Financial Accounting Standards Board or is part of  
10 a consolidated group of affiliated corporations, as filed for federal  
11 income tax purposes, that in the aggregate has demonstrated  
12 positive net operating income in any of the two previous full years  
13 of ongoing operations as determined on its combined financial  
14 statements issued according to generally accepted accounting  
15 standards endorsed by the Financial Accounting Standards Board.

16 The maximum lifetime value of surrendered tax benefits that a  
17 corporation shall be permitted to surrender pursuant to the program  
18 is \$15,000,000. Applications must be received on or before June 30  
19 of each State fiscal year. The authority, in consultation with the  
20 Division of Taxation, shall establish rules for the recapture of all, or  
21 a portion of, the amount of a grant of a **【corporation business】** tax  
22 benefit certificate from the new or expanding emerging technology  
23 and biotechnology **【company】** business having surrendered tax  
24 benefits pursuant to this section in the event the taxpayer fails to  
25 use the private financial assistance received for the surrender of tax  
26 benefits as required by this section or fails to maintain a  
27 headquarters or a base of operation in this State during the five  
28 years following receipt of the private financial assistance; except if  
29 the failure to maintain a headquarters or a base of operation in this  
30 State is due to the liquidation of the new or expanding emerging  
31 technology and biotechnology **【company】** business.

32 c. The authority, in cooperation with the Division of Taxation  
33 in the Department of the Treasury, shall review and approve  
34 applications by taxpayers under the Corporation Business Tax Act  
35 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and "New Jersey  
36 Gross Income Tax Act," N.J.S.54A:1-1 et seq., to acquire  
37 surrendered tax benefits approved pursuant to subsection b. of this  
38 section which shall be issued in the form of **【corporation business】**  
39 tax benefit transfer certificates, in exchange for private financial  
40 assistance to be made by the taxpayer in an amount equal to at least  
41 80% of the amount of the surrendered tax benefit of an emerging  
42 technology or biotechnology **【company】** business in the State. A  
43 **【corporation business】** tax benefit transfer certificate shall not be  
44 issued unless the applicant certifies that as of the date of the  
45 exchange of the **【corporation business】** tax benefit certificate it is  
46 operating as a new or expanding emerging technology or  
47 biotechnology **【company】** business and has no current intention to

1 cease operating as a new or expanding emerging technology or  
2 biotechnology **【company】 business**.

3 The private financial assistance shall assist in funding expenses  
4 incurred in connection with the operation of the new or expanding  
5 emerging technology or biotechnology **【company】 business** in the  
6 State, including but not limited to the expenses of fixed assets, such  
7 as the construction and acquisition and development of real estate,  
8 materials, start-up, tenant fit-out, working capital, salaries, research  
9 and development expenditures and any other expenses determined  
10 by the authority to be necessary to carry out the purposes of the  
11 New Jersey Emerging Technology and Biotechnology Financial  
12 Assistance Program.

13 The authority shall require a corporation business taxpayer or  
14 gross income taxpayer that acquires a **【corporation business】** tax  
15 benefit certificate to enter into a written agreement with the new or  
16 expanding emerging technology or biotechnology **【company】**  
17 business concerning the terms and conditions of the private  
18 financial assistance made in exchange for the certificate. The  
19 written agreement may contain terms concerning the maintenance  
20 by the new or expanding emerging technology or biotechnology  
21 **【company】 business** of a headquarters or a base of operation in this  
22 State.

23 d. (Deleted by amendment, P.L.2009, c.90.)  
24 (cf: P.L.2009, c.90, s.29)  
25

26 23. Section 1 of P.L.1999, c.140 (C.34:1B-7.42b) is amended to  
27 read as follows:

28 1. As used in P.L.1997, c.334 (C.34:1B-7.42a et al.):

29 "Authority" means the New Jersey Economic Development  
30 Authority established pursuant to section 4 of P.L.1974, c.80  
31 (C.34:1B-4).

32 "Biotechnology" means the continually expanding body of  
33 fundamental knowledge about the functioning of biological systems  
34 from the macro level to the molecular and sub-atomic levels, as  
35 well as novel products, services, technologies and sub-technologies  
36 developed as a result of insights gained from research advances that  
37 add to that body of fundamental knowledge.

38 "Biotechnology business" means a biotechnology company, sole  
39 proprietorship, limited liability company, partnership, or any other  
40 business entity that is emerging and that has its headquarters or base  
41 of operations in this State; that owns, has filed for, or has a valid  
42 license to use protected, proprietary intellectual property; and that is  
43 engaged in the research, development, production, or provision of  
44 biotechnology for the purpose of developing or providing products  
45 or processes for specific commercial or public purposes, including  
46 but not limited to, medical, pharmaceutical, nutritional, and other

1 health-related purposes, agricultural purposes, and environmental  
2 purposes.

3 "Biotechnology company" means an emerging corporation that  
4 has its headquarters or base of operations in this State; that owns,  
5 has filed for, or has a valid license to use protected, proprietary  
6 intellectual property; and that is engaged in the research,  
7 development, production, or provision of biotechnology for the  
8 purpose of developing or providing products or processes for  
9 specific commercial or public purposes, including but not limited  
10 to, medical, pharmaceutical, nutritional, and other health-related  
11 purposes, agricultural purposes, and environmental purposes.

12 "Full-time employee" means a person employed by a new or  
13 expanding emerging technology or biotechnology **【company】**  
14 business for consideration for at least 35 hours a week, or who  
15 renders any other standard of service generally accepted by custom  
16 or practice as full-time employment and whose wages are subject to  
17 withholding as provided in the "New Jersey Gross Income Tax  
18 Act," N.J.S.54A:1-1 et seq., or who is a partner of a new or  
19 expanding emerging technology or biotechnology **【company】**  
20 business who works for the partnership for at least 35 hours a week,  
21 or who renders any other standard of service generally accepted by  
22 custom or practice as full-time employment, and whose distributive  
23 share of income, gain, loss, or deduction, or whose guaranteed  
24 payments, or any combination thereof, is subject to the payment of  
25 estimated taxes, as provided in the "New Jersey Gross Income Tax  
26 Act," N.J.S.54A:1-1 et seq. To qualify as a "full-time employee," an  
27 employee shall also receive from the new or expanding emerging  
28 technology or biotechnology **【company】** business health benefits  
29 under a group health plan as defined under section 14 of P.L.1997,  
30 c.146 (C.17B:27-54), a health benefits plan as defined under section  
31 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of  
32 health insurance covering more than one person issued pursuant to  
33 Article 2 of chapter 27 of Title 17B of the New Jersey Statutes.

34 "Full-time employee" shall not include any person who works as  
35 an independent contractor or on a consulting basis for the new or  
36 expanding emerging technology or biotechnology **【company】**  
37 business.

38 "New or expanding" means a technology or biotechnology  
39 **【company】** business that (1) on June 30 of the year in which the  
40 company files an application for surrender of unused but otherwise  
41 allowable tax benefits under P.L.1997, c.334 (C.34:1B-7.42a et al.)  
42 and on the date of the exchange of the **【corporation business】** tax  
43 benefit certificate, has fewer than 225 employees in the United  
44 States of America; (2) on June 30 of the year in which the  
45 **【company】** business files such an application, has at least one full-  
46 time employee working in this State if the **【company】** business has  
47 been incorporated, or for unincorporated business has been operated

1 for commercial purposes in its present form, for less than three  
2 years, has at least five full-time employees working in this State if  
3 the **【company】 business** has been incorporated, or for  
4 unincorporated business has been operated for commercial purposes  
5 in its present form, for more than three years but less than five  
6 years, and has at least 10 full-time employees working in this State  
7 if the **【company】 business** has been incorporated, or for  
8 unincorporated business has been operated for commercial purposes  
9 in its present form, for more than five years; and (3) on the date of  
10 the exchange of the corporation business tax benefit certificate, the  
11 **【company】 business** has the requisite number of full-time  
12 employees in New Jersey that were required on June 30 as set forth  
13 in part (2) of this definition.

14 “Technology business” means a technology company, sole  
15 proprietorship, limited liability company, partnership, S  
16 corporation, or any other business entity that is emerging and that  
17 has its headquarters or base of operations in this State; that owns,  
18 has filed for, or has a valid license to use protected, proprietary  
19 intellectual property; and that employs some combination of the  
20 following: highly educated or trained managers and workers, or  
21 both, employed in this State who use sophisticated scientific  
22 research service or production equipment, processes or knowledge  
23 to discover, develop, test, transfer or manufacture a product or  
24 service.

25 "Technology company" means an emerging corporation that has  
26 its headquarters or base of operations in this State; that owns, has  
27 filed for, or has a valid license to use protected, proprietary  
28 intellectual property; and that employs some combination of the  
29 following: highly educated or trained managers and workers, or  
30 both, employed in this State who use sophisticated scientific  
31 research service or production equipment, processes or knowledge  
32 to discover, develop, test, transfer or manufacture a product or  
33 service.

34 (cf: P.L.2010, c.10, s.2)

35

36 24. (New section) As used in sections 24 through 32 of P.L. ,  
37 c. (C. ) (pending before the Legislature as this bill):

38 “Business” means a sole proprietorship, a partnership, limited  
39 liability company, or other entity classified as a partnership for  
40 federal income tax purposes, or a New Jersey S Corporation.

41 “Business relocation or expansion or investment” means capital  
42 investment in a new or expanded business facility in this State.

43 "Business facility" means any factory, mill, plant, refinery,  
44 warehouse, building, complex of buildings or structural components  
45 of buildings, and all machinery, equipment and personal property  
46 located within this State, used in connection with the operation of  
47 the business of a taxpayer that is subject to the tax imposed  
48 pursuant to N.J.S.54A:1-1 et seq., and all facility preparation and

1 start-up costs of the taxpayer for the business facility which it  
2 capitalizes for federal income tax purposes.

3 "Compensation" means wages, salaries, commissions or any  
4 other form of remuneration paid to employees for personal services.

5 "Expanded business facility" means any business facility, other  
6 than a new business facility, resulting from acquisition,  
7 construction, reconstruction, installation or erection of  
8 improvements or additions to existing property if such  
9 improvements or additions are purchased in taxable years beginning  
10 on or after the date of enactment of this section, but only to the  
11 extent of a taxpayer's qualified investment in such improvements or  
12 additions.

13 "New business facility" means a business facility that meets the  
14 following conditions:

15 a. is employed by a business in the conduct of the business, the  
16 gross income of which is or will be taxable under N.J.S.54A:1-1 et  
17 seq. Such facility shall not be considered a new business facility in  
18 the hands of a business if the business' only activity with respect to  
19 such facility is to lease it to another person;

20 b. is purchased by a business and is placed in service or use in  
21 taxable years beginning on or after the date of enactment of this  
22 section;

23 c. was not purchased by a business from a related person,  
24 provided however, the director may waive this requirement if the  
25 facility was acquired from a related person for its fair market value  
26 and the acquisition was not tax motivated; and

27 d. was not in service or use during the 90-day period  
28 immediately prior to transfer of the title to the facility, provided that  
29 this restriction for the 90-day period may be waived by the director  
30 if the director determines that individuals employed at the facility  
31 may be considered as "new employees" as defined in this section.

32 "New employee" means an individual residing and domiciled in  
33 this State, hired by a business to fill a position or a job in this State  
34 which previously did not exist in the business' business enterprise in  
35 this State prior to the date on which the taxpayer's qualified  
36 investment is placed in service or use in this State provided that:

37 a. the individual's duties in connection with the operation of  
38 the business facility are on a regular, full-time and permanent basis  
39 or regular part-time and permanent basis;

40 b. the individual is not a related individual as defined in  
41 subsection (i) of section 51 of the federal Internal Revenue Code of  
42 1986 (26 U.S.C. s.51), or does not own 10% or more of the business  
43 with such ownership interest to be determined under the rules set  
44 forth in section 267 of the federal Internal Revenue Code of 1986  
45 (26 U.S.C. s.267);

46 c. the individual is not an individual who worked for the  
47 business during the six-month period ending on the date the  
48 business' qualified investment is placed in service or use and is



1 rehired by the business during the six-month period beginning on  
2 the date the business' qualified investment is placed in service or  
3 use in this State; and

4 d. the individual is not an employee for whom the taxpayer is  
5 allowed another State tax credit.

6 As used in this definition: "full-time" means employment for at  
7 least 140 hours per month at a wage not less than the State or  
8 federal minimum wage, if either minimum wage provision is  
9 applicable to the business and "permanent basis" does not include  
10 employment that is temporary or seasonal and therefore the  
11 compensation paid to temporary or seasonal employees will not be  
12 considered for purposes of sections 26 and 28 of P.L. , c.  
13 (C. ) (pending before the Legislature as this bill); and "part-  
14 time" means customarily performing such duties at least 20 hours  
15 per week for at least six months during the taxable year. In no  
16 event shall the number of new employees directly attributable to the  
17 qualified investment for the purpose of the credit allowed pursuant  
18 to sections 24 through 32 of P.L. , c. (C. ) (pending before  
19 the Legislature as this bill) exceed the total increase in the  
20 taxpayer's average employment in this State for the taxable year  
21 over the average employment in this State for the previous taxable  
22 year and in no event shall the number of new employees directly  
23 attributable to the qualified investment for the purpose of the credit  
24 allowed pursuant to sections 24 through 32 of P.L. , c. (C. )  
25 (pending before the Legislature as this bill) exceed one-half of the  
26 average employment in this State for the taxable year; and provided,  
27 that the director may require that the net increase in the business'  
28 employment in this State be determined and certified for the  
29 business' controlled group.

30 Provided further, however, that individuals filling jobs saved as a  
31 direct result of the business' qualified investment in property  
32 purchased for business relocation or expansion in taxable years  
33 beginning on or after the date of enactment of this section may be  
34 treated as new employees filling new jobs if the business certifies  
35 the material facts to the director and the director expressly finds  
36 that: but for the new employer purchasing the assets of a business in  
37 bankruptcy under chapter 7 or 11 of the United States Bankruptcy  
38 Code and such new employer making qualified investment in  
39 property purchased for business relocation or expansion, the assets  
40 would have been sold by the United States bankruptcy court in a  
41 liquidation sale and the jobs so saved would have been lost; or but  
42 for the business' qualified investment in property purchased for  
43 business relocation or expansion in this State, the business facility  
44 in this State would have closed and the employees located at the  
45 facility would have lost their jobs; provided that the director shall  
46 not make this certification unless the director finds that the business  
47 is insolvent as defined in paragraph (32) of 11 U.S.C. s.101 or that

1 the business facility was destroyed in whole or in significant part by  
2 fire, flood or act of God.

3 "New job" means a job which did not exist in the business of the  
4 taxpayer in this State prior to the business' qualified investment  
5 being made, and which is filled by a new employee.

6 "Partnership" means a syndicate, group, pool, joint venture or  
7 other unincorporated organization through or by means of which  
8 any business, financial operation or venture is carried on, and which  
9 is not a trust or estate, a corporation or a sole proprietorship. The  
10 term "partner" includes a member in such a syndicate, group, pool,  
11 joint venture or organization.

12 "Property purchased for business relocation or expansion" means  
13 improvements to real property and tangible personal property, but  
14 only if that improvement or personal property was constructed or  
15 purchased and placed in service or use by the business, for use as a  
16 component part of a new or expanded business facility located in  
17 this State.

18 a. Property purchased for business relocation or expansion  
19 shall include only:

20 (1) improvements to real property placed in service or use in  
21 taxable years beginning on or after the date of enactment of this  
22 section by the business;

23 (2) tangible personal property placed in service or use by the  
24 business in taxable years beginning on or after the date of  
25 enactment of this section, with respect to which depreciation, or  
26 amortization in lieu of depreciation, is allowable in determining the  
27 gross income tax liability of the business under N.J.S.54A:1-1 et  
28 seq., and which has a remaining recovery period of three or more  
29 taxable years at the time the property is placed in service or use in  
30 this State; or

31 (3) tangible personal property owned and used by the business at  
32 a business location outside this State which is moved into this State  
33 in taxable years beginning on or after the date of enactment of this  
34 section, for use as a component part of a new or expanded business  
35 facility located in this State; provided that the property is  
36 depreciable or amortizable personal property for income tax  
37 purposes, and has a remaining recovery period of three or more  
38 taxable years at the time the property is placed in service or use in  
39 this State.

40 b. Property purchased for business relocation or expansion shall  
41 not include:

42 (1) Repair costs, including materials used in the repair, unless for  
43 federal income tax purposes, the cost of the repair must be  
44 capitalized and not expensed;

45 (2) Airplanes;

46 (3) Property which is primarily used outside this State with that  
47 use being determined based upon the amount of time the property is  
48 actually used both within and without this State;

1 (4) Property which is acquired incident to the purchase of the  
2 stock or assets of the seller unless for good cause shown, the  
3 director consents to waiving this disqualification; or

4 (5) Property purchased in taxable years beginning on or after the  
5 date of enactment of this section, unless pursuant to a written  
6 contract to purchase executed prior to the taxable years beginning  
7 on or after the date of enactment of this section, the cost or  
8 consideration for which cannot be quantified with any reasonable  
9 degree of accuracy at the time such property is placed in service or  
10 use; provided that if the contract of purchase specifies a minimum  
11 purchase price the amount thereof shall be used to determine the  
12 qualified investment in such property under section 27 of P.L. , c.  
13 (C. ) (pending before the Legislature as this bill) if the property  
14 otherwise qualifies as property purchased for business relocation or  
15 expansion.

16 c. Property shall be deemed to have been purchased prior to a  
17 specified date only if:

18 (1) the physical construction, reconstruction or erection of the  
19 property was begun prior to the specified date, or such property was  
20 constructed, reconstructed, erected or acquired pursuant to a written  
21 contract as existing and binding on the purchase prior to the  
22 specified date; or

23 (2) the machinery or equipment was owned by the business prior  
24 to the specified date, or was acquired by the business pursuant to a  
25 binding purchase contract which was in effect prior to the specified  
26 date.

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  
30 relationship to the person acquiring it would result in the  
31 disallowance of deductions under section 267 or subsection (b) of  
32 section 707 of the federal Internal Revenue Code of 1986 (26  
33 U.S.C. s.267 or s.707); and

34 b. the basis of the property for federal income tax purposes, in  
35 the hands of the person acquiring it, is not determined:

36 (1) in whole or in part by reference to the federal adjusted basis  
37 of such property in the hands of the person from whom it was  
38 acquired; or (2) under subsection (e) of section 1014 of the federal  
39 Internal Revenue Code of 1986 (26 U.S.C. s.1014).

40 "Related person" means:

41 a. a corporation, partnership, association or trust controlled by  
42 the business;

43 b. an individual, corporation, partnership, association or trust  
44 that is in control of the business; or

45 c. a corporation, partnership, association or trust controlled by  
46 an individual, corporation, partnership, association or trust that is in  
47 control of the business.

1 As used in the definition of related person and as is applicable to  
2 the definitions of purchase and small or mid-size business,  
3 "control," with respect to a corporation, means ownership, directly  
4 or indirectly, of stock possessing 50% or more of the total  
5 combined voting power of all classes of the stock of the corporation  
6 entitled to vote; "control," with respect to a trust, means ownership,  
7 directly or indirectly, of 50% or more of the beneficial interest in  
8 the principal or income of the trust. The ownership of stock in a  
9 corporation, of a capital or profits interest in a partnership or  
10 association or of a beneficial interest in a trust shall be determined  
11 in accordance with the rules for constructive ownership of stock  
12 provided in subsection (c) of section 267 of the federal Internal  
13 Revenue Code of 1986 (26 U.S.C. s.267(c)), other than paragraph  
14 (3) of subsection (c) of that section.

15 "Small or mid-size business" means a business that has an annual  
16 payroll and annual gross receipts that do not exceed the limits for  
17 annual payroll and annual gross receipts promulgated by the  
18 director pursuant to the definition of "small or mid-size business  
19 taxpayer" by section 2 of P.L.1993, c.170 (C.54:10A-5.5).

20 The annual payroll of a business shall include the employees of  
21 its domestic and foreign affiliates, whether employed on a full-time,  
22 part-time, temporary, or other basis, during the preceding 12  
23 months. If a business has not been in existence for 12 months, the  
24 payroll of the business shall be divided by the number of weeks,  
25 including fractions of a week, that it has been in business, and the  
26 result multiplied by 52. That amount shall then be added to the 12-  
27 month payrolls of its domestic and foreign affiliates to determine  
28 the annual payroll of the business for purposes of this definition.  
29 The annual gross receipts of a business shall include the annual  
30 gross receipts of its foreign and domestic affiliates. The annual  
31 gross receipts of a business which has been in business for three or  
32 more complete taxable years means the average of the annual gross  
33 receipts of the business for the last three taxable years. For  
34 purposes of this definition, the gross receipts of the business  
35 includes receipts from sales of tangible personal property and  
36 services, interests, rents, royalties, fees, commissions and receipts  
37 from any other source, but less returns and allowances, sales of  
38 fixed assets, interaffiliated transactions between a business and its  
39 domestic and foreign affiliates, and taxes collected for remittance to  
40 a third party, as shown on its books for federal income tax purposes.  
41 The annual receipts of a business that has been in business for less  
42 than three complete taxable years means its total receipts for the  
43 period it has been in business, divided by the number of weeks  
44 including fractions of a week that it has been in business, and  
45 multiplied by 52.

46 "Affiliates" includes all concerns that are affiliates of each other  
47 when either directly or indirectly one concern controls the other or a  
48 third party or parties controls both. In determining whether

1 concerns are independently owned and operated and whether or not  
2 affiliation exists, the director shall consider all appropriate factors,  
3 including common ownership, common management and  
4 contractual relationships.

5 "Concern" means any business entity organized for profit (even  
6 if its ownership is in the hands of a nonprofit entity), having a place  
7 of business located in this State, and which makes a contribution to  
8 the economy of this State through payment of taxes, or the sale or  
9 use in this State of tangible personal property, or the procurement or  
10 providing of services in this State, or the hiring of employees who  
11 work in this State. "Concern" includes but is not limited to any  
12 person as defined in R.S.1:1-2.

13  
14 25. (New section) a. A business shall be allowed a credit against  
15 the portion of the tax imposed in N.J.S.54A:1-1 et seq., that is  
16 attributable to and the direct consequence of the business' qualified  
17 investment in a new or expanded business facility in this State  
18 which results in the creation of at least five new jobs in the case of a  
19 small or mid-size business, or at least 50 new jobs in the case of any  
20 other business, provided that the median compensation of all new  
21 jobs included in the business' determination of the new jobs factor  
22 shall not be less than the median compensation determined by the  
23 director pursuant to subsection e. of section 3 of P.L.1993, c.170  
24 (C.54:10A-5.6). The amount of this credit shall be determined and  
25 applied as hereinafter provided.

26 b. The amount of the credit allowed shall be determined by  
27 multiplying the amount of the business' "qualified investment,"  
28 determined under section 27 of P.L. , c. (C. ) (pending  
29 before the Legislature as this bill), in "property purchased for  
30 business relocation or expansion" by the business' new jobs factor  
31 determined under section 28 of P.L. , c. (C. ) (pending  
32 before the Legislature as this bill). The product of this calculation  
33 shall establish the maximum amount of credit allowed under this  
34 section due to the qualified investment.

35 c. The amount of credit allowed shall be taken over a five-year  
36 period, at the rate of one-fifth of the amount thereof per taxable  
37 year, beginning with the taxable year in which the taxpayer places  
38 the qualified investment in service or use in this State.

39 d. For purposes of the credit allowed by this section, property  
40 shall be considered placed in service or use in the earlier of the  
41 following taxable years:

42 (1) The taxable year in which, under the business' depreciation  
43 practice, the period for depreciation with respect to such property  
44 begins; or

45 (2) The taxable year in which the property is placed in a  
46 condition or state of readiness and availability for a specifically  
47 assigned function.

- 1        26. (New section) a. The aggregate annual credit allowed for a  
2 taxable year shall be an amount equal to the sum of:
- 3        (1) The one-fifth part allowed under section 25 P.L.       , c.  
4 (C.       ) (pending before the Legislature as this bill) for qualified  
5 investment placed into service or use during a prior taxable year,  
6 plus
- 7        (2) The one-fifth part allowed under section 25 P.L.       , c.  
8 (C.       ) (pending before the Legislature as this bill) for qualified  
9 investment placed into service or use during the current taxable  
10 year.
- 11       b. (1) The amount determined under subsection a. shall be  
12 allowed as a credit against that portion of the business' gross  
13 income tax liability which is attributable to and the direct result of  
14 the business' qualified investment. The amount determined under  
15 subsection a. and allowed as a credit against the tax imposed  
16 pursuant to N.J.S.54A:1-1 et seq., for a taxable year shall not reduce  
17 that tax liability by more than 50% of that portion of the business'  
18 tax liability otherwise due for the taxable year which is attributable  
19 to and the direct result of the business' qualified investment.
- 20       (2) If any amount of credit determined under subsection a.  
21 remains after the amount allowed as a credit under the limitations of  
22 paragraph (1) of this subsection, that amount of credit remaining  
23 shall be refunded to the business. The amount refunded to the  
24 business shall not exceed 50% of the sum of the amount of property  
25 taxes timely paid in the taxable year pursuant to R.S.54:4-1 et seq.  
26 and the amount of implicit property taxes paid through rent or lease  
27 payments in respect of property taxable pursuant to R.S.54:4-1 et  
28 seq., and for which taxes another party that is not a related person is  
29 liable, which is attributable to and the direct result of the taxpayer's  
30 qualified investment.
- 31       c. (1) If the taxes due under N.J.S.54A:1-1 (determined before  
32 application of allowable credits against the tax), the sum of the  
33 amount of property taxes timely paid in the taxable year pursuant to  
34 R.S.54:4-1 et seq. and the amount of implicit property taxes paid  
35 through rent or lease payments in respect of property taxable  
36 pursuant to R.S.54:4-1 et seq., and for which taxes another party  
37 that is not a related person is liable, are not solely attributable to  
38 and the direct result of the business' qualified investment, the  
39 amount of those taxes which are so attributable shall be determined  
40 by multiplying the amount of taxes due under those acts for the  
41 taxable year (determined before application of allowable credits  
42 against tax) by a fraction, the numerator of which is all  
43 compensation paid during the taxable year to all employees of the  
44 business employed in this State whose positions are directly  
45 attributable to the qualified investment. The denominator of the  
46 fraction is the compensation paid during the taxable year to all  
47 employees of the business employed in this State.

1 (2) Any credits allowable under section 19 of P.L.1983, c.303  
2 (C.52:27H-78) and section 12 of P.L.1985, c.227 (C.55:19-13),  
3 shall be applied against and reduce only the amount of gross income  
4 tax not apportioned to the qualified investment used for this credit.  
5 Provided, that any excess of those credits may be applied against  
6 the amount of gross income tax apportioned to the qualified  
7 investment under this credit that is not offset by the amount of  
8 annual credit against the tax allowed under this act for the taxable  
9 year, unless their application is otherwise prohibited by P.L.1987,  
10 c.102, P.L.1983, c.303, or P.L.1985, c.227.

11 (3) If any credit for the taxable year pursuant to this section  
12 remains after application of the provisions of subsections a. and b.  
13 of this section, the amount thereof shall be forfeited. No carryover  
14 to a subsequent taxable year or carryback to a prior taxable year  
15 shall be allowed for the amount of any unused portion of any annual  
16 credit allowance.

17 d. For the purposes of this act, "implicit property taxes" means  
18 15% of the amount of the rent or lease payments made by the  
19 taxpayer in respect of property taxable pursuant to R.S.54:4-1 et  
20 seq., and for which taxes another party that is not a related person is  
21 liable.

22  
23 27. (New section) a. The qualified investment in property  
24 purchased for business relocation or expansion shall be the  
25 applicable percentage of the cost of each property purchased for  
26 business relocation or expansion which is placed in service or use in  
27 this State by the business during the taxable year. Provided, that  
28 only the cost of property purchased for business relocation or  
29 expansion placed in service or use in this State during the taxable  
30 year for which the average value of the business' real and tangible  
31 personal property within the State, is greater than that average value  
32 for the previous tax year, shall be considered in determining  
33 qualified investment.

34 b. For the purpose of subsection a., the applicable percentage  
35 of any cost of property purchased for business relocation or  
36 expansion shall be determined under the following table:

37

38	If property has a:	The applicable percentage is:
39		
40	three year recovery period .....	35%
41	five year recovery period .....	70%
42	seven year or more recovery period .....	100%

43  
44 The recovery period of any property, for purposes of this section,  
45 shall be determined as of the date such property is first placed in  
46 service or use in this State by the business, determined in  
47 accordance with section 168 of the federal Internal Revenue Code  
48 of 1986 (26 U.S.C. s.168).

1 c. For purposes of subsection a., the cost of each property  
2 purchased for business relocation or expansion shall be determined  
3 under the following restrictions:

4 (1) cost shall not include the value of property given in trade or  
5 exchange for the property purchased for business relocation or  
6 expansion;

7 (2) if property is damaged or destroyed by fire, flood, storm or  
8 other casualty, or is stolen, the cost of replacement property shall  
9 not include any insurance proceeds received in compensation for  
10 the loss;

11 (3) in the case of self-constructed property, the cost thereof shall  
12 be the amount properly charged to the capital account for  
13 depreciation in accordance with federal income tax law; and

14 (4) the cost of property used by the business out-of-State and  
15 then brought into this State shall be determined based on the  
16 remaining recovery period of the property at the time it is placed in  
17 service or use in this State, and the cost shall be the original cost of  
18 the property to the business less straight line depreciation allowable  
19 for the taxable years or portions thereof the business used the  
20 property outside this State.

21 (5) The cost of equipment acquired by written lease is the  
22 minimum amount required by the agreement, agreements, contract  
23 or contracts to be paid over the term of the lease, provided however,  
24 that the minimum amount shall not include any amount required to  
25 be paid, as determined by the director, after the expiration of the  
26 recovery period of the equipment.

27 d. No amount of cost for property which qualifies for the  
28 credits allowed under sections 14 through 17 of P.L. , c.  
29 (C. ) (pending before the Legislature as this bill), shall be  
30 allowed as qualified investment under this section.

31

32 28. (New section) a. The new jobs factor used to determine the  
33 amount of credit allowed by sections 24 through 32 of P.L. , c.  
34 (C. ) (pending before the Legislature as this bill) shall be based  
35 on the number of new jobs created in this State that are directly  
36 attributable to the qualified investment of the business.

37 b. (1) (a) For a business that is not a small or mid-size business  
38 taxpayer, if 50 new jobs are created and filled during the taxable  
39 year in which the qualified investment is placed in service or use in  
40 this State, the applicable new jobs factor shall be 0.005. For each 50  
41 additional new jobs over the initial 50, up to 1000 total new jobs,  
42 the applicable new jobs factor of 0.005 shall be increased by adding  
43 thereto 0.005, up to a maximum new jobs factor of 0.10.

44 (b) During each of the remaining four years of the five-year  
45 credit period, the business shall redetermine the new jobs factor for  
46 the taxable year on the annual return based on the average number  
47 of new employees employed in new jobs during that taxable year



1 (determined on a monthly basis) created as the direct result of the  
2 business' qualified investment.

3 (2) (a) For a business that is a small or mid-size business  
4 taxpayer, if five new jobs are created and filled during the taxable  
5 year in which the qualified investment is placed in service or use in  
6 this State, the applicable new jobs factor shall be 0.01. For each five  
7 additional new jobs over the initial five, up to 100 total new jobs,  
8 the applicable new jobs factor of 0.01 shall be increased by adding  
9 thereto 0.01, up to a maximum new jobs factor of 0.20.

10 (b) During each of the remaining four years of the five-year  
11 credit period, the taxpayer shall redetermine the new jobs factor for  
12 the taxable year on the annual return based on the average number  
13 of new employees employed in new jobs during that taxable year  
14 (determined on a monthly basis) created as the direct result of the  
15 taxpayer's qualified investment.

16 c. An employee's position shall be directly attributable to the  
17 qualified investment if:

18 (1) the employee's service is performed or the employee's base of  
19 operations is at the new or expanded business facility;

20 (2) the position did not exist prior to the construction,  
21 renovation, expansion or acquisition of the business facility and the  
22 making of the qualified investment; and

23 (3) but for the qualified investment, the position would not have  
24 existed.

25 d. With the annual gross income tax return filed under  
26 N.J.S.54A:1-1 et seq., for each taxable year during the five-year  
27 credit period for a qualified investment, the business shall certify to  
28 the taxpayer and the Division of Taxation:

29 (1) the new jobs factor for that taxable year for the qualified  
30 investment;

31 (2) the amount of the credit allowed for that taxable year for the  
32 qualified investment;

33 (3) that the qualified investment property continued to be used in  
34 the business, or if any of it was disposed of during the taxable year,  
35 the date of disposition, and that such property was not disposed of  
36 prior to expiration of its recovery period, as determined under  
37 section 27 of P.L. , c. (C. ) (pending before the Legislature  
38 as this bill); and

39 (4) that the new jobs are directly attributable to the qualified  
40 investment, are filled by individuals who meet the definition of new  
41 employee, and the median annual compensation of all new  
42 employees is equal to or greater than the minimum median annual  
43 compensation required by section 25 of P.L. , c. (C. )  
44 (pending before the Legislature as this bill).

45 e. With the annual return for the gross income tax imposed  
46 under N.J.S.54A:1-1 et seq., filed for the taxable year in which the  
47 qualified investment is first placed in service or use in this State,  
48 the business shall estimate and certify the number of new jobs

1 reasonably projected to be created by it in this State within the  
2 period prescribed in subsection g. of this section, that are, or will be  
3 directly attributable to the qualified investment of the business.

4 f. The hours of part-time employees shall be aggregated to  
5 determine the number of equivalent full-time employees for the  
6 purpose of determining the new jobs factor pursuant to subsection  
7 b. of this section but shall not be so aggregated for the purposes of  
8 subsection c. of this section.

9 g. With the annual return for the tax imposed under  
10 N.J.S.54A:1-1 et seq., filed for the third taxable year in which the  
11 qualified investment is in service or use in this State, the business  
12 shall certify the actual number of new jobs created by it in this  
13 State, that are directly attributable to the qualified investment of the  
14 business.

15 (1) If the actual number of jobs created would result in a higher  
16 new jobs factor, the credit allowed under sections 24 through 32 of  
17 P.L. , c. (C. ) (pending before the Legislature as this bill)  
18 shall be redetermined and amended returns filed for the first and  
19 second taxable years that the qualified investment was in service or  
20 use in this State.

21 (2) If the actual number of jobs created would result in a lower  
22 new jobs factor, the credit previously allowed under this act shall be  
23 redetermined and amended returns filed for the first and second  
24 taxable years. Any additional taxes due under N.J.S.54A:1-1 et  
25 seq., shall be remitted with the amended returns filed with the  
26 director, together with any penalty and interest, for failure to pay  
27 any such tax when due.

28

29 29. (New section) a. If during any taxable year, property with  
30 respect to which a tax credit has been allowed under section 24  
31 through 32 P.L. , c. (C. ) (pending before the Legislature as  
32 this bill):

33 (1) is disposed of prior to the end of its recovery period, as  
34 determined under section 27 of P.L. , c. (C. ) (pending  
35 before the Legislature as this bill); or

36 (2) ceases to be used in a new or expanded business facility of  
37 the taxpayer in this State prior to the end of its recovery period, as  
38 determined under section 27 of P.L. , c. (C. ) (pending  
39 before the Legislature as this bill), then the unused portion of the  
40 credit allowed for such property shall be forfeited for the taxable  
41 year and all ensuing years. Additionally, except when the property  
42 is damaged or destroyed by fire, flood, storm or other casualty, or is  
43 stolen, the business shall redetermine the amount of credit allowed  
44 in all earlier years by reducing the applicable percentage of cost of  
45 such property allowed under section 27 of P.L. , c. (C. )  
46 (pending before the Legislature as this bill), to correspond with the  
47 percentage of cost allowable for the period of time that the property  
48 was actually used in this State in the new or expanded business

1 facility of the business. The business shall then file a reconciliation  
2 statement with its annual gross income tax return for the year in  
3 which the forfeiture occurs with the Division of Taxation and the  
4 pertinent taxpayers and the taxpayers shall pay any additional tax  
5 owed due to reduction of the amount of credit allowable for such  
6 earlier years, together with any penalty and interest for failure to  
7 pay any such tax.

8 b. If during any taxable year the business ceases operation of a  
9 new or expanded business facility in this State for which a credit  
10 was allowed under section 24 through 32 P.L. , c. (C. )  
11 (pending before the Legislature as this bill), before expiration of the  
12 recovery period of the property with respect to which a tax credit  
13 has been allowed under this credit, then the unused portion of the  
14 allowed credit shall be forfeited for the taxable year and all ensuing  
15 years. Additionally, except when the cessation is due to fire, flood,  
16 storm or other casualty, the business shall redetermine the amount  
17 of credit allowed in earlier years by reducing the applicable  
18 percentage of cost of such property allowed under section 27 of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill), to  
20 correspond with the percentage of cost allowable for the period of  
21 time that the property was actually used in this State in a new or  
22 expanded business facility of the business that is subject to tax  
23 under N.J.S.54A:1-1 et seq. The business shall then file a  
24 reconciliation statement with its annual gross income tax return for  
25 the taxable year in which the forfeiture occurs with the Division of  
26 Taxation and the pertinent taxpayers and the taxpayers shall pay  
27 any additional taxes owed due to reduction of the amount of credit  
28 allowable for such earlier years, together with any penalty and  
29 interest for failure to pay any such tax.

30 c. If during any taxable year subsequent to the taxable year in  
31 which the new jobs factor is redetermined as provided in section 28  
32 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
33 the average number of employees of the business, for the then  
34 current taxable year, employed in positions created because of and  
35 directly attributable to the qualified investment falls below the  
36 minimum number of new jobs created upon which the business'  
37 annual credit allowance is based, the business shall calculate what  
38 the taxpayer's annual credit allowance would have been had the  
39 taxpayer's new jobs factor been determined based upon the average  
40 number of employees, for the then current taxable year, employed  
41 in positions created because of and directly attributable to the  
42 qualified investment. The difference between the result of this  
43 calculation and the business' annual credit allowance for the  
44 qualified investment as determined under section 25 of P.L. , c.  
45 (C. ) (pending before the Legislature as this bill), shall be  
46 forfeited for the then current taxable year, and for each succeeding  
47 taxable year unless for a succeeding taxable year the business'  
48 average employment in positions directly attributable to the

1 qualified investment once again meets the level required to enable  
2 the business to utilize its full annual credit allowance for that  
3 taxable year.

4  
5 30. (New section) a. (1) Property of a small or mid-size business  
6 shall not be treated as disposed of under section 29 of P.L. , c.  
7 (C. ) (pending before the Legislature as this bill) by reason of a  
8 mere change in the form of conducting the business as long as the  
9 property is retained in a business of a small or mid-size business in  
10 this State, and the business retains a controlling interest in the  
11 successor business. In this event, the successor business shall be  
12 allowed to claim the amount of credit still available with respect to  
13 the new or expanded business facility or facilities transferred, and  
14 the small or mid-size business-transferor shall not be required to  
15 redetermine the amount of credit allowed in earlier taxable years.

16 (2) Property of a business that is not a small or mid-size business  
17 taxpayer shall not be treated as disposed of under section 29 of  
18 P.L. , c. (C. ) (pending before the Legislature as this bill) by  
19 reason of a mere change in the form of conducting the business as  
20 long as the property is retained in a business of a taxpayer in this  
21 State, and the business retains a controlling interest in the successor  
22 business. In this event, the owners of the successor business shall be  
23 allowed to claim the amount of credit still available with respect to  
24 the new or expanded business facility or facilities transferred, and  
25 the taxpayer-transferor shall not be required to redetermine the  
26 amount of credit allowed in earlier taxable years.

27 b. (1) Property of a small or mid-size business shall be treated as  
28 disposed of under section 29 of P.L. , c. (C. ) (pending  
29 before the Legislature as this bill) by reason of a change in the form  
30 of conducting the business if the property is not retained in a  
31 business of a small or mid-size business in this State in which the  
32 small or mid-size business retains a controlling interest.

33 (2) Property of a small or mid-size business shall not be treated  
34 as disposed of under section 29 of P.L. , c. (C. ) (pending  
35 before the Legislature as this bill) by reason of any transfer or sale  
36 to a successor small or mid-size business which continues to  
37 operate the new or expanded business facility in this State. Upon  
38 transfer or sale, the successor shall acquire the amount of credit that  
39 remains available under this credit for each subsequent taxable year  
40 and the business-transferor shall not be required to redetermine the  
41 amount of credit allowed in earlier years.

42 (3) Property of a business that is not a small or mid-size business  
43 shall not be treated as disposed of under section 29 of P.L. , c.  
44 (C. ) (pending before the Legislature as this bill) by reason of  
45 any transfer or sale to a successor business which continues to  
46 operate the new or expanded business facility in this State. Upon  
47 transfer or sale, the successor shall acquire the amount of credit that  
48 remains available under this credit for each subsequent taxable year

1 and the business-transferor shall not be required to redetermine the  
2 amount of credit allowed in earlier years.

3 (4) Property of a small or mid-size business shall be treated as  
4 disposed of under section 29 of P.L. , c. (C. ) (pending  
5 before the Legislature as this bill) by reason of any transfer or sale  
6 to a successor that is not a small or mid-size business, whether or  
7 not the successor continues to operate the business in this State.  
8 Upon such transfer or sale, the successor shall not acquire any  
9 amount of credit under this credit and the business-transferor shall  
10 redetermine, as required by sections 24 through 32 of P.L. , c.  
11 (C. ) (pending before the Legislature as this bill), the amount of  
12 credit allowed in earlier years.

13  
14 31. (New section) a. A business whose owner claims credit  
15 under sections 24 through 32 of P.L. , c. (C. ) (pending  
16 before the Legislature as this bill) shall maintain sufficient records  
17 to establish the following facts for each item of qualified property:

- 18 (1) its identity;  
19 (2) its actual or reasonably determined cost;  
20 (3) its straight-line depreciation life;  
21 (4) the month and taxable year in which it was placed in service;  
22 (5) the amount of credit taken; and  
23 (6) the date it was disposed of or otherwise ceased to be  
24 qualified property.

25 b. A business that does not keep records required for  
26 identification of investment credit property shall be treated as  
27 having disposed of, during the taxable year, any investment credit  
28 property which the taxpayer cannot establish was still on hand in  
29 this State at the end of that year.

30 c. If a business cannot establish when investment credit  
31 property reported for purposes of claiming this credit during a  
32 taxable year was placed in service, the business shall be treated as  
33 having placed it in service in the most recent prior year in which  
34 similar property was placed in service unless the business can  
35 establish that the property placed in service in the most recent year  
36 is still on hand. In that event, the business shall be treated as  
37 having placed the property in service in the next most recent year.

38  
39 32. (New section) a. The burden of proof shall be on a taxpayer  
40 to establish by clear and convincing evidence that the taxpayer is  
41 entitled to the credit allowed pursuant to sections 24 through 32 of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill).

43 b. Notwithstanding any provision of sections 24 through 32 of  
44 P.L. , c. (C. ) (pending before the Legislature as this bill) to  
45 the contrary, no credit shall be allowed or applied for any qualified  
46 investment property placed in service or use until the person  
47 asserting a claim for the allowance of credit makes written  
48 application to the director for allowance of the credit as provided in

1 this subsection and receives written acknowledgement of its receipt  
2 from the director. An application for credit is timely made if filed  
3 no later than the last day of the due date without extensions, for  
4 filing the tax return required under N.J.S.54A:1-1 et seq., for the  
5 taxable year in which the property to which the credit relates is  
6 placed in service or use and all information required by the director  
7 is provided as part of the application.

8 c. The failure to timely apply for the credit shall result in the  
9 forfeiture of 50% of the annual credit allowance otherwise  
10 allowable under sections 24 through 32 of P.L. , c. (C. )  
11 (pending before the Legislature as this bill). This penalty shall  
12 apply annually until such application is filed.

13  
14 33. Section 11 of P.L.1993, c.170 (C.54:10A-5.14) is amended  
15 to read as follows:

16 11. The Director of the Division of Taxation shall prepare and  
17 transmit to the Governor and the Legislature, on or before the  
18 second March 1 following the operative date of this section and  
19 annually thereafter, a report concerning the revenue cost and  
20 distributional impact of this act and sections 24 through 32 of  
21 P.L. , c. (C. ) (pending before the Legislature as this bill) in  
22 such a manner as to facilitate an evaluation of its costs in State tax  
23 revenue forgone and its benefits in new job creation. To facilitate  
24 an understanding of the gross amount and percentage of credits  
25 claimed in relation to the size, number and income of corporations  
26 and the number of jobs created, the report shall include statistical  
27 analyses of the number and value of applications for credits, credits  
28 granted and anticipated to be granted, and the number of new jobs  
29 created and anticipated to be created. To facilitate an understanding  
30 of the distribution of the use of the credit, or any concentration of  
31 such use in a particular industry or by a particular taxpayer, and the  
32 creation of new jobs among corporations, the report shall include  
33 statistics of credit use and new jobs creation segregated by specific  
34 industry, displayed in a manner that facilitates an understanding of  
35 the relative distribution of credit claims and uses and the relative  
36 distribution of new jobs created. To facilitate an understanding of  
37 the distinction between the new jobs created as a result of the credit  
38 and the new jobs not resulting from the credit, the report shall  
39 include statistics concerning the mean cost in State tax revenue  
40 forgone of creating a new job in specific industries, the relative new  
41 job creation rates between corporations using the credit and those  
42 not using the credit, and increases in employment in the State and  
43 the region. The director shall include in the report such further  
44 observations and recommendations about the use or administration  
45 of the credit as the director deems appropriate.

46 (cf: P.L.1993, c.170, s.11)

1        34. Section 12 of P.L.1993, c.170 (C.54:10A-5.15) is amended  
2 to read as follows:

3        12. Notwithstanding the provisions of subsection (g) of  
4 R.S.43:21-11 to the contrary, the Commissioner of the Department  
5 of Labor and Workforce Development shall provide the Director of  
6 the Division of Taxation such copies of the quarterly reports filed  
7 by taxpayers with the Department of Labor pursuant to  
8 subparagraph (A) of paragraph (2) of subsection (a) of R.S.43:21-14  
9 as the director may request to verify the qualifications of the  
10 taxpayers to the credits allowed under **[this act]** P.L.1993, c.170  
11 (C.54:10A-5.4 et seq.) and sections 24 through 32 of P.L. , c.  
12 (C. ) (pending before the Legislature as this bill). The director  
13 shall not use the reports provided for any purpose other than the  
14 administration of the credits allowed under **[this act]** P.L.1993,  
15 c.170 (C.54:10A-5.4 et seq.) and sections 24 through 32 of P.L. ,  
16 c. (C. ) (pending before the Legislature as this bill), and  
17 reports so provided shall be deemed files and records of the director  
18 pursuant to R.S.54:50-8.  
19 (cf: P.L.1993, c.170, s.12)  
20

21        35. Section 12 of P.L.1985, c.227 (C.55:19-13) is amended to  
22 read as follows:

23        12. Any person, firm or corporation actively engaged in the  
24 conduct of business at a location within a project, as defined in this  
25 act, which is subject to the provisions of the "Corporation Business  
26 Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) or the "New  
27 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the  
28 business of which at that location consists primarily of  
29 manufacturing or other business that is not retail sales or  
30 warehousing oriented, shall, for a period of two years from the date  
31 upon which an agreement for the undertaking of the project was  
32 entered into pursuant to section 8 or 9 of **[this act]** P.L.1985, c.227  
33 (C.55:19-8 et seq.), be entitled to an annual credit against the  
34 amount of tax imposed under that act of \$1,500.00 for each new  
35 employee employed at that location who is a resident of the  
36 qualified municipality and who immediately prior to such  
37 employment was unemployed at least 90 days or was dependent  
38 upon public assistance as the primary source of income. A credit  
39 for which an employer taxpayer qualifies under this section shall be  
40 allowed in the tax year next following the tax year of qualification,  
41 and may be continued into a second tax year if such qualification  
42 continues, but it shall be allowed only for those new employees who  
43 were employed for at least six consecutive months by the employer  
44 taxpayer in the year of qualification.  
45 (cf: P.L.1985, c.227, s.12)  
46

47        36. Section 7 of P.L.1995, c.137 (C.34:1B-7.43) is amended to  
48 read as follows:

1       7. Not later than one year following the effective date of [this  
2 act] the “New Jersey Emerging Technology and Biotechnology  
3 Financial Assistance Act,” P.L.1995, c.137 (C.34:1B-7.37 et seq.),  
4 and for each succeeding year in which a financial assistance  
5 agreement entered into under [this act] the “New Jersey Emerging  
6 Technology and Biotechnology Financial Assistance Act,”  
7 P.L.1995, c.137 (C.34:1B-7.37 et seq.) is in effect, the authority  
8 shall prepare a report on the program. The report shall include, but  
9 need not be limited to, a description of the demand for the program  
10 from emerging technology and biotechnology businesses and  
11 companies and financial institutions, the efforts made by the  
12 authority to promote the program, the total amount of financial  
13 assistance approved by the authority pursuant to the program and an  
14 assessment of the effectiveness of the program in meeting the goals  
15 of [this act] the “New Jersey Emerging Technology and  
16 Biotechnology Financial Assistance Act,” P.L.1995, c.137  
17 (C.34:1B-7.37 et seq.). The authority shall submit its report to the  
18 Governor and the Legislature, including therein any  
19 recommendations for legislation to improve the effectiveness of the  
20 program.

21 (cf: P.L.1995, c.137, s.7)

22  
23       37. Section 8 of P.L.1995, c.137 (C.34:1B-7.44) is amended to  
24 read as follows:

25       8. The authority shall adopt, pursuant to the "Administrative  
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and  
27 regulations necessary to effectuate the purposes of [this act] the  
28 “New Jersey Emerging Technology and Biotechnology Financial  
29 Assistance Act,” P.L.1995, c.137 (C.34:1B-7.37 et seq.). In  
30 developing procedures and forms to be used in connection with the  
31 application for and approval of financial assistance pursuant to [this  
32 act] the “New Jersey Emerging Technology and Biotechnology  
33 Financial Assistance Act,” P.L.1995, c.137 (C.34:1B-7.37 et seq.),  
34 the authority shall consider the special needs and problems of  
35 emerging technology and biotechnology businesses and companies  
36 in the State.

37 (cf: P.L.1995, c.137, s.8)

38  
39       38. Section 1 of P.L.2005, c.345 (C.54:10A-5.39) is amended to  
40 read as follows:

41       1. a. A taxpayer, upon application to the Director of the Division  
42 of Taxation in the Department of the Treasury and the New Jersey  
43 Economic Development Authority, shall be allowed a credit against  
44 the tax imposed pursuant to section 5 of P.L.1945, c.162  
45 (C.54:10A-5), in an amount equal to 20 percent of the qualified film  
46 production expenses of the taxpayer during a privilege period  
47 commencing after the effective date of P.L.2005, c.345, provided



1 that (1) at least 60 percent of the total film production expenses,  
2 exclusive of post-production costs, of the taxpayer will be incurred  
3 for services performed and goods used or consumed in New Jersey,  
4 and (2) principal photography of the film commences within 150  
5 days after the approval of the application for the credit.

6 b. A taxpayer, upon application to the Director of the Division  
7 of Taxation in the Department of the Treasury and the New Jersey  
8 Economic Development Authority, shall be allowed a credit against  
9 the tax imposed pursuant to section 5 of P.L.1945, c.162  
10 (C.54:10A-5), in an amount up to 20 percent, as determined by the  
11 authority of the qualified digital media content production expenses  
12 of the taxpayer during a privilege period commencing after the  
13 effective date of P.L.2007, c.257, provided that at least \$2,000,000  
14 of the total digital media content production expenses of the  
15 taxpayer will be incurred for services performed and goods used or  
16 consumed in New Jersey and at least a significant percentage, as  
17 determined by the authority, of the qualified digital media content  
18 production expenses of the taxpayer will include wages and salaries  
19 paid to one or more new full-time employees in New Jersey. For  
20 purposes of this subsection, "new full-time employee" means a  
21 person employed by the taxpayer for consideration for at least 35  
22 hours a week, or who renders any other standard of service  
23 generally accepted by custom or practice as full-time employment,  
24 whose wages are subject to withholding as provided in the "New  
25 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a  
26 partner of a taxpayer that is an eligible partnership, who works for  
27 the partnership for at least 35 hours a week, or who renders any  
28 other standard of service generally accepted by custom or practice  
29 as full-time employment, and whose distributive share of income,  
30 gain, loss, or deduction, or whose guaranteed payments, or any  
31 combination thereof, is subject to the payment of estimated taxes, as  
32 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
33 et seq., and who is determined by the authority to work in a newly  
34 created permanent position according to criteria it develops. "New  
35 full-time employee" shall not include any person who works as an  
36 independent contractor or on a consulting basis for the taxpayer. In  
37 determining the amount of any grant of tax credits made pursuant to  
38 this subsection, the authority shall consider the number of new full-  
39 time positions created by the taxpayer as well as the quality of the  
40 full-time positions created, including but not limited to the salaries  
41 and benefits provided to new full-time employees. The authority, in  
42 consultation with the Division of Taxation, shall establish rules for  
43 the recapture of all, or a portion of, the grant of tax credits pursuant  
44 to this subsection in the event the taxpayer fails to maintain the new  
45 full-time positions that were included in calculating the qualified  
46 digital media content production expenses of the taxpayer.

47 c. The amount of the credit applied under this section against  
48 the tax imposed pursuant to section 5 of P.L.1945, c.162, for a

1 privilege period, when taken together with any other credits allowed  
2 against the tax imposed pursuant to section 5 of P.L.1945, c.162,  
3 shall not exceed 50 percent of the tax liability otherwise due and  
4 shall not reduce the tax liability to an amount less than the statutory  
5 minimum provided in subsection (e) of section 5 of P.L.1945,  
6 c.162. The priority in which credits allowed pursuant to this section  
7 and any other credits shall be taken shall be as determined by the  
8 Director of the Division of Taxation. The amount of the credit  
9 otherwise allowable under this section which cannot be applied for  
10 the privilege period due to the limitations of this subsection or  
11 under other provisions of P.L.1945, c.162 may be carried over, if  
12 necessary, to the seven privilege periods following the privilege  
13 period for which the credit was allowed.

14 d. A taxpayer may, with an application for a credit provided for  
15 in subsection a. or subsection b. of this section, apply to the director  
16 and the executive director of the authority for a tax credit transfer  
17 certificate in lieu of the taxpayer being allowed any amount of the  
18 credit against the tax liability of the taxpayer. The director and the  
19 executive director of the authority may consult with the New Jersey  
20 Motion Picture and Television Development Commission in  
21 consideration of any application for approval of a tax credit or tax  
22 credit transfer certificate under this section. The tax credit transfer  
23 certificate, upon receipt thereof by the taxpayer from the director  
24 and the authority, may be sold or assigned, in full or in part, to any  
25 other taxpayer that may have a tax liability under P.L.1945, c.162  
26 or N.J.S.54A:1-1 et seq., in exchange for private financial  
27 assistance to be provided by the purchaser or assignee to the  
28 taxpayer that has applied for and been granted the credit. The  
29 certificate provided to the taxpayer shall include a statement  
30 waiving the taxpayer's right to claim that amount of the credit  
31 against the tax imposed pursuant to section 5 of P.L.1945, c.162  
32 (C.54:10A-5) that the taxpayer has elected to sell or assign. The  
33 sale or assignment of any amount of a tax credit transfer certificate  
34 allowed under this section shall not be exchanged for consideration  
35 received by the taxpayer of less than 75% of the transferred credit  
36 amount. Any amount of a tax credit transfer certificate used by a  
37 purchaser or assignee against a tax liability under P.L.1945, c.162  
38 shall be subject to the same limitations and conditions that apply to  
39 the use of a credit pursuant to subsection c. of this section. Any  
40 amount of a tax credit transfer certificate obtained by a purchaser or  
41 assignee under subsection a. of this section may be applied against  
42 the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et  
43 seq. and shall be subject to the same limitations and conditions that  
44 apply to the use of a credit pursuant to section 2 of P.L.2005, c.345  
45 (C.54A:4-12).

46 e. As used in this section:

47 "Digital media content" means any data or information that is  
48 produced in digital form, including data or information created in

1 analog form but reformatted in digital form, text, graphics,  
2 photographs, animation, sound and video content. "Digital media  
3 content" does not mean content offerings generated by the end user  
4 (including postings on electronic bulletin boards and chat rooms);  
5 content offerings comprised primarily of local news, events,  
6 weather or local market reports; public service content; electronic  
7 commerce platforms (such as retail and wholesale websites);  
8 websites or content offerings that contain obscene material as  
9 defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or  
10 content that are produced or maintained primarily for private,  
11 industrial, corporate or institutional purposes; or digital media  
12 content acquired or licensed by the taxpayer for distribution or  
13 incorporation into the taxpayer's digital media content.

14 "Film" means a feature film, a television series or a television  
15 show of 15 minutes or more in length, intended for a national  
16 audience. "Film" shall not include a production featuring news,  
17 current events, weather and market reports or public programming,  
18 talk show, game show, sports event, award show or other gala  
19 event, a production that solicits funds, a production containing  
20 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-  
21 3, or a production primarily for private, industrial, corporate or  
22 institutional purposes.

23 "Qualified digital media content production expenses" means an  
24 expense incurred in New Jersey for the production of digital media  
25 content. Qualified digital media content production expenses shall  
26 include but shall not be limited to wages and salaries of individuals  
27 employed in the production of digital media content on which the  
28 tax imposed by the "New Jersey Gross Income Tax Act,"  
29 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of computer  
30 software and hardware, data processing, visualization technologies,  
31 sound synchronization, editing, and the rental of facilities and  
32 equipment. Qualified digital media content production expenses  
33 shall not include expenses incurred in marketing, promotion or  
34 advertising digital media or other costs not directly related to the  
35 production of digital media content. Costs related to the acquisition  
36 or licensing of digital media content by the taxpayer for distribution  
37 or incorporation into the taxpayer's digital media content shall not  
38 be qualified digital media content production expenses.

39 "Qualified film production expenses" means an expense incurred  
40 in New Jersey for the production of a film including post-  
41 production costs incurred in New Jersey. Qualified film production  
42 expenses shall include but shall not be limited to wages and salaries  
43 of individuals employed in the production of a film on which the  
44 tax imposed by the "New Jersey Gross Income Tax Act,"  
45 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of  
46 construction, operations, editing, photography, sound  
47 synchronization, lighting, wardrobe and accessories and the cost of  
48 rental of facilities and equipment. Qualified film production

1 expenses shall not include expenses incurred in marketing or  
2 advertising a film.

3 "Total digital media content production expenses" means costs  
4 for services performed and property used or consumed in the  
5 production of digital media content.

6 "Total film production expenses" means costs for services  
7 performed and tangible personal property used or consumed in the  
8 production of a film.

9 "Post-production costs" means the costs of the phase of  
10 production that follows principal photography, in which raw  
11 footage is cut and assembled into a finished film with sound  
12 synchronization and visual effects.

13 f. The Director of the Division of Taxation in the Department  
14 of the Treasury, in consultation with the New Jersey Motion Picture  
15 and Television Development Commission and the New Jersey  
16 Economic Development Authority, shall adopt rules in accordance  
17 with the "Administrative Procedure Act," P.L.1968, c.410  
18 (C.52:14B-1 et seq.), as are necessary to implement this act  
19 including examples of qualified film production and digital media  
20 content production expenses and the procedures and forms to apply  
21 for a credit and for a tax credit transfer certificate necessary for a  
22 taxpayer to sell or assign an amount of tax credit under this section.  
23 The value of credits, including tax credits allowed through the  
24 granting of tax credit transfer certificates, approved by the director  
25 and the authority pursuant to subsection a. of this section, section  
26 20 of P.L. , c. (C. ) (pending before the Legislature as this  
27 bill), and pursuant to section 2 of P.L.2005, c.345 (C.54A:4-12)  
28 shall not exceed a cumulative total of \$10,000,000 in any fiscal year  
29 to apply against the tax imposed pursuant to section 5 of P.L.1945,  
30 c.162 (C.54:10A-5), and the tax imposed pursuant to the "New  
31 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the  
32 cumulative total amount of credits and tax credit transfer  
33 certificates allowed to taxpayers for privilege periods or taxable  
34 years commencing during a single fiscal year under subsection a. of  
35 this section, section 20 of P.L. , c. (C. ) (pending before the  
36 Legislature as this bill), and section 2 of P.L.2005, c.345 (C.54A:4-  
37 12) exceeds the amount of credits available in that year, then  
38 taxpayers who have first applied for and have not been allowed a  
39 credit or tax credit transfer certificate amount for that reason shall  
40 be allowed, in the order in which they have submitted an  
41 application, the amount of tax credit or certificate on the first day of  
42 the next succeeding fiscal year in which tax credits and tax credit  
43 transfer certificates under subsection a. of this section, section 20 of  
44 P.L. , c. (C. ) (pending before the Legislature as this bill),  
45 and section 2 of P.L.2005, c.345 (C.54A:4-12) are not in excess of  
46 the amount of credits available. The value of credits, including tax  
47 credits allowed through the granting of tax credit transfer  
48 certificates, approved by the director and the authority pursuant to

1 subsection b. of this section shall not exceed a total of \$5,000,000  
2 in any fiscal year to apply against the tax imposed pursuant to  
3 section 5 of P.L.1945, c.162 (C.54:10A-5). If the total amount of  
4 credits and tax credit transfer certificates allowed to taxpayers for  
5 privilege periods or taxable years commencing during a single fiscal  
6 year under subsection b. of this section exceeds the amount of  
7 credits available in that year, then taxpayers who have first applied  
8 for and have not been allowed a credit or tax credit transfer  
9 certificate amount for that reason shall be allowed, in the order in  
10 which they have submitted an application, the amount of tax credit  
11 or certificate on the first day of the next succeeding fiscal year in  
12 which tax credits and tax credit transfer certificates under  
13 subsection b. of this section are not in excess of the amount of  
14 credits available. The Executive Director of the New Jersey  
15 Economic Development Authority, in conjunction with the Director  
16 of the Division of Taxation shall prepare and submit a report to the  
17 Governor and the Legislature on the effectiveness of the credit as an  
18 incentive for encouraging film productions and digital media  
19 content productions to locate in New Jersey which shall be  
20 completed before the third taxable year or privilege period in which  
21 a credit may be claimed.

22 g. For the purpose of determining eligibility for or the amount  
23 of any grant of tax credits pursuant to this section, the authority  
24 shall not include any job that is included in the calculation of a  
25 business employment incentive grant pursuant to the provisions of  
26 P.L.1996, c.26 (C.34:1B-124 et al.) or a business retention and  
27 relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.).  
28 (cf: P.L.2007, c.257, s.1)

29  
30 39. Section 34 of P.L.2009, c.90 (C.34:1B-209.2) is amended to  
31 read as follows:

32 34. As used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-  
33 209.2 and C.34:1B-209.3), the terms "affiliate," "authority,"  
34 "capital investment," "eligible municipality," "partnership,"  
35 "residential unit," and "urban transit hub" **shall** have the same  
36 meanings as **ascribed thereto in** defined by the "Urban Transit  
37 Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.), **as**  
38 **amended by P.L.2009, c.90 (C.52:27D-489a et al.)**, provided that  
39 all references therein to "business" and "qualified business facility"  
40 **shall be** are deemed to refer respectively to "developer" and  
41 "qualified residential project," as **such** those terms are defined in  
42 this section. Provided however, for purposes of a "mixed use  
43 project" as that term is defined and used pursuant to subparagraph  
44 (b) of paragraph (4) of subsection a. of section 35 of P.L.2009, c.90  
45 (C.34:1B-209.3), "qualified business facility" means that term as  
46 defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208). In

1 addition, as used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-  
2 209.2 and C.34:1B-209.3):

3 "Developer" [shall have the same meaning as] means  
4 "business," as [such term is] defined in the "Urban Transit Hub  
5 Tax Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.) [, as  
6 amended by P.L.2009, c.90 (C.52:27D-489a et al.)].

7 "Qualified residential project" means any building, complex of  
8 buildings or structural components of buildings consisting  
9 predominantly of residential units, located in an urban transit hub  
10 within an eligible municipality.

11 (cf: P.L.2011, c.89, s.3)

12

13 40. (New section) The gross income tax credits authorized  
14 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
15 this bill) shall be subject to the conditions of this section.

16 A credit shall not be allowed for a creditable activity if that  
17 activity has already been used by the taxpayer for any other State  
18 tax credit authorized under law.

19 The maximum amount of the taxpayer's liability against which a  
20 credit may be applied for a taxable year is that share of a taxpayer's  
21 total liability attributable to the inclusion of the income of the  
22 taxpayer's credited business entity in the taxpayer's gross income,  
23 determined according to the following ratio. The numerator of the  
24 ratio is that proportion of the taxpayer's income for the taxable year  
25 in respect of the credited business entity that the net income from  
26 the category of gross income in which the income from the credited  
27 business entity for the taxable year falls bears to all sources of gross  
28 income in that category for the taxable year. The denominator of  
29 the ratio is the gross income of the taxpayer for the taxable year  
30 determined pursuant to N.J.S.54A:5-1 and N.J.S.54A:5-2, before  
31 itemized exclusions and deductions. This ratio shall be multiplied  
32 by the taxpayer's total tax liability for the taxable year, before  
33 credits, to determine the share of the taxpayer's liability against  
34 which a credit may be applied for a taxable year. Any amount of  
35 credit which may not be applied to liability because of this  
36 subsection may be carried forward pursuant to the terms of  
37 allowable carry forward, if any, under each credit. This subsection  
38 shall not reduce the amount of credit that may otherwise be  
39 available for a tax credit transfer certificate.

40 A business entity that elects to be treated as a partnership for  
41 federal income tax purposes shall not be allowed a credit directly  
42 under the gross income tax, but the amount of credit of a taxpayer  
43 in respect of a distributive share of partnership income, shall be  
44 determined by allocating to the taxpayer that proportion of the  
45 credit acquired by the partnership that is equal to the taxpayer's  
46 share, whether or not distributed, of the total distributive income or  
47 gain of the partnership for its taxable year ending within or with the  
48 taxpayer's taxable year except as otherwise provided by law.

1       A New Jersey S Corporation shall not be allowed a credit  
2 directly under the gross income tax, but the amount of credit of a  
3 taxpayer in respect of a pro rata share of S Corporation income,  
4 shall be determined by allocating to the taxpayer that proportion of  
5 the credit acquired by the New Jersey S Corporation that is equal to  
6 the taxpayer's share, whether or not distributed, of the total pro rata  
7 share of S Corporation income of the New Jersey S Corporation for  
8 its privilege period ending within or with the taxpayer's taxable  
9 year.

10       Applications for credits or transfer certificates authorized  
11 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
12 this bill) shall be made by the business entity of a taxpayer, except  
13 as otherwise prescribed by the director.

14       The Director of the Division of Taxation in the Department of  
15 the Treasury shall adopt regulations in accordance with the  
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
17 seq.) that the director deems necessary to administer the gross  
18 income tax credits authorized pursuant to P.L. , c. (C. )  
19 (pending before the Legislature as this bill) on substantially similar  
20 terms to the related corporation business tax credits.

21

22       41. This act shall take effect immediately and apply to creditable  
23 activity occurring in taxable years beginning on or after the date of  
24 enactment.

25

26

27

## STATEMENT

28

29       This bill expands certain corporation business tax credit  
30 programs to the gross income tax. The purpose of this bill is to  
31 provide gross income taxpayers with the same incentives available  
32 to corporation business taxpayers for investment and hiring,  
33 particularly sole proprietors, partnerships, and limited liability  
34 companies. The bill creates gross income tax credit authority for  
35 the corporation business tax credit programs summarized below and  
36 conditions that authority on several uniform requirements addressed  
37 after the overview of credits provided below:

- 38       • The Business Retention and Relocation Assistance Grant  
39       Program provides escalating tax credit award amounts for jobs  
40       relocated or maintained at and above 50 jobs. The per-  
41       employee tax credit begins at \$1,500 for between 50 and 250  
42       full-time employees and ends at \$9,000 for more than 1,000  
43       full-time employees. There is a bonus award of 50% of the job  
44       credit for relocating at least 2,000 jobs from a location in New  
45       Jersey into a designated urban area. There is also a bonus award  
46       for capital investment that is 200% or more of the amount of the  
47       job retention tax credits issued. The total value of credits  
48       approved may not exceed \$20 million annually.

- 1 • The Urban Transit Hub Tax Credit Act provides credit for  
2 capital investment made for a facility within a qualified  
3 proximity of an urban transit hub. Generally, this credit has two  
4 overarching components, the business facility credit and  
5 residential facility credit. Generally, the business facility  
6 component allows a credit of up to 100% of the investment in a  
7 business facility if the capital investment in the facility is at  
8 least \$50 million and at least 250 full-time employees work in  
9 the facility. Generally, the residential facility component allows  
10 a credit of up to 35% of the total project investment if the  
11 capital investment in the facility is not less than \$50 million.  
12 The credit also has variations for qualifying tenant facilities and  
13 mixed-use facilities. Linked to the Urban Transit Hub Tax  
14 Credit Act is the wind energy facility tax credit. This credit  
15 allows a credit for 100 percent of capital investment qualified  
16 wind energy facility located within an eligible wind energy  
17 zone. The Urban Transit Hub Tax Credit Act credits are capped  
18 cumulatively at \$1.5 billion.
- 19 • The Qualified Municipality Open for Business Incentive  
20 Program provides two tax credits, one which rewards capital  
21 investment in qualified municipalities and a second which  
22 rewards the creation of new full-time employment in the first  
23 two year's of a taxpayer's expansion of operations in a qualified  
24 municipality. At the time of enactment the sole qualifying  
25 municipality appears to have been Camden. Generally, the  
26 capital investment component offers a taxpayer that locates or  
27 expands operations in a qualified municipality, during the  
28 municipality's period of rehabilitation and economic recovery, a  
29 partial rebate of its corporation business tax or gross income tax  
30 payments. Generally, the rebate is computed by calculating 96  
31 percent of the product of (i) the tax liability for that year, and  
32 (ii) the fraction of the business's total New Jersey-sited capital  
33 investment property that year that consists of new or expanded  
34 business property in the municipality. The amount of the credit  
35 can be up to 100% of that amount. Generally, the new full-time  
36 employment credit component of this program provides a  
37 taxpayer with \$2,500 for each new full-time position in year 1  
38 of a taxpayer's expansion of operations in a qualified  
39 municipality. For year 2, the taxpayer may be allowed a credit  
40 of \$1,250 for each new full-time position.
- 41 • The Neighborhood Revitalization State Tax Credit Act provides  
42 tax credits to businesses that invest in neighborhood  
43 revitalization and preservation projects sponsored by nonprofit  
44 corporations. A business entity that contributes financial  
45 assistance to a nonprofit sponsor may be granted a tax credit  
46 certificate that may be applied against tax liability on business  
47 income. The tax credits may be granted in an amount up to 100  
48 percent of the approved assistance provided to a nonprofit



- 1 organization to implement a qualified project that is part of an  
2 approved neighborhood preservation and revitalization plan. No  
3 more than \$10,000,000 in tax credits may be authorized under  
4 the program for a single fiscal year.
- 5 • The Enterprise Zone tax credit program has an employee and  
6 capital investment component. The employee component of this  
7 credit allows a qualified business actively engaged in business  
8 at a location within a zone a one-time credit of \$1,500 for each  
9 qualifying new full-time and permanent employee that was  
10 unemployed for 90 days, or was dependent upon public  
11 assistance. There is also a one-time credit of \$500 for each  
12 qualifying new full-time and permanent employee residing in  
13 the qualifying municipality that does not meet the \$1,500 credit  
14 requirements. The investment component of this credit allows  
15 qualified businesses which are not eligible for the employee  
16 credit component a one-time credit in an amount equal to 8% of  
17 qualified investment made by the business pursuant to an  
18 agreement with the New Jersey Urban Enterprise Zone  
19 Authority.
  - 20 • The Manufacturing Equipment and Employment Investment Tax  
21 Credit Act also has a capital investment component and an  
22 employee component. The capital investment component allows  
23 a credit in the amount of 2% of the cost of qualified equipment,  
24 which is generally manufacturing equipment and certain energy  
25 generation equipment. The credit percentage is increased to 4%  
26 if the taxpayer has 50 or fewer employees and taxable income  
27 less than \$5 million. The employment component provides a  
28 credit in the amount of 3% of the cost of qualified equipment  
29 used for the manufacturing equipment credit in each of the two  
30 years following the year of investment, but in an amount that  
31 may not exceed the number of new employees multiplied by  
32 \$1,000.
  - 33 • The tax credit for purchase of certain effluent treatment  
34 equipment credit for CBT taxpayers who purchase certain  
35 treatment equipment designed to take effluent from a  
36 wastewater treatment system for purposes of additional  
37 treatment and subsequent reuse in an industrial process.  
38 Generally, the credit is allowed in an amount equal to 50 percent  
39 of the cost of treatment equipment.
  - 40 • The tax credit for qualified digital media content production  
41 expenses provides a credit in an amount of up to 20% of  
42 qualified digital media content production expenses. At least \$2  
43 million of digital media content production expenses must be  
44 expended in New Jersey and a significant percentage as  
45 determined by EDA must be for the employment of full-time  
46 employees in New Jersey.
  - 47 • The research expense tax credit has essentially two components  
48 to it, the credit for increased research activity and the credit for

1        basic research. The credit for increased research activity is  
2        allowed in an amount that is equal to 10% of the taxpayer's  
3        increase in "qualified research expenses" (research performed  
4        by or for the taxpayer) in a tax year over the base amount of  
5        those expenses. Generally, the base amount represents a multi-  
6        year average of the amount of qualified research expenses  
7        relative to annual gross receipts. The research expense tax credit  
8        also includes a credit for 10% of "basic research payments"  
9        (university research funded by the taxpayer) made in a tax year.  
10       As connected to the research expense tax credit, the bill's gross  
11       income tax authority also extends to the New Jersey Emerging  
12       Technology and Biotechnology Financial Assistance program's  
13       tax credit transfer certificate component and unused net  
14       operating loss carryover component.

15       • The New Jobs Investment Tax Credit Act is available for  
16       investment in new or expanded business facilities that create  
17       new jobs in New Jersey. The credit is allowed in an amount  
18       equal to a percentage of certain costs of new or expanded  
19       business facilities in this State. The percentage of credit allowed  
20       depends upon the kind of investment made and the number of  
21       new jobs created, but can equal up to 20% of the investment  
22       costs. The cost of property considered as a "qualified  
23       investment" and allowed in the calculation of the credit is based  
24       upon the expected depreciation life of the property for federal  
25       income tax purposes. The investment must create at least 5 new  
26       jobs (50 new jobs for large businesses) with a qualified median  
27       annual compensation level. The credit is conditioned on the  
28       number of new jobs created by the new investment, in that the  
29       qualified investment amount is allowed as a credit amount to the  
30       extent new jobs are created. The rate of creditable return varies  
31       depending on the scale of the business and job growth. A small  
32       or mid-sized business' percentage of creditable investment is  
33       increased by one percent for each 5 new jobs created over the 5  
34       new job minimum, up to a 20 percent credit for 100 new jobs  
35       created. A taxpayer that is not a small or mid-sized business  
36       must create a minimum of 50 new jobs to be allowed a credit of  
37       one half of one percent of the qualified investment. The  
38       percentage of creditable investment is increased by one-half of  
39       one percent for each additional 50 new jobs created over the 50  
40       new job minimum, up to a 10 percent credit for 1000 new jobs  
41       created.

42       • The New Jersey Urban Development Corporation Act's  
43       employment credit allows a taxpayer actively engaged in the  
44       conduct of a business within a qualified project a credit of  
45       \$1,500 for each new employee employed at that location during  
46       the first two years after the agreement to undertake the project  
47       was entered into. The employees must be employed by the  
48       taxpayer for six consecutive months and must have been

1 unemployed for 90 days prior to employment or dependent upon  
2 public assistance as a primary source of income.

3 In addition to extending gross income tax authority to the  
4 aforementioned credits, the bill also establishes several  
5 requirements that will be imposed upon the gross income tax  
6 component of each credit. The bill prohibits the duplicative use of  
7 a creditable activity to secure a gross income tax credit claim  
8 authorized under this bill.

9 The bill imposes a maximum amount of taxpayer liability against  
10 which a credit may be applied for a taxable year, which is that share  
11 of a taxpayer's total liability attributable to the inclusion of income  
12 of the taxpayer's credited business entity in the taxpayer's gross  
13 income, determined according to the following ratio. The  
14 numerator of the ratio is that proportion of the taxpayer's income  
15 for the taxable year in respect of the credited business entity that the  
16 net income from the category of gross income in which the income  
17 from the credited business entity for the taxable year falls bears to  
18 all sources of gross income in that category for the taxable year.  
19 The denominator of the ratio is the gross income of the taxpayer for  
20 the taxable year determined pursuant to N.J.S.54A:5-1 and  
21 N.J.S.54A:5-2, before itemized exclusions and deductions. This  
22 ratio shall be multiplied by the taxpayer's total tax liability for the  
23 taxable year, before credits, to determine the share of the taxpayer's  
24 liability against which a credit may be applied for a taxable year.  
25 Any amount of credit which may not be applied to liability because  
26 of this subsection may be carried forward pursuant to the terms of  
27 allowable carry forward, if any, under each credit. This subsection  
28 shall not reduce the amount of credit that may otherwise be  
29 available for a tax credit transfer certificate

30 Additionally, the bill provides that a business entity that elects to  
31 be treated as a partnership for federal income tax purposes shall not  
32 be allowed a gross income tax credit directly. Instead, the amount  
33 of credit of a taxpayer shall be determined by allocating to the  
34 taxpayer that proportion of the credit that is equal to the taxpayer's  
35 distributive share of the partnership except as otherwise provided  
36 by law.

37 The bill also provides that a New Jersey S Corporation shall not  
38 be allowed a credit directly under the gross income tax. Instead, the  
39 amount of credit of a taxpayer shall be determined by allocating to  
40 the taxpayer that proportion of the credit that is equal to the  
41 taxpayer's pro rata share of S Corporation income.

42 The bill directs that applications for credits or transfer  
43 certificates authorized pursuant to P.L. , c. (C. ) (pending  
44 before the Legislature as this bill) shall be made by the business  
45 entity of a taxpayer, except as otherwise prescribed by the director.

46 Lastly, the bill grants the Director of the Division of Taxation  
47 rulemaking authority to administer the gross income tax credits

- 1    allowed pursuant to this bill on substantially similar terms to the
- 2    related corporation business tax credits.