50:10A-5.24

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 83

NJSA: 50:10A-5.24 (Eliminates limit on application of corporation business tax research credit to 50% of liability otherwise due)

BILL NO: S2980 (Substituted for A4205)

SPONSOR(S) Whelan and others

DATE INTRODUCED: June 23, 2011

COMMITTEE: **ASSEMBLY:** ---

SENATE: Budget and Appropriations

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 29, 2011

SENATE: June 29, 2011

DATE OF APPROVAL: June 30, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Introduced version of bill enacted)

S2980

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: No .

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes

A4205

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes .

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes

(continued)

VETO MESSAGE:	No
GOVERNOR'S PRESS RELEASE ON SIGNING:	Yes

FOLLOWING WERE PRINTED:

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REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	No

LAW/KR

P.L.2011, CHAPTER 83, ***approved June 30, 2011***
Senate, No. 2980

AN ACT eliminating a limit on the application of the research expense credit allowed pursuant to the corporation business tax, amending P.L.1993, c.175.

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

1. Section 1 of P.L.1993, c.175 (C.54:10A-5.24) is amended to read as follows:

1. a. A taxpayer shall be allowed a credit, subject to the provisions of subsection b. of this section, against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to

(1) 10% of the excess of the qualified research expenses for the **[**fiscal or calendar accounting year (referred to hereafter in this section as the "tax year")**]** <u>privilege period</u> over the base amount; and

(2) 10% of the basic research payments <u>for the privilege period</u>

determined in accordance with section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41, as in effect on June 30, 1992, and provided that subsection (h) of 26 U.S.C. s.41 relating to termination shall not apply. Provided however, that the terms "qualified research expenses," "base amount," "qualified organization base amount period," "basic research" and any other terms determined by the Director of the Division of Taxation to affect the calculation of the credit shall include only expenditures for research conducted in this State.

b. No credit shall be allowed under section 42 of P.L.1987, c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and Employment Investment Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et seq.), for property or expenditures 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 fiscal or calendar accounting 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

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.

(C.54:10A-5.6), and 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), prior to applying any credits allowable pursuant to this section] The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law shall be as prescribed by the director. Credits allowable pursuant to this section shall be applied in the order of the [credits' tax years] privilege periods for which the credits were allowed.

[The] For privilege periods beginning before January 1, 2012, the amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for [an accounting year] the privilege period 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.

For privilege periods beginning on or after January 1, 2012, the amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for the privilege period 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.

The amount of [tax year] credit otherwise allowable under this section which cannot be applied for the [tax year] privilege period due to the limitations of this subsection may be carried over, if necessary, to the seven [accounting years] privilege periods following a credit's [tax year] privilege period.

(cf: P.L1993, c.175, s.1.)

2. This act shall take effect immediately.

STATEMENT

This bill eliminates the limit on the application of the corporation business tax research expense credit to 50% of liability otherwise due for the tax period.

Currently, the research expense credit is equal to 10% of the increase in “qualified research expenses” (research performed by or for the taxpayer) in a tax year over a base amount, plus 10% of the “basic research payments” (university research funded by the taxpayer) in a tax period. The credit is limited to expenditures made in New Jersey. This bill does not affect the allowance of the credit.

This bill removes a restriction on the application of the credit. Currently, the amount of research credit applied in any tax period may not exceed 50% of the tax otherwise due and may not reduce the tax liability to less than the statutory minimum (currently $500 to $2,000 annually, depending on the gross receipts of the taxpayer). This bill eliminates the restriction that the amount of credit may not exceed 50% of the tax otherwise due for tax periods beginning on or after January 1, 2012. The bill retains the restriction that the credit may not reduce the tax liability to less than the statutory minimum.

Eliminates limit on application of corporation business tax research credit to 50% of liability otherwise due.

SENATE, No. 2980

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED JUNE 23, 2011

Sponsored by:
Senator JIM WHELAN
District 2 (Atlantic)
Senator PAUL A. SARLO
District 36 (Bergen, Essex and Passaic)
Assemblywoman PAMELA R. LAMPITT
District 6 (Camden)
Assemblyman VINCENT PRIETO
District 32 (Bergen and Hudson)
Assemblyman PETER J. BARNES, III
District 18 (Middlesex)
Assemblyman UPENDRA J. CHIVUKULA
District 17 (Middlesex and Somerset)

Co-Sponsored by:
Senators Addiego, Gordon, Oroho, Stack, Assemblyman Milam, Assemblywoman Pou, Assemblymen Fuentes, Delany, Rudder and Assemblywoman Evans

SYNOPSIS

Eliminates limit on application of corporation business tax research credit to 50% of liability otherwise due.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/30/2011)

AN ACT eliminating a limit on the application of the research expense credit allowed pursuant to the corporation business tax, amending P.L.1993, c.175.

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

1. Section 1 of P.L.1993, c.175 (C.54:10A-5.24) is amended to read as follows:

1. a. A taxpayer shall be allowed a credit, subject to the provisions of subsection b. of this section, against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to

(1) 10% of the excess of the qualified research expenses for the **[**fiscal or calendar accounting year (referred to hereafter in this section as the "tax year")**]** <u>privilege period</u> over the base amount; and

(2) 10% of the basic research payments <u>for the privilege period</u>

determined in accordance with section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41, as in effect on June 30, 1992, and provided that subsection (h) of 26 U.S.C. s.41 relating to termination shall not apply. Provided however, that the terms "qualified research expenses," "base amount," "qualified organization base amount period," "basic research" and any other terms determined by the Director of the Division of Taxation to affect the calculation of the credit shall include only expenditures for research conducted in this State.

b. No credit shall be allowed under section 42 of P.L.1987, c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and Employment Investment Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et seq.), for property or expenditures 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 fiscal or calendar accounting 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), and 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), prior to applying any credits allowable pursuant to this section**]** <u>The order</u>

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.

of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law shall be as prescribed by the director. Credits allowable pursuant to this section shall be applied in the order of the [credits' tax years] privilege periods for which the credits were allowed.

[The] For privilege periods beginning before January 1, 2012, the amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for [an accounting year] the privilege period 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.

For privilege periods beginning on or after January 1, 2012, the amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for the privilege period 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.

The amount of [tax year] credit otherwise allowable under this section which cannot be applied for the [tax year] privilege period due to the limitations of this subsection may be carried over, if necessary, to the seven [accounting years] privilege periods following a credit's [tax year] privilege period.

(cf: P.L1993, c.175, s.1.)

2. This act shall take effect immediately.

STATEMENT

This bill eliminates the limit on the application of the corporation business tax research expense credit to 50% of liability otherwise due for the tax period.

Currently, the research expense credit is equal to 10% of the increase in “qualified research expenses” (research performed by or for the taxpayer) in a tax year over a base amount, plus 10% of the “basic research payments” (university research funded by the taxpayer) in a tax period. The credit is limited to expenditures made in New Jersey. This bill does not affect the allowance of the credit.

This bill removes a restriction on the application of the credit. Currently, the amount of research credit applied in any tax period may not exceed 50% of the tax otherwise due and may not reduce the tax liability to less than the statutory minimum (currently $500 to $2,000 annually, depending on the gross receipts of the taxpayer). This bill eliminates the restriction that the amount of credit may not exceed 50% of the tax otherwise due for tax periods beginning on or after

January 1, 2012. The bill retains the restriction that the credit may not reduce the tax liability to less than the statutory minimum.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2980

STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2980.

This bill eliminates the limit on the application of the corporation business tax research expense credit to 50% of liability otherwise due for the tax period.

Currently, the research expense credit is equal to 10% of the increase in “qualified research expenses” (research performed by or for the taxpayer) in a tax year over a base amount, plus 10% of the “basic research payments” (university research funded by the taxpayer) in a tax period. The credit is limited to expenditures made in New Jersey. This bill does not affect the allowance of the credit.

This bill removes a restriction on the application of the credit. Currently, the amount of research credit applied in any tax period may not exceed 50% of the tax otherwise due and may not reduce the tax liability to less than the statutory minimum (currently $500 to $2,000 annually, depending on the gross receipts of the taxpayer).

This bill eliminates the restriction that the amount of credit may not exceed 50% of the tax otherwise due for tax periods beginning on or after January 1, 2012. The bill retains the restriction that the credit may not reduce the tax liability to less than the statutory minimum, so under the bill a taxpayer will be permitted to apply available research expense credit to reduce tax liability to the statutory minimum.

FISCAL IMPACT:

The Budget Summary for the Governor’s FY 2012 Budget recommended an initiative that is reflected in this bill. The Budget Summary estimated that the initiative will result in a $33 million corporation business tax revenue reduction for State FY 2012, $66 million for FY2013 and $66 million for FY 2014 based on 2007 data.

The Office of Legislative Services (OLS) believes that the Governor's Budget estimates for the recommended initiative are based on unrealistic assumptions about the availability and applicability of the research expense credit. The OLS believes that the actual revenue loss would be substantially less than that estimated in the Budget Summary, but without access to return data on the allowance and application of the research expense credit, cannot make an independent estimate. The OLS notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources constitutionally dedicated to certain environmental mitigation programs.

FISCAL NOTE
SENATE, No. 2980
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JULY 6, 2011

SUMMARY

Synopsis:	Eliminates limit on application of corporation business tax research credit to 50 percent of liability otherwise due
Type of Impact:	Increased availability of tax expenditure, reducing revenue from the corporation business tax, impacting the General Fund and the 4 percent Constitutional dedication for environmental programs.
Agencies Affected:	Department of the Treasury. Department of Environmental Protection.

Executive Estimate

Fiscal Impact	**Year 1**	**Year 2**	**Year 3**
State Cost	$33,000,000	$66,000,000	$66,000,000

- The Executive Branch estimates that the bill would result in a corporation business tax revenue reduction of $33 million impact for State FY 2012, $66 million for FY2013 and $66 million for FY 2014. The Office of Legislative Services (OLS) **does not concur**.

- The OLS believes that the Executive estimates are based on unrealistic assumptions about the availability and applicability of the research expense credit. The OLS believes that the actual revenue loss would be substantially less than that estimated by the Executive, but without access to return data on the allowance and application of the research expense credit cannot make an independent estimate. The OLS notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources Constitutionally dedicated to certain environmental mitigation programs.

BILL DESCRIPTION

Senate Bill No. 2980 of 2011 eliminates the limit on the application of the corporation business tax research expense credit to 50 percent of liability otherwise due for the tax period.

Currently, the research expense credit is equal to 10 percent of the increase in “qualified research expenses” (research performed by or for the taxpayer) in a tax year over a base amount, plus 10 percent of the “basic research payments” (university research funded by the taxpayer) in a tax period. The credit is limited to expenditures made in New Jersey. This bill does not affect the allowance of the credit.

This bill removes a restriction on the application of the credit. Currently, the amount of research credit applied in any tax period may not exceed 50 percent of the tax otherwise due (a "50 percent cap") and may not reduce the tax liability to less than the statutory minimum (currently $500 to $2,000 annually, depending on the gross receipts of the taxpayer).

This bill eliminates the restriction that the amount of credit may not exceed 50 percent of the tax otherwise due for tax periods beginning on or after January 1, 2012. The bill retains the restriction that the credit may not reduce the tax liability to less than the statutory minimum, so under the bill a taxpayer will be permitted to apply available research expense credit to reduce tax liability to the statutory minimum.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Budget Summary for the Governor's FY 2012 Budget estimates for a recommended initiative to increase the amount of corporation business tax liability that can be offset by the research expense credit from 50 percent of liability to 100 percent of liability, a $33 million corporation business tax revenue reduction for State FY 2012, $66 million for FY2013 and $66 million for FY 2014 based on 2007 data.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot concur with the Executive estimate.

The Report on Tax Expenditures In New Jersey issued in 2011 by the Division of Taxation in the Department of the Treasury estimates the corporation business tax expenditure for the research expense credit, the decrease in corporation business tax revenue that results from the use of the research expense credit, at $65.6 million for FY2012 under current law.

The OLS notes that in order to use the estimate of current revenue loss to generate the estimate of revenue loss under the bill, a doubling of the current tax expenditure, it would be necessary to make two assumptions: (1) that every corporation expected to claim a research expense tax credit will be limited by the 50 percent cap, and (2) that each of those corporations will have credits available to apply, as under the bill, against 100 percent of its liability.

The OLS does not find either of those assumptions reasonable. Studies of the federal research and development credit (on which the New Jersey is based) indicate that the majority of the value federal credits are taken by relatively few large corporations with substantial income and substantial tax liability. There is no rationale that would indicate that claims for the New Jersey credit follow any different pattern. Therefore it is unlikely that any substantial amount of credit allowed to these large corporations is currently limited by the 50 percent cap.

There are also a substantial number of small corporations that have allowances of tax credits, typically start-up companies that have, as yet, little or no liability, so their use of credit is not limited by the 50 percent cap so much as it is limited by their lack of tax liability. To the extent that the credits allowed these corporations are applied at all, it is likely that the credits have been assigned through the tax benefit certificate transfer program (P.L.1997, c.334) and those transferred tax credits are acquired by corporations that can fully apply, and currently do fully apply, the credits against liability unlimited by the 50 percent cap.

The OLS believes that the actual revenue loss would be substantially less than that estimated by the Executive, but without access to return data on the allowance and application of the research expense credit, cannot make an independent estimate.

The Executive estimation methodology as to the first year of operation of the bill, suggesting that the bill would have precisely one-half of the effect as in other years, is unclear. The OLS notes, however, that it is usual, given that taxpayers make estimated payments based on past liability and that large taxpayers file under extension and subject to redetermination, that the first fiscal year impact of a corporation change is less than the impact in subsequent years.

The OLS also notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources Constitutionally dedicated to certain environmental mitigation programs.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Philip N. Liloia* *Lead Counsel*
Approved:	*David J. Rosen* *Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4205

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED JUNE 27, 2011

Sponsored by:
Assemblywoman PAMELA R. LAMPITT
District 6 (Camden)
Assemblyman VINCENT PRIETO
District 32 (Bergen and Hudson)
Assemblyman PETER J. BARNES, III
District 18 (Middlesex)
Assemblyman UPENDRA J. CHIVUKULA
District 17 (Middlesex and Somerset)

Co-Sponsored by:
Assemblyman Milam, Assemblywoman Pou, Assemblymen Fuentes, Delany, Rudder and Assemblywoman Evans

SYNOPSIS
Eliminates limit on application of corporation business tax research credit to 50% of liability otherwise due.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 6/30/2011)

AN ACT eliminating a limit on the application of the research expense credit allowed pursuant to the corporation business tax, amending P.L.1993, c.175.

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

1. Section 1 of P.L.1993, c.175 (C.54:10A-5.24) is amended to read as follows:

1. a. A taxpayer shall be allowed a credit, subject to the provisions of subsection b. of this section, against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to

(1) 10% of the excess of the qualified research expenses for the **[**fiscal or calendar accounting year (referred to hereafter in this section as the "tax year")**]** <u>privilege period</u> over the base amount; and

(2) 10% of the basic research payments <u>for the privilege period</u>

determined in accordance with section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41, as in effect on June 30, 1992, and provided that subsection (h) of 26 U.S.C. s.41 relating to termination shall not apply. Provided however, that the terms "qualified research expenses," "base amount," "qualified organization base amount period," "basic research" and any other terms determined by the Director of the Division of Taxation to affect the calculation of the credit shall include only expenditures for research conducted in this State.

b. No credit shall be allowed under section 42 of P.L.1987, c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and Employment Investment Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et seq.), for property or expenditures 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 fiscal or calendar accounting 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), and 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), prior to applying any credits allowable pursuant to this section**]** <u>The order</u>

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.

of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law shall be as prescribed by the director. Credits allowable pursuant to this section shall be applied in the order of the **[**credits' tax years**]** privilege periods for which the credits were allowed.

[The**]** For privilege periods beginning before January 1, 2012, the amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for **[**an accounting year**]** the privilege period 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.

For privilege periods beginning on or after January 1, 2012, the amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for the privilege period 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.

The amount of **[**tax year**]** credit otherwise allowable under this section which cannot be applied for the **[**tax year**]** privilege period due to the limitations of this subsection may be carried over, if necessary, to the seven **[**accounting years**]** privilege periods following a credit's **[**tax year**]** privilege period.

(cf: P.L1993, c.175, s.1.)

2. This act shall take effect immediately.

STATEMENT

This bill eliminates the limit on the application of the corporation business tax research expense credit to 50% of liability otherwise due for the tax period.

Currently, the research expense credit is equal to 10% of the increase in “qualified research expenses” (research performed by or for the taxpayer) in a tax year over a base amount, plus 10% of the “basic research payments” (university research funded by the taxpayer) in a tax period. The credit is limited to expenditures made in New Jersey. This bill does not affect the allowance of the credit.

This bill removes a restriction on the application of the credit. Currently, the amount of research credit applied in any tax period may not exceed 50% of the tax otherwise due and may not reduce the tax liability to less than the statutory minimum (currently $500 to $2,000 annually, depending on the gross receipts of the taxpayer). This bill eliminates the restriction that the amount of credit may not exceed 50% of the tax otherwise due for tax periods beginning on or after

January 1, 2012. The bill retains the restriction that the credit may not reduce the tax liability to less than the statutory minimum.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4205

STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Assembly Budget Committee reports favorably Assembly Bill No. 4205.

This bill eliminates the limit on the application of the corporation business tax research expense credit to 50% of liability otherwise due for the tax period.

Currently, the research expense credit is equal to 10% of the increase in "qualified research expenses" (research performed by or for the taxpayer) in a tax year over a base amount, plus 10% of the "basic research payments" (university research funded by the taxpayer) in a tax period. The credit is limited to expenditures made in New Jersey. This bill does not affect the allowance of the credit.

This bill removes a restriction on the application of the credit. Currently, the amount of research credit applied in any tax period may not exceed 50% of the tax otherwise due and may not reduce the tax liability to less than the statutory minimum (currently $500 to $2,000 annually, depending on the gross receipts of the taxpayer).

This bill eliminates the restriction that the amount of credit may not exceed 50% of the tax otherwise due for tax periods beginning on or after January 1, 2012. The bill retains the restriction that the credit may not reduce the tax liability to less than the statutory minimum, so under the bill a taxpayer will be permitted to apply available research expense credit to reduce tax liability to the statutory minimum.

FISCAL IMPACT:

The Budget Summary for the Governor's FY 2012 Budget recommended an initiative that is reflected in this bill. The Budget Summary estimated that the initiative will result in a $33 million corporation business tax revenue reduction for State FY 2012, $66 million for FY2013 and $66 million for FY 2014 based on 2007 data.

The Office of Legislative Services (OLS) believes that the Governor's Budget estimates for the recommended initiative are based on unrealistic assumptions about the availability and applicability of the research expense credit. The OLS believes that the actual revenue loss would be substantially less than that estimated in the Budget Summary, but without access to return data on the allowance and application of the research expense credit, cannot make an independent estimate. The OLS notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources constitutionally dedicated to certain environmental mitigation programs.

FISCAL NOTE
ASSEMBLY, No. 4205
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JULY 6, 2011

SUMMARY

Synopsis:	Eliminates limit on application of corporation business tax research credit to 50 percent of liability otherwise due
Type of Impact:	Increased availability of tax expenditure, reducing revenue from the corporation business tax, impacting the General Fund and the 4 percent Constitutional dedication for environmental programs.
Agencies Affected:	Department of the Treasury. Department of Environmental Protection.

Executive Estimate

Fiscal Impact	**Year 1**	**Year 2**	**Year 3**
State Cost	$33,000,000	$66,000,000	$66,000,000

- The Executive Branch estimates that the bill would result in a corporation business tax revenue reduction of $33 million impact for State FY 2012, $66 million for FY2013 and $66 million for FY 2014. The Office of Legislative Services (OLS) **does not concur**.

- The OLS believes that the Executive estimates are based on unrealistic assumptions about the availability and applicability of the research expense credit. The OLS believes that the actual revenue loss would be substantially less than that estimated by the Executive, but without access to return data on the allowance and application of the research expense credit cannot make an independent estimate. The OLS notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources Constitutionally dedicated to certain environmental mitigation programs.

BILL DESCRIPTION

Assembly Bill No. 4205 of 2011 eliminates the limit on the application of the corporation business tax research expense credit to 50 percent of liability otherwise due for the tax period.

Currently, the research expense credit is equal to 10 percent of the increase in "qualified research expenses" (research performed by or for the taxpayer) in a tax year over a base amount, plus 10 percent of the "basic research payments" (university research funded by the taxpayer) in

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Legislative Budget and Finance Office
Phone (609) 292-8030
Fax (609) 777-2442
www.njleg.state.nj.us

a tax period. The credit is limited to expenditures made in New Jersey. This bill does not affect the allowance of the credit.

This bill removes a restriction on the application of the credit. Currently, the amount of research credit applied in any tax period may not exceed 50 percent of the tax otherwise due (a "50 percent cap") and may not reduce the tax liability to less than the statutory minimum (currently $500 to $2,000 annually, depending on the gross receipts of the taxpayer).

This bill eliminates the restriction that the amount of credit may not exceed 50 percent of the tax otherwise due for tax periods beginning on or after January 1, 2012. The bill retains the restriction that the credit may not reduce the tax liability to less than the statutory minimum, so under the bill a taxpayer will be permitted to apply available research expense credit to reduce tax liability to the statutory minimum.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Budget Summary for the Governor's FY 2012 Budget estimates for a recommended initiative to increase the amount of corporation business tax liability that can be offset by the research expense credit from 50 percent of liability to 100 percent of liability, a $33 million corporation business tax revenue reduction for State FY 2012, $66 million for FY2013 and $66 million for FY 2014 based on 2007 data.

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The OLS cannot concur with the Executive estimate.

The Report on Tax Expenditures In New Jersey issued in 2011 by the Division of Taxation in the Department of the Treasury estimates the corporation business tax expenditure for the research expense credit, the decrease in corporation business tax revenue that results from the use of the research expense credit, at $65.6 million for FY2012 under current law.

The OLS notes that in order to use the estimate of current revenue loss to generate the estimate of revenue loss under the bill, a doubling of the current tax expenditure, it would be necessary to make two assumptions: (1) that every corporation expected to claim a research expense tax credit will be limited by the 50 percent cap, and (2) that each of those corporations will have credits available to apply, as under the bill, against 100 percent of its liability.

The OLS does not find either of those assumptions reasonable. Studies of the federal research and development credit (on which the New Jersey is based) indicate that the majority of the value federal credits are taken by relatively few large corporations with substantial income and substantial tax liability. There is no rationale that would indicate that claims for the New Jersey credit follow any different pattern. Therefore it is unlikely that any substantial amount of credit allowed to these large corporations is currently limited by the 50 percent cap.

There are also a substantial number of small corporations that have allowances of tax credits, typically start-up companies that have, as yet, little or no liability, so their use of credit is not limited by the 50 percent cap so much as it is limited by their lack of tax liability. To the extent that the credits allowed these corporations are applied at all, it is likely that the credits have been assigned through the tax benefit certificate transfer program (P.L.1997, c.334) and those transferred tax credits are acquired by corporations that can fully apply, and currently do fully apply, the credits against liability unlimited by the 50 percent cap.

The OLS believes that the actual revenue loss would be substantially less than that estimated by the Executive, but without access to return data on the allowance and application of the research expense credit, cannot make an independent estimate.

The Executive estimation methodology as to the first year of operation of the bill, suggesting that the bill would have precisely one-half of the effect as in other years, is unclear. The OLS notes, however, that it is usual, given that taxpayers make estimated payments based on past liability and that large taxpayers file under extension and subject to redetermination, that the first fiscal year impact of a corporation change is less than the impact in subsequent years.

The OLS also notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources Constitutionally dedicated to certain environmental mitigation programs.

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This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Christie Keeps Commitment to New Jerseyans with Balanced Budget, Increased Education Spending and Job Creating Tax Cuts

Thursday, June 30, 2011 Tags: Budget and Spending

Trenton, NJ – For the second year in a row, Governor Chris Christie has enacted a constitutionally balanced budget that reduces spending, does not raise taxes and protects critical priorities like education and health care. The revised budget is grounded in reality and is the polar opposite of a reckless Democratic spending plan the Governor was forced to line-item veto by nearly $1 billion in order to meet the state's constitutional obligation to deliver a balanced budget for the next fiscal year. At the same time, the budget builds on the hard-won progress made over the last year to right New Jersey's fiscal course over the long term, and also protects key priorities and encourages job growth. The Governor maintained his commitment to education by increasing funding by $850 million over last year's budget. In total, this means every dollar of cuts made last year has been restored and increased by an additional $30 million.

Additionally, the Governor took action rejecting job-killing tax increases and signed into law additional targeted tax cuts for small business and job creators.

"It is my solemn pact with the residents and taxpayers of New Jersey to never allow a return to the kind of reckless, autopilot spending that devastated our state's economic health in years past and which was embodied in the budget I repaired, a relic of days when there was no concern for the state's fiscal reality," Governor Chris Christie said. "Let me be clear – New Jersey is only going to spend the money we have. We are not going to revert back to business as usual and undo all the progress that has been made to improve New Jersey's long-term fiscal health. The actions I have taken today reinforce a commitment to protecting taxpayer dollars, safeguarding critical priorities like education, and rejecting tax increases that impede economic expansion and job creation.

"This budget is not only constitutionally balanced, but represents my commitment to education. This year's budget managed to increase funding by $850 million and does so in a fiscally prudent budget. New Jersey continues to spend more money per pupil than any other state and now is the time to complement the dollars spent with real education reform. Now is the time to turn our focus and energy to tackling the next big thing for our state – education reform," concluded Governor Christie.

The Governor's remedies, a combination of the line-item veto on the appropriations bill and the absolute veto, ensure the state will go into the next fiscal year with a constitutionally balanced budget, puts New Jersey on stronger fiscal footing and funds key commitments:

- Governor Christie's adjusted budget spends $29.7 billion, $900 million less than the Democratic budget and maintains a healthy and necessary surplus;
- Increases state aid to school districts by $850 million over last year. This commitment to education includes the Governor's initial $250 million increase for all school districts, meeting the Supreme Court's mandate by providing an additional $450 million to the Abbott districts, and an additional $150 million for non-Abbott districts;
- Doubles the Homestead Benefit to provide property tax relief for New Jersey families;
- Increases and secures funding for New Jersey hospitals by $20 million;
- Provides full funding for healthcare to low-income earners and the uninsured through Federally Qualified Health Centers;
- Provides $180 million in targeted tax cuts and incentives to grow the economy and create jobs;
- Fulfills New Jersey's commitment to make the state's pension fund payment;
- Doesn't raise taxes on individuals and job creators at a time when New Jerseyans are already subject to one of the highest state income tax rates in the nation and New York is reducing its tax burden; and
- Preserves critical spending for senior and disabled prescription aid.

In addition to returning a responsible and balanced budget to the Legislature, Governor Christie took other action today to stop job-killing tax increases and create a competitive climate for economic growth. Governor Christie vetoed Assembly Bill 4202, a Democratic proposal that would raise taxes on individuals and businesses at a time when New Jerseyans are already subject to one of the highest state income tax rates in the nation. The proposed income tax hike would directly hurt small business and exacerbate the volatility of New Jersey's revenue base, considering that 71 percent of the taxpayers who pay the top tax rate under this legislation report income from business activity, and nearly 42 percent of the revenue subject to this tax increase represents business income.

The Governor signed into law today two additional pro-growth tax cuts that were part of his budget proposal that will eliminate the cap on the corporation business tax research credit and decrease the minimum corporation business tax on S-corps by 25 percent. Previously, on April 28, Governor Christie signed two tax cuts that he had initially proposed, the single-sales tax factor and net-loss carry forward. In addition, as initially proposed by Governor Christie, the Transition Energy Facility Assessment will phase out over the next three years, reducing energy costs for New Jersey families and businesses. In total, these pro-growth measures provide $180 million in targeted tax relief for New Jersey businesses and entrepreneurs.

The Governor also vetoed Assembly bill A-4204 in a fiscally responsible move that allows the State to continue to provide the Earned Income Tax Credit (EITC) at a level that the State's taxpayers can sustain. While a difficult decision, providing the State EITC at 25 percent of the federal EITC is not affordable and not sustainable, which is why the Legislature passed and the Governor signed into law last year legislation to make the State EITC equal to 20 percent of the federal EITC. He also absolutely vetoed the Democrat's supplemental spending bill, A-4203, which was unconstitutional because it provided educational spending outside of the budget appropriations act.

A listing of spending line-items vetoed by the Governor, copies of the Governor's line item veto messages for S-4000 and S-4001, and copies of the Governor's veto messages for A-4202, A-4203 and A-4204 can be found below.

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