[First Reprint]

ASSEMBLY, No. 2414

STATE OF NEW JERSEY

INTRODUCED OCTOBER 7, 1996

By Assemblymen DiGAETANO and DORIA

AN ACT increasing the new jobs investment tax credit under the corporation business tax for new jobs and investment in research and development, amending P.L.1993, c.170.

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

1. Section 2 of P.L.1993, c.170 (C.54:10A-5.5) is amended to read as follows:

2. As used in this act:

"Business relocation or expansion" means capital investment in a new or expanded business facility in this State.

"Business facility" means any factory, mill, plant, refinery, warehouse, building, complex of buildings or structural components of buildings, and all machinery, equipment and personal property located within this State, used in connection with the operation of the business of a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and all facility preparation and start-up costs of the taxpayer for the business facility which it capitalizes for federal income tax purposes.

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

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

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

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 <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Assembly ACV committee amendments adopted May 12, 1997.

"Expanded business facility" means any business facility, other than a new business facility, resulting from acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property if such improvements or additions are purchased on or after the operative date of this act, but only to the extent of a taxpayer's qualified investment in such improvements or additions.

"New business facility" means a business facility which:

a. is employed by a taxpayer in the conduct of a business which is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.). Such facility shall not be considered a new business facility in the hands of a taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person;

b. is purchased by a taxpayer and is placed in service or use on or after the operative date of this act;

c. was not purchased by a taxpayer from a related person. The director may waive this requirement if the facility was acquired from a related person for its fair market value and the acquisition was not tax motivated;

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

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

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

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

c. the individual is not an individual who worked for the taxpayer during the six month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six month period beginning on the date the taxpayer's qualified investment is placed in service or use in this State; and

d. the individual is not an employee for whom the taxpayer is allowed a credit pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78) or section 12 of P.L.1985, c.227 (C.55:19-13).

As used in this definition: "full-time" means employment for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is applicable to the business and "permanent basis" does not include employment that is temporary or seasonal and therefore the compensation paid to temporary or seasonal employees will not be considered for purposes of sections 4 and 6 of this act; and "part-time" means customarily performing such duties at least 20 hours per week for at least six months during the tax year. In no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed the total increase in the taxpayer's average employment in this State for the tax year over the average employment in this State for the previous tax year and in no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed one half of the average employment in this State for the tax year; and provided, that the director may require that the net increase in the taxpayer's employment in this State be determined and certified for the taxpayer's controlled group.

Provided further, however, that individuals filling jobs saved as a direct result of the taxpayer's qualified investment in property purchased for business relocation or expansion on or after the operative date of this act may be treated as new employees filling new jobs if the taxpayer certifies the material facts to the director and the director expressly finds that: but for the new employer purchasing the assets of a business in bankruptcy under chapter 7 or 11 of the United States Bankruptcy Code and such new employer making qualified investment in property purchased for business relocation or expansion, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs so saved would have been lost; or but for the taxpayer's qualified investment in property purchased for business relocation or expansion in this State, the business facility in this State would have closed and the employees located at the facility would have lost their jobs; provided that the director shall not make this certification unless the director finds that the business is insolvent as defined in paragraph (32) of 11 U.S.C. s.101 or that the business facility was destroyed in whole or in significant part by fire, flood or act of God.

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

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

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

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

(1) improvements to real property placed in service or use on or after the operative date of this act by the taxpayer;

(2) tangible personal property placed in service or use by the taxpayer on or after the operative date of this act, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the corporation business tax liability of the taxpayer under P.L.1945, c.162, and which has a remaining recovery period of three or more years at the time the property is placed in service or use in this State; or

(3) tangible personal property owned and used by the taxpayer at a business location outside this State which is moved into this State on or after the operative date of this act, for use as a component part of a new or expanded business facility located in this State; provided that the property is depreciable or amortizable personal property for income tax purposes, and has a remaining recovery period of three or more years at the time the property is placed in service or use in this State.

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

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

(2) Airplanes;

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

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

(5) Property purchased on or after the operative date of this act, unless pursuant to a written contract to purchase executed prior to the operative date of this act, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use; provided that if the contract of purchase specifies a minimum purchase price the amount thereof shall be used to determine the qualified investment in such property under section 5 of this act if the property otherwise qualifies as property purchased for business relocation or expansion.

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

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

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

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

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

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

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

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

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

"Related person" means:

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

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

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

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

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

"Research and development" means qualified research as determined in accordance with section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. §41.

"Small business taxpayer" means a taxpayer that has an annual payroll, as calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), of $2,000,000 or less and annual gross receipts, as calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), of not more than $6,000,000 for the tax year in which property purchased for business relocation or expansion is placed in service or use by the taxpayer; provided that beginning with tax years commencing on and after January 1 next following the operative date of this act the director shall prescribe the amount of annual payroll and annual gross receipts which shall apply by increasing each such amount hereinabove by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins. The annual payroll of a taxpayer shall include the employees of its domestic and foreign affiliates, whether employed on a full-time, part-time, temporary, or other basis, during the preceding 12 months. If a taxpayer has not been in existence for 12 months, the payroll of the taxpayer shall be divided by the number of weeks, including fractions of a week, that it has been in business, and the result multiplied by 52. That amount shall then be added to the 12 month payrolls of its domestic and foreign affiliates to determine the annual payroll of the taxpayer for purposes of this definition. The annual gross receipts of a taxpayer shall include the annual gross receipts of its foreign and domestic affiliates. The annual gross receipts of a taxpayer which has been in business for three or more complete tax years means the average of the annual gross receipts of the business for the last three tax years. For purposes of this definition, the gross receipts of the taxpayer includes receipts from sales of tangible personal property and services, interests, rents, royalties, fees, commissions and receipts from any other source, but less returns and allowances, sales of fixed assets, interaffiliated transactions between a business and its domestic and foreign affiliates, and taxes collected for remittance to a third party, as shown on its books for federal income tax purposes. The annual receipts of a taxpayer that has been in business for less than three complete tax years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. "Affiliates" includes all concerns that are affiliates of each other when either directly or indirectly one concern controls the other or a third party or parties controls both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, the director shall consider all appropriate factors, including common ownership, common management and contractual relationships. "Concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity), having a place of business located in this State, and which makes a contribution to the economy of this State through payment of taxes, or the sale or use in this State of tangible personal property, or the procurement or providing of services in this State, or the hiring of employees who work in this State. "Concern" includes but is not limited to any person as defined in R.S.1:1-2.

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

(cf: P.L.1993, c.170, s.2)

2. Section 5 of P.L.1993, c.170 (C.54:10A-5.8) is amended to read as follows:

5. a. The qualified investment in property purchased for business relocation or expansion shall be the applicable percentage of the cost of each property purchased for business relocation or expansion which is placed in service or use in this State by the taxpayer during the tax year. Provided, that only the cost of property purchased for business relocation or expansion placed in service or use in this State during the tax year for which the average value of the taxpayer's real and tangible personal property within the State as shall be determined pursuant to subsection (A) of section 6 of P.L.1945, c.162 (C.54:10A-6), is greater than that average value for the previous tax year, shall be considered in determining qualified investment.

b. For the purpose of subsection a., the applicable percentage of any cost of property purchased for business relocation or expansion, <u>that is not used for the purposes of research and development,</u> shall be determined under the following table:

If the property has a:	The applicable percentage is:
Three year recovery period	35%
Five year recovery period	70%
Seven year recovery period	100%

<u>The applicable percentage of any cost of property purchased for</u>

<u>business relocation or expansion that is used for the purposes of research and development shall be 100%.</u> The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the taxpayer, determined in accordance with section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. §168.

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

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

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

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

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

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

d. No amount of cost for property the cost of which qualifies for the credit allowable under section 42 of P.L.1987, c.102 (C.54:10A-5.3), or for the credits allowed under the "Manufacturing Equipment and Employment Investment Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et al.), shall be allowed as qualified investment under this section.

(cf: P.L.1993,c.170, s.5)

3. Section 6 of P.L.1993, c.170 (54:10A-5.9) is amended to read as follows:

6. a. The new jobs factor used to determine the amount of credit allowed under this act shall be based on the number of new jobs created in this State that are directly attributable to the qualified investment of the taxpayer.

b. (1) (a) For a taxpayer that is not a small business taxpayer, if

50 new jobs are created and filled that are not performing, supervising or in direct support of research and development functions, during the tax year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.005. For each 50 additional new jobs over the initial 50, up to 1000 total new jobs, the applicable new jobs factor of 0.005 shall be increased by adding thereto 0.005, up to a maximum new jobs factor of 0.10.

(b) For a taxpayer that is not a small business taxpayer, if five new jobs are created and filled performing, supervising or in direct support of research and development functions during the tax year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.01. For each five additional new jobs over the initial five, up to 100 total new jobs, the applicable new jobs factor of 0.01 shall be increased by adding thereto 0.01, up to a maximum new jobs factor of 0.20.

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

(2) (a) For a taxpayer that is a small business taxpayer, if five new jobs are created and filled that are not performing, supervising or in direct support of [1][non][1] research and development functions, during the tax year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.005. For each five additional new jobs over the initial five, up to 100 total new jobs, the applicable new jobs factor of 0.005 shall be increased by adding thereto 0.005, up to a maximum new jobs factor of 0.10.

(b) For a taxpayer that is a small business taxpayer, if five new jobs are created and filled performing, supervising or in direct support of research and development functions during the tax year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.01. For each five additional new jobs over the initial five, up to 100 total new jobs, the applicable new jobs factor of 0.01 shall be increased by adding thereto 0.01, up to a maximum new jobs factor of 0.20.

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

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

(1) the employee's service is performed or the employee's base of

operations is at the new or expanded business facility;

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

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

d. With the annual corporation business tax return filed under P.L.1945, c.162, for each tax year during the five year credit period for a qualified investment, the taxpayer shall certify:

(1) the new jobs factor for that tax year for the qualified investment;

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

(3) that the qualified investment property continued to be used in the business, or if any of it was disposed of during the year, the date of disposition, and that such property was not disposed of prior to expiration of its recovery period, as determined under section 5 of this act; and

(4) that the new jobs are directly attributable to the qualified investment, are filled by individuals who meet the definition of new employee, and the median annual compensation of all new employees is equal to or greater than the minimum median annual compensation required by section 3 of this act.

e. With the annual return for the corporation business tax imposed under P.L.1945, c.162, filed for the tax year in which the qualified investment is first placed in service or use in this State, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this State within the period prescribed in subsection g. of this section, that are, or will be directly attributable to the qualified investment of the taxpayer.

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

g. With the annual return for the tax imposed under P.L.1945, c.162, filed for the third tax year in which the qualified investment is in service or use in this State, the taxpayer shall certify the actual number of new jobs created by it in this State, that are directly attributable to the qualified investment of the taxpayer.

(1) If the actual number of jobs created would result in a higher new jobs factor, the credit allowed under this act shall be redetermined and amended returns filed for the first and second tax years that the qualified investment was in service or use in this State.

(2) If the actual number of jobs created would result in a lower new jobs factor, the credit previously allowed under this act shall be

redetermined and amended returns filed for the first and second tax years. Any additional taxes due under P.L.1945, c.162, shall be remitted with the amended returns filed with the director, together with any penalty and interest, for failure to pay any such tax when due as provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.
(cf: P.L.1993, c.170, s.6)

4. This act shall take effect immediately.

Increases the new jobs investment tax credit under the corporation business tax for new jobs and investment in research and development.