

CHAPTER 349

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

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

C.54:10A-5.28 Short title.

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

C.54:10A-5.29 Definitions relative to small New Jersey-based high-technology businesses.

2. As used in this act:

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

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

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

"Control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 80% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control," with respect to a trust, means ownership, directly or indirectly, of 80% 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.s.267, other than paragraph (3) of subsection (c) of that section;

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80% 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 80% 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;

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

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

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

"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;

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

"Qualified investment" means the non-refundable investment, at risk in a small New

Jersey-based high-technology business, of cash that is transferred to the small New Jersey-based high-technology business by a taxpayer that is not a related person of the small New Jersey-based high-technology business, the transfer of which is in connection with a transaction in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options or any items similar to those included herein, including but not limited to options or rights to acquire any of the items included herein;

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

"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 the control of the taxpayer;
- c. a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or
- d. a member of the same controlled group as the taxpayer;

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

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

C.54:10A-5.30 Taxpayer allowed credit.

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

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

The tax imposed for a tax year pursuant to section 5 of P.L.1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), then by any credit allowed under section 3 of P.L.1993, c.170 (C.54:10A-5.6), then by any credit allowed under section 3 or 4 of P.L.1993, c.171 (C.54:10A-5.18 or C.54:10A-5.19), then by any credit allowed under section 1 of P.L.1993, c.175 (C.54:10A-5.24), and then by any credit allowed under section 1 of P.L.1993, c.150 (C.27:26A-15), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the credits' tax years. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year 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.

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

d. A taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the

taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

4. Prior to December 31, 2001, the State Treasurer shall submit a report to the Governor and the Legislature regarding the effectiveness of this and P.L.1997, c.350 (C.54:10A-4.3), and P.L.1997, c.351 (C.54:10A-5.24b).

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

Approved January 15, 1998.