

SENATE, No. 445

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators SINGER and McGREEVEY

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.).

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

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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."

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

1 "Controlled group" means one or more chains of corporations
2 connected through stock ownership with a common parent corporation
3 if stock possessing at least 80% of the voting power of all classes of
4 stock of each of the corporations is owned directly or indirectly by one
5 or more of the corporations and the common parent owns directly
6 stock possessing at least 80% of the voting power of all classes of
7 stock of at least one of the other corporations;

8 "Director" means the Director of the Division of Taxation in the
9 Department of the Treasury;

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

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

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

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

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

34 "Qualified investment" means the non-refundable investment, at
35 risk in a small New Jersey-based high-technology business, of cash
36 that is transferred to the small New Jersey-based high-technology
37 business by a taxpayer that is not a related person of the small New
38 Jersey-based high-technology business, the transfer of which is in
39 connection with a transaction in exchange for stock, interests in
40 partnerships or joint ventures, licenses (exclusive or non-exclusive),
41 rights to use technology, marketing rights, warrants, options or any
42 items similar to those included herein, including but not limited to
43 options or rights to acquire any of the items included herein;

44 "Qualified research expenses" means qualified research expenses as
45 defined in section 41 of the federal Internal Revenue Code of 1986,
46 26 U.S.C.§41, as in effect on June 30, 1992, in the fields of advanced

1 computing, advanced materials, biotechnology, electronic device
2 technology, environmental technology, or medical device technology;

3 "Related person" means:

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

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

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

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

12 "Small New Jersey-based high-technology business" means a
13 corporation doing business, employing or owning capital or property,
14 or maintaining an office, in this State that has qualified research
15 expenses paid or incurred for research conducted in this State or
16 conducts pilot scale manufacturing in this State, and has fewer than
17 225 employees, of whom 75% are New Jersey-based employees filling
18 a position or job in this State; and

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

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22 3. a. A taxpayer shall be allowed a credit against the tax imposed
23 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount
24 equal to 10% of the qualified investment made by the taxpayer during
25 the tax year in a small New Jersey-based high-technology business, up
26 to a maximum allowed credit of \$1,000,000 for the tax year for each
27 qualified investment made by the taxpayer. An unused credit may be
28 carried forward for use in future years, subject to the \$1,000,000 per
29 year limitation.

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

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

1 amount of the credits applied under this section against the tax
2 imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall
3 not exceed 50% of the tax liability otherwise due and shall not reduce
4 the tax liability to an amount less than the statutory minimum provided
5 in subsection (e) of section 5 of P.L.1945, c.162.

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

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

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

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STATEMENT

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35 This bill provides a credit under the Corporation Business Tax for
36 investment by corporate taxpayers in small New Jersey-based
37 high-technology businesses that conduct research in New Jersey in
38 certain fields of science and technology or that conduct pilot scale
39 manufacturing in New Jersey in order to bring their high-technology
40 innovations into market production. Small high-technology businesses
41 are a vital and growing source of high-wage, high-skilled jobs in this
42 State. The high technology sector is a key component of the State's
43 effort to encourage economic growth and diversification. However,
44 in recent years the sources of funds necessary for the high initial
45 investments necessary in such business enterprises in this State,
46 including the availability of start-up equity financing, have not kept

1 pace with the potential for economic growth in this sector.

2 Small high-technology businesses incur significant costs associated
3 with research and development and pilot scale manufacturing many
4 years before a marketable product or service can be delivered. The
5 provision of a tax credit to corporate taxpayers for investments made
6 in such enterprises will provide an incentive to invest in these small
7 New Jersey businesses early in their development cycle, when they are
8 turning ideas into marketable products and services. The stimulation
9 of local corporate investment in small, emerging high-technology
10 enterprises in New Jersey will build upon the State's established
11 high-technology base, creating additional research and development
12 jobs and subsequent manufacturing facilities.

13 The tax credit is based upon 10% of investments made in each small
14 high-technology business with less than 225 employees, 75% of whom
15 have jobs in New Jersey. The utilization of the credit is limited to
16 \$1,000,000 per investment, per year, with carryforwards available for
17 unutilized credits. The investment must be a non-refundable
18 investment at risk in the small high-technology business. The small
19 high-technology business must conduct pilot scale manufacturing or
20 qualified research in New Jersey in the fields of advanced computing,
21 advanced materials, biotechnology, electronic device technology,
22 environmental technology, and medical device technology.

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28 small New Jersey-based high-technology businesses.