

§1
C. 34:1B-7.42a
§2
C. 54:10A-4.2
§3
C. 54:10A-5.24a
§4
Note To §§ 1-3

P.L. 1997, CHAPTER 334, *approved January 12, 1998*
Senate, No. 446 (*First Reprint*)

1 **AN ACT** establishing a corporation business tax benefit certificate
2 transfer program to assist new or expanding emerging technology
3 and biotechnology companies in this State, and supplementing
4 P.L.1995, c.137 (C.34:1B-7.37 et seq.).
5

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

9 1. a. The New Jersey Economic Development Authority shall
10 establish within the New Jersey Emerging Technology and
11 Biotechnology Financial Assistance Program established pursuant to
12 P.L.1995, c.137 (C.34:1B-7.37 et seq.) , a corporation business tax
13 benefit certificate transfer program to allow new or expanding
14 emerging technology and biotechnology companies in this State with
15 unused amounts of research and development tax credits otherwise
16 allowable which cannot be applied for the credit's tax year due to the
17 limitations of subsection b. of section 1 of P.L.1993, c.175
18 (C.54:10A-5.24) and unused net operating loss carryover pursuant to
19 subparagraph (B) of paragraph (6) of subsection ¹[k.] (k)¹ of section
20 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for
21 use by other corporation business taxpayers in this State on the
22 corporation business tax returns to be filed by those taxpayers in
23 exchange for private financial assistance to be provided by the
24 corporation business taxpayer that is the recipient of the corporation
25 business tax benefit certificate to assist in the funding of costs incurred
26 by the new or expanding emerging technology and biotechnology
27 company.

28 b. The authority, in cooperation with the Division of Taxation in
29 the Department of the Treasury, shall review and approve applications
30 by new or expanding emerging technology and biotechnology
31 companies in this State with unused but otherwise allowable carryover

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SNR committee amendments adopted May 9, 1996.

1 of research and development tax credits pursuant to section 1 of
2 P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable
3 net operating loss carryover pursuant to paragraph (6) of subsection
4 ¹[k.] (k)¹ of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender
5 those tax benefits in exchange for private financial assistance to be
6 made by the corporation business taxpayer that is the recipient of the
7 corporation business tax benefit certificate in an amount equal to at
8 least 75% of the amount of the surrendered tax benefit. The private
9 financial assistance shall be used to fund expenses incurred in
10 connection with the operation of the new or expanding emerging
11 technology or biotechnology company in the State, including but not
12 limited to the expenses of fixed assets, such as the construction and
13 acquisition and development of real estate, materials, start-up, tenant
14 fit-out, working capital, salaries, research and development
15 expenditures and any other expenses determined by the authority to be
16 necessary to carry out the purposes of the New Jersey Emerging
17 Technology and Biotechnology Financial Assistance Program.

18 c. The authority, in cooperation with the Division of Taxation in
19 the Department of the Treasury, shall review and approve applications
20 by taxpayers under the Corporation Business Tax Act (1945),
21 P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax
22 benefits approved pursuant to subsection b. of this section which shall
23 be issued in the form of corporation business tax benefit transfer
24 certificates, in exchange for private financial assistance to be made by
25 the taxpayer in an amount equal to at least 75% of the amount of the
26 surrendered tax benefit of an emerging technology or biotechnology
27 company in the State. The private financial assistance shall assist in
28 funding expenses incurred in connection with the operation of the new
29 or expanding emerging technology or biotechnology company in the
30 State, including but not limited to the expenses of fixed assets, such as
31 the construction and acquisition and development of real estate,
32 materials, start-up, tenant fit-out, working capital, salaries, research
33 and development expenditures and any other expenses determined by
34 the authority to be necessary to carry out the purposes of the New
35 Jersey Emerging Technology and Biotechnology Financial Assistance
36 Program.

37 d. The authority shall coordinate the applications for surrender and
38 acquisition of unused but otherwise allowable tax benefits pursuant to
39 this section in a manner that can best stimulate and encourage the
40 extension of private financial assistance to new and expanding
41 emerging technology and biotechnology companies in this State. The
42 applications shall be submitted and the authority shall approve or
43 disapprove the applications pursuant to the process and criteria
44 established under section 6 of the "New Jersey Emerging Technology
45 and Biotechnology Financial Assistance ¹[Act,] Act."¹ P.L.1995,
46 c.137 (C.34:1B-7.42). The authority shall require a corporation

1 business taxpayer that acquires a corporation business tax benefit
2 certificate to enter into a written agreement with the new or expanding
3 emerging technology or biotechnology company concerning the terms
4 and conditions of the private financial assistance made in exchange for
5 the certificate. The written agreement may contain terms concerning
6 the maintenance by the new or expanding emerging technology or
7 biotechnology company of a headquarters or a base of operation in this
8 State.

9
10 2. a. Notwithstanding the provisions of paragraph (6) of
11 subsection ¹[k.] (k)¹ of section 4 of P.L.1945, c.162 (C.54:10A-4) to
12 the contrary, a taxpayer that has acquired a corporation business tax
13 benefit certificate pursuant to the provisions of section 1 of P.L.
14 ¹[1996]¹, c. (C.) (¹[Now] now¹ pending before the Legislature
15 as this bill), that includes the right to a net operating loss carryover
16 deduction shall attach that certificate to any return the taxpayer is
17 required to file under P.L.1945, c.162 (C.54:10A-1 et seq.), and shall
18 otherwise apply the net operating loss carryover deduction as
19 evidenced by the certificate according to the provisions of subsection
20 ¹[k.] (k)¹ of section 4 of P.L.1945, c.162 and any rules or regulations
21 the director may adopt to carry out the provisions of this section.

22 b. A new or expanding emerging technology or biotechnology
23 company that has surrendered an unused net operating loss carryover
24 pursuant to the provisions of section 1 of P.L. ¹[1996]¹, c. (C.)
25 (¹[Now] now¹ pending before the Legislature as this bill), shall not be
26 allowed a net operating loss carryover deduction based upon the right
27 to such a deduction as evidenced by the corporation business tax
28 benefit certificate and shall attach a copy of the certificate to any
29 return the taxpayer is required to file under P.L.1945, c.162
30 (C.54:10A-1 et seq.).

31
32 3. a. Notwithstanding the provisions of section 1 of P.L.1993,
33 c.175 (C.54:10A-5.24) to the contrary, a taxpayer that has acquired
34 a corporation business tax benefit certificate pursuant to the provisions
35 of section 1 of P.L. ¹[1996]¹, c. (C.) (¹[Now] now¹ pending
36 before the Legislature as this bill), that includes the right to a research
37 and development tax credit carryover shall attach that certificate to
38 any return the taxpayer is required to file under P.L.1945, c.162
39 (C.54:10A-1 et seq.), and shall otherwise apply the credit carryover as
40 evidenced by the certificate according to the provisions of section 1 of
41 P.L.1993, c.175 (C.54:10A-5.24) and any rules or regulations the
42 director may adopt to carry out the provisions of this section.

43 b. A new or expanding emerging technology or biotechnology
44 company that has surrendered an unused research and development tax
45 credit carryover pursuant to the provisions of section 1 of P.L.
46 ¹[1996]¹, c. (C.) (¹[Now] now¹ pending before the Legislature

1 as this bill), shall not be allowed a research and development tax credit
2 carryover based upon the right to such a credit carryover as evidenced
3 by the corporation business tax benefit certificate and shall attach a
4 copy of the certificate to any return the taxpayer is required to file
5 under P.L.1945, c.162 (C.54:10A-1 et seq.)

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7 4. This act shall take effect immediately and sections 1 through 3
8 shall apply to tax years beginning on or after January 1 next following
9 enactment.

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13

14 Provides for establishment of a corporation business tax benefit
15 certificate transfer program to assist new or expanding emerging
16 technology and biotechnology companies in this State.