SENATE, No. 1086

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED JANUARY 23, 2012

Sponsored by:
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

SYNOPSIS
Provides corporation business tax incentives for life sciences research.

CURRENT VERSION OF TEXT
As introduced.
AN ACT providing corporation business tax incentives for life sciences research, amending P.L.1945, c.162 and P.L.1993, c.175.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read as follows:

4. For the purposes of this act, unless the context requires a different meaning:

(a) "Commissioner" or "director" shall mean the Director of the Division of Taxation of the State Department of the Treasury.

(b) "Allocation factor" shall mean the proportionate part of a taxpayer's net worth or entire net income used to determine a measure of its tax under this act.

(c) "Corporation" shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument, any other entity classified as a corporation for federal income tax purposes, and any state or federally chartered building and loan association or savings and loan association.

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2)(F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from the net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits or for the purpose of status as a

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.
controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

In the case of banking corporations which have international banking facilities as defined in subsection (n), the foregoing aggregate of values shall also be reduced by retained earnings of the international banking facility. Retained earnings means the earnings accumulated over the life of such facility and shall not include the distributive share of dividends paid and federal income taxes paid or payable during the tax year.

If in the opinion of the commissioner, the corporation's books do not disclose fair valuations the commissioner may make a reasonable determination of the net worth which, in his opinion, would reflect the fair value of the assets, exclusive of subsidiary investments as defined aforesaid, carried on the books of the corporation, in accordance with sound accounting principles, and such determination shall be used as net worth for the purpose of this act.

(e) (Deleted by amendment, P.L.1998, c.114.)

(f) "Investment company" shall mean any corporation whose business during the period covered by its report consisted, to the extent of at least 90% thereof of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities for its own account, but this shall not include any corporation which: (1) is a merchant or a dealer of stocks, bonds and other securities, regularly engaged in buying the same and selling the same to customers; or (2) had less than 90% of its average gross assets in New Jersey, at cost, invested in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities or consisting of cash on deposit during the period covered by its report; or (3) is a banking corporation, a savings institution, or a financial business corporation as defined in the Corporation Business Tax Act.

(g) "Regulated investment company" shall mean any corporation which for a period covered by its report, is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended.

(h) "Taxpayer" shall mean any corporation, and any partnership required, or consenting, to report or to pay taxes, interest or penalties under this act. "Taxpayer" shall not include a partnership that is listed on a United States national stock exchange.

(i) "Fiscal year" shall mean an accounting period ending on any day other than the last day of December on the basis of which the taxpayer is required to report for federal income tax purposes.
(j) Except as herein provided, "privilege period" shall mean the calendar or fiscal accounting period for which a tax is payable under this act.

(k) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets.

For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report, or, if the taxpayer is classified as a partnership for federal tax purposes, would otherwise be required to report, to the United States Treasury Department for the purpose of computing its federal income tax, provided however, that in the determination of such entire net income,

(1) Entire net income shall exclude for the periods set forth in paragraph (2)(F)(i) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which is included in a taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of paragraph (8) of that section.

(2) Entire net income shall be determined without the exclusion, deduction or credit of:

(A) The amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations.

(B) Any part of any income from dividends or interest on any kind of stock, securities or indebtedness, except as provided in paragraph (5) of subsection (k) of this section.

(C) Taxes paid or accrued to the United States, a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia, or to any foreign country, state, province, territory or subdivision thereof, on or measured by profits or income, or business presence or business activity, or the tax imposed by this act, or any tax paid or accrued with respect to subsidiary dividends excluded from entire net income as provided in paragraph (5) of subsection (k) of this section.

(D) (Deleted by amendment, P.L. 1985, c. 143.)

(E) (Deleted by amendment, P.L. 1995, c. 418.)

(F) (i) The amount by which depreciation reported to the United States Treasury Department for property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on and after the effective date of P.L. 1993, c. 172, for purposes of computing federal taxable income in accordance with section 168 of the Internal Revenue Code in
effect after December 31, 1980, exceeds the amount of depreciation
determined in accordance with the Internal Revenue Code
provisions in effect prior to January 1, 1981, but only with respect
to a taxpayer's accounting period ending after December 31, 1981;
provided, however, that where a taxpayer's accounting period
begins in 1981 and ends in 1982, no modification shall be required
with respect to this paragraph (F) for the report filed for such period
with respect to property placed in service during that part of the
accounting period which occurs in 1981. The provisions of this
subparagraph shall not apply to assets placed in service prior to
January 1, 1998 of a gas, gas and electric, and electric public utility
that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
seq.) prior to 1998.

(ii) For the periods set forth in subparagraph (F)(i) of paragraph
(2) of this subsection, any amount, except with respect to qualified
mass commuting vehicles as described in section 168(f)(8)(D)(v) of
the Internal Revenue Code as in effect immediately prior to January
1, 1984, which the taxpayer claimed as a deduction in computing
federal income tax pursuant to a qualified lease agreement under
paragraph (8) of that section.

The director shall promulgate rules and regulations necessary to
carry out the provisions of this section, which rules shall provide,
among others, the manner in which the remaining life of property
shall be reported.

(G) (i) The amount of any civil, civil administrative, or criminal
penalty or fine, including a penalty or fine under an administrative
consent order, assessed and collected for a violation of a State or
federal environmental law, an administrative consent order, or an
environmental ordinance or resolution of a local governmental
entity, and any interest earned on the penalty or fine, and any
economic benefits having accrued to the violator as a result of a
violation, which benefits are assessed and recovered in a civil, civil
administrative, or criminal action, or pursuant to an administrative
consent order. The provisions of this paragraph shall not apply to a
penalty or fine assessed or collected for a violation of a State or
federal environmental law, or local environmental ordinance or
resolution, if the penalty or fine was for a violation that resulted
from fire, riot, sabotage, flood, storm event, natural cause, or other
act of God beyond the reasonable control of the violator, or caused
by an act or omission of a person who was outside the reasonable
control of the violator.

(ii) The amount of treble damages paid to the Department of
Environmental Protection pursuant to subsection a. of section 7 of
P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
department in removing, or arranging for the removal of, an
unauthorized discharge upon failure of the discharger to comply
with a directive from the department to remove, or arrange for the
removal of, the discharge.
(H) The amount of any sales and use tax paid by a utility vendor pursuant to section 71 of P.L.1997, c.162.

(I) Interest paid, accrued or incurred for the privilege period to a related member, as defined in section 5 of P.L.2002, c.40 (C.54:10A-4.4), except that a deduction shall be permitted to the extent that the taxpayer establishes by clear and convincing evidence, as determined by the director, that: (i) a principal purpose of the transaction giving rise to the payment of the interest was not to avoid taxes otherwise due under Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to arm's length contracts at an arm's length rate of interest, and (iii)(aa) the related member was subject to a tax on its net income or receipts in this State or another state or possession of the United States or in a foreign nation, (bb) a measure of the tax includes the interest received from the related member, and (cc) the rate of tax applied to the interest received by the related member is equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State.

A deduction shall also be permitted if the taxpayer establishes by clear and convincing evidence, as determined by the director, that the disallowance of a deduction is unreasonable, or the taxpayer and the director agree in writing to the application or use of an alternative method of apportionment under section 8 of P.L.1945, c.162 (C.54:10A-8); nothing in this subsection shall be construed to limit or negate the director's authority to otherwise enter into agreements and compromises otherwise allowed by law.

A deduction shall also be permitted to the extent that the taxpayer establishes by a preponderance of the evidence, as determined by the director, that the interest is directly or indirectly paid, accrued or incurred to (i) a related member in a foreign nation which has in force a comprehensive income tax treaty with the United States, provided however that the taxpayer shall disclose on its return for the privilege period the name of the related member, the amount of the interest, the relevant foreign nation, and such other information as the director may prescribe or (ii) to an independent lender and the taxpayer guarantees the debt on which the interest is required.

(J) Amounts deducted for federal tax purposes pursuant to section 199 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.199, except that this exclusion shall not apply to amounts deducted pursuant to that section that are exclusively based upon domestic production gross receipts of the taxpayer which are derived only from any lease, rental, license, sale, exchange, or other disposition of qualifying production property which the taxpayer demonstrates to the satisfaction of the director was manufactured or produced by the taxpayer in whole or in significant part within the United States but not qualified production property that was grown or extracted by the taxpayer. "Manufactured or produced" as used
in this paragraph shall be limited to performance of an operation or series of operations the object of which is to place items of tangible personal property in a form, composition, or character different from that in which they were acquired. The change in form, composition, or character shall be a substantial change, and result in a transformation of property into a different or substantially more usable product.

(3) The commissioner may, whenever necessary to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

(4) There shall be allowed as a deduction from entire net income of a banking corporation, to the extent not deductible in determining federal taxable income, the eligible net income of an international banking facility determined as follows:

(A) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses;

(B) Eligible gross income shall be the gross income derived by an international banking facility, which shall include, but not be limited to, gross income derived from:

(i) Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States;

(ii) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities;

(iii) Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph;

(iv) Such other activities as an international banking facility may, from time to time, be authorized to engage in;

(C) Applicable expenses shall be any expense or other deductions attributable, directly or indirectly, to the eligible gross income described in subparagraph (B) of this paragraph.

(5) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section and shall exclude 50% of dividends which were included in computing such
taxable income for federal income tax purposes, paid to the
taxpayer by one or more subsidiaries owned by the taxpayer to the
extent of 50% or more ownership of investment, such ownership of
investment calculated in the same manner as the 80% or more of
ownership of investment is calculated as described in subsection (d)
of this section.

(6) (A) Net operating loss deduction. There shall be allowed as a
deduction for the privilege period the net operating loss carryover to
that period.

(B) Net operating loss carryover. A net operating loss for any
privilege period ending after June 30, 1984 shall be a net operating
loss carryover to each of the seven privilege periods following the
period of the loss and a net operating loss for any privilege period
ending after June 30, 2009 shall be a net operating loss carryover to
each of the twenty privilege periods following the period of the
loss. The entire amount of the net operating loss for any privilege
period (the "loss period") shall be carried to the earliest of the
privilege periods to which the loss may be carried. The portion of
the loss which shall be carried to each of the other privilege periods
shall be the excess, if any, of the amount of the loss over the sum of
the entire net income, computed without the exclusions permitted in
paragraphs (4) and (5) of this subsection or the net operating loss
deduction provided by subparagraph (A) of this paragraph, for each
of the prior privilege periods to which the loss may be carried.

(C) Net operating loss. For purposes of this paragraph the term
"net operating loss" means the excess of the deductions over the
gross income used in computing entire net income without the net
operating loss deduction provided for in subparagraph (A) of this
paragraph and the exclusions in paragraphs (4) and (5) of this
subsection.

(D) Change in ownership. Where there is a change in 50% or
more of the ownership of a corporation because of redemption or
sale of stock and the corporation changes the trade or business
giving rise to the loss, no net operating loss sustained before the
changes may be carried over to be deducted from income earned
after such changes. In addition where the facts support the premise
that the corporation was acquired under any circumstances for the
primary purpose of the use of its net operating loss carryover, the
director may disallow the carryover.

(E) Notwithstanding the provisions of this paragraph (6) of
subsection (k) of this section to the contrary, for privilege periods
beginning during calendar year 2002 and calendar year 2003, no
deduction for any net operating loss carryover shall be allowed and
for privilege periods beginning during calendar year 2004 and
calendar year 2005, there shall be allowed as a deduction for the
privilege period so much of the net operating loss carryover as
reduces entire net income otherwise calculated by 50%. If and only
to the extent that any net operating loss carryover deduction is
disallowed by reason of this subparagraph (E), the date on which the amount of the disallowed net operating loss carryover deduction would otherwise expire shall be extended by a period equal to the period for which application of the net operating loss was disallowed by this subparagraph.

Provided, that this subparagraph (E) shall not restrict the surrender or acquisition of corporation business tax benefit certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict the application of corporation business tax benefit certificates pursuant to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

(7) The entire net income of gas, electric and gas and electric public utilities that were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting the New Jersey depreciation allowance for federal tax depreciation with respect to assets placed in service prior to January 1, 1998. For gas, electric, and gas and electric public utilities that were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998, the New Jersey depreciation allowance shall be computed as follows: All depreciable assets placed in service prior to January 1, 1998 shall be considered a single asset account. The New Jersey tax basis of this depreciable asset account shall be an amount equal to the carryover adjusted basis for federal income tax purposes on December 31, 1997 of all depreciable assets in service on December 31, 1997, increased by the excess, of the "net carrying value," defined to be adjusted book basis of all assets and liabilities, excluding deferred income taxes, recorded on the public utility's books of account on December 31, 1997, over the carryover adjusted basis for federal income tax purposes on December 31, 1997 of all assets and liabilities owned by the gas, electric, or gas and electric public utility as of December 31, 1997. "Books of account" for gas, gas and electric, and electric public utilities means the uniform system of accounts as promulgated by the Federal Energy Regulatory Commission and adopted by the Board of Public Utilities. The following adjustments to entire net income shall be made pursuant to this section:

(A) Depreciation for property placed in service prior to January 1, 1998 shall be adjusted as follows:

(i) Depreciation for federal income tax purposes shall be disallowed in full.

(ii) A deduction shall be allowed for the New Jersey depreciation allowance. The New Jersey depreciation allowance shall be computed for the single asset account described above based on the New Jersey tax basis as adjusted above as if all assets in the single asset account were first placed in service on January 1, 1998. Depreciation shall be computed using the straight line method over a thirty-year life. A full year's depreciation shall be allowed in the initial tax year. No half-year convention shall apply.
The depreciable basis of the single account shall be reduced by the adjusted federal tax basis of assets sold, retired, or otherwise disposed of during any year on which gain or loss is recognized for federal income tax purposes as described in subparagraph (B) of this paragraph.

(B) Gains and losses on sales, retirements and other dispositions of assets placed in service prior to January 1, 1998 shall be recognized and reported on the same basis as for federal income tax purposes.

(C) The Director of the Division of Taxation shall promulgate regulations describing the methodology for allocating the single asset account in the event that a portion of the utility's operations are separated, spun-off, transferred to a separate company or otherwise desegregated.

(8) In the case of taxpayers that are gas, electric, gas and electric, or telecommunications public utilities as defined pursuant to subsection (q) of this section, the director shall have authority to promulgate rules and issue guidance correcting distortions and adjusting timing differences resulting from the adoption of P.L.1997, c.162 (C.54:10A-5.25 et al.).

(9) Notwithstanding paragraph (1) of this subsection, entire net income shall not include the income derived by a corporation organized in a foreign country from the international operation of a ship or ships, or from the international operation of aircraft, if such income is exempt from federal taxation pursuant to section 883 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

(10) Entire net income shall exclude all income of an alien corporation the activities of which are limited in this State to investing or trading in stocks and securities for its own account, investing or trading in commodities for its own account, or any combination of those activities, within the meaning of section 864 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on December 31, 1998. Notwithstanding the previous sentence, if an alien corporation undertakes one or more infrequent, extraordinary or non-recurring activities, including but not limited to the sale of tangible property, only the income from such infrequent, extraordinary or non-recurring activity shall be subject to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income subject to tax shall be determined without regard to the allocation to that specific transaction of any general business expense of the taxpayer and shall be specifically assigned to this State for taxation by this State without regard to section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this paragraph, "alien corporation" means a corporation organized under the laws of a jurisdiction other than the United States or its political subdivisions.

(11) No deduction shall be allowed for research and experimental expenditures, to the extent that those research and
experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to section 1 of P.L. 1993, c.175 (C.54:10A-5.24) unless those research and experimental expenditures are also used to compute a federal credit claimed pursuant to section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41.


(B) The director shall prescribe the rules and regulations necessary to carry out the provisions of this paragraph, including, among others, those for determining the adjusted basis of the acquired property for the purposes of the Corporation Business Tax Act (1945), P.L.1945, c.162.

(13) (A) Notwithstanding the provisions of section 179 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for property placed in service on or after January 1, 2004, the costs that a taxpayer may otherwise elect to treat as an expense which is not chargeable to a capital account shall be determined pursuant to the provisions of the federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2002.

(B) The director shall prescribe the rules and regulations necessary to carry out the provisions of this paragraph, including, among others, those for determining the adjusted basis of the acquired property for the purposes of the Corporation Business Tax Act (1945), P.L.1945, c.162.

(14) Notwithstanding the provisions of subsection (i) of section 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108), for privilege periods beginning after December 31, 2008 and before January 1, 2011, entire net income shall include the amount of discharge of indebtedness income excluded for federal income tax purposes pursuant to subsection (i) of section 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege periods beginning on or after January 1, 2014 and before January 1, 2019, entire net income shall exclude the amount of discharge of indebtedness income included for federal income tax purposes, pursuant to subsection (i) of section 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108).

(15) (A) For the five privilege periods beginning on or after the July 1 next following enactment of P.L. , c. (pending before the Legislature as this bill), a corporation which is a “United States
shareholder” as that term is defined pursuant to section 951 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.951) and for which the election under this paragraph is in effect for the privilege period, shall be allowed as a deduction an amount equal to 100 percent of the cash dividends which are received during that privilege period from controlled foreign corporations.

If, within the privilege period for which the election under this section is in effect, a United States shareholder receives a cash distribution from a controlled foreign corporation which is excluded from gross income under subsection (a) of section 959 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.959), the distribution shall be treated for purposes of this paragraph as a cash dividend to the extent of any amount included in income by the taxpayer pursuant to section 951 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.951), including as a result of any cash dividend during the privilege period to:

(i) the controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in subsection (a) of section 958 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.958), or

(ii) any other controlled foreign corporation in that chain of ownership from another controlled foreign corporation in that chain of ownership, but only to the extent of cash distributions described in subsection (b) of section 959 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.959) which are made during that privilege period to the controlled foreign corporation from which the taxpayer received the distribution.

(B) The amount of dividends taken into account under subparagraph (A) shall not exceed the lesser of--

(i) $150,000,000, or

(ii) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States; the amount of earnings permanently reinvested outside the United States shall be treated as being zero if there is no applicable financial statement or the applicable statement fails to show a specific amount of those earnings.

(C) Subparagraph (A) shall not apply to any dividend received by a United States shareholder unless the amount of the dividend is invested solely in the United States and solely for the purpose of:

(i) the new hiring of additional scientists, researchers, and comparable personnel engaged in life sciences research,

(ii) payments to universities, qualified research incubators, and other qualified organizations which are used by those organizations to conduct life sciences research, or

(iii) the building or leasing of new facilities to be used in the conduct of life sciences research.

(D) Subparagraph (A) shall not apply to any dividend any amount of which is used by the taxpayer to pay compensation to
any officer or executive of the taxpayer other than one whose principal occupation is the conduct of life sciences research, to pay dividends to the shareholders of the taxpayer, or to pay interest or principal on any debt security of the taxpayer.

(E) Subparagraph (A) shall not apply to any dividend if the taxpayer's compliance with this section is uncertain and requires a provision or reserve on the taxpayer's applicable financial statements.

(F) Subparagraph (A) shall not apply to any dividend unless the amount of the dividend is held in a separate account, trust, or other arrangement that segregates the amount from other funds of the taxpayer until the amount is used solely for the purposes described in subparagraph (C).

(G) (i) The taxpayer shall substantiate its compliance with subparagraphs (B) through (F) of this paragraph with written documents and such other credible evidence as the director may reasonably require, and shall bear the burden of proof with respect to that substantiation.

(ii) The chief executive officer and the independent director serving as head of the audit committee of the taxpayer, or comparable corporate officials, shall attest in writing to the taxpayer's compliance with each of the requirements of subparagraphs (B) through (F) of this paragraph.

(H) For the purposes of this paragraph:

Applicable financial statement” has the meaning provided by subsection (c) of section 965 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.965).

“Dividend” has the meaning provided by subsection (c) of section 965 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.965).

“Life sciences research” means any qualified research with respect to the branch of knowledge or study of biology, biochemistry, biophysics, bioengineering, microbiology, genetics, or physiology (in each case as that knowledge or study relates to human beings), but does not include sociology or psychology.

“Qualified organization” means an organization described in subparagraph (A), (B), or (C) of paragraph (6) of subsection (e) of section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41).

“Qualified research incubator” means an entity created by and operated under State law exclusively to conduct qualified life sciences research on behalf of the taxpayer and one or more unrelated taxpayers.

(I) No deduction shall be allowed under this paragraph for any dividend that is excluded pursuant to paragraph (5) of this subsection, and no deduction shall be allowed under this paragraph for any privilege period for which the taxpayer is claiming a credit
pursuant to subsection c. of section 1 of P.L. 1993, c.175 (C.54:10A-5.24).

(J) An election under this paragraph shall be made in the manner as may be prescribed by the director, and shall be made with respect to a privilege period not later than the due date (including extensions of time) for filing the taxpayer's return for that privilege period.

(I) "Real estate investment trust" shall mean any corporation, trust or association qualifying and electing to be taxed as a real estate investment trust under federal law.

(m) "Financial business corporation" shall mean any corporate enterprise which is (1) in substantial competition with the business of national banks and which (2) employs moneyed capital with the object of making profit by its use as money, through discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or any political subdivision thereof, or of a corporate instrumentality of any of them. This shall include, without limitation of the foregoing, business commonly known as industrial banks, dealers in commercial paper and acceptances, sales finance, personal finance, small loan and mortgage financing businesses, as well as any other enterprise employing moneyed capital coming into competition with the business of national banks; provided that the holding of bonds, notes, or other evidences of indebtedness by individual persons not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the business of national banks, shall not be deemed financial business. Nor shall "financial business" include national banks, production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual insurance companies duly authorized to transact business in this State, security brokers or dealers or investment companies or bankers not employing moneyed capital coming into competition with the business of national banks, real estate investment trusts, or any of the following entities organized under the laws of this State: credit unions, savings banks, savings and loan and building and loan associations, pawnbrokers, and State banks and trust companies.
(n) "International banking facility" shall mean a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit as such terms are defined in section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the board of governors of the Federal Reserve System, 12 CFR Part 204, effective December 3, 1981. In the event that the United States enacts a law, or the board of governors of the Federal Reserve System adopts a regulation which amends the present definition of international banking facility or of such facilities' time deposits or extensions of credit, the Commissioner of Banking and Insurance shall forthwith adopt regulations defining such terms in the same manner as such terms are set forth in the laws of the United States or the regulations of the board of governors of the Federal Reserve System. The regulations of the Commissioner of Banking and Insurance shall thereafter provide the applicable definitions.

(o) "S corporation" means a corporation included in the definition of an "S corporation" pursuant to section 1361 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

(p) "New Jersey S corporation" means a corporation that is an S corporation; which has made a valid election pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S corporation continuously since the effective date of the valid election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

(q) "Public Utility" means "public utility" as defined in R.S.48:2-13.

(r) "Qualified investment partnership" means a partnership under this act that has more than 10 members or partners with no member or partner owning more than a 50% interest in the entity and that derives at least 90% of its gross income from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of stocks or securities or foreign currencies or commodities or other similar income (including but not limited to gains from swaps, options, futures or forward contracts) derived with respect to its business of investing or trading in those stocks, securities, currencies or commodities, but "investment partnership" shall not include a "dealer in securities" within the meaning of section 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

(s) "Savings institution" means a state or federally chartered building and loan association, savings and loan association, or savings bank.

(t) "Partnership" means an entity classified as a partnership for
federal income tax purposes.

(cf: P.L.2009, c.72, s.2.)

2. Section 1 of P.L.1993, c.175 (C.54:10A-5.24) is amended to read as follows:

1. a. A taxpayer shall be allowed a credit, subject to the provisions of subsection b. of this section, against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to

   (1) 10% of the excess of the qualified research expenses for the privilege period over the base amount; and

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

   b. No credit shall be allowed under section 42 of P.L.1987, c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and Employment Investment Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et seq.), for property or expenditures for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

   The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law shall be as prescribed by the director. Credits allowable pursuant to this section shall be applied in the order of the privilege periods for which the credits were allowed.

   For privilege periods beginning before January 1, 2012, the amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for the privilege period shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

   For privilege periods beginning on or after January 1, 2012, the amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for the privilege period shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

   The amount of credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of
this subsection may be carried over, if necessary, to the seven
privilege periods following a credit's privilege period.

c. (1) For the five privilege periods beginning on or after the
July 1 next following enactment of P.L.____, c.____ (pending before
the Legislature as this bill), a taxpayer shall, notwithstanding the
provisions of subsection a. of this section, be allowed a credit,
subject to the provisions of subsection b. of this section, against the
tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
in an amount equal to

(a) 20% of the excess of the qualified research expenses for life
sciences research for the privilege period over the base amount; and
(b) 20% of the basic research payments for life sciences
research for the privilege period,

provided that a taxpayer’s qualified research expenses and basic
research payments for life sciences research for a privilege period
creditable under this subsection shall not exceed $150,000,000; and
provided further that, notwithstanding the provision of subsection a.
of this section, that amounts be determined in accordance with
section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C.
s.41) as in effect on June 30, 1992, the basic research payments for
life sciences research shall be determined as if “contract research
expenses” determined pursuant to subparagraph (A) of paragraph
(3) of subsection (b) of section 41 of the federal Internal Revenue
Code of 1986 (26 U.S.C. s.41) were determined as 100 percent of
any amount paid or incurred by the taxpayer for qualified research;
and provided further qualified research shall include amounts paid
to a qualified research incubator.

(2) For the purposes of this section:

“Life sciences research” means any qualified research with
respect to the branch of knowledge or study of biology,
biochemistry, biophysics, bioengineering, microbiology, genetics,
or physiology (in each case as that knowledge or study relates to
human beings), but does not include sociology or psychology.

“Qualified research incubator” means an entity created by and
operated under State law exclusively to conduct qualified life
sciences research on behalf of the taxpayer and one or more
unrelated taxpayers.

(3) This subsection shall not apply with respect to a taxpayer for
a privilege period for which an election is in effect under paragraph
(15) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4),
(cf: P.L.2011, c.83, s.1)

3. This act shall take effect immediately.
This bill provides corporation business tax incentives for life sciences research investments made over the next five years. Life sciences research is defined by the bill as research with respect to the branch of knowledge or study of biology, biochemistry, biophysics, bioengineering, microbiology, genetics, or physiology (in each case as that knowledge or study relates to human beings), but not including sociology or psychology.

The bill encourages companies to elect to repatriate earnings from their foreign subsidiaries by allowing a 100 percent deduction for those dividends if they are invested in life sciences jobs, research or facilities. The election applies to actual cash dividends. The dividends eligible for the deduction are limited to the greater of 1) $150 million, or 2) the earnings shown as permanently invested outside the United States on the most recently audited certified financial statements. For the dividends to qualify for the repatriation deduction, they must be invested in the United States solely for the purpose of:

(1) the new hiring of additional scientists, researchers, and comparable personnel engaged in life sciences research,
(2) payments to universities, qualified research incubators, and other qualified organizations which are used by those organizations to conduct life sciences research, or
(3) the building or leasing of new facilities to be used in the conduct of life sciences research.

The burden of substantiating compliance with reinvestment requirements is on the taxpayer, and the company’s chief executive officer and the independent director serving as head of the audit committee must attest in writing to the taxpayer’s compliance.

The bill also encourages companies to increase their expenditures for life sciences research by doubling the credit for research and development in New Jersey if the research is life sciences research. Currently, a credit is allowed for 10 percent of the increase in qualified research expenses in a tax year over a base amount and 10 percent of the basic research payments made to institutions of higher education, scientific research organizations and institutions that make grants for scientific research.

This bill increases those percentages of expenditure for research to 20 percent of the amount expended if the research is life sciences research and includes in qualifying basic research payments any payments made to a “qualified research incubator,” an entity created by and operated under State law exclusively to conduct qualified life sciences research on behalf of the taxpayer and one or more unrelated taxpayers.
Both of the incentives are available for the five tax years following the enactment of the bill, but a taxpayer must, for any tax year, choose one incentive or the other. The dividend exclusion and the increased credit provide incentives for investors to put investments in New Jersey's life sciences industry. An already growing industry in New Jersey will continue to grow. Innovation in biotechnology will create ripple effects for the entire State economy.