

§§1-3
C. 54:10A-5.28
To 54:10A-5.30
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Note To
P.L. 1997, c.350 &
P.L. 1997, c.351
§5
Note To §§1-3

P.L. 1997, CHAPTER 349, *approved January 15, 1998*
Senate, No. 445 (*First Reprint*)

1 **AN ACT** providing a credit against the corporation business tax for
2 certain investments made in small New Jersey-based
3 high-technology businesses, and supplementing P.L.1945, c.162
4 (C.54:10A-1 et seq.).

5

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

8

9 1. This act shall be known and may be cited as the "Small New
10 Jersey-based High-Technology Business Investment Tax Credit Act."

11

12 2. As used in this act:

13 "Advanced computing" means a technology used in the designing
14 and developing of computing hardware and software, including
15 innovations in designing the full spectrum of hardware from hand-held
16 calculators to super computers, and peripheral equipment;

17 "Advanced materials" means materials with engineered properties
18 created through the development of specialized processing and
19 synthesis technology, including ceramics, high value-added metals,
20 electronic materials, composites, polymers, and biomaterials;

21 "Biotechnology" means the continually expanding body of
22 fundamental knowledge about the functioning of biological systems
23 from the macro level to the molecular and sub-atomic levels, as well
24 as novel products, services, technologies and sub-technologies
25 developed as a result of insights gained from research advances which
26 add to that body of fundamental knowledge;

27 "Control," with respect to a corporation, means ownership, directly
28 or indirectly, of stock possessing 80% or more of the total combined
29 voting power of all classes of the stock of the corporation entitled to

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 amendments adopted in accordance with Governor's
recommendations January 12, 1998.**

1 vote; and "control," with respect to a trust, means ownership, directly
2 or indirectly, of 80% or more of the beneficial interest in the principal
3 or income of the trust. The ownership of stock in a corporation, of a
4 capital or profits interest in a partnership or association or of a
5 beneficial interest in a trust shall be determined in accordance with the
6 rules for constructive ownership of stock provided in subsection (c) of
7 section 267 of the federal Internal Revenue Code of 1986, 26
8 U.S.C. §267, other than paragraph (3) of subsection (c) of that section;

9 "Controlled group" means one or more chains of corporations
10 connected through stock ownership with a common parent corporation
11 if stock possessing at least 80% of the voting power of all classes of
12 stock of each of the corporations is owned directly or indirectly by one
13 or more of the corporations and the common parent owns directly
14 stock possessing at least 80% of the voting power of all classes of
15 stock of at least one of the other corporations;

16 "Director" means the Director of the Division of Taxation in the
17 Department of the Treasury;

18 "Electronic device technology" means a technology involving
19 microelectronics, semiconductors, electronic equipment, and
20 instrumentation, radio frequency, microwave, and millimeter
21 electronics, and optical and optic-electrical devices, or data and digital
22 communications and imaging devices;

23 "Environmental technology" means assessment and prevention of
24 threats or damage to human health or the environment, environmental
25 cleanup, or the development of alternative energy sources;

26 "Medical device technology" means a technology involving any
27 medical equipment or product (other than a pharmaceutical product)
28 that has therapeutic value, diagnostic value, or both, and is regulated
29 by the federal Food and Drug Administration;

30 "Partnership" means a syndicate, group, pool, joint venture or other
31 unincorporated organization through or by means of which any
32 business, financial operation or venture is carried on, and which is not
33 a trust or estate, a corporation or a sole proprietorship;

34 "Pilot scale manufacturing" means design, construction, and testing
35 of preproduction prototypes and models in the fields of advanced
36 computing, advanced materials, biotechnology, electronic device
37 technology, environmental technology, and medical device technology,
38 other than for commercial sale, excluding sales of prototypes or sales
39 for market testing if total gross receipts, as calculated pursuant to
40 section 6 of P.L.1945, c.162 (C.54:10A-6), from such sales of the
41 product, service or process do not exceed \$1,000,000;

42 "Qualified investment" means the non-refundable investment, at
43 risk in a small New Jersey-based high-technology business, of cash
44 that is transferred to the small New Jersey-based high-technology
45 business by a taxpayer that is not a related person of the small New
46 Jersey-based high-technology business, the transfer of which is in

1 connection with a transaction in exchange for stock, interests in
2 partnerships or joint ventures, licenses (exclusive or non-exclusive),
3 rights to use technology, marketing rights, warrants, options or any
4 items similar to those included herein, including but not limited to
5 options or rights to acquire any of the items included herein;

6 "Qualified research expenses" means qualified research expenses as
7 defined in section 41 of the federal Internal Revenue Code of 1986,
8 26 U.S.C. §41, as in effect on June 30, 1992, in the fields of advanced
9 computing, advanced materials, biotechnology, electronic device
10 technology, environmental technology, or medical device technology;

11 "Related person" means:

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

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

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

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

20 "Small New Jersey-based high-technology business" means a
21 corporation doing business, employing or owning capital or property,
22 or maintaining an office, in this State that has qualified research
23 expenses paid or incurred for research conducted in this State or
24 conducts pilot scale manufacturing in this State, and has fewer than
25 225 employees, of whom 75% are New Jersey-based employees filling
26 a position or job in this State; and

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

29

30 3. a. A taxpayer shall be allowed a credit against the tax imposed
31 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount
32 equal to 10% of the qualified investment made by the taxpayer during
33 each of the three tax [year] years beginning on or after January 1
34 next following enactment of this act,¹ in a small New Jersey-based
35 high-technology business, up to a maximum allowed credit of
36 [\$1,000,000] \$500,000¹ for the tax year for each qualified investment
37 made by the taxpayer. An unused credit may be carried forward for
38 use in future years, subject to the [\$1,000,000] \$500,000¹ per year
39 limitation.

40 b. A credit shall not be allowed pursuant to section 1 of P.L.1993,
41 c.175 (C.54:10A-5.24), for expenses paid from funds for which a
42 credit is allowed, or which are includable in the calculation of a credit
43 allowed, under this section.

44 The tax imposed for a tax year pursuant to section 5 of P.L.1945,
45 c.162, shall first be reduced by the amount of any credit allowed
46 pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any

1 credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13),
2 then by any credit allowed pursuant to section 42 of P.L.1987, c.102
3 (C.54:10A-5.3), then by any credit allowed under section 3 of
4 P.L.1993, c.170 (C.54:10A-5.6), then by any credit allowed under
5 section 3 or 4 of P.L.1993, c.171 (C.54:10A-5.18 or C.54:10A-5.19),
6 then by any credit allowed under section 1 of P.L.1993, c.175
7 (C.54:10A-5.24), and then by any credit allowed under section 1 of
8 P.L.1993, c.150 (C.27:26A-15), prior to applying any credits
9 allowable pursuant to this section. Credits allowable pursuant to this
10 section shall be applied in the order of the credits' tax years. The
11 amount of the credits applied under this section against the tax
12 imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall
13 not exceed 50% of the tax liability otherwise due and shall not reduce
14 the tax liability to an amount less than the statutory minimum provided
15 in subsection (e) of section 5 of P.L.1945, c.162.

16 c. Except as provided in subsection d. of this section, the amount
17 of tax year credit otherwise allowable under this section which cannot
18 be applied for the tax year due to the limitations of subsection b. of
19 this section may be carried over, if necessary, to the 15 tax years
20 following a credit's tax year.

21 d. A taxpayer may not carry over any amount of credit or credits
22 allowed under subsection a. of this section to a tax year during which
23 a corporate acquisition with respect to which the taxpayer was a target
24 corporation occurred or during which the taxpayer was a party to a
25 merger or a consolidation, or to any subsequent tax year, if the credit
26 was allowed for a tax year prior to the year of acquisition, merger or
27 consolidation, except that if in the case of a corporate merger or
28 corporate consolidation the taxpayer can demonstrate, through the
29 submission of a copy of the plan of merger or consolidation and such
30 other evidence as may be required by the director, the identity of the
31 constituent corporation which was the acquiring person, a credit
32 allowed to the acquiring person may be carried over by the taxpayer.
33 As used in this subsection, "acquiring person" means the constituent
34 corporation the stockholders of which own the largest proportion of
35 the total voting power in the surviving or consolidated corporation
36 after the merger or consolidation.

37
38 ¹4. Prior to December 31, 2001, the State Treasurer shall submit
39 a report to the Governor and the Legislature regarding the
40 effectiveness of this and P.L. , c. , (C.)(now pending before
41 the Legislature as Senate No.447 of 1996), and P.L. , c. (C.),
42 (now pending before the Legislature as Senate No.449 of 1996).¹

43
44 ¹[4.] 5.¹ This act shall take effect immediately and sections 1
45 through 3 shall apply to tax years beginning on or after January 1 next
46 following enactment.

1

2

3 Provides corporation business tax credit for certain investments in

4 small New Jersey-based high-technology businesses.