

# ASSEMBLY, No. 1797

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman ERIK PETERSON**

**District 23 (Hunterdon, Somerset and Warren)**

**Co-Sponsored by:**

**Assemblyman Giblin**

**SYNOPSIS**

Allows New Jersey S corporations to elect to transfer corporation business tax credits to shareholders to apply against the shareholders' gross income tax liability.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT allowing New Jersey S corporations to elect to transfer  
2 corporation business tax credits to their shareholders to apply  
3 against the shareholders' gross income tax liability,  
4 supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title  
5 54A of the New Jersey Statutes.

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

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10 1. a. Notwithstanding the provisions of any other law to the  
11 contrary, a New Jersey S corporation may make an election for a  
12 privilege period to (1) not apply an amount of one of the tax credits  
13 enumerated in subsection c. of this section allowed for the privilege  
14 period against its corporation business tax liability for that privilege  
15 period, and (2) instead transfer the credit to its shareholders for  
16 application against their respective gross income tax liabilities for  
17 the shareholder taxable years in which that privilege period ends.  
18 The election to transfer an amount of credit to shareholders, which  
19 may not be rescinded, shall preclude the application of that amount  
20 of credit against the liability imposed pursuant to section 5 of  
21 P.L.1945, c.162 (C.54:10A-5). An amount of credit for which an  
22 election has been made pursuant to section 1 of P.L. , c. (C. )  
23 (pending before the Legislature as this bill) shall be transferred to  
24 shareholders in proportion to their ownership interest in the New  
25 Jersey S corporation.

26 b. The verification of credit amounts, the methodology and  
27 timing of the election, the notification of the shareholders, and the  
28 determination and verification of amounts of credit transferred to  
29 each shareholder, shall be as the Director of the Division of  
30 Taxation in the Department of the Treasury shall prescribe.

31 c. The corporation business tax credits to which this section  
32 applies are:

33 the credit allowed pursuant to section 1 of P.L.1993, c.150  
34 (C.27:26A-15);

35 the credit allowed pursuant to section 56 of P.L.2002, c.43  
36 (C.52:27BBB-55);

37 the credit allowed pursuant to section 3 of P.L.2001, c.415  
38 (C.52:27D-492);

39 the credit allowed pursuant to section 19 of P.L.1983, c.303  
40 (C.52:27H-78);

41 the credit allowed pursuant to section 3 of P.L.1993, c.170  
42 (C.54:10A-5.6);

43 the credit allowed pursuant to section 3 of P.L.1993, c.171  
44 (C.54:10A-5.19);

45 the credit allowed pursuant to section 1 of P.L.1993, c.175  
46 (C.54:10A-5.24);

47 the credit allowed pursuant to section 3 of P.L.1997, c.349  
48 (C.54:10A-5.30);

1 the credit allowed pursuant to section 1 of P.L.2001, c.321  
2 (C.54:10A-5.31);  
3 the credit allowed pursuant to section 1 of P.L.2003, c.296  
4 (C.54:10A-5.33); and  
5 the credit allowed pursuant to section 12 of P.L.1985, c.227  
6 (C.55:19-13).

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8 2. a. An amount of credit for which an election has been made  
9 pursuant to section 1 of P.L. , c. (C. ) (pending before the  
10 Legislature as this bill) shall be transferred to shareholders in  
11 proportion to their ownership interest in the New Jersey S  
12 corporation. A shareholder shall be allowed to apply the credit  
13 against the tax due pursuant to N.J.S.54A:2-1 or section 4 of  
14 P.L.1993, c.178 (C.54A:2-1.1) for the taxpayer's taxable year in  
15 which the privilege period to which the New Jersey S corporation  
16 election applies ends. The amount of credit applied shall not  
17 exceed 50% of that amount of the taxpayer's liability for tax for the  
18 taxable year that bears the same proportional relationship to the  
19 total amount of such liability as the lesser of:

20 (1) the amount of the taxpayer's pro rata share of S corporation  
21 income from the electing New Jersey S corporation for the taxable  
22 year; or

23 (2) the amount of the taxpayer's net pro rata share of S  
24 corporation income determined pursuant to subsection p. of  
25 N.J.S.54A:5-1 for the taxable year;

26 bears to the taxpayer's entire gross income for that year.

27 The amount of the credit otherwise allowable under this section  
28 which cannot be applied for the taxable year due to the limitations  
29 of this subsection shall expire.

30 b. The determination of amounts of credit transferred to each  
31 shareholder, and the method of shareholder application of credit  
32 amounts transferred, shall be as the Director of the Division of  
33 Taxation in the Department of the Treasury shall prescribe.

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35 3. This act shall take effect immediately and section 1 shall  
36 apply to privilege periods beginning after enactment and section 2  
37 shall apply to the taxable years in which or with which those  
38 privilege periods end.

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#### STATEMENT

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43 This bill allows New Jersey S corporations to elect to transfer  
44 corporation business tax credits to shareholders to apply against  
45 gross income tax liability.

46 Most large C corporations pay State corporation business tax on  
47 profits at the rate of 9%. Subchapter S corporations pay corporation  
48 business tax at a reduced rate, currently at a 1.33% rate that is

1 scheduled to phase down to a zero rate for Tax Year 2007 and  
2 thereafter. A wide range of credits are available under the  
3 corporation business tax to provide incentives for employee  
4 benefits, encourage investment in communities in need of  
5 redevelopment, encourage job creation, and promote investment in  
6 infrastructure located in New Jersey. These corporation business  
7 tax credits are typically limited to reducing tax liability by half, so a  
8 typical credit can reduce the tax liability of a large C corporation  
9 from 9% to 4.5%, a substantial incentive. Because the liability of a  
10 subchapter S corporation can only be reduced from 1.33% to 0.66%,  
11 these credits provide much less incentive to subchapter S  
12 corporations to do the things the credits are designed to promote.

13 This bill allows subchapter S corporations to elect to pass the  
14 corporate level credits through to their shareholders, for the purpose  
15 of allowing the shareholders to reduce their individual New Jersey  
16 gross income tax liabilities on the income they are deemed to have  
17 received from the subchapter S corporation.

18 The bill allows this pass-through for the Alternate Commuting  
19 Credit, the Urban Enterprise Zone New Employment Credit, the  
20 Qualified Municipality Open For Business Credit, the  
21 Neighborhood Revitalization Credit, the New Jobs Investment Tax  
22 Credit, the Manufacturing Equipment and Employment Investment  
23 Credit, the Research and Development Credit, the Water Treatment  
24 Equipment Credit, and the Urban Development Project Employment  
25 Tax Credit.