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P.L. 2017, CHAPTER 313, *approved January 16, 2018*
Senate Committee Substitute for
Senate, No. 3305

1 AN ACT concerning certain tax incentive programs and the
2 provisions associated with tax credit transfer certificates,
3 revising the tax treatment of those tax credit transfer certificates,
4 and amending various parts of the statutory law.

5

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

8

9 1. Section 6 of P.L.2011, c.149 (C.34:1B-247) is amended to
10 read as follows:

11 6. a. (1) The combined value of all credits approved by the
12 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and
13 P.L.2011, c.149 (C.34:1B-242 et al.) prior to December 31, 2013
14 shall not exceed \$1,750,000,000, except as may be increased by the
15 authority as set forth in paragraph (5) of subsection a. of section 35
16 of P.L.2009, c.90 (C.34:1B-209.3). Following the enactment of the
17 "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161
18 (C.52:27D-489p et al.), there shall be no monetary cap on the value
19 of credits approved by the authority attributable to the program
20 pursuant to the "New Jersey Economic Opportunity Act of 2013,"
21 P.L.2013, c.161 (C.52:27D-489p et al.).

22 (2) (Deleted by amendment, P.L.2013, c.161).

23 (3) (Deleted by amendment, P.L.2013, c.161).

24 (4) (Deleted by amendment, P.L.2013, c.161).

25 (5) (Deleted by amendment, P.L.2013, c.161).

26 b. (1) A business shall submit an application for tax credits
27 prior to July 1, 2019. The authority shall not approve an application
28 for tax credits unless the application was submitted prior to July 1,
29 2019.

30 (2) (a) A business shall submit its documentation indicating that
31 it has met the capital investment and employment requirements
32 specified in the incentive agreement for certification of its tax credit
33 amount within three years following the date of approval of its
34 application by the authority. The authority shall have the discretion
35 to grant two six-month extensions of this deadline. Except as
36 provided in subparagraph (b) of this paragraph, in no event shall the
37 incentive effective date occur later than four years following the
38 date of approval of an application by the authority.

39 (b) As of the effective date of P.L.2015, c.252, a business which
40 applied for the tax credit prior to July 1, 2014 under P.L.2011,
41 c.149 (C.34:1B-242 et al.), shall submit its documentation to the

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 thus is new matter.

1 authority no later than July 28, 2018, indicating that it has met the
2 capital investment and employment requirements specified in the
3 incentive agreement for certification of its tax credit amount.

4 (3) Full-time employment for an accounting or privilege period
5 shall be determined as the average of the monthly full-time
6 employment for the period.

7 (4) A business seeking a credit for a mega project shall apply for
8 the credit within four years after the effective date of the "New
9 Jersey Economic Opportunity Act of 2013," P.L.2013, c.161
10 (C.52:27D-489p et al.).

11 c. (1) In conducting its annual review, the authority may
12 require a business to submit any information determined by the
13 authority to be necessary and relevant to its review.

14 The credit amount for any tax period for which the
15 documentation of a business's credit amount remains uncertified as
16 of a date three years after the closing date of that period shall be
17 forfeited, although credit amounts for the remainder of the years of
18 the eligibility period shall remain available to it.

19 The credit amount may be taken by the tax certificate holder for
20 the tax period for which it was issued or may be carried forward for
21 use by the tax certificate holder in any of the next 20 successive tax
22 periods, and shall expire thereafter. The tax certificate holder may
23 transfer the tax credit amount on or after the date of issuance or at
24 any time within three years of the date of issuance for use by the
25 transferee in the tax period **【during】** for which it was **【transferred】**
26 issued or in any of the next **【three】** 20 successive tax periods.
27 Notwithstanding the foregoing, no more than the amount of tax
28 credits equal to the total credit amount divided by the duration of
29 the eligibility period in years may be taken in any tax period.

30 (2) Credits granted to a partnership shall be passed through to
31 the partners, members, or owners, respectively, pro-rata or pursuant
32 to an executed agreement among the partners, members, or owners
33 documenting an alternate distribution method provided to the
34 Director of the Division of Taxation in the Department of the
35 Treasury accompanied by any additional information as the director
36 may require.

37 (3) The amount of credit allowed may be applied against the tax
38 liability otherwise due pursuant to section 5 of P.L.1945, c.162
39 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132
40 (C.54:18A-2 and C.54:18A-3), pursuant to section 1 of P.L.1950,
41 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

42 d. (1) If, in any tax period, the business reduces the total
43 number of full-time employees in its Statewide workforce by more
44 than 20 percent from the number of full-time employees in its
45 Statewide workforce in the last tax period prior to the credit amount
46 approval under section 3 of P.L.2011, c.149 (C.34:1B-244), then the
47 business shall forfeit its credit amount for that tax period and each

1 subsequent tax period, until the first tax period for which
2 documentation demonstrating the restoration of the business's
3 Statewide workforce to the threshold levels required by this
4 paragraph has been reviewed and approved by the authority, for
5 which tax period and each subsequent tax period the full amount of
6 the credit shall be allowed.

7 (2) If, in any tax period, the number of full-time employees
8 employed by the business at the qualified business facility located
9 within a qualified incentive area drops below 80 percent of the
10 number of new and retained full-time jobs specified in the incentive
11 agreement, then the business shall forfeit its credit amount for that
12 tax period and each subsequent tax period, until the first tax period
13 for which documentation demonstrating the restoration of the
14 number of full-time employees employed by the business at the
15 qualified business facility to 80 percent of the number of jobs
16 specified in the incentive agreement.

17 (3) (a) If the qualified business facility is sold by the owner in
18 whole or in part during the eligibility period, the new owner shall
19 not acquire the capital investment of the seller and the seller shall
20 forfeit all credits for the tax period in which the sale occurs and all
21 subsequent tax periods, provided however that any credits of the
22 business shall remain unaffected.

23 (b) In connection with a regional distribution facility of
24 foodstuffs, the business entity or entities which own or lease the
25 facility shall qualify as a business regardless of: (i) the type of the
26 business entity or entities which own or lease the facility; (ii) the
27 ownership or leasing of the facility by more than one business
28 entity; or (iii) the ownership of the business entity or entities which
29 own or lease the facility. The ownership or leasing, whether by
30 members, shareholders, partners, or other owners of the business
31 entity or entities, shall be treated as ownership or leasing by
32 affiliates. The members, shareholders, partners, or other ownership
33 or leasing participants and others that are tenants in the facility shall
34 be treated as affiliates for the purpose of counting the full-time
35 employees and capital investments in the facility. The business
36 entity or entities may distribute credits to members, shareholders,
37 partners, or other ownership or leasing participants in accordance
38 with their respective interests. If the business entity or entities or
39 their members, shareholders, partners, or other ownership or leasing
40 participants lease space in the facility to members, shareholders,
41 partners, or other ownership or leasing participants or others as
42 tenants in the facility, the leases shall be treated as a lease to an
43 affiliate, and the business entity or entities shall not be subject to
44 forfeiture of the credits. For the purposes of this section, leasing
45 shall include subleasing and tenants shall include subtenants.

46 (4) (a) For a project located within a Garden State Growth Zone,
47 if, in any tax period, the number of full-time employees employed

1 by the business at the qualified business facility located within a
2 qualified incentive area increases above the number of full-time
3 employees specified in the incentive agreement, then the business
4 shall be entitled to an increased base credit amount for that tax
5 period and each subsequent tax period, for each additional full-time
6 employee added above the number of full-time employees specified
7 in the incentive agreement, until the first tax period for which
8 documentation demonstrating a reduction of the number of full-time
9 employees employed by the business at the qualified business
10 facility, at which time the tax credit amount will be adjusted
11 accordingly pursuant to this section.

12 (b) For a project located within a Garden State Growth Zone
13 which qualifies under the "Municipal Rehabilitation and Economic
14 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which
15 contains a Tourism District as established pursuant to section 5 of
16 P.L.2011, c.18 (C.5:12-219) and regulated by the Casino
17 Reinvestment Development Authority, and which qualifies for a tax
18 credit pursuant to subsubparagraph (ii) of subparagraphs (a) through
19 (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149
20 (C.34:1B-246), if, in any tax period the number of full-time
21 employees employed by the business at the qualified business
22 facility located within a qualified incentive area increases above the
23 number of full-time employees specified in the incentive agreement
24 such that the business shall then meet the minimum number of
25 employees required in subparagraph (b), (c), (d), or (e) of paragraph
26 (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246),
27 then the authority shall recalculate the total tax credit amount per
28 full-time job by using the certified capital investment of the project
29 allowable under the applicable subsubparagraph and the number of
30 full-time jobs certified on the date of the recalculation and applying
31 those numbers to subparagraph (b), (c), (d), or (e) of paragraph (6)
32 of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246),
33 until the first tax period for which documentation demonstrating a
34 reduction of the number of full-time employees employed by the
35 business at the qualified business facility, at which time the tax
36 credit amount shall be adjusted accordingly pursuant to this section.

37 e. The authority shall not enter into an incentive agreement
38 with a business that has previously received incentives pursuant to
39 the "Business Retention and Relocation Assistance Act," P.L.1996,
40 c.25 (C.34:1B-112 et seq.), the "Business Employment Incentive
41 Program Act," P.L.1996, c.26 (C.34:1B-124 et seq.), or any other
42 program administered by the authority unless:

43 (1) the business has satisfied all of its obligations underlying the
44 previous award of incentives or is compliant with section 4 of
45 P.L.2011, c.149 (C.34:1B-245); or

46 (2) the capital investment incurred and new or retained full-time
47 jobs pledged by the business in the new incentive agreement are

1 separate and apart from any capital investment or jobs underlying
2 the previous award of incentives.

3 f. A business which has already applied for a tax credit
4 incentive award prior to the effective date of the "New Jersey
5 Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-
6 489p et al.), but who has not yet been approved for the tax credits,
7 or has not executed an agreement with the authority, may proceed
8 under that application or seek to amend the application or reapply
9 for a tax credit incentive award for the same project or any part
10 thereof for the purpose of availing itself of any more favorable
11 provisions of the program.

12 (cf: P.L.2015, c.252, s.4)

13

14 2. Section 7 of P.L.2011, c.149 (C.34:1B-248) is amended to
15 read as follows:

16 7. A business may apply to the Director of the Division of
17 Taxation in the Department of the Treasury and the chief executive
18 officer of the authority for a tax credit transfer certificate, covering
19 one or more years, in lieu of the business being allowed any amount
20 of the credit against the tax liability of the business. The tax credit
21 transfer certificate, upon receipt thereof by the business from the
22 director and the chief executive officer of the authority, may be sold
23 or assigned, in full or in part, in an amount not less than \$25,000, to
24 any other person that may have a tax liability pursuant to section 5
25 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of
26 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
27 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.
28 The certificate provided to the business shall include a statement
29 waiving the business's right to claim that amount of the credit
30 against the taxes that the business has elected to sell or assign. The
31 sale or assignment of any amount of a tax credit transfer certificate
32 allowed under this section shall not be exchanged for consideration
33 received by the business of less than 75 percent of the transferred
34 credit amount before considering any further discounting to present
35 value which shall be permitted, except that the 75 percent minimum
36 measure of consideration shall not apply to the sale or assignment
37 of a tax credit transfer certificate to an affiliate irrespective of
38 whether the affiliate met the capital investment and employment
39 requirements specified in the incentive agreement. Any amount of
40 a tax credit transfer certificate used by a purchaser or assignee
41 against a tax liability shall be subject to the same limitations and
42 conditions that apply to the use of the credit by the business that
43 originally applied for and was allowed the credit.

44 (cf: P.L.2014, c.63, s.6)

45

46 3. Section 10 of P.L.2014, c.63 (C.34:1B-251) is amended to
47 read as follows:

1 10. a. For the purposes of this section:

2 "Authority" means the New Jersey Economic Development
3 Authority established pursuant to section 4 of P.L.1974, c.80
4 (C.34:1B-4).

5 "Government entity" means the State government, a local unit of
6 government, or a State or local government agency or authority.

7 "Providing public infrastructure" means undertaking and paying
8 for the construction of public infrastructure; contributing money or
9 paying debt service for the construction of public infrastructure; or
10 deeding land to a government entity for use as public infrastructure.

11 "Public infrastructure" means: (1) buildings and structures, such
12 as schools; fire houses; police stations; recreation centers; public
13 works garages; and water and sewer treatment and pumping
14 facilities; (2) open space with improvements such as athletic fields;
15 playgrounds; planned parks; (3) open space without improvements;
16 and (4) public transportation facilities such as train stations and
17 public parking facilities. To qualify as public infrastructure under
18 this section, the facilities, land, or both, shall have a minimum fair
19 market value of \$5 million; provided, however, that multiple lands
20 and facilities, valued individually at less than \$5 million, that are
21 part of the same redevelopment project may be aggregated to
22 achieve the minimum \$5 million requirement. In the case of open
23 space without improvements, the land shall have a minimum fair
24 market value of at least \$1 million prior to its dedication as open
25 space. Sidewalks, streets, roads, ramps, and jug handles shall not
26 be deemed public infrastructure for the purposes of this section.

27 "Tax credit" means a credit equal to 100 percent of the
28 applicant's cost of providing public infrastructure for use to offset a
29 tax liability.

30 "Tax liability" means a liability for the taxes imposed pursuant to
31 the "Corporation Business Tax (1945)," P.L.1945, c.162 (C.54:10A-
32 1 et seq.), and liability for basic, general, additional, and
33 supplemental realty transfer fees imposed pursuant to P.L.1968,
34 c.49 (C.46:15-5 et seq.), as amended and supplemented.

35 "Urban transit hub municipality" means an urban transit hub
36 municipality, as defined in section 2 of P.L.2011, c.149 (C.34:1B-
37 243).

38 b. Commencing with October 24, 2014, the effective date of
39 P.L.2014, c.63 (C.34:1B-251 et al.), and ending on December 31 of
40 the fifth complete year next following, an applicant that has agreed
41 to, or has provided, public infrastructure may apply to the New
42 Jersey Economic Development Authority for a tax credit under the
43 following conditions:

44 (1) The applicant or another entity by contract or development
45 agreement either makes a new capital investment in an amount
46 equal to or greater than \$10,000,000 at any time during the term set
47 forth in this subsection, or causes another entity by contract or

1 development agreement to construct a building, complex of
2 buildings or other similar structures or facilities, which relies on the
3 completed public infrastructure and completes construction during
4 the term set forth in this subsection.

5 (2) The applicant has not received a tax credit under the "Grow
6 New Jersey Assistance Program" established by section 3 of
7 P.L.2011, c.149 (C.34:1B-244).

8 (3) The applicant has not received a grant under a State or a
9 local Economic Redevelopment and Growth Grant program
10 pursuant to section 4 or section 5 of P.L.2009, c.90 (C.52:27D-489d
11 or C.52:27D-489e).

12 (4) The applicant is not a "Garden State Growth Zone
13 Development Entity," as defined in section 23 of P.L.2013, c.161
14 (C.52:27D-489r).

15 (5) The applicant is not partnered with the New Jersey Sports
16 and Exposition Authority for the capital investment pursuant to this
17 section.

18 c. The New Jersey Economic Development Authority shall
19 grant an application for a tax credit if the government entity
20 receiving the public infrastructure adopts a resolution and files it
21 with the authority, consenting to the award of the tax credit and the
22 ownership of the public infrastructure is transferred to that
23 government entity, and either: (1) the construction commences after
24 January 1, 2013; (2) the construction is completed, as evidenced by
25 a certificate of occupancy or other certificate of completion, after
26 January 1, 2013; (3) the first monetary or debt service payment
27 occurs after January 1, 2013; or (4) the land is deeded to the
28 government entity after January 1, 2013.

29 d. (1) (a) Except as provided in subparagraph (b) of this
30 paragraph, the total amount of tax credits that may be awarded to an
31 eligible applicant for a single project shall not exceed \$5,000,000.

32 (b) In the case of an applicant engaged in a brownfields
33 redevelopment project comprising park and infrastructure
34 development within an urban transit hub municipality, the total
35 amount of tax credits the authority may award to the applicant shall
36 not exceed \$2,000,000 cumulative of all applications submitted
37 under this section by the applicant. As used in this subparagraph,
38 "applicant" means an entity applying for a tax credit pursuant to
39 subsection b. of this section and shall include its subsidiaries, its
40 parent, affiliated entities, and common principal owners.

41 (c) The total value of all tax credits approved by the authority
42 pursuant to this section shall not exceed \$22,000,000.

43 (2) A tax credit granted pursuant to this section may be
44 transferred in the same manner as tax credits are transferred **【**under
45 section 33 of P.L.2009, c.90 (C.34:1B-209.1)**】** pursuant to section 7
46 of P.L.2011, c.149 (C.34:1B-248) and utilized in the same manner

1 as provided pursuant to paragraph (1) of subsection c. of section 6
2 of P.L.2011, c.149 (C.34:1B-247).

3 (3) Except for the limitations set forth in paragraph (1) of this
4 subsection, nothing in this section shall prohibit an applicant from
5 applying for and being awarded multiple tax credit awards based on
6 separate public infrastructure projects.

7 e. The chief executive of the authority, in consultation with the
8 Director of the Division of Taxation in the Department of the
9 Treasury, may adopt rules and regulations pursuant to the
10 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
11 seq.), necessary to implement the provisions of this section.

12 (cf: P.L.2015, c.217, s.2)

13

14 4. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to
15 read as follows:

16 4. For the purposes of this act, unless the context requires a
17 different meaning:

18 (a) "Commissioner" or "director" shall mean the Director of the
19 Division of Taxation of the State Department of the Treasury.

20 (b) "Allocation factor" shall mean the proportionate part of a
21 taxpayer's net worth or entire net income used to determine a
22 measure of its tax under this act.

23 (c) "Corporation" shall mean any corporation, joint-stock
24 company or association and any business conducted by a trustee or
25 trustees wherein interest or ownership is evidenced by a certificate
26 of interest or ownership or similar written instrument, any other
27 entity classified as a corporation for federal income tax purposes,
28 and any state or federally chartered building and loan association or
29 savings and loan association.

30 (d) "Net worth" shall mean the aggregate of the values disclosed
31 by the books of the corporation for (1) issued and outstanding
32 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
33 undivided profits, and (4) surplus reserves which can reasonably be
34 expected to accrue to holders or owners of equitable shares, not
35 including reasonable valuation reserves, such as reserves for
36 depreciation or obsolescence or depletion. Notwithstanding the
37 foregoing, net worth shall not include any deduction for the amount
38 of the excess depreciation described in paragraph (2)(F) of
39 subsection (k) of this section. The foregoing aggregate of values
40 shall be reduced by 50% of the amount disclosed by the books of
41 the corporation for investment in the capital stock of one or more
42 subsidiaries, which investment is defined as ownership (1) of at
43 least 80% of the total combined voting power of all classes of stock
44 of the subsidiary entitled to vote and (2) of at least 80% of the total
45 number of shares of all other classes of stock except nonvoting
46 stock which is limited and preferred as to dividends. In the case of
47 investment in an entity organized under the laws of a foreign

1 country, the foregoing requisite degree of ownership shall effect a
2 like reduction of such investment from the net worth of the
3 taxpayer, if the foreign entity is considered a corporation for any
4 purpose under the United States federal income tax laws, such as
5 (but not by way of sole examples) for the purpose of supplying
6 deemed paid foreign tax credits or for the purpose of status as a
7 controlled foreign corporation. In calculating the net worth of a
8 taxpayer entitled to reduction for investment in subsidiaries, the
9 amount of liabilities of the taxpayer shall be reduced by such
10 proportion of the liabilities as corresponds to the ratio which the
11 excluded portion of the subsidiary values bears to the total assets of
12 the taxpayer.

13 In the case of banking corporations which have international
14 banking facilities as defined in subsection (n), the foregoing
15 aggregate of values shall also be reduced by retained earnings of the
16 international banking facility. Retained earnings means the
17 earnings accumulated over the life of such facility and shall not
18 include the distributive share of dividends paid and federal income
19 taxes paid or payable during the tax year.

20 If in the opinion of the commissioner, the corporation's books do
21 not disclose fair valuations the commissioner may make a
22 reasonable determination of the net worth which, in his opinion,
23 would reflect the fair value of the assets, exclusive of subsidiary
24 investments as defined aforesaid, carried on the books of the
25 corporation, in accordance with sound accounting principles, and
26 such determination shall be used as net worth for the purpose of this
27 act.

28 (e) (Deleted by amendment, P.L.1998, c.114.)

29 (f) "Investment company" shall mean any corporation whose
30 business during the period covered by its report consisted, to the
31 extent of at least 90% thereof of holding, investing and reinvesting
32 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
33 and other securities for its own account, but this shall not include
34 any corporation which: (1) is a merchant or a dealer of stocks,
35 bonds and other securities, regularly engaged in buying the same
36 and selling the same to customers; or (2) had less than 90% of its
37 average gross assets in New Jersey, at cost, invested in stocks,
38 bonds, debentures, mortgages, notes, patents, patent rights or other
39 securities or consisting of cash on deposit during the period covered
40 by its report; or (3) is a banking corporation, a savings institution,
41 or a financial business corporation as defined in the Corporation
42 Business Tax Act.

43 (g) "Regulated investment company" shall mean any corporation
44 which for a period covered by its report, is registered and regulated
45 under the Investment Company Act of 1940 (54 Stat. 789), as
46 amended.

1 (h) "Taxpayer" shall mean any corporation, and any partnership
2 required, or consenting, to report or to pay taxes, interest or
3 penalties under this act. "Taxpayer" shall not include a partnership
4 that is listed on a United States national stock exchange.

5 (i) "Fiscal year" shall mean an accounting period ending on any
6 day other than the last day of December on the basis of which the
7 taxpayer is required to report for federal income tax purposes.

8 (j) Except as herein provided, "privilege period" shall mean the
9 calendar or fiscal accounting period for which a tax is payable
10 under this act.

11 (k) "Entire net income" shall mean total net income from all
12 sources, whether within or without the United States, and shall
13 include the gain derived from the employment of capital or labor, or
14 from both combined, as well as profit gained through a sale or
15 conversion of capital assets.

16 For the purpose of this act, the amount of a taxpayer's entire net
17 income shall be deemed prima facie to be equal in amount to the
18 taxable income, before net operating loss deduction and special
19 deductions, which the taxpayer is required to report, or, if the
20 taxpayer is classified as a partnership for federal tax purposes,
21 would otherwise be required to report, to the United States Treasury
22 Department for the purpose of computing its federal income tax,
23 provided however, that in the determination of such entire net
24 income,

25 (1) Entire net income shall exclude for the periods set forth in
26 paragraph (2)(F)(i) of this subsection, any amount, except with
27 respect to qualified mass commuting vehicles as described in
28 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect
29 immediately prior to January 1, 1984, which is included in a
30 taxpayer's federal taxable income solely as a result of an election
31 made pursuant to the provisions of paragraph (8) of that section.

32 (2) Entire net income shall be determined without the exclusion,
33 deduction or credit of:

34 (A) The amount of any specific exemption or credit allowed in
35 any law of the United States imposing any tax on or measured by
36 the income of corporations.

37 (B) Any part of any income from dividends or interest on any
38 kind of stock, securities or indebtedness, except as provided in
39 paragraph (5) of subsection (k) of this section.

40 (C) Taxes paid or accrued to the United States, a possession or
41 territory of the United States, a state, a political subdivision thereof,
42 or the District of Columbia, or to any foreign country, state,
43 province, territory or subdivision thereof, on or measured by profits
44 or income, or business presence or business activity, or the tax
45 imposed by this act, or any tax paid or accrued with respect to
46 subsidiary dividends excluded from entire net income as provided
47 in paragraph (5) of subsection (k) of this section.

1 (D) (Deleted by amendment, P.L.1985, c.143.)

2 (E) (Deleted by amendment, P.L.1995, c.418.)

3 (F) (i) The amount by which depreciation reported to the United
4 States Treasury Department for property placed in service on and
5 after January 1, 1981, but prior to taxpayer fiscal or calendar
6 accounting years beginning on and after the effective date of
7 P.L.1993, c.172, for purposes of computing federal taxable income
8 in accordance with section 168 of the Internal Revenue Code in
9 effect after December 31, 1980, exceeds the amount of depreciation
10 determined in accordance with the Internal Revenue Code
11 provisions in effect prior to January 1, 1981, but only with respect
12 to a taxpayer's accounting period ending after December 31, 1981;
13 provided, however, that where a taxpayer's accounting period
14 begins in 1981 and ends in 1982, no modification shall be required
15 with respect to this paragraph (F) for the report filed for such period
16 with respect to property placed in service during that part of the
17 accounting period which occurs in 1981. The provisions of this
18 subparagraph shall not apply to assets placed in service prior to
19 January 1, 1998 of a gas, gas and electric, and electric public utility
20 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
21 seq.) prior to 1998.

22 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
23 (2) of this subsection, any amount, except with respect to qualified
24 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
25 the Internal Revenue Code as in effect immediately prior to January
26 1, 1984, which the taxpayer claimed as a deduction in computing
27 federal income tax pursuant to a qualified lease agreement under
28 paragraph (8) of that section.

29 The director shall promulgate rules and regulations necessary to
30 carry out the provisions of this section, which rules shall provide,
31 among others, the manner in which the remaining life of property
32 shall be reported.

33 (G) (i) The amount of any civil, civil administrative, or criminal
34 penalty or fine, including a penalty or fine under an administrative
35 consent order, assessed and collected for a violation of a State or
36 federal environmental law, an administrative consent order, or an
37 environmental ordinance or resolution of a local governmental
38 entity, and any interest earned on the penalty or fine, and any
39 economic benefits having accrued to the violator as a result of a
40 violation, which benefits are assessed and recovered in a civil, civil
41 administrative, or criminal action, or pursuant to an administrative
42 consent order. The provisions of this paragraph shall not apply to a
43 penalty or fine assessed or collected for a violation of a State or
44 federal environmental law, or local environmental ordinance or
45 resolution, if the penalty or fine was for a violation that resulted
46 from fire, riot, sabotage, flood, storm event, natural cause, or other
47 act of God beyond the reasonable control of the violator, or caused

1 by an act or omission of a person who was outside the reasonable
2 control of the violator.

3 (ii) The amount of treble damages paid to the Department of
4 Environmental Protection pursuant to subsection a. of section 7 of
5 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
6 department in removing, or arranging for the removal of, an
7 unauthorized discharge upon failure of the discharger to comply
8 with a directive from the department to remove, or arrange for the
9 removal of, the discharge.

10 (H) The amount of any sales and use tax paid by a utility vendor
11 pursuant to section 71 of P.L.1997, c.162.

12 (I) Interest paid, accrued or incurred for the privilege period to
13 a related member, as defined in section 5 of P.L.2002, c.40
14 (C.54:10A-4.4), except that a deduction shall be permitted to the
15 extent that the taxpayer establishes by clear and convincing
16 evidence, as determined by the director, that: (i) a principal purpose
17 of the transaction giving rise to the payment of the interest was not
18 to avoid taxes otherwise due under Title 54 of the Revised Statutes
19 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
20 pursuant to arm's length contracts at an arm's length rate of interest,
21 and (iii)(aa) the related member was subject to a tax on its net
22 income or receipts in this State or another state or possession of the
23 United States or in a foreign nation, (bb) a measure of the tax
24 includes the interest received from the related member, and (cc) the
25 rate of tax applied to the interest received by the related member is
26 equal to or greater than a rate three percentage points less than the
27 rate of tax applied to taxable interest by this State.

28 A deduction shall also be permitted if the taxpayer establishes by
29 clear and convincing evidence, as determined by the director, that
30 the disallowance of a deduction is unreasonable, or the taxpayer and
31 the director agree in writing to the application or use of an
32 alternative method of apportionment under section 8 of P.L.1945,
33 c.162 (C.54:10A-8); nothing in this subsection shall be construed to
34 limit or negate the director's authority to otherwise enter into
35 agreements and compromises otherwise allowed by law.

36 A deduction shall also be permitted to the extent that the
37 taxpayer establishes by a preponderance of the evidence, as
38 determined by the director, that the interest is directly or indirectly
39 paid, accrued or incurred to (i) a related member in a foreign nation
40 which has in force a comprehensive income tax treaty with the
41 United States, provided however that the taxpayer shall disclose on
42 its return for the privilege period the name of the related member,
43 the amount of the interest, the relevant foreign nation, and such
44 other information as the director may prescribe or (ii) to an
45 independent lender and the taxpayer guarantees the debt on which
46 the interest is required.

1 (J) Amounts deducted for federal tax purposes pursuant to
2 section 199 of the federal Internal Revenue Code of 1986, 26
3 U.S.C. s.199, except that this exclusion shall not apply to amounts
4 deducted pursuant to that section that are exclusively based upon
5 domestic production gross receipts of the taxpayer which are
6 derived only from any lease, rental, license, sale, exchange, or other
7 disposition of qualifying production property which the taxpayer
8 demonstrates to the satisfaction of the director was manufactured or
9 produced by the taxpayer in whole or in significant part within the
10 United States but not qualified production property that was grown
11 or extracted by the taxpayer. "Manufactured or produced" as used
12 in this paragraph shall be limited to performance of an operation or
13 series of operations the object of which is to place items of tangible
14 personal property in a form, composition, or character different
15 from that in which they were acquired. The change in form,
16 composition, or character shall be a substantial change, and result in
17 a transformation of property into a different or substantially more
18 usable product.

19 (3) The commissioner may, whenever necessary to properly
20 reflect the entire net income of any taxpayer, determine the year or
21 period in which any item of income or deduction shall be included,
22 without being limited to the method of accounting employed by the
23 taxpayer.

24 (4) There shall be allowed as a deduction from entire net income
25 of a banking corporation, to the extent not deductible in
26 determining federal taxable income, the eligible net income of an
27 international banking facility determined as follows:

28 (A) The eligible net income of an international banking facility
29 shall be the amount remaining after subtracting from the eligible
30 gross income the applicable expenses;

31 (B) Eligible gross income shall be the gross income derived by
32 an international banking facility, which shall include, but not be
33 limited to, gross income derived from:

34 (i) Making, arranging for, placing or carrying loans to foreign
35 persons, provided, however, that in the case of a foreign person
36 which is an individual, or which is a foreign branch of a domestic
37 corporation (other than a bank), or which is a foreign corporation or
38 foreign partnership which is controlled by one or more domestic
39 corporations (other than banks), domestic partnerships or resident
40 individuals, all the proceeds of the loan are for use outside of the
41 United States;

42 (ii) Making or placing deposits with foreign persons which are
43 banks or foreign branches of banks (including foreign subsidiaries)
44 or foreign branches of the taxpayers or with other international
45 banking facilities;

- 1 (iii) Entering into foreign exchange trading or hedging
2 transactions related to any of the transactions described in this
3 paragraph; or
- 4 (iv) Such other activities as an international banking facility
5 may, from time to time, be authorized to engage in;
- 6 (C) Applicable expenses shall be any expense or other
7 deductions attributable, directly or indirectly, to the eligible gross
8 income described in subparagraph (B) of this paragraph.
- 9 (5) Entire net income shall exclude 100% of dividends which
10 were included in computing such taxable income for federal income
11 tax purposes, paid to the taxpayer by one or more subsidiaries
12 owned by the taxpayer to the extent of the 80% or more ownership
13 of investment described in subsection (d) of this section and shall
14 exclude 50% of dividends which were included in computing such
15 taxable income for federal income tax purposes, paid to the
16 taxpayer by one or more subsidiaries owned by the taxpayer to the
17 extent of 50% or more ownership of investment, such ownership of
18 investment calculated in the same manner as the 80% or more of
19 ownership of investment is calculated as described in subsection (d)
20 of this section.
- 21 (6) (A) Net operating loss deduction. There shall be allowed as a
22 deduction for the privilege period the net operating loss carryover to
23 that period.
- 24 (B) Net operating loss carryover. A net operating loss for any
25 privilege period ending after June 30, 1984 shall be a net operating
26 loss carryover to each of the seven privilege periods following the
27 period of the loss and a net operating loss for any privilege period
28 ending after June 30, 2009 shall be a net operating loss carryover to
29 each of the twenty privilege periods following the period of the
30 loss. The entire amount of the net operating loss for any privilege
31 period (the "loss period") shall be carried to the earliest of the
32 privilege periods to which the loss may be carried. The portion of
33 the loss which shall be carried to each of the other privilege periods
34 shall be the excess, if any, of the amount of the loss over the sum of
35 the entire net income, computed without the exclusions permitted in
36 paragraphs (4) and (5) of this subsection or the net operating loss
37 deduction provided by subparagraph (A) of this paragraph, for each
38 of the prior privilege periods to which the loss may be carried.
- 39 (C) Net operating loss. For purposes of this paragraph the term
40 "net operating loss" means the excess of the deductions over the
41 gross income used in computing entire net income without the net
42 operating loss deduction provided for in subparagraph (A) of this
43 paragraph and the exclusions in paragraphs (4) and (5) of this
44 subsection.
- 45 (D) Change in ownership. Where there is a change in 50% or
46 more of the ownership of a corporation because of redemption or
47 sale of stock and the corporation changes the trade or business

1 giving rise to the loss, no net operating loss sustained before the
2 changes may be carried over to be deducted from income earned
3 after such changes. In addition where the facts support the premise
4 that the corporation was acquired under any circumstances for the
5 primary purpose of the use of its net operating loss carryover, the
6 director may disallow the carryover.

7 (E) Notwithstanding the provisions of this paragraph (6) of
8 subsection (k) of this section to the contrary, for privilege periods
9 beginning during calendar year 2002 and calendar year 2003, no
10 deduction for any net operating loss carryover shall be allowed and
11 for privilege periods beginning during calendar year 2004 and
12 calendar year 2005, there shall be allowed as a deduction for the
13 privilege period so much of the net operating loss carryover as
14 reduces entire net income otherwise calculated by 50%. If and only
15 to the extent that any net operating loss carryover deduction is
16 disallowed by reason of this subparagraph (E), the date on which
17 the amount of the disallowed net operating loss carryover deduction
18 would otherwise expire shall be extended by a period equal to the
19 period for which application of the net operating loss was
20 disallowed by this subparagraph.

21 Provided, that this subparagraph (E) shall not restrict the
22 surrender or acquisition of corporation business tax benefit
23 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
24 7.42a) and shall not restrict the application of corporation business
25 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
26 (C.54:10A-4.2).

27 (F) Reduction for discharge of indebtedness. A net operating
28 loss for any privilege period ending after June 30, 2014, and any net
29 operating loss carryover to such privilege period, shall be reduced
30 by the amount excluded from federal taxable income under
31 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
32 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),
33 for the privilege period of the discharge of indebtedness.

34 (7) The entire net income of gas, electric and gas and electric
35 public utilities that were subject to the provisions of P.L.1940, c.5
36 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
37 substituting the New Jersey depreciation allowance for federal tax
38 depreciation with respect to assets placed in service prior to January
39 1, 1998. For gas, electric, and gas and electric public utilities that
40 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
41 seq.) prior to 1998, the New Jersey depreciation allowance shall be
42 computed as follows: All depreciable assets placed in service prior
43 to January 1, 1998 shall be considered a single asset account. The
44 New Jersey tax basis of this depreciable asset account shall be an
45 amount equal to the carryover adjusted basis for federal income tax
46 purposes on December 31, 1997 of all depreciable assets in service
47 on December 31, 1997, increased by the excess, of the "net carrying

1 value," defined to be adjusted book basis of all assets and liabilities,
2 excluding deferred income taxes, recorded on the public utility's
3 books of account on December 31, 1997, over the carryover
4 adjusted basis for federal income tax purposes on December 31,
5 1997 of all assets and liabilities owned by the gas, electric, or gas
6 and electric public utility as of December 31, 1997. "Books of
7 account" for gas, gas and electric, and electric public utilities means
8 the uniform system of accounts as promulgated by the Federal
9 Energy Regulatory Commission and adopted by the Board of Public
10 Utilities. The following adjustments to entire net income shall be
11 made pursuant to this section:

12 (A) Depreciation for property placed in service prior to January
13 1, 1998 shall be adjusted as follows:

14 (i) Depreciation for federal income tax purposes shall be
15 disallowed in full.

16 (ii) A deduction shall be allowed for the New Jersey
17 depreciation allowance. The New Jersey depreciation allowance
18 shall be computed for the single asset account described above
19 based on the New Jersey tax basis as adjusted above as if all assets
20 in the single asset account were first placed in service on January 1,
21 1998. Depreciation shall be computed using the straight line
22 method over a thirty-year life. A full year's depreciation shall be
23 allowed in the initial tax year. No half-year convention shall apply.
24 The depreciable basis of the single account shall be reduced by the
25 adjusted federal tax basis of assets sold, retired, or otherwise
26 disposed of during any year on which gain or loss is recognized for
27 federal income tax purposes as described in subparagraph (B) of
28 this paragraph.

29 (B) Gains and losses on sales, retirements and other dispositions
30 of assets placed in service prior to January 1, 1998 shall be
31 recognized and reported on the same basis as for federal income tax
32 purposes.

33 (C) The Director of the Division of Taxation shall promulgate
34 regulations describing the methodology for allocating the single
35 asset account in the event that a portion of the utility's operations
36 are separated, spun-off, transferred to a separate company or
37 otherwise desegregated.

38 (8) In the case of taxpayers that are gas, electric, gas and
39 electric, or telecommunications public utilities as defined pursuant
40 to subsection (q) of this section, the director shall have authority to
41 promulgate rules and issue guidance correcting distortions and
42 adjusting timing differences resulting from the adoption of
43 P.L.1997, c.162 (C.54:10A-5.25 et al.).

44 (9) Notwithstanding paragraph (1) of this subsection, entire net
45 income shall not include the income derived by a corporation
46 organized in a foreign country from the international operation of a
47 ship or ships, or from the international operation of aircraft, if such

1 income is exempt from federal taxation pursuant to section 883 of
2 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

3 (10) Entire net income shall exclude all income of an alien
4 corporation the activities of which are limited in this State to
5 investing or trading in stocks and securities for its own account,
6 investing or trading in commodities for its own account, or any
7 combination of those activities, within the meaning of section 864
8 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
9 effect on December 31, 1998. Notwithstanding the previous
10 sentence, if an alien corporation undertakes one or more infrequent,
11 extraordinary or non-recurring activities, including but not limited
12 to the sale of tangible property, only the income from such
13 infrequent, extraordinary or non-recurring activity shall be subject
14 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
15 seq.), and that amount of income subject to tax shall be determined
16 without regard to the allocation to that specific transaction of any
17 general business expense of the taxpayer and shall be specifically
18 assigned to this State for taxation by this State without regard to
19 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this
20 paragraph, "alien corporation" means a corporation organized under
21 the laws of a jurisdiction other than the United States or its political
22 subdivisions.

23 (11) No deduction shall be allowed for research and
24 experimental expenditures, to the extent that those research and
25 experimental expenditures are qualified research expenses or basic
26 research payments for which an amount of credit is claimed
27 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless
28 those research and experimental expenditures are also used to
29 compute a federal credit claimed pursuant to section 41 of the
30 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

31 (12) (A) Notwithstanding the provisions of subsection (k) of
32 section 168 of the federal Internal Revenue Code of 1986, 26
33 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
34 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
35 law, for property acquired after September 10, 2001, the
36 depreciation deduction otherwise allowed pursuant to section 167 of
37 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
38 be determined pursuant to the provisions of the federal Internal
39 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
40 December 31, 2001.

41 (B) The director shall prescribe the rules and regulations
42 necessary to carry out the provisions of this paragraph, including,
43 among others, those for determining the adjusted basis of the
44 acquired property for the purposes of the Corporation Business Tax
45 Act (1945), P.L.1945, c.162.

46 (13) (A) Notwithstanding the provisions of section 179 of the
47 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for

1 property placed in service on or after January 1, 2004, the costs that
2 a taxpayer may otherwise elect to treat as an expense which is not
3 chargeable to a capital account shall be determined pursuant to the
4 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.
5 s.1 et seq.) in effect on December 31, 2002.

6 (B) The director shall prescribe the rules and regulations
7 necessary to carry out the provisions of this paragraph, including,
8 among others, those for determining the adjusted basis of the
9 acquired property for the purposes of the Corporation Business Tax
10 Act (1945), P.L.1945, c.162.

11 (14)Notwithstanding the provisions of subsection (i) of section
12 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
13 for privilege periods beginning after December 31, 2008 and before
14 January 1, 2011, entire net income shall include the amount of
15 discharge of indebtedness income excluded for federal income tax
16 purposes pursuant to subsection (i) of section 108 of the federal
17 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
18 periods beginning on or after January 1, 2014 and before January 1,
19 2019, entire net income shall exclude the amount of discharge of
20 indebtedness income included for federal income tax purposes,
21 pursuant to subsection (i) of section 108 of the federal Internal
22 Revenue Code of 1986 (26 U.S.C. s.108).

23 (15) Entire net income shall exclude the gain or income derived
24 from the sale or assignment of a tax credit transfer certificate
25 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
26 10 of P.L.2014, c.63 (C.34:1B-251).

27 (l) "Real estate investment trust" shall mean any corporation,
28 trust or association qualifying and electing to be taxed as a real
29 estate investment trust under federal law.

30 (m) "Financial business corporation" shall mean any corporate
31 enterprise which is (1) in substantial competition with the business
32 of national banks and which (2) employs moneyed capital with the
33 object of making profit by its use as money, through discounting
34 and negotiating promissory notes, drafts, bills of exchange and
35 other evidences of debt; buying and selling exchange; making of or
36 dealing in secured or unsecured loans and discounts; dealing in
37 securities and shares of corporate stock by purchasing and selling
38 such securities and stock without recourse, solely upon the order
39 and for the account of customers; or investing and reinvesting in
40 marketable obligations evidencing indebtedness of any person,
41 copartnership, association or corporation in the form of bonds,
42 notes or debentures commonly known as investment securities; or
43 dealing in or underwriting obligations of the United States, any
44 state or any political subdivision thereof, or of a corporate
45 instrumentality of any of them. This shall include, without
46 limitation of the foregoing, business commonly known as industrial
47 banks, dealers in commercial paper and acceptances, sales finance,

1 personal finance, small loan and mortgage financing businesses, as
2 well as any other enterprise employing moneyed capital coming
3 into competition with the business of national banks; provided that
4 the holding of bonds, notes, or other evidences of indebtedness by
5 individual persons not employed or engaged in the banking or
6 investment business and representing merely personal investments
7 not made in competition with the business of national banks, shall
8 not be deemed financial business. Nor shall "financial business"
9 include national banks, production credit associations organized
10 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
11 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
12 insurance companies duly authorized to transact business in this
13 State, security brokers or dealers or investment companies or
14 bankers not employing moneyed capital coming into competition
15 with the business of national banks, real estate investment trusts, or
16 any of the following entities organized under the laws of this State:
17 credit unions, savings banks, savings and loan and building and
18 loan associations, pawnbrokers, and State banks and trust
19 companies.

20 (n) "International banking facility" shall mean a set of asset and
21 liability accounts segregated on the books and records of a
22 depository institution, United States branch or agency of a foreign
23 bank, or an Edge or Agreement Corporation that includes only
24 international banking facility time deposits and international
25 banking facility extensions of credit as such terms are defined in
26 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
27 board of governors of the Federal Reserve System, 12 CFR Part
28 204, effective December 3, 1981. In the event that the United
29 States enacts a law, or the board of governors of the Federal
30 Reserve System adopts a regulation which amends the present
31 definition of international banking facility or of such facilities' time
32 deposits or extensions of credit, the Commissioner of Banking and
33 Insurance shall forthwith adopt regulations defining such terms in
34 the same manner as such terms are set forth in the laws of the
35 United States or the regulations of the board of governors of the
36 Federal Reserve System. The regulations of the Commissioner of
37 Banking and Insurance shall thereafter provide the applicable
38 definitions.

39 (o) "S corporation" means a corporation included in the
40 definition of an "S corporation" pursuant to section 1361 of the
41 federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

42 (p) "New Jersey S corporation" means a corporation that is an S
43 corporation; which has made a valid election pursuant to section 3
44 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
45 corporation continuously since the effective date of the valid
46 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
47 5.22).

1 (q) "Public Utility" means "public utility" as defined in
2 R.S.48:2-13.

3 (r) "Qualified investment partnership" means a partnership
4 under this act that has more than 10 members or partners with no
5 member or partner owning more than a 50% interest in the entity
6 and that derives at least 90% of its gross income from dividends,
7 interest, payments with respect to securities loans, and gains from
8 the sale or other disposition of stocks or securities or foreign
9 currencies or commodities or other similar income (including but
10 not limited to gains from swaps, options, futures or forward
11 contracts) derived with respect to its business of investing or
12 trading in those stocks, securities, currencies or commodities, but
13 "investment partnership" shall not include a "dealer in securities"
14 within the meaning of section 1236 of the federal Internal Revenue
15 Code of 1986, 26 U.S.C. s.1236.

16 (s) "Savings institution" means a state or federally chartered
17 building and loan association, savings and loan association, or
18 savings bank.

19 (t) "Partnership" means an entity classified as a partnership for
20 federal income tax purposes.

21 (cf: P.L. 2014, c.13, s.3)

22

23 5. N.J.S.54A:5-1 is amended to read as follows:

24 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
25 income shall consist of the following categories of income:

26 a. Salaries, wages, tips, fees, commissions, bonuses, and other
27 remuneration received for services rendered whether in cash or in
28 property, and amounts paid or distributed, or deemed paid or
29 distributed, out of a medical savings account that are not excluded
30 from gross income pursuant to section 5 of P.L.1997, c.414
31 (C.54A:6-27).

32 b. Net profits from business. The net income from the
33 operation of a business, profession or other activity after provision
34 for all costs and expenses incurred in the conduct thereof,
35 determined either on a cash or accrual basis in accordance with the
36 method of accounting allowed for federal income tax purposes but
37 without deduction of the amount of:

38 (1) taxes based on income;

39 (2) a civil, civil administrative, or criminal penalty or fine,
40 including a penalty or fine under an administrative consent order,
41 assessed and collected for a violation of a State or federal
42 environmental law, an administrative consent order, or an
43 environmental ordinance or resolution of a local governmental
44 entity, and any interest earned on the penalty or fine, and any
45 economic benefits having accrued to the violator as a result of a
46 violation, which benefits are assessed and recovered in a civil, civil
47 administrative, or criminal action, or pursuant to an administrative

1 consent order. The provisions of this paragraph shall not apply to a
2 penalty or fine assessed or collected for a violation of a State or
3 federal environmental law, or local environmental ordinance or
4 resolution, if the penalty or fine was for a violation that resulted
5 from fire, riot, sabotage, flood, storm event, natural cause, or other
6 act of God beyond the reasonable control of the violator, or caused
7 by an act or omission of a person who was outside the reasonable
8 control of the violator; and

9 (3) treble damages paid to the Department of Environmental
10 Protection pursuant to subsection a. of section 7 of P.L.1976, c.141
11 (C.58:10-23.11f) for costs incurred by the department in removing,
12 or arranging for the removal of, an unauthorized discharge upon the
13 failure of the discharger to comply with a directive from the
14 department to remove, or arrange for the removal of, a discharge.

15 c. Net gains or income from disposition of property. Net gains
16 or net income, less net losses, derived from the sale, exchange or
17 other disposition of property, including real or personal, whether
18 tangible or intangible as determined in accordance with the method
19 of accounting allowed for federal income tax purposes. For the
20 purpose of determining gain or loss, the basis of property shall be
21 the adjusted basis used for federal income tax purposes, except as
22 expressly provided for under this act, but without a deduction for
23 penalties, fines, or economic benefits excepted pursuant to
24 paragraph (2), or for treble damages excepted pursuant to paragraph
25 (3) of subsection b. of this section.

26 A taxpayer's net gain or loss on the sale, exchange or other
27 disposition of a share of an S corporation shall be calculated by
28 increasing the adjusted basis of the share by an amount equal to the
29 shareholder's net losses and deductions in respect of the share
30 allowed and deducted from income for federal income tax purposes,
31 not including any personal net operating loss deductions, to the
32 extent that such net losses were not offset by the taxpayer's pro rata
33 share of S corporation income otherwise subject to taxation
34 pursuant to subsection p. of this section in respect of another S
35 corporation, subject to rules of priority and assignment determined
36 by the director.

37 For the tax year 1976, any taxpayer with a tax liability under this
38 subsection, or under the "Tax on Capital Gains and Other Unearned
39 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be
40 subject to payment of an amount greater than the amount he would
41 have paid if either return had covered all capital transactions during
42 the full tax year 1976; provided, however, that the rate which shall
43 apply to any capital gain shall be that in effect on the date of the
44 transaction. To the extent that any loss is used to offset any gain
45 under P.L.1975, c.172, it shall not be used to offset any gain under
46 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

1 The term "net gains or income" shall not include gains or income
2 derived from obligations which are referred to in clause (1) or (2) of
3 N.J.S.54A:6-14 of this act or from securities which evidence
4 ownership in a qualified investment fund as defined in section 2 of
5 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or income"
6 shall not include gains or income derived from the sale or
7 assignment of a tax credit transfer certificate pursuant to section 7
8 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63
9 (C.34:1B-251). The term "net gains or net income" shall not include
10 gains or income from transactions to the extent to which
11 nonrecognition is allowed for federal income tax purposes. The
12 term "sale, exchange or other disposition" shall not include the
13 exchange of stock or securities in a corporation a party to a
14 reorganization in pursuance of a plan of reorganization, solely for
15 stock or securities in such corporation or in another corporation a
16 party to the reorganization and the transfer of property to a
17 corporation by one or more persons solely in exchange for stock or
18 securities in such corporation if immediately after the exchange
19 such person or persons are in control of the corporation. For
20 purposes of this clause, stock or securities issued for services shall
21 not be considered as issued in return for property.

22 For purposes of this clause, the term "reorganization" means--

23 (i) A statutory merger or consolidation;

24 (ii) The acquisition by one corporation, in exchange solely for
25 all or part of its voting stock (or in exchange solely for all or a part
26 of the voting stock of a corporation which is in control of the
27 acquiring corporation) of stock of another corporation if,
28 immediately after the acquisition, the acquiring corporation has
29 control of such other corporation (whether or not such acquiring
30 corporation had control immediately before the acquisition);

31 (iii) The acquisition by one corporation, in exchange solely for
32 all or part of its voting stock (or in exchange solely for all or a part
33 of the voting stock of a corporation which is in control of the
34 acquiring corporation), of substantially all of the properties of
35 another corporation, but in determining whether the exchange is
36 solely for stock the assumption by the acquiring corporation of a
37 liability of the other, or the fact that property acquired is subject to
38 a liability, shall be disregarded;

39 (iv) A transfer by a corporation of all or a part of its assets to
40 another corporation if immediately after the transfer the transferor,
41 or one or more of its shareholders (including persons who were
42 shareholders immediately before the transfer), or any combination
43 thereof, is in control of the corporation to which the assets are
44 transferred;

45 (v) A recapitalization;

46 (vi) A mere change in identity, form, or place of organization
47 however effected; or

1 (vii) The acquisition by one corporation, in exchange for stock
2 of a corporation (referred to in this subclause as "controlling
3 corporation") which is in control of the acquiring corporation, of
4 substantially all of the properties of another corporation which in
5 the transaction is merged into the acquiring corporation shall not
6 disqualify a transaction under subclause (i) if such transaction
7 would have qualified under subclause (i) if the merger had been into
8 the controlling corporation, and no stock of the acquiring
9 corporation is used in the transaction;

10 (viii) A transaction otherwise qualifying under subclause (i)
11 shall not be disqualified by reason of the fact that stock of a
12 corporation (referred to in this subclause as the "controlling
13 corporation") which before the merger was in control of the merged
14 corporation is used in the transaction, if after the transaction, the
15 corporation surviving the merger holds substantially all of its
16 properties and of the properties of the merged corporation (other
17 than stock of the controlling corporation distributed in the
18 transaction); and in the transaction, former shareholders of the
19 surviving corporation exchanged, for an amount of voting stock of
20 the controlling corporation, an amount of stock in the surviving
21 corporation which constitutes control of such corporation.

22 For purposes of this clause, the term "control" means the
23 ownership of stock possessing at least 80% of the total combined
24 voting power of all classes of stock entitled to vote and at least 80%
25 of the total number of shares of all other classes of stock of the
26 corporation.

27 For purposes of this clause, the term "a party to a reorganization"
28 includes a corporation resulting from a reorganization, and both
29 corporations, in the case of a reorganization resulting from the
30 acquisition by one corporation of stock or properties of another. In
31 the case of a reorganization qualifying under subclause (i) by reason
32 of subclause (vii) the term "a party to a reorganization" includes the
33 controlling corporation referred to in such subclause (vii).

34 Notwithstanding any provisions hereof, upon every such
35 exchange or conversion, the taxpayer's basis for the stock or
36 securities received shall be the same as the taxpayer's actual or
37 attributed basis for the stock, securities or property surrendered in
38 exchange therefor.

39 d. Net gains or net income derived from or in the form of rents,
40 royalties, patents, and copyrights.

41 e. Interest, except interest referred to in clause (1) or (2) of
42 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
43 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
44 extent provided in that section.

45 f. Dividends. "Dividends" means any distribution in cash or
46 property made by a corporation, association or business trust that is
47 not an S corporation, (1) out of accumulated earnings and profits, or

- 1 (2) out of earnings and profits of the year in which such dividend is
2 paid and any distribution in cash or property made by an S
3 corporation, as specifically determined pursuant to section 16 of
4 P.L.1993, c.173 (C.54A:5-14).
- 5 The term "dividends" shall not include distributions paid by a
6 qualified investment fund as defined in section 2 of P.L.1987, c.310
7 (C.54A:6-14.1), to the extent provided in that section.
- 8 g. Gambling winnings.
- 9 h. Net gains or income derived through estates or trusts.
- 10 i. Income in respect of a decedent.
- 11 j. Amounts distributed or withdrawn from an employee trust
12 attributable to contributions to the trust which were excluded from
13 gross income under the provisions of chapter 6 of Title 54A of the
14 New Jersey Statutes, amounts rolled over from an IRA, as defined
15 pursuant to subsection (a) of section 408 of the federal Internal
16 Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as
17 defined pursuant to subsection b. of section 2 of P.L.1998,c.57
18 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and
19 annuities except to the extent of exclusions in N.J.S.54A:6-10
20 hereunder, notwithstanding the provisions of N.J.S.18A:66-51,
21 P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53
22 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965,
23 c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22
24 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954,
25 c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60),
26 R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44,
27 and P.L.1943, c.189, s.5 (C.43:13-37.5).
- 28 k. Distributive share of partnership income, excluding the gain
29 or income derived from the sale or assignment of a tax credit
30 transfer certificate pursuant to section 7 of P.L.2011, c.149
31 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).
- 32 l. Amounts received as prizes and awards, except as provided
33 in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.
- 34 m. Rental value of a residence furnished by an employer or a
35 rental allowance paid by an employer to provide a home.
- 36 n. Alimony and separate maintenance payments to the extent
37 that such payments are required to be made under a decree of
38 divorce or separate maintenance but not including payments for
39 support of minor children.
- 40 o. Income, gain or profit derived from acts or omissions
41 defined as crimes or offenses under the laws of this State or any
42 other jurisdiction.
- 43 p. Net pro rata share of S corporation income, excluding the
44 gain or income derived from the sale or assignment of a tax credit
45 transfer certificate pursuant to section 7 of P.L.2011, c.149
46 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).
47 (cf: P.L.1998, c.57, s.1)

1 6. This act shall take effect immediately and section 4 shall
2 apply to accounting and privilege periods beginning on and after
3 January 1, 2017 and section 5 shall apply to taxable years beginning
4 on and after January 1, 2017.

5

6

7

8

9 Revises tax credit transfer provisions for certain tax incentive
10 programs and revises certain tax treatment of tax credit transfer
11 certificates.

SENATE, No. 3305

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 12, 2017

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)

SYNOPSIS

Revises tax credit transfer provisions for certain tax incentive programs; revises certain tax treatment of tax credit transfer certificates; and extends certain tax incentive program application periods.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning certain tax incentive programs and the
2 provisions associated with tax credit transfer certificates,
3 revising the tax treatment of those tax credit transfer certificates,
4 and amending various parts of the statutory law.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. Section 6 of P.L.2011, c.149 (C.34:1B-247) is amended to
10 read as follows:

11 6. a. (1) The combined value of all credits approved by the
12 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and
13 P.L.2011, c.149 (C.34:1B-242 et al.) prior to December 31, 2013
14 shall not exceed \$1,750,000,000, except as may be increased by the
15 authority as set forth in paragraph (5) of subsection a. of section 35
16 of P.L.2009, c.90 (C.34:1B-209.3). Following the enactment of the
17 "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161
18 (C.52:27D-489p et al.), there shall be no monetary cap on the value
19 of credits approved by the authority attributable to the program
20 pursuant to the "New Jersey Economic Opportunity Act of 2013,"
21 P.L.2013, c.161 (C.52:27D-489p et al.).

22 (2) (Deleted by amendment, P.L.2013, c.161).

23 (3) (Deleted by amendment, P.L.2013, c.161).

24 (4) (Deleted by amendment, P.L.2013, c.161).

25 (5) (Deleted by amendment, P.L.2013, c.161).

26 b. (1) A business shall submit an application for tax credits prior
27 to **July 1, 2019** December 31, 2021. The authority shall not
28 approve an application for tax credits unless the application was
29 submitted prior to **July 1, 2019** December 31, 2021.

30 (2) (a) A business shall submit its documentation indicating that
31 it has met the capital investment and employment requirements
32 specified in the incentive agreement for certification of its tax credit
33 amount within three years following the date of approval of its
34 application by the authority. The authority shall have the discretion
35 to grant two six-month extensions of this deadline. Except as
36 provided in subparagraph (b) of this paragraph, in no event shall the
37 incentive effective date occur later than four years following the
38 date of approval of an application by the authority.

39 (b) As of the effective date of P.L.2015, c.252, a business which
40 applied for the tax credit prior to July 1, 2014 under P.L.2011,
41 c.149 (C.34:1B-242 et al.), shall submit its documentation to the
42 authority no later than **July 28, 2018** December 31, 2021,
43 indicating that it has met the capital investment and employment
44 requirements specified in the incentive agreement for certification
45 of its tax credit amount.

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 thus is new matter.

1 (3) Full-time employment for an accounting or privilege period
2 shall be determined as the average of the monthly full-time
3 employment for the period.

4 (4) A business seeking a credit for a mega project shall apply for
5 the credit within four years after the effective date of the "New
6 Jersey Economic Opportunity Act of 2013," P.L.2013, c.161
7 (C.52:27D-489p et al.).

8 c. (1) In conducting its annual review, the authority may require
9 a business to submit any information determined by the authority to
10 be necessary and relevant to its review.

11 The credit amount for any tax period for which the
12 documentation of a business's credit amount remains uncertified as
13 of a date three years after the closing date of that period shall be
14 forfeited, although credit amounts for the remainder of the years of
15 the eligibility period shall remain available to it.

16 The credit amount may be taken by the tax certificate holder for
17 the tax period for which it was issued or may be carried forward for
18 use by the tax certificate holder in any of the next 20 successive tax
19 periods, and shall expire thereafter. The tax certificate holder may
20 transfer the tax credit amount on or after the date of issuance or at
21 any time within three years of the date of issuance for use by the
22 transferee in the tax period **[during]** for which it was **[transferred]**
23 issued or in any of the next **[three]** 20 successive tax periods.
24 Notwithstanding the foregoing, no more than the amount of tax
25 credits equal to the total credit amount divided by the duration of
26 the eligibility period in years may be taken in any tax period.

27 (2) Credits granted to a partnership shall be passed through to
28 the partners, members, or owners, respectively, pro-rata or pursuant
29 to an executed agreement among the partners, members, or owners
30 documenting an alternate distribution method provided to the
31 Director of the Division of Taxation in the Department of the
32 Treasury accompanied by any additional information as the director
33 may require.

34 (3) The amount of credit allowed may be applied against the tax
35 liability otherwise due pursuant to section 5 of P.L.1945, c.162
36 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132
37 (C.54:18A-2 and C.54:18A-3), pursuant to section 1 of P.L.1950,
38 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

39 d. (1) If, in any tax period, the business reduces the total
40 number of full-time employees in its Statewide workforce by more
41 than 20 percent from the number of full-time employees in its
42 Statewide workforce in the last tax period prior to the credit amount
43 approval under section 3 of P.L.2011, c.149 (C.34:1B-244), then the
44 business shall forfeit its credit amount for that tax period and each
45 subsequent tax period, until the first tax period for which
46 documentation demonstrating the restoration of the business's
47 Statewide workforce to the threshold levels required by this
48 paragraph has been reviewed and approved by the authority, for

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1 which tax period and each subsequent tax period the full amount of
2 the credit shall be allowed.

3 (2) If, in any tax period, the number of full-time employees
4 employed by the business at the qualified business facility located
5 within a qualified incentive area drops below 80 percent of the
6 number of new and retained full-time jobs specified in the incentive
7 agreement, then the business shall forfeit its credit amount for that
8 tax period and each subsequent tax period, until the first tax period
9 for which documentation demonstrating the restoration of the
10 number of full-time employees employed by the business at the
11 qualified business facility to 80 percent of the number of jobs
12 specified in the incentive agreement.

13 (3) (a) If the qualified business facility is sold by the owner in
14 whole or in part during the eligibility period, the new owner shall
15 not acquire the capital investment of the seller and the seller shall
16 forfeit all credits for the tax period in which the sale occurs and all
17 subsequent tax periods, provided however that any credits of the
18 business shall remain unaffected.

19 (b) In connection with a regional distribution facility of
20 foodstuffs, the business entity or entities which own or lease the
21 facility shall qualify as a business regardless of: (i) the type of the
22 business entity or entities which own or lease the facility; (ii) the
23 ownership or leasing of the facility by more than one business
24 entity; or (iii) the ownership of the business entity or entities which
25 own or lease the facility. The ownership or leasing, whether by
26 members, shareholders, partners, or other owners of the business
27 entity or entities, shall be treated as ownership or leasing by
28 affiliates. The members, shareholders, partners, or other ownership
29 or leasing participants and others that are tenants in the facility shall
30 be treated as affiliates for the purpose of counting the full-time
31 employees and capital investments in the facility. The business
32 entity or entities may distribute credits to members, shareholders,
33 partners, or other ownership or leasing participants in accordance
34 with their respective interests. If the business entity or entities or
35 their members, shareholders, partners, or other ownership or leasing
36 participants lease space in the facility to members, shareholders,
37 partners, or other ownership or leasing participants or others as
38 tenants in the facility, the leases shall be treated as a lease to an
39 affiliate, and the business entity or entities shall not be subject to
40 forfeiture of the credits. For the purposes of this section, leasing
41 shall include subleasing and tenants shall include subtenants.

42 (4) (a) For a project located within a Garden State Growth
43 Zone, if, in any tax period, the number of full-time employees
44 employed by the business at the qualified business facility located
45 within a qualified incentive area increases above the number of full-
46 time employees specified in the incentive agreement, then the
47 business shall be entitled to an increased base credit amount for that
48 tax period and each subsequent tax period, for each additional full-

1 time employee added above the number of full-time employees
2 specified in the incentive agreement, until the first tax period for
3 which documentation demonstrating a reduction of the number of
4 full-time employees employed by the business at the qualified
5 business facility, at which time the tax credit amount will be
6 adjusted accordingly pursuant to this section.

7 (b) For a project located within a Garden State Growth Zone
8 which qualifies under the "Municipal Rehabilitation and Economic
9 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which
10 contains a Tourism District as established pursuant to section 5 of
11 P.L.2011, c.18 (C.5:12-219) and regulated by the Casino
12 Reinvestment Development Authority, and which qualifies for a tax
13 credit pursuant to subsubparagraph (ii) of subparagraphs (a) through
14 (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149
15 (C.34:1B-246), if, in any tax period the number of full-time
16 employees employed by the business at the qualified business
17 facility located within a qualified incentive area increases above the
18 number of full-time employees specified in the incentive agreement
19 such that the business shall then meet the minimum number of
20 employees required in subparagraph (b), (c), (d), or (e) of paragraph
21 (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246),
22 then the authority shall recalculate the total tax credit amount per
23 full-time job by using the certified capital investment of the project
24 allowable under the applicable subsubparagraph and the number of
25 full-time jobs certified on the date of the recalculation and applying
26 those numbers to subparagraph (b), (c), (d), or (e) of paragraph (6)
27 of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246),
28 until the first tax period for which documentation demonstrating a
29 reduction of the number of full-time employees employed by the
30 business at the qualified business facility, at which time the tax
31 credit amount shall be adjusted accordingly pursuant to this section.

32 e. The authority shall not enter into an incentive agreement
33 with a business that has previously received incentives pursuant to
34 the "Business Retention and Relocation Assistance Act," P.L.1996,
35 c.25 (C.34:1B-112 et seq.), the "Business Employment Incentive
36 Program Act," P.L.1996, c.26 (C.34:1B-124 et seq.), or any other
37 program administered by the authority unless:

38 (1) the business has satisfied all of its obligations underlying the
39 previous award of incentives or is compliant with section 4 of
40 P.L.2011, c.149 (C.34:1B-245); or

41 (2) the capital investment incurred and new or retained full-time
42 jobs pledged by the business in the new incentive agreement are
43 separate and apart from any capital investment or jobs underlying
44 the previous award of incentives.

45 f. A business which has already applied for a tax credit
46 incentive award prior to the effective date of the "New Jersey
47 Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-
48 489p et al.), but who has not yet been approved for the tax credits,

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1 or has not executed an agreement with the authority, may proceed
2 under that application or seek to amend the application or reapply
3 for a tax credit incentive award for the same project or any part
4 thereof for the purpose of availing itself of any more favorable
5 provisions of the program.

6 (cf: P.L.2015, c.252, s.4)

7

8 2. Section 7 of P.L.2011, c.149 (C.34:1B-248) is amended to
9 read as follows:

10 7. A business may apply to the Director of the Division of
11 Taxation in the Department of the Treasury and the chief executive
12 officer of the authority for a tax credit transfer certificate, covering
13 one or more years, in lieu of the business being allowed any amount
14 of the credit against the tax liability of the business. The tax credit
15 transfer certificate, upon receipt thereof by the business from the
16 director and the chief executive officer of the authority, may be sold
17 or assigned, in full or in part, in an amount not less than \$25,000, to
18 any other person that may have a tax liability pursuant to section 5
19 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of
20 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
21 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.
22 The certificate provided to the business shall include a statement
23 waiving the business's right to claim that amount of the credit
24 against the taxes that the business has elected to sell or assign. The
25 sale or assignment of any amount of a tax credit transfer certificate
26 allowed under this section shall not be exchanged for consideration
27 received by the business of less than 75 percent of the transferred
28 credit amount before considering any further discounting to present
29 value which shall be permitted, except that the 75 percent minimum
30 measure of consideration shall not apply to the sale or assignment
31 of a tax credit transfer certificate to an affiliate irrespective of
32 whether the affiliate met the capital investment and employment
33 requirements specified in the incentive agreement. Any amount of
34 a tax credit transfer certificate used by a purchaser or assignee
35 against a tax liability shall be subject to the same limitations and
36 conditions that apply to the use of the credit by the business that
37 originally applied for and was allowed the credit.

38 (cf: P.L.2014, c.63, s.6)

39

40 3. Section 10 of P.L.2014, c.63 (C.34:1B-251) is amended to
41 read as follows:

42 10. a. For the purposes of this section:

43 "Authority" means the New Jersey Economic Development
44 Authority established pursuant to section 4 of P.L.1974, c.80
45 (C.34:1B-4).

46 "Government entity" means the State government, a local unit of
47 government, or a State or local government agency or authority.

1 "Providing public infrastructure" means undertaking and paying
2 for the construction of public infrastructure; contributing money or
3 paying debt service for the construction of public infrastructure; or
4 deeding land to a government entity for use as public infrastructure.

5 "Public infrastructure" means: (1) buildings and structures, such
6 as schools; fire houses; police stations; recreation centers; public
7 works garages; and water and sewer treatment and pumping
8 facilities; (2) open space with improvements such as athletic fields;
9 playgrounds; planned parks; (3) open space without improvements;
10 and (4) public transportation facilities such as train stations and
11 public parking facilities. To qualify as public infrastructure under
12 this section, the facilities, land, or both, shall have a minimum fair
13 market value of \$5 million; provided, however, that multiple lands
14 and facilities, valued individually at less than \$5 million, that are
15 part of the same redevelopment project may be aggregated to
16 achieve the minimum \$5 million requirement. In the case of open
17 space without improvements, the land shall have a minimum fair
18 market value of at least \$1 million prior to its dedication as open
19 space. Sidewalks, streets, roads, ramps, and jug handles shall not
20 be deemed public infrastructure for the purposes of this section.

21 "Tax credit" means a credit equal to 100 percent of the
22 applicant's cost of providing public infrastructure for use to offset a
23 tax liability.

24 "Tax liability" means a liability for the taxes imposed pursuant to
25 the "Corporation Business Tax (1945)," P.L.1945, c.162 (C.54:10A-
26 1 et seq.), and liability for basic, general, additional, and
27 supplemental realty transfer fees imposed pursuant to P.L.1968,
28 c.49 (C.46:15-5 et seq.), as amended and supplemented.

29 "Urban transit hub municipality" means an urban transit hub
30 municipality, as defined in section 2 of P.L.2011, c.149 (C.34:1B-
31 243).

32 b. Commencing with October 24, 2014, the effective date of
33 P.L.2014, c.63 (C.34:1B-251 et al.), and ending on December 31 of
34 the fifth complete year next following, an applicant that has agreed
35 to, or has provided, public infrastructure may apply to the New
36 Jersey Economic Development Authority for a tax credit under the
37 following conditions:

38 (1) The applicant or another entity by contract or development
39 agreement either makes a new capital investment in an amount
40 equal to or greater than \$10,000,000 at any time during the term set
41 forth in this subsection, or causes another entity by contract or
42 development agreement to construct a building, complex of
43 buildings or other similar structures or facilities, which relies on the
44 completed public infrastructure and completes construction during
45 the term set forth in this subsection.

46 (2) The applicant has not received a tax credit under the "Grow
47 New Jersey Assistance Program" established by section 3 of
48 P.L.2011, c.149 (C.34:1B-244).

1 (3) The applicant has not received a grant under a State or a
2 local Economic Redevelopment and Growth Grant program
3 pursuant to section 4 or section 5 of P.L.2009, c.90 (C.52:27D-489d
4 or C.52:27D-489e).

5 (4) The applicant is not a "Garden State Growth Zone
6 Development Entity," as defined in section 23 of P.L.2013, c.161
7 (C.52:27D-489r).

8 (5) The applicant is not partnered with the New Jersey Sports
9 and Exposition Authority for the capital investment pursuant to this
10 section.

11 c. The New Jersey Economic Development Authority shall
12 grant an application for a tax credit if the government entity
13 receiving the public infrastructure adopts a resolution and files it
14 with the authority, consenting to the award of the tax credit and the
15 ownership of the public infrastructure is transferred to that
16 government entity, and either: (1) the construction commences after
17 January 1, 2013; (2) the construction is completed, as evidenced by
18 a certificate of occupancy or other certificate of completion, after
19 January 1, 2013; (3) the first monetary or debt service payment
20 occurs after January 1, 2013; or (4) the land is deeded to the
21 government entity after January 1, 2013.

22 d. (1) (a) Except as provided in subparagraph (b) of this
23 paragraph, the total amount of tax credits that may be awarded to an
24 eligible applicant for a single project shall not exceed \$5,000,000.

25 (b) In the case of an applicant engaged in a brownfields
26 redevelopment project comprising park and infrastructure
27 development within an urban transit hub municipality, the total
28 amount of tax credits the authority may award to the applicant shall
29 not exceed \$2,000,000 cumulative of all applications submitted
30 under this section by the applicant. As used in this subparagraph,
31 "applicant" means an entity applying for a tax credit pursuant to
32 subsection b. of this section and shall include its subsidiaries, its
33 parent, affiliated entities, and common principal owners.

34 (c) The total value of all tax credits approved by the authority
35 pursuant to this section shall not exceed \$22,000,000.

36 (2) A tax credit granted pursuant to this section may be
37 transferred in the same manner as tax credits are transferred **[**under
38 section 33 of P.L.2009, c.90 (C.34:1B-209.1)**]** pursuant to section 7
39 of P.L.2011, c.149 (C.34:1B-248) and utilized in the same manner
40 as provided pursuant to paragraph (1) of subsection c. of section 6
41 of P.L.2011, c.149 (C.34:1B-247).

42 (3) Except for the limitations set forth in paragraph (1) of this
43 subsection, nothing in this section shall prohibit an applicant from
44 applying for and being awarded multiple tax credit awards based on
45 separate public infrastructure projects.

46 e. The chief executive of the authority, in consultation with the
47 Director of the Division of Taxation in the Department of the
48 Treasury, may adopt rules and regulations pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.), necessary to implement the provisions of this section.
3 (cf: P.L.2015, c.217, s.2)

4

5 4. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read
6 as follows:

7 4. For the purposes of this act, unless the context requires a
8 different meaning:

9 (a) "Commissioner" or "director" shall mean the Director of the
10 Division of Taxation of the State Department of the Treasury.

11 (b) "Allocation factor" shall mean the proportionate part of a
12 taxpayer's net worth or entire net income used to determine a
13 measure of its tax under this act.

14 (c) "Corporation" shall mean any corporation, joint-stock
15 company or association and any business conducted by a trustee or
16 trustees wherein interest or ownership is evidenced by a certificate
17 of interest or ownership or similar written instrument, any other
18 entity classified as a corporation for federal income tax purposes,
19 and any state or federally chartered building and loan association or
20 savings and loan association.

21 (d) "Net worth" shall mean the aggregate of the values disclosed
22 by the books of the corporation for (1) issued and outstanding
23 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
24 undivided profits, and (4) surplus reserves which can reasonably be
25 expected to accrue to holders or owners of equitable shares, not
26 including reasonable valuation reserves, such as reserves for
27 depreciation or obsolescence or depletion. Notwithstanding the
28 foregoing, net worth shall not include any deduction for the amount
29 of the excess depreciation described in paragraph (2)(F) of
30 subsection (k) of this section. The foregoing aggregate of values
31 shall be reduced by 50% of the amount disclosed by the books of
32 the corporation for investment in the capital stock of one or more
33 subsidiaries, which investment is defined as ownership (1) of at
34 least 80% of the total combined voting power of all classes of stock
35 of the subsidiary entitled to vote and (2) of at least 80% of the total
36 number of shares of all other classes of stock except nonvoting
37 stock which is limited and preferred as to dividends. In the case of
38 investment in an entity organized under the laws of a foreign
39 country, the foregoing requisite degree of ownership shall effect a
40 like reduction of such investment from the net worth of the
41 taxpayer, if the foreign entity is considered a corporation for any
42 purpose under the United States federal income tax laws, such as
43 (but not by way of sole examples) for the purpose of supplying
44 deemed paid foreign tax credits or for the purpose of status as a
45 controlled foreign corporation. In calculating the net worth of a
46 taxpayer entitled to reduction for investment in subsidiaries, the
47 amount of liabilities of the taxpayer shall be reduced by such
48 proportion of the liabilities as corresponds to the ratio which the

1 excluded portion of the subsidiary values bears to the total assets of
2 the taxpayer.

3 In the case of banking corporations which have international
4 banking facilities as defined in subsection (n), the foregoing
5 aggregate of values shall also be reduced by retained earnings of the
6 international banking facility. Retained earnings means the
7 earnings accumulated over the life of such facility and shall not
8 include the distributive share of dividends paid and federal income
9 taxes paid or payable during the tax year.

10 If in the opinion of the commissioner, the corporation's books do
11 not disclose fair valuations the commissioner may make a
12 reasonable determination of the net worth which, in his opinion,
13 would reflect the fair value of the assets, exclusive of subsidiary
14 investments as defined aforesaid, carried on the books of the
15 corporation, in accordance with sound accounting principles, and
16 such determination shall be used as net worth for the purpose of this
17 act.

18 (e) (Deleted by amendment, P.L.1998, c.114.)

19 (f) "Investment company" shall mean any corporation whose
20 business during the period covered by its report consisted, to the
21 extent of at least 90% thereof of holding, investing and reinvesting
22 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
23 and other securities for its own account, but this shall not include
24 any corporation which: (1) is a merchant or a dealer of stocks,
25 bonds and other securities, regularly engaged in buying the same
26 and selling the same to customers; or (2) had less than 90% of its
27 average gross assets in New Jersey, at cost, invested in stocks,
28 bonds, debentures, mortgages, notes, patents, patent rights or other
29 securities or consisting of cash on deposit during the period covered
30 by its report; or (3) is a banking corporation, a savings institution,
31 or a financial business corporation as defined in the Corporation
32 Business Tax Act.

33 (g) "Regulated investment company" shall mean any corporation
34 which for a period covered by its report, is registered and regulated
35 under the Investment Company Act of 1940 (54 Stat. 789), as
36 amended.

37 (h) "Taxpayer" shall mean any corporation, and any partnership
38 required, or consenting, to report or to pay taxes, interest or
39 penalties under this act. "Taxpayer" shall not include a partnership
40 that is listed on a United States national stock exchange.

41 (i) "Fiscal year" shall mean an accounting period ending on any
42 day other than the last day of December on the basis of which the
43 taxpayer is required to report for federal income tax purposes.

44 (j) Except as herein provided, "privilege period" shall mean the
45 calendar or fiscal accounting period for which a tax is payable
46 under this act.

47 (k) "Entire net income" shall mean total net income from all
48 sources, whether within or without the United States, and shall

1 include the gain derived from the employment of capital or labor, or
2 from both combined, as well as profit gained through a sale or
3 conversion of capital assets.

4 For the purpose of this act, the amount of a taxpayer's entire net
5 income shall be deemed prima facie to be equal in amount to the
6 taxable income, before net operating loss deduction and special
7 deductions, which the taxpayer is required to report, or, if the
8 taxpayer is classified as a partnership for federal tax purposes,
9 would otherwise be required to report, to the United States Treasury
10 Department for the purpose of computing its federal income tax,
11 provided however, that in the determination of such entire net
12 income,

13 (1) Entire net income shall exclude for the periods set forth in
14 paragraph (2)(F)(i) of this subsection, any amount, except with
15 respect to qualified mass commuting vehicles as described in
16 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect
17 immediately prior to January 1, 1984, which is included in a
18 taxpayer's federal taxable income solely as a result of an election
19 made pursuant to the provisions of paragraph (8) of that section.

20 (2) Entire net income shall be determined without the exclusion,
21 deduction or credit of:

22 (A) The amount of any specific exemption or credit allowed in
23 any law of the United States imposing any tax on or measured by
24 the income of corporations.

25 (B) Any part of any income from dividends or interest on any
26 kind of stock, securities or indebtedness, except as provided in
27 paragraph (5) of subsection (k) of this section.

28 (C) Taxes paid or accrued to the United States, a possession or
29 territory of the United States, a state, a political subdivision thereof,
30 or the District of Columbia, or to any foreign country, state,
31 province, territory or subdivision thereof, on or measured by profits
32 or income, or business presence or business activity, or the tax
33 imposed by this act, or any tax paid or accrued with respect to
34 subsidiary dividends excluded from entire net income as provided
35 in paragraph (5) of subsection (k) of this section.

36 (D) (Deleted by amendment, P.L.1985, c.143.)

37 (E) (Deleted by amendment, P.L.1995, c.418.)

38 (F) (i) The amount by which depreciation reported to the United
39 States Treasury Department for property placed in service on and
40 after January 1, 1981, but prior to taxpayer fiscal or calendar
41 accounting years beginning on and after the effective date of
42 P.L.1993, c.172, for purposes of computing federal taxable income
43 in accordance with section 168 of the Internal Revenue Code in
44 effect after December 31, 1980, exceeds the amount of depreciation
45 determined in accordance with the Internal Revenue Code
46 provisions in effect prior to January 1, 1981, but only with respect
47 to a taxpayer's accounting period ending after December 31, 1981;
48 provided, however, that where a taxpayer's accounting period

1 begins in 1981 and ends in 1982, no modification shall be required
2 with respect to this paragraph (F) for the report filed for such period
3 with respect to property placed in service during that part of the
4 accounting period which occurs in 1981. The provisions of this
5 subparagraph shall not apply to assets placed in service prior to
6 January 1, 1998 of a gas, gas and electric, and electric public utility
7 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
8 seq.) prior to 1998.

9 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
10 (2) of this subsection, any amount, except with respect to qualified
11 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
12 the Internal Revenue Code as in effect immediately prior to January
13 1, 1984, which the taxpayer claimed as a deduction in computing
14 federal income tax pursuant to a qualified lease agreement under
15 paragraph (8) of that section.

16 The director shall promulgate rules and regulations necessary to
17 carry out the provisions of this section, which rules shall provide,
18 among others, the manner in which the remaining life of property
19 shall be reported.

20 (G) (i) The amount of any civil, civil administrative, or criminal
21 penalty or fine, including a penalty or fine under an administrative
22 consent order, assessed and collected for a violation of a State or
23 federal environmental law, an administrative consent order, or an
24 environmental ordinance or resolution of a local governmental
25 entity, and any interest earned on the penalty or fine, and any
26 economic benefits having accrued to the violator as a result of a
27 violation, which benefits are assessed and recovered in a civil, civil
28 administrative, or criminal action, or pursuant to an administrative
29 consent order. The provisions of this paragraph shall not apply to a
30 penalty or fine assessed or collected for a violation of a State or
31 federal environmental law, or local environmental ordinance or
32 resolution, if the penalty or fine was for a violation that resulted
33 from fire, riot, sabotage, flood, storm event, natural cause, or other
34 act of God beyond the reasonable control of the violator, or caused
35 by an act or omission of a person who was outside the reasonable
36 control of the violator.

37 (ii) The amount of treble damages paid to the Department of
38 Environmental Protection pursuant to subsection a. of section 7 of
39 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
40 department in removing, or arranging for the removal of, an
41 unauthorized discharge upon failure of the discharger to comply
42 with a directive from the department to remove, or arrange for the
43 removal of, the discharge.

44 (H) The amount of any sales and use tax paid by a utility vendor
45 pursuant to section 71 of P.L.1997, c.162.

46 (I) Interest paid, accrued or incurred for the privilege period to
47 a related member, as defined in section 5 of P.L.2002, c.40
48 (C.54:10A-4.4), except that a deduction shall be permitted to the

1 extent that the taxpayer establishes by clear and convincing
2 evidence, as determined by the director, that: (i) a principal purpose
3 of the transaction giving rise to the payment of the interest was not
4 to avoid taxes otherwise due under Title 54 of the Revised Statutes
5 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
6 pursuant to arm's length contracts at an arm's length rate of interest,
7 and (iii)(aa) the related member was subject to a tax on its net
8 income or receipts in this State or another state or possession of the
9 United States or in a foreign nation, (bb) a measure of the tax
10 includes the interest received from the related member, and (cc) the
11 rate of tax applied to the interest received by the related member is
12 equal to or greater than a rate three percentage points less than the
13 rate of tax applied to taxable interest by this State.

14 A deduction shall also be permitted if the taxpayer establishes by
15 clear and convincing evidence, as determined by the director, that
16 the disallowance of a deduction is unreasonable, or the taxpayer and
17 the director agree in writing to the application or use of an
18 alternative method of apportionment under section 8 of P.L.1945,
19 c.162 (C.54:10A-8); nothing in this subsection shall be construed to
20 limit or negate the director's authority to otherwise enter into
21 agreements and compromises otherwise allowed by law.

22 A deduction shall also be permitted to the extent that the
23 taxpayer establishes by a preponderance of the evidence, as
24 determined by the director, that the interest is directly or indirectly
25 paid, accrued or incurred to (i) a related member in a foreign nation
26 which has in force a comprehensive income tax treaty with the
27 United States, provided however that the taxpayer shall disclose on
28 its return for the privilege period the name of the related member,
29 the amount of the interest, the relevant foreign nation, and such
30 other information as the director may prescribe or (ii) to an
31 independent lender and the taxpayer guarantees the debt on which
32 the interest is required.

33 (J) Amounts deducted for federal tax purposes pursuant to
34 section 199 of the federal Internal Revenue Code of 1986, 26
35 U.S.C. s.199, except that this exclusion shall not apply to amounts
36 deducted pursuant to that section that are exclusively based upon
37 domestic production gross receipts of the taxpayer which are
38 derived only from any lease, rental, license, sale, exchange, or other
39 disposition of qualifying production property which the taxpayer
40 demonstrates to the satisfaction of the director was manufactured or
41 produced by the taxpayer in whole or in significant part within the
42 United States but not qualified production property that was grown
43 or extracted by the taxpayer. "Manufactured or produced" as used
44 in this paragraph shall be limited to performance of an operation or
45 series of operations the object of which is to place items of tangible
46 personal property in a form, composition, or character different
47 from that in which they were acquired. The change in form,
48 composition, or character shall be a substantial change, and result in

1 a transformation of property into a different or substantially more
2 usable product.

3 (3) The commissioner may, whenever necessary to properly
4 reflect the entire net income of any taxpayer, determine the year or
5 period in which any item of income or deduction shall be included,
6 without being limited to the method of accounting employed by the
7 taxpayer.

8 (4) There shall be allowed as a deduction from entire net income
9 of a banking corporation, to the extent not deductible in
10 determining federal taxable income, the eligible net income of an
11 international banking facility determined as follows:

12 (A) The eligible net income of an international banking facility
13 shall be the amount remaining after subtracting from the eligible
14 gross income the applicable expenses;

15 (B) Eligible gross income shall be the gross income derived by
16 an international banking facility, which shall include, but not be
17 limited to, gross income derived from:

18 (i) Making, arranging for, placing or carrying loans to foreign
19 persons, provided, however, that in the case of a foreign person
20 which is an individual, or which is a foreign branch of a domestic
21 corporation (other than a bank), or which is a foreign corporation or
22 foreign partnership which is controlled by one or more domestic
23 corporations (other than banks), domestic partnerships or resident
24 individuals, all the proceeds of the loan are for use outside of the
25 United States;

26 (ii) Making or placing deposits with foreign persons which are
27 banks or foreign branches of banks (including foreign subsidiaries)
28 or foreign branches of the taxpayers or with other international
29 banking facilities;

30 (iii) Entering into foreign exchange trading or hedging
31 transactions related to any of the transactions described in this
32 paragraph; or

33 (iv) Such other activities as an international banking facility
34 may, from time to time, be authorized to engage in;

35 (C) Applicable expenses shall be any expense or other
36 deductions attributable, directly or indirectly, to the eligible gross
37 income described in subparagraph (B) of this paragraph.

38 (5) Entire net income shall exclude 100% of dividends which
39 were included in computing such taxable income for federal income
40 tax purposes, paid to the taxpayer by one or more subsidiaries
41 owned by the taxpayer to the extent of the 80% or more ownership
42 of investment described in subsection (d) of this section and shall
43 exclude 50% of dividends which were included in computing such
44 taxable income for federal income tax purposes, paid to the
45 taxpayer by one or more subsidiaries owned by the taxpayer to the
46 extent of 50% or more ownership of investment, such ownership of
47 investment calculated in the same manner as the 80% or more of

1 ownership of investment is calculated as described in subsection (d)
2 of this section.

3 (6) (A) Net operating loss deduction. There shall be allowed as
4 a deduction for the privilege period the net operating loss carryover
5 to that period.

6 (B) Net operating loss carryover. A net operating loss for any
7 privilege period ending after June 30, 1984 shall be a net operating
8 loss carryover to each of the seven privilege periods following the
9 period of the loss and a net operating loss for any privilege period
10 ending after June 30, 2009 shall be a net operating loss carryover to
11 each of the twenty privilege periods following the period of the
12 loss. The entire amount of the net operating loss for any privilege
13 period (the "loss period") shall be carried to the earliest of the
14 privilege periods to which the loss may be carried. The portion of
15 the loss which shall be carried to each of the other privilege periods
16 shall be the excess, if any, of the amount of the loss over the sum of
17 the entire net income, computed without the exclusions permitted in
18 paragraphs (4) and (5) of this subsection or the net operating loss
19 deduction provided by subparagraph (A) of this paragraph, for each
20 of the prior privilege periods to which the loss may be carried.

21 (C) Net operating loss. For purposes of this paragraph the term
22 "net operating loss" means the excess of the deductions over the
23 gross income used in computing entire net income without the net
24 operating loss deduction provided for in subparagraph (A) of this
25 paragraph and the exclusions in paragraphs (4) and (5) of this
26 subsection.

27 (D) Change in ownership. Where there is a change in 50% or
28 more of the ownership of a corporation because of redemption or
29 sale of stock and the corporation changes the trade or business
30 giving rise to the loss, no net operating loss sustained before the
31 changes may be carried over to be deducted from income earned
32 after such changes. In addition where the facts support the premise
33 that the corporation was acquired under any circumstances for the
34 primary purpose of the use of its net operating loss carryover, the
35 director may disallow the carryover.

36 (E) Notwithstanding the provisions of this paragraph (6) of
37 subsection (k) of this section to the contrary, for privilege periods
38 beginning during calendar year 2002 and calendar year 2003, no
39 deduction for any net operating loss carryover shall be allowed and
40 for privilege periods beginning during calendar year 2004 and
41 calendar year 2005, there shall be allowed as a deduction for the
42 privilege period so much of the net operating loss carryover as
43 reduces entire net income otherwise calculated by 50%. If and only
44 to the extent that any net operating loss carryover deduction is
45 disallowed by reason of this subparagraph (E), the date on which
46 the amount of the disallowed net operating loss carryover deduction
47 would otherwise expire shall be extended by a period equal to the

1 period for which application of the net operating loss was
2 disallowed by this subparagraph.

3 Provided, that this subparagraph (E) shall not restrict the
4 surrender or acquisition of corporation business tax benefit
5 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
6 7.42a) and shall not restrict the application of corporation business
7 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
8 (C.54:10A-4.2).

9 (F) Reduction for discharge of indebtedness. A net operating
10 loss for any privilege period ending after June 30, 2014, and any net
11 operating loss carryover to such privilege period, shall be reduced
12 by the amount excluded from federal taxable income under
13 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
14 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),
15 for the privilege period of the discharge of indebtedness.

16 (7) The entire net income of gas, electric and gas and electric
17 public utilities that were subject to the provisions of P.L.1940, c.5
18 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
19 substituting the New Jersey depreciation allowance for federal tax
20 depreciation with respect to assets placed in service prior to January
21 1, 1998. For gas, electric, and gas and electric public utilities that
22 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
23 seq.) prior to 1998, the New Jersey depreciation allowance shall be
24 computed as follows: All depreciable assets placed in service prior
25 to January 1, 1998 shall be considered a single asset account. The
26 New Jersey tax basis of this depreciable asset account shall be an
27 amount equal to the carryover adjusted basis for federal income tax
28 purposes on December 31, 1997 of all depreciable assets in service
29 on December 31, 1997, increased by the excess, of the "net carrying
30 value," defined to be adjusted book basis of all assets and liabilities,
31 excluding deferred income taxes, recorded on the public utility's
32 books of account on December 31, 1997, over the carryover
33 adjusted basis for federal income tax purposes on December 31,
34 1997 of all assets and liabilities owned by the gas, electric, or gas
35 and electric public utility as of December 31, 1997. "Books of
36 account" for gas, gas and electric, and electric public utilities means
37 the uniform system of accounts as promulgated by the Federal
38 Energy Regulatory Commission and adopted by the Board of Public
39 Utilities. The following adjustments to entire net income shall be
40 made pursuant to this section:

41 (A) Depreciation for property placed in service prior to January
42 1, 1998 shall be adjusted as follows:

43 (i) Depreciation for federal income tax purposes shall be
44 disallowed in full.

45 (ii) A deduction shall be allowed for the New Jersey
46 depreciation allowance. The New Jersey depreciation allowance
47 shall be computed for the single asset account described above
48 based on the New Jersey tax basis as adjusted above as if all assets

1 in the single asset account were first placed in service on January 1,
2 1998. Depreciation shall be computed using the straight line
3 method over a thirty-year life. A full year's depreciation shall be
4 allowed in the initial tax year. No half-year convention shall apply.
5 The depreciable basis of the single account shall be reduced by the
6 adjusted federal tax basis of assets sold, retired, or otherwise
7 disposed of during any year on which gain or loss is recognized for
8 federal income tax purposes as described in subparagraph (B) of
9 this paragraph.

10 (B) Gains and losses on sales, retirements and other dispositions
11 of assets placed in service prior to January 1, 1998 shall be
12 recognized and reported on the same basis as for federal income tax
13 purposes.

14 (C) The Director of the Division of Taxation shall promulgate
15 regulations describing the methodology for allocating the single
16 asset account in the event that a portion of the utility's operations
17 are separated, spun-off, transferred to a separate company or
18 otherwise desegregated.

19 (8) In the case of taxpayers that are gas, electric, gas and
20 electric, or telecommunications public utilities as defined pursuant
21 to subsection (q) of this section, the director shall have authority to
22 promulgate rules and issue guidance correcting distortions and
23 adjusting timing differences resulting from the adoption of
24 P.L.1997, c.162 (C.54:10A-5.25 et al.).

25 (9) Notwithstanding paragraph (1) of this subsection, entire net
26 income shall not include the income derived by a corporation
27 organized in a foreign country from the international operation of a
28 ship or ships, or from the international operation of aircraft, if such
29 income is exempt from federal taxation pursuant to section 883 of
30 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

31 (10) Entire net income shall exclude all income of an alien
32 corporation the activities of which are limited in this State to
33 investing or trading in stocks and securities for its own account,
34 investing or trading in commodities for its own account, or any
35 combination of those activities, within the meaning of section 864
36 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
37 effect on December 31, 1998. Notwithstanding the previous
38 sentence, if an alien corporation undertakes one or more infrequent,
39 extraordinary or non-recurring activities, including but not limited
40 to the sale of tangible property, only the income from such
41 infrequent, extraordinary or non-recurring activity shall be subject
42 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
43 seq.), and that amount of income subject to tax shall be determined
44 without regard to the allocation to that specific transaction of any
45 general business expense of the taxpayer and shall be specifically
46 assigned to this State for taxation by this State without regard to
47 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this
48 paragraph, "alien corporation" means a corporation organized under

1 the laws of a jurisdiction other than the United States or its political
2 subdivisions.

3 (11) No deduction shall be allowed for research and
4 experimental expenditures, to the extent that those research and
5 experimental expenditures are qualified research expenses or basic
6 research payments for which an amount of credit is claimed
7 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless
8 those research and experimental expenditures are also used to
9 compute a federal credit claimed pursuant to section 41 of the
10 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

11 (12) (A) Notwithstanding the provisions of subsection (k) of
12 section 168 of the federal Internal Revenue Code of 1986, 26
13 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
14 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
15 law, for property acquired after September 10, 2001, the
16 depreciation deduction otherwise allowed pursuant to section 167 of
17 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
18 be determined pursuant to the provisions of the federal Internal
19 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
20 December 31, 2001.

21 (B) The director shall prescribe the rules and regulations
22 necessary to carry out the provisions of this paragraph, including,
23 among others, those for determining the adjusted basis of the
24 acquired property for the purposes of the Corporation Business Tax
25 Act (1945), P.L.1945, c.162.

26 (13) (A) Notwithstanding the provisions of section 179 of the
27 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
28 property placed in service on or after January 1, 2004, the costs that
29 a taxpayer may otherwise elect to treat as an expense which is not
30 chargeable to a capital account shall be determined pursuant to the
31 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.
32 s.1 et seq.) in effect on December 31, 2002.

33 (B) The director shall prescribe the rules and regulations
34 necessary to carry out the provisions of this paragraph, including,
35 among others, those for determining the adjusted basis of the
36 acquired property for the purposes of the Corporation Business Tax
37 Act (1945), P.L.1945, c.162.

38 (14) Notwithstanding the provisions of subsection (i) of section
39 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
40 for privilege periods beginning after December 31, 2008 and before
41 January 1, 2011, entire net income shall include the amount of
42 discharge of indebtedness income excluded for federal income tax
43 purposes pursuant to subsection (i) of section 108 of the federal
44 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
45 periods beginning on or after January 1, 2014 and before January 1,
46 2019, entire net income shall exclude the amount of discharge of
47 indebtedness income included for federal income tax purposes,

1 pursuant to subsection (i) of section 108 of the federal Internal
2 Revenue Code of 1986 (26 U.S.C. s.108).

3 (15) Entire net income shall exclude the gain or income derived
4 from the sale or assignment of a tax credit transfer certificate
5 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
6 10 of P.L.2014, c.63 (C.34:1B-251).

7 (l) "Real estate investment trust" shall mean any corporation,
8 trust or association qualifying and electing to be taxed as a real
9 estate investment trust under federal law.

10 (m) "Financial business corporation" shall mean any corporate
11 enterprise which is (1) in substantial competition with the business
12 of national banks and which (2) employs moneyed capital with the
13 object of making profit by its use as money, through discounting
14 and negotiating promissory notes, drafts, bills of exchange and
15 other evidences of debt; buying and selling exchange; making of or
16 dealing in secured or unsecured loans and discounts; dealing in
17 securities and shares of corporate stock by purchasing and selling
18 such securities and stock without recourse, solely upon the order
19 and for the account of customers; or investing and reinvesting in
20 marketable obligations evidencing indebtedness of any person,
21 copartnership, association or corporation in the form of bonds,
22 notes or debentures commonly known as investment securities; or
23 dealing in or underwriting obligations of the United States, any
24 state or any political subdivision thereof, or of a corporate
25 instrumentality of any of them. This shall include, without
26 limitation of the foregoing, business commonly known as industrial
27 banks, dealers in commercial paper and acceptances, sales finance,
28 personal finance, small loan and mortgage financing businesses, as
29 well as any other enterprise employing moneyed capital coming
30 into competition with the business of national banks; provided that
31 the holding of bonds, notes, or other evidences of indebtedness by
32 individual persons not employed or engaged in the banking or
33 investment business and representing merely personal investments
34 not made in competition with the business of national banks, shall
35 not be deemed financial business. Nor shall "financial business"
36 include national banks, production credit associations organized
37 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
38 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
39 insurance companies duly authorized to transact business in this
40 State, security brokers or dealers or investment companies or
41 bankers not employing moneyed capital coming into competition
42 with the business of national banks, real estate investment trusts, or
43 any of the following entities organized under the laws of this State:
44 credit unions, savings banks, savings and loan and building and
45 loan associations, pawnbrokers, and State banks and trust
46 companies.

47 (n) "International banking facility" shall mean a set of asset and
48 liability accounts segregated on the books and records of a

1 depository institution, United States branch or agency of a foreign
2 bank, or an Edge or Agreement Corporation that includes only
3 international banking facility time deposits and international
4 banking facility extensions of credit as such terms are defined in
5 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
6 board of governors of the Federal Reserve System, 12 CFR Part
7 204, effective December 3, 1981. In the event that the United
8 States enacts a law, or the board of governors of the Federal
9 Reserve System adopts a regulation which amends the present
10 definition of international banking facility or of such facilities' time
11 deposits or extensions of credit, the Commissioner of Banking and
12 Insurance shall forthwith adopt regulations defining such terms in
13 the same manner as such terms are set forth in the laws of the
14 United States or the regulations of the board of governors of the
15 Federal Reserve System. The regulations of the Commissioner of
16 Banking and Insurance shall thereafter provide the applicable
17 definitions.

18 (o) "S corporation" means a corporation included in the
19 definition of an "S corporation" pursuant to section 1361 of the
20 federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

21 (p) "New Jersey S corporation" means a corporation that is an S
22 corporation; which has made a valid election pursuant to section 3
23 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
24 corporation continuously since the effective date of the valid
25 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
26 5.22).

27 (q) "Public Utility" means "public utility" as defined in
28 R.S.48:2-13.

29 (r) "Qualified investment partnership" means a partnership
30 under this act that has more than 10 members or partners with no
31 member or partner owning more than a 50% interest in the entity
32 and that derives at least 90% of its gross income from dividends,
33 interest, payments with respect to securities loans, and gains from
34 the sale or other disposition of stocks or securities or foreign
35 currencies or commodities or other similar income (including but
36 not limited to gains from swaps, options, futures or forward
37 contracts) derived with respect to its business of investing or
38 trading in those stocks, securities, currencies or commodities, but
39 "investment partnership" shall not include a "dealer in securities"
40 within the meaning of section 1236 of the federal Internal Revenue
41 Code of 1986, 26 U.S.C. s.1236.

42 (s) "Savings institution" means a state or federally chartered
43 building and loan association, savings and loan association, or
44 savings bank.

45 (t) "Partnership" means an entity classified as a partnership for
46 federal income tax purposes.

47 (cf: P.L. 2014, c.13, s.3)

1 5. N.J.S.54A:5-1 is amended to read as follows:

2 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
3 income shall consist of the following categories of income:

4 a. Salaries, wages, tips, fees, commissions, bonuses, and other
5 remuneration received for services rendered whether in cash or in
6 property, and amounts paid or distributed, or deemed paid or
7 distributed, out of a medical savings account that are not excluded
8 from gross income pursuant to section 5 of P.L.1997, c.414
9 (C.54A:6-27).

10 b. Net profits from business. The net income from the
11 operation of a business, profession or other activity after provision
12 for all costs and expenses incurred in the conduct thereof,
13 determined either on a cash or accrual basis in accordance with the
14 method of accounting allowed for federal income tax purposes but
15 without deduction of the amount of:

16 (1) taxes based on income;

17 (2) a civil, civil administrative, or criminal penalty or fine,
18 including a penalty or fine under an administrative consent order,
19 assessed and collected for a violation of a State or federal
20 environmental law, an administrative consent order, or an
21 environmental ordinance or resolution of a local governmental
22 entity, and any interest earned on the penalty or fine, and any
23 economic benefits having accrued to the violator as a result of a
24 violation, which benefits are assessed and recovered in a civil, civil
25 administrative, or criminal action, or pursuant to an administrative
26 consent order. The provisions of this paragraph shall not apply to a
27 penalty or fine assessed or collected for a violation of a State or
28 federal environmental law, or local environmental ordinance or
29 resolution, if the penalty or fine was for a violation that resulted
30 from fire, riot, sabotage, flood, storm event, natural cause, or other
31 act of God beyond the reasonable control of the violator, or caused
32 by an act or omission of a person who was outside the reasonable
33 control of the violator; and

34 (3) treble damages paid to the Department of Environmental
35 Protection pursuant to subsection a. of section 7 of P.L.1976, c.141
36 (C.58:10-23.11f) for costs incurred by the department in removing,
37 or arranging for the removal of, an unauthorized discharge upon the
38 failure of the discharger to comply with a directive from the
39 department to remove, or arrange for the removal of, a discharge.

40 c. Net gains or income from disposition of property. Net gains
41 or net income, less net losses, derived from the sale, exchange or
42 other disposition of property, including real or personal, whether
43 tangible or intangible as determined in accordance with the method
44 of accounting allowed for federal income tax purposes. For the
45 purpose of determining gain or loss, the basis of property shall be
46 the adjusted basis used for federal income tax purposes, except as
47 expressly provided for under this act, but without a deduction for
48 penalties, fines, or economic benefits excepted pursuant to

1 paragraph (2), or for treble damages excepted pursuant to paragraph
2 (3) of subsection b. of this section.

3 A taxpayer's net gain or loss on the sale, exchange or other
4 disposition of a share of an S corporation shall be calculated by
5 increasing the adjusted basis of the share by an amount equal to the
6 shareholder's net losses and deductions in respect of the share
7 allowed and deducted from income for federal income tax purposes,
8 not including any personal net operating loss deductions, to the
9 extent that such net losses were not offset by the taxpayer's pro rata
10 share of S corporation income otherwise subject to taxation
11 pursuant to subsection p. of this section in respect of another S
12 corporation, subject to rules of priority and assignment determined
13 by the director.

14 For the tax year 1976, any taxpayer with a tax liability under this
15 subsection, or under the "Tax on Capital Gains and Other Unearned
16 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be
17 subject to payment of an amount greater than the amount he would
18 have paid if either return had covered all capital transactions during
19 the full tax year 1976; provided, however, that the rate which shall
20 apply to any capital gain shall be that in effect on the date of the
21 transaction. To the extent that any loss is used to offset any gain
22 under P.L.1975, c.172, it shall not be used to offset any gain under
23 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

24 The term "net gains or income" shall not include gains or income
25 derived from obligations which are referred to in clause (1) or (2) of
26 N.J.S.54A:6-14 of this act or from securities which evidence
27 ownership in a qualified investment fund as defined in section 2 of
28 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or income"
29 shall not include gains or income derived from the sale or
30 assignment of a tax credit transfer certificate pursuant to section 7
31 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63
32 (C.34:1B-251). The term "net gains or net income" shall not include
33 gains or income from transactions to the extent to which
34 nonrecognition is allowed for federal income tax purposes. The
35 term "sale, exchange or other disposition" shall not include the
36 exchange of stock or securities in a corporation a party to a
37 reorganization in pursuance of a plan of reorganization, solely for
38 stock or securities in such corporation or in another corporation a
39 party to the reorganization and the transfer of property to a
40 corporation by one or more persons solely in exchange for stock or
41 securities in such corporation if immediately after the exchange
42 such person or persons are in control of the corporation. For
43 purposes of this clause, stock or securities issued for services shall
44 not be considered as issued in return for property.

45 For purposes of this clause, the term "reorganization" means--

- 46 (i) A statutory merger or consolidation;
47 (ii) The acquisition by one corporation, in exchange solely for
48 all or part of its voting stock (or in exchange solely for all or a part

1 of the voting stock of a corporation which is in control of the
2 acquiring corporation) of stock of another corporation if,
3 immediately after the acquisition, the acquiring corporation has
4 control of such other corporation (whether or not such acquiring
5 corporation had control immediately before the acquisition);

6 (iii) The acquisition by one corporation, in exchange solely for
7 all or part of its voting stock (or in exchange solely for all or a part
8 of the voting stock of a corporation which is in control of the
9 acquiring corporation), of substantially all of the properties of
10 another corporation, but in determining whether the exchange is
11 solely for stock the assumption by the acquiring corporation of a
12 liability of the other, or the fact that property acquired is subject to
13 a liability, shall be disregarded;

14 (iv) A transfer by a corporation of all or a part of its assets to
15 another corporation if immediately after the transfer the transferor,
16 or one or more of its shareholders (including persons who were
17 shareholders immediately before the transfer), or any combination
18 thereof, is in control of the corporation to which the assets are
19 transferred;

20 (v) A recapitalization;

21 (vi) A mere change in identity, form, or place of organization
22 however effected; or

23 (vii) The acquisition by one corporation, in exchange for stock
24 of a corporation (referred to in this subclause as "controlling
25 corporation") which is in control of the acquiring corporation, of
26 substantially all of the properties of another corporation which in
27 the transaction is merged into the acquiring corporation shall not
28 disqualify a transaction under subclause (i) if such transaction
29 would have qualified under subclause (i) if the merger had been into
30 the controlling corporation, and no stock of the acquiring
31 corporation is used in the transaction;

32 (viii) A transaction otherwise qualifying under subclause (i)
33 shall not be disqualified by reason of the fact that stock of a
34 corporation (referred to in this subclause as the "controlling
35 corporation") which before the merger was in control of the merged
36 corporation is used in the transaction, if after the transaction, the
37 corporation surviving the merger holds substantially all of its
38 properties and of the properties of the merged corporation (other
39 than stock of the controlling corporation distributed in the
40 transaction); and in the transaction, former shareholders of the
41 surviving corporation exchanged, for an amount of voting stock of
42 the controlling corporation, an amount of stock in the surviving
43 corporation which constitutes control of such corporation.

44 For purposes of this clause, the term "control" means the
45 ownership of stock possessing at least 80% of the total combined
46 voting power of all classes of stock entitled to vote and at least 80%
47 of the total number of shares of all other classes of stock of the
48 corporation.

1 For purposes of this clause, the term "a party to a reorganization"
2 includes a corporation resulting from a reorganization, and both
3 corporations, in the case of a reorganization resulting from the
4 acquisition by one corporation of stock or properties of another. In
5 the case of a reorganization qualifying under subclause (i) by reason
6 of subclause (vii) the term "a party to a reorganization" includes the
7 controlling corporation referred to in such subclause (vii).

8 Notwithstanding any provisions hereof, upon every such
9 exchange or conversion, the taxpayer's basis for the stock or
10 securities received shall be the same as the taxpayer's actual or
11 attributed basis for the stock, securities or property surrendered in
12 exchange therefor.

13 d. Net gains or net income derived from or in the form of rents,
14 royalties, patents, and copyrights.

15 e. Interest, except interest referred to in clause (1) or (2) of
16 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
17 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
18 extent provided in that section.

19 f. Dividends. "Dividends" means any distribution in cash or
20 property made by a corporation, association or business trust that is
21 not an S corporation, (1) out of accumulated earnings and profits, or
22 (2) out of earnings and profits of the year in which such dividend is
23 paid and any distribution in cash or property made by an S
24 corporation, as specifically determined pursuant to section 16 of
25 P.L.1993, c.173 (C.54A:5-14).

26 The term "dividends" shall not include distributions paid by a
27 qualified investment fund as defined in section 2 of P.L.1987, c.310
28 (C.54A:6-14.1), to the extent provided in that section.

29 g. Gambling winnings.

30 h. Net gains or income derived through estates or trusts.

31 i. Income in respect of a decedent.

32 j. Amounts distributed or withdrawn from an employee trust
33 attributable to contributions to the trust which were excluded from
34 gross income under the provisions of chapter 6 of Title 54A of the
35 New Jersey Statutes, amounts rolled over from an IRA, as defined
36 pursuant to subsection (a) of section 408 of the federal Internal
37 Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as
38 defined pursuant to subsection b. of section 2 of P.L.1998,c.57
39 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and
40 annuities except to the extent of exclusions in N.J.S.54A:6-10
41 hereunder, notwithstanding the provisions of N.J.S.18A:66-51,
42 P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53
43 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965,
44 c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22
45 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954,
46 c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60),
47 R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44,
48 and P.L.1943, c.189, s.5 (C.43:13-37.5).

1 k. Distributive share of partnership income, excluding the gain
2 or income derived from the sale or assignment of a tax credit
3 transfer certificate pursuant to section 7 of P.L.2011, c.149
4 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).

5 l. Amounts received as prizes and awards, except as provided
6 in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

7 m. Rental value of a residence furnished by an employer or a
8 rental allowance paid by an employer to provide a home.

9 n. Alimony and separate maintenance payments to the extent
10 that such payments are required to be made under a decree of
11 divorce or separate maintenance but not including payments for
12 support of minor children.

13 o. Income, gain or profit derived from acts or omissions
14 defined as crimes or offenses under the laws of this State or any
15 other jurisdiction.

16 p. Net pro rata share of S corporation income, excluding the
17 gain or income derived from the sale or assignment of a tax credit
18 transfer certificate pursuant to section 7 of P.L.2011, c.149
19 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).
20 (cf: P.L.1998, c.57, s.1)

21
22 6. This act shall take effect immediately and section 4 shall
23 apply to accounting and privilege periods beginning on and after
24 January 1, 2017 and section 5 shall apply to taxable years beginning
25 on and after January 1, 2017.

26 27 28 STATEMENT

29
30 This bill extends the application deadline for “Grow New Jersey
31 Assistance Act” (Grow NJ) tax credits and revises the tax credit
32 transfer provisions for the Grow NJ Assistance Program and the
33 Public Infrastructure Project Tax Credit Program. The bill revises
34 the tax treatment of gains and income associated with the sale or
35 assignment of those tax credit transfer certificates.

36 Under the current Grow NJ Assistance Program, businesses have
37 until July 1, 2019 to submit an application for a Grow NJ tax credit
38 (an application must be submitted before July 1, 2019 to be
39 considered for approval). A business that applied for a Grow NJ tax
40 credit prior to July 1, 2014, under the legacy program, is required to
41 submit documentation to the Economic Development Authority
42 (EDA) no later than July 28, 2018. The bill extends these deadlines
43 to December 31, 2021.

44 Certain businesses that receive tax credits under the Grow NJ
45 Assistance Program and the Public Infrastructure Project Tax Credit
46 Program are unable to apply these tax credits directly to their tax
47 liabilities. Instead, these businesses may apply to the Director of
48 the Division of Taxation in the Department of the Treasury and the

1 chief executive officer of the EDA for a tax credit transfer
2 certificate. However, if a business sells a tax credit transfer
3 certificate, the amount the credit is sold for is likely to be less than
4 the amount of the original tax credit award, reducing the economic
5 development power of these incentive-based tax credits.

6 Moreover, various limitations and conditions are imposed upon
7 tax credit transfer certificates, including a time period of three
8 successive tax periods for a transferee to use the tax credit and that
9 a business may not sell a tax credit transfer certificate for an
10 amount less than 75 percent of the transferred credit amount, further
11 restricting a business's ability to obtain a fair selling price.

12 The bill would extend the time period for transferees from three
13 years to 20 years, making the time period for redemption identical
14 to the period permitted for the original tax certificate holder.
15 Further, the bill exempts from the 75 percent minimum value
16 requirement the sale or assignment of a tax credit transfer certificate
17 to an affiliate irrespective of whether the affiliate met the capital
18 investment and employment requirements specified in the incentive
19 agreement.

20 Finally, tax credits utilized to reduce the tax liability of the
21 original tax credit recipient are not considered to be income and are
22 not subject to the gross income tax (GIT) or the corporation
23 business tax (CBT). However, if a business sells the tax credit
24 transfer certificate, the amounts gained or derived from the sale of
25 the tax credit transfer certificate are subject to the GIT or CBT.
26 Since these sales are currently considered income, imposing the
27 GIT or CBT reduces the value of the tax credit transfer certificate
28 for the business transferring the tax credit. The bill would exclude
29 the gain or income derived from the sale or assignment of certain
30 tax credit transfer certificates from taxation so those businesses
31 which cannot apply the tax credits to their tax liability may receive
32 gains closer to the original incentive amounts.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 3305

STATE OF NEW JERSEY

DATED: JUNE 15, 2017

The Senate Budget and Appropriations Committee reports favorably a Senate Committee Substitute for Senate Bill No. 3305.

This substitute bill revises the tax credit transfer certificate provisions for the “Grow New Jersey Assistance Act” (Grow NJ) and the Public Infrastructure Project (PIP) Tax Credit Program. The substitute revises the tax treatment of gains and income associated with the sale or assignment of those tax credit transfer certificates.

The substitute extends the time period for transferees from three years to 20 years, making the time period for redemption identical to the period permitted for the original tax certificate holder.

The substitute exempts from the 75 percent minimum value requirement the sale or assignment of a tax credit transfer certificate to an affiliate irrespective of whether the affiliate met the capital investment and employment requirements specified in the incentive agreement.

The substitute excludes the gain or income derived from the sale or assignment of certain tax credit transfer certificates from taxation.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the substitute will result in an indeterminate annual State revenue reduction to the State General Fund and the Property Tax Relief Fund for the lifespan of tax credits awarded through the Grow NJ Assistance Program and the PIP Tax Credit Program. The OLS is unable to determine the magnitude of the impact due to imperfect information regarding the number taxpayers that will benefit from the exclusion of gains or income derived from the sale or assignment of Grow NJ and PIP tax credit transfer certificates from taxation and the changes made to certain limitations and conditions imposed upon tax credit transfer certificates.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE

SENATE, No. 3305

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2017

The Assembly Appropriations Committee reports favorably Senate Bill No. 3305 (SCS).

This bill revises the tax credit transfer certificate provisions for the “Grow New Jersey Assistance Act” (Grow NJ) and the Public Infrastructure Project (PIP) Tax Credit Program. The bill revises the tax treatment of gains and income associated with the sale or assignment of those tax credit transfer certificates.

The bill extends the time period for transferees from three years to 20 years, making the time period for redemption identical to the period permitted for the original tax certificate holder.

The bill exempts from the 75 percent minimum value requirement the sale or assignment of a tax credit transfer certificate to an affiliate irrespective of whether the affiliate met the capital investment and employment requirements specified in the incentive agreement.

The bill excludes the gain or income derived from the sale or assignment of certain tax credit transfer certificates from taxation.

As reported, this bill is identical to Assembly Bill No. 5035, as reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate annual State revenue reduction to the State General Fund and the Property Tax Relief Fund for the lifespan of tax credits awarded through the Grow NJ Assistance Program and the PIP Tax Credit Program. The OLS is unable to determine the magnitude of the impact due to imperfect information regarding the number taxpayers that will benefit from the exclusion of gains or income derived from the sale or assignment of Grow NJ and PIP tax credit transfer certificates from taxation and the changes made to certain limitations and conditions imposed upon tax credit transfer certificates.

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 3305
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: JULY 13, 2017

SUMMARY

- Synopsis:** Revises tax credit transfer provisions for certain tax incentive programs and revises certain tax treatment of tax credit transfer certificates.
- Type of Impact:** Indeterminate revenue loss to State General Fund and Property Tax Relief Fund.
- Agencies Affected:** Department of the Treasury; and
New Jersey Economic Development Authority.

Office of Legislative Services Estimate

Fiscal Impact	Multi-Year Lifespan of Tax Credit Awards
State Revenue Loss	Indeterminate — See comments below

- The Office of Legislative Services (OLS) concludes that an indeterminate annual State revenue reduction to the State General Fund or the Property Tax Relief Fund (PTRF) will result from the enactment of this bill. The OLS is unable to determine the magnitude of the impact due to imperfect information regarding the number taxpayers that will benefit from the exclusion of gains or income derived from the sale or assignment of “Grow New Jersey Assistance Act (Grow NJ)” and Public Infrastructure Project (PIP) tax credit transfer certificates from taxation and the changes made to certain limitations and conditions imposed upon tax credit transfer certificates.

BILL DESCRIPTION

The Senate Committee Substitute for Senate Bill No. 3305 of 2017 revises the tax credit transfer provisions for the Grow NJ Assistance Program and the PIP Tax Credit Program and revises the tax treatment of gains and income associated with the sale or assignment of tax credit transfer certificates obtained through those programs.

The bill permits the sale or assignment of a tax credit transfer certificate, obtained under Grow NJ Assistance Program or the PIP Tax Credit Program, to an affiliate for an amount less

than 75 percent of the transferred credit amount irrespective of whether the affiliate met the capital investment and employment requirements specified in the incentive agreement. Additionally, the bill extends the time period for transferees to use the tax credits from three successive tax periods to 20 successive tax periods, making the time period for redemption identical to the period permitted for the original tax credit certificate holder.

The bill excludes the gain or income derived from the sale or assignment of certain tax credit transfer certificates from taxation so those businesses which cannot apply the tax credits to their tax liability may receive gains closer to the original incentive amounts.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that an indeterminate annual State revenue reduction to the State General Fund or the PTRF will result from the enactment of this bill. The OLS is unable to determine the magnitude of the impact due to imperfect information regarding the number taxpayers that will benefit from the exclusion from taxation of gains or income derived from the sale or assignment of Grow NJ and PIP tax credit transfer certificates and the changes made to certain limitations and conditions imposed upon tax credit transfer certificates.

Under current law, if a business sells a tax credit transfer certificate, the gain or income derived from this sale is subject to the GIT or the CBT depending upon the business's tax liability. If enacted, the bill would exclude the gain or income derived from the sale of a Grow NJ or PIP tax credit transfer certificate from taxation under the GIT or CBT, subsequently reducing State revenues. The OLS is unaware of the number of tax credit transfer certificates sold from the Grow NJ Assistance Program and the PIP Tax Credit Program, the value of those tax credit transfer certificates, and the amount of revenue generated from the taxes imposed on the gains or income derived from those sales. The OLS notes that actual revenue losses will vary since the amount of tax revenue forgone is dependent upon each taxpayer's tax bracket and existing tax liability which the OLS cannot quantify given the lack of available data.

Moreover, various limitations and conditions are placed upon these tax credit transfer certificates. Under current law, if a taxpayer purchases a tax credit transfer certificate from the original tax credit holder under the Grow NJ Assistance Program or the PIP Tax Credit Program, the taxpayer must utilize the total tax credit amount within a time frame of three successive tax periods or the outstanding amount of the tax credit award is forgone. However, the bill provides a taxpayer who purchases a tax credit transfer certificate under the Grow NJ Assistance Program and the PIP Tax Credit Program with an additional 17 tax periods, for a total of 20 tax periods, to utilize the full tax credit award. Thus, the outstanding balance of a tax credit award, obtained through a tax credit transfer certificate, which may have been forgone after three years, absent the enactment of the bill, may be carried forward into additional tax years and applied against future tax liabilities. Any revenue loss to the State would be the direct result of any additional tax credits applied to a taxpayer's tax liability which would have otherwise been forgone absent the bill's additional 17 successive tax periods.

Further, the bill exempts from the 75 percent minimum value requirement the sale or assignment of a tax credit transfer certificate, obtained under Grow NJ Assistance Program or the

PIP Tax Credit Program, to an affiliate irrespective of whether the affiliate met the capital investment and employment requirements specified in the incentive agreement. The OLS notes that this exemption only applies to the sale of a tax credit transfer certificate to an affiliate, and by eliminating the 75 percent minimum value requirement for sales to an affiliate, the bill would increase the population of potential recipients to whom the original tax credit holder may sell. If the bill results in the sale of a tax credit transfer certificate to an affiliate, which otherwise may not have occurred absent the bill's enactment, the State would realize a direct revenue loss to either the State General Fund or PTRF from the affiliate utilizing the tax credit to reduce its tax liability (assuming the original tax credit holder was unable to sell the tax credit transfer certificate prior to the bill's enactment).

Section: Revenue, Finance and Appropriations

*Analyst: Jordan M. DiGiovanni
Associate Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

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

ASSEMBLY, No. 5035

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 19, 2017

Sponsored by:

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Revises tax credit transfer provisions for certain tax incentive programs and revises certain tax treatment of tax credit transfer certificates.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/9/2018)

1 AN ACT concerning certain tax incentive programs and the
2 provisions associated with tax credit transfer certificates,
3 revising the tax treatment of those tax credit transfer certificates,
4 and amending various parts of the statutory law.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. Section 6 of P.L.2011, c.149 (C.34:1B-247) is amended to
10 read as follows:

11 6. a. (1) The combined value of all credits approved by the
12 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and
13 P.L.2011, c.149 (C.34:1B-242 et al.) prior to December 31, 2013
14 shall not exceed \$1,750,000,000, except as may be increased by the
15 authority as set forth in paragraph (5) of subsection a. of section 35
16 of P.L.2009, c.90 (C.34:1B-209.3). Following the enactment of the
17 "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161
18 (C.52:27D-489p et al.), there shall be no monetary cap on the value
19 of credits approved by the authority attributable to the program
20 pursuant to the "New Jersey Economic Opportunity Act of 2013,"
21 P.L.2013, c.161 (C.52:27D-489p et al.).

22 (2) (Deleted by amendment, P.L.2013, c.161).

23 (3) (Deleted by amendment, P.L.2013, c.161).

24 (4) (Deleted by amendment, P.L.2013, c.161).

25 (5) (Deleted by amendment, P.L.2013, c.161).

26 b. (1) A business shall submit an application for tax credits prior
27 to July 1, 2019. The authority shall not approve an application for
28 tax credits unless the application was submitted prior to July 1,
29 2019.

30 (2) (a) A business shall submit its documentation indicating that
31 it has met the capital investment and employment requirements
32 specified in the incentive agreement for certification of its tax credit
33 amount within three years following the date of approval of its
34 application by the authority. The authority shall have the discretion
35 to grant two six-month extensions of this deadline. Except as
36 provided in subparagraph (b) of this paragraph, in no event shall the
37 incentive effective date occur later than four years following the
38 date of approval of an application by the authority.

39 (b) As of the effective date of P.L.2015, c.252, a business which
40 applied for the tax credit prior to July 1, 2014 under P.L.2011,
41 c.149 (C.34:1B-242 et al.), shall submit its documentation to the
42 authority no later than July 28, 2018, indicating that it has met the
43 capital investment and employment requirements specified in the
44 incentive agreement for certification of its tax credit amount.

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 thus is new matter.

1 (3) Full-time employment for an accounting or privilege period
2 shall be determined as the average of the monthly full-time
3 employment for the period.

4 (4) A business seeking a credit for a mega project shall apply for
5 the credit within four years after the effective date of the "New
6 Jersey Economic Opportunity Act of 2013," P.L.2013, c.161
7 (C.52:27D-489p et al.).

8 c. (1) In conducting its annual review, the authority may require
9 a business to submit any information determined by the authority to
10 be necessary and relevant to its review.

11 The credit amount for any tax period for which the
12 documentation of a business's credit amount remains uncertified as
13 of a date three years after the closing date of that period shall be
14 forfeited, although credit amounts for the remainder of the years of
15 the eligibility period shall remain available to it.

16 The credit amount may be taken by the tax certificate holder for
17 the tax period for which it was issued or may be carried forward for
18 use by the tax certificate holder in any of the next 20 successive tax
19 periods, and shall expire thereafter. The tax certificate holder may
20 transfer the tax credit amount on or after the date of issuance or at
21 any time within three years of the date of issuance for use by the
22 transferee in the tax period **【during】** for which it was **【transferred】**
23 issued or in any of the next **【three】** 20 successive tax periods.
24 Notwithstanding the foregoing, no more than the amount of tax
25 credits equal to the total credit amount divided by the duration of
26 the eligibility period in years may be taken in any tax period.

27 (2) Credits granted to a partnership shall be passed through to
28 the partners, members, or owners, respectively, pro-rata or pursuant
29 to an executed agreement among the partners, members, or owners
30 documenting an alternate distribution method provided to the
31 Director of the Division of Taxation in the Department of the
32 Treasury accompanied by any additional information as the director
33 may require.

34 (3) The amount of credit allowed may be applied against the tax
35 liability otherwise due pursuant to section 5 of P.L.1945, c.162
36 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132
37 (C.54:18A-2 and C.54:18A-3), pursuant to section 1 of P.L.1950,
38 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

39 d. (1) If, in any tax period, the business reduces the total number
40 of full-time employees in its Statewide workforce by more than 20
41 percent from the number of full-time employees in its Statewide
42 workforce in the last tax period prior to the credit amount approval
43 under section 3 of P.L.2011, c.149 (C.34:1B-244), then the business
44 shall forfeit its credit amount for that tax period and each
45 subsequent tax period, until the first tax period for which
46 documentation demonstrating the restoration of the business's
47 Statewide workforce to the threshold levels required by this
48 paragraph has been reviewed and approved by the authority, for

1 which tax period and each subsequent tax period the full amount of
2 the credit shall be allowed.

3 (2) If, in any tax period, the number of full-time employees
4 employed by the business at the qualified business facility located
5 within a qualified incentive area drops below 80 percent of the
6 number of new and retained full-time jobs specified in the incentive
7 agreement, then the business shall forfeit its credit amount for that
8 tax period and each subsequent tax period, until the first tax period
9 for which documentation demonstrating the restoration of the
10 number of full-time employees employed by the business at the
11 qualified business facility to 80 percent of the number of jobs
12 specified in the incentive agreement.

13 (3) (a) If the qualified business facility is sold by the owner in
14 whole or in part during the eligibility period, the new owner shall
15 not acquire the capital investment of the seller and the seller shall
16 forfeit all credits for the tax period in which the sale occurs and all
17 subsequent tax periods, provided however that any credits of the
18 business shall remain unaffected.

19 (b) In connection with a regional distribution facility of
20 foodstuffs, the business entity or entities which own or lease the
21 facility shall qualify as a business regardless of: (i) the type of the
22 business entity or entities which own or lease the facility; (ii) the
23 ownership or leasing of the facility by more than one business
24 entity; or (iii) the ownership of the business entity or entities which
25 own or lease the facility. The ownership or leasing, whether by
26 members, shareholders, partners, or other owners of the business
27 entity or entities, shall be treated as ownership or leasing by
28 affiliates. The members, shareholders, partners, or other ownership
29 or leasing participants and others that are tenants in the facility shall
30 be treated as affiliates for the purpose of counting the full-time
31 employees and capital investments in the facility. The business
32 entity or entities may distribute credits to members, shareholders,
33 partners, or other ownership or leasing participants in accordance
34 with their respective interests. If the business entity or entities or
35 their members, shareholders, partners, or other ownership or leasing
36 participants lease space in the facility to members, shareholders,
37 partners, or other ownership or leasing participants or others as
38 tenants in the facility, the leases shall be treated as a lease to an
39 affiliate, and the business entity or entities shall not be subject to
40 forfeiture of the credits. For the purposes of this section, leasing
41 shall include subleasing and tenants shall include subtenants.

42 (4) (a) For a project located within a Garden State Growth Zone,
43 if, in any tax period, the number of full-time employees employed
44 by the business at the qualified business facility located within a
45 qualified incentive area increases above the number of full-time
46 employees specified in the incentive agreement, then the business
47 shall be entitled to an increased base credit amount for that tax
48 period and each subsequent tax period, for each additional full-time

1 employee added above the number of full-time employees specified
2 in the incentive agreement, until the first tax period for which
3 documentation demonstrating a reduction of the number of full-time
4 employees employed by the business at the qualified business
5 facility, at which time the tax credit amount will be adjusted
6 accordingly pursuant to this section.

7 (b) For a project located within a Garden State Growth Zone
8 which qualifies under the "Municipal Rehabilitation and Economic
9 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which
10 contains a Tourism District as established pursuant to section 5 of
11 P.L.2011, c.18 (C.5:12-219) and regulated by the Casino
12 Reinvestment Development Authority, and which qualifies for a tax
13 credit pursuant to subsubparagraph (ii) of subparagraphs (a) through
14 (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149
15 (C.34:1B-246), if, in any tax period the number of full-time
16 employees employed by the business at the qualified business
17 facility located within a qualified incentive area increases above the
18 number of full-time employees specified in the incentive agreement
19 such that the business shall then meet the minimum number of
20 employees required in subparagraph (b), (c), (d), or (e) of paragraph
21 (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246),
22 then the authority shall recalculate the total tax credit amount per
23 full-time job by using the certified capital investment of the project
24 allowable under the applicable subsubparagraph and the number of
25 full-time jobs certified on the date of the recalculation and applying
26 those numbers to subparagraph (b), (c), (d), or (e) of paragraph (6)
27 of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246),
28 until the first tax period for which documentation demonstrating a
29 reduction of the number of full-time employees employed by the
30 business at the qualified business facility, at which time the tax
31 credit amount shall be adjusted accordingly pursuant to this section.

32 e. The authority shall not enter into an incentive agreement
33 with a business that has previously received incentives pursuant to
34 the "Business Retention and Relocation Assistance Act," P.L.1996,
35 c.25 (C.34:1B-112 et seq.), the "Business Employment Incentive
36 Program Act," P.L.1996, c.26 (C.34:1B-124 et seq.), or any other
37 program administered by the authority unless:

38 (1) the business has satisfied all of its obligations underlying the
39 previous award of incentives or is compliant with section 4 of
40 P.L.2011, c.149 (C.34:1B-245); or

41 (2) the capital investment incurred and new or retained full-time
42 jobs pledged by the business in the new incentive agreement are
43 separate and apart from any capital investment or jobs underlying
44 the previous award of incentives.

45 f. A business which has already applied for a tax credit
46 incentive award prior to the effective date of the "New Jersey
47 Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-
48 489p et al.), but who has not yet been approved for the tax credits,

1 or has not executed an agreement with the authority, may proceed
2 under that application or seek to amend the application or reapply
3 for a tax credit incentive award for the same project or any part
4 thereof for the purpose of availing itself of any more favorable
5 provisions of the program.

6 (cf: P.L.2015, c.252, s.4)

7

8 2. Section 7 of P.L.2011, c.149 (C.34:1B-248) is amended to
9 read as follows:

10 7. A business may apply to the Director of the Division of
11 Taxation in the Department of the Treasury and the chief executive
12 officer of the authority for a tax credit transfer certificate, covering
13 one or more years, in lieu of the business being allowed any amount
14 of the credit against the tax liability of the business. The tax credit
15 transfer certificate, upon receipt thereof by the business from the
16 director and the chief executive officer of the authority, may be sold
17 or assigned, in full or in part, in an amount not less than \$25,000, to
18 any other person that may have a tax liability pursuant to section 5
19 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of
20 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
21 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.
22 The certificate provided to the business shall include a statement
23 waiving the business's right to claim that amount of the credit
24 against the taxes that the business has elected to sell or assign. The
25 sale or assignment of any amount of a tax credit transfer certificate
26 allowed under this section shall not be exchanged for consideration
27 received by the business of less than 75 percent of the transferred
28 credit amount before considering any further discounting to present
29 value which shall be permitted, except that the 75 percent minimum
30 measure of consideration shall not apply to the sale or assignment
31 of a tax credit transfer certificate to an affiliate irrespective of
32 whether the affiliate met the capital investment and employment
33 requirements specified in the incentive agreement. Any amount of
34 a tax credit transfer certificate used by a purchaser or assignee
35 against a tax liability shall be subject to the same limitations and
36 conditions that apply to the use of the credit by the business that
37 originally applied for and was allowed the credit.

38 (cf: P.L.2014, c.63, s.6)

39

40 3. Section 10 of P.L.2014, c.63 (C.34:1B-251) is amended to
41 read as follows:

42 10. a. For the purposes of this section:

43 "Authority" means the New Jersey Economic Development
44 Authority established pursuant to section 4 of P.L.1974, c.80
45 (C.34:1B-4).

46 "Government entity" means the State government, a local unit of
47 government, or a State or local government agency or authority.

1 "Providing public infrastructure" means undertaking and paying
2 for the construction of public infrastructure; contributing money or
3 paying debt service for the construction of public infrastructure; or
4 deeding land to a government entity for use as public infrastructure.

5 "Public infrastructure" means: (1) buildings and structures, such
6 as schools; fire houses; police stations; recreation centers; public
7 works garages; and water and sewer treatment and pumping
8 facilities; (2) open space with improvements such as athletic fields;
9 playgrounds; planned parks; (3) open space without improvements;
10 and (4) public transportation facilities such as train stations and
11 public parking facilities. To qualify as public infrastructure under
12 this section, the facilities, land, or both, shall have a minimum fair
13 market value of \$5 million; provided, however, that multiple lands
14 and facilities, valued individually at less than \$5 million, that are
15 part of the same redevelopment project may be aggregated to
16 achieve the minimum \$5 million requirement. In the case of open
17 space without improvements, the land shall have a minimum fair
18 market value of at least \$1 million prior to its dedication as open
19 space. Sidewalks, streets, roads, ramps, and jug handles shall not
20 be deemed public infrastructure for the purposes of this section.

21 "Tax credit" means a credit equal to 100 percent of the
22 applicant's cost of providing public infrastructure for use to offset a
23 tax liability.

24 "Tax liability" means a liability for the taxes imposed pursuant to
25 the "Corporation Business Tax (1945)," P.L.1945, c.162 (C.54:10A-
26 1 et seq.), and liability for basic, general, additional, and
27 supplemental realty transfer fees imposed pursuant to P.L.1968,
28 c.49 (C.46:15-5 et seq.), as amended and supplemented.

29 "Urban transit hub municipality" means an urban transit hub
30 municipality, as defined in section 2 of P.L.2011, c.149 (C.34:1B-
31 243).

32 b. Commencing with October 24, 2014, the effective date of
33 P.L.2014, c.63 (C.34:1B-251 et al.), and ending on December 31 of
34 the fifth complete year next following, an applicant that has agreed
35 to, or has provided, public infrastructure may apply to the New
36 Jersey Economic Development Authority for a tax credit under the
37 following conditions:

38 (1) The applicant or another entity by contract or development
39 agreement either makes a new capital investment in an amount
40 equal to or greater than \$10,000,000 at any time during the term set
41 forth in this subsection, or causes another entity by contract or
42 development agreement to construct a building, complex of
43 buildings or other similar structures or facilities, which relies on the
44 completed public infrastructure and completes construction during
45 the term set forth in this subsection.

46 (2) The applicant has not received a tax credit under the "Grow
47 New Jersey Assistance Program" established by section 3 of
48 P.L.2011, c.149 (C.34:1B-244).

1 (3) The applicant has not received a grant under a State or a
2 local Economic Redevelopment and Growth Grant program
3 pursuant to section 4 or section 5 of P.L.2009, c.90 (C.52:27D-489d
4 or C.52:27D-489e).

5 (4) The applicant is not a "Garden State Growth Zone
6 Development Entity," as defined in section 23 of P.L.2013, c.161
7 (C.52:27D-489r).

8 (5) The applicant is not partnered with the New Jersey Sports
9 and Exposition Authority for the capital investment pursuant to this
10 section.

11 c. The New Jersey Economic Development Authority shall
12 grant an application for a tax credit if the government entity
13 receiving the public infrastructure adopts a resolution and files it
14 with the authority, consenting to the award of the tax credit and the
15 ownership of the public infrastructure is transferred to that
16 government entity, and either: (1) the construction commences after
17 January 1, 2013; (2) the construction is completed, as evidenced by
18 a certificate of occupancy or other certificate of completion, after
19 January 1, 2013; (3) the first monetary or debt service payment
20 occurs after January 1, 2013; or (4) the land is deeded to the
21 government entity after January 1, 2013.

22 d. (1) (a) Except as provided in subparagraph (b) of this
23 paragraph, the total amount of tax credits that may be awarded to an
24 eligible applicant for a single project shall not exceed \$5,000,000.

25 (b) In the case of an applicant engaged in a brownfields
26 redevelopment project comprising park and infrastructure
27 development within an urban transit hub municipality, the total
28 amount of tax credits the authority may award to the applicant shall
29 not exceed \$2,000,000 cumulative of all applications submitted
30 under this section by the applicant. As used in this subparagraph,
31 "applicant" means an entity applying for a tax credit pursuant to
32 subsection b. of this section and shall include its subsidiaries, its
33 parent, affiliated entities, and common principal owners.

34 (c) The total value of all tax credits approved by the authority
35 pursuant to this section shall not exceed \$22,000,000.

36 (2) A tax credit granted pursuant to this section may be
37 transferred in the same manner as tax credits are transferred **[**under
38 section 33 of P.L.2009, c.90 (C.34:1B-209.1)**]** pursuant to section 7
39 of P.L.2011, c.149 (C.34:1B-248) and utilized in the same manner
40 as provided pursuant to paragraph (1) of subsection c. of section 6
41 of P.L.2011, c.149 (C.34:1B-247).

42 (3) Except for the limitations set forth in paragraph (1) of this
43 subsection, nothing in this section shall prohibit an applicant from
44 applying for and being awarded multiple tax credit awards based on
45 separate public infrastructure projects.

46 e. The chief executive of the authority, in consultation with the
47 Director of the Division of Taxation in the Department of the
48 Treasury, may adopt rules and regulations pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.), necessary to implement the provisions of this section.
3 (cf: P.L.2015, c.217, s.2)

4

5 4. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read
6 as follows:

7 4. For the purposes of this act, unless the context requires a
8 different meaning:

9 (a) "Commissioner" or "director" shall mean the Director of the
10 Division of Taxation of the State Department of the Treasury.

11 (b) "Allocation factor" shall mean the proportionate part of a
12 taxpayer's net worth or entire net income used to determine a
13 measure of its tax under this act.

14 (c) "Corporation" shall mean any corporation, joint-stock
15 company or association and any business conducted by a trustee or
16 trustees wherein interest or ownership is evidenced by a certificate
17 of interest or ownership or similar written instrument, any other
18 entity classified as a corporation for federal income tax purposes,
19 and any state or federally chartered building and loan association or
20 savings and loan association.

21 (d) "Net worth" shall mean the aggregate of the values disclosed
22 by the books of the corporation for (1) issued and outstanding
23 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
24 undivided profits, and (4) surplus reserves which can reasonably be
25 expected to accrue to holders or owners of equitable shares, not
26 including reasonable valuation reserves, such as reserves for
27 depreciation or obsolescence or depletion. Notwithstanding the
28 foregoing, net worth shall not include any deduction for the amount
29 of the excess depreciation described in paragraph (2)(F) of
30 subsection (k) of this section. The foregoing aggregate of values
31 shall be reduced by 50% of the amount disclosed by the books of
32 the corporation for investment in the capital stock of one or more
33 subsidiaries, which investment is defined as ownership (1) of at
34 least 80% of the total combined voting power of all classes of stock
35 of the subsidiary entitled to vote and (2) of at least 80% of the total
36 number of shares of all other classes of stock except nonvoting
37 stock which is limited and preferred as to dividends. In the case of
38 investment in an entity organized under the laws of a foreign
39 country, the foregoing requisite degree of ownership shall effect a
40 like reduction of such investment from the net worth of the
41 taxpayer, if the foreign entity is considered a corporation for any
42 purpose under the United States federal income tax laws, such as
43 (but not by way of sole examples) for the purpose of supplying
44 deemed paid foreign tax credits or for the purpose of status as a
45 controlled foreign corporation. In calculating the net worth of a
46 taxpayer entitled to reduction for investment in subsidiaries, the
47 amount of liabilities of the taxpayer shall be reduced by such
48 proportion of the liabilities as corresponds to the ratio which the

1 excluded portion of the subsidiary values bears to the total assets of
2 the taxpayer.

3 In the case of banking corporations which have international
4 banking facilities as defined in subsection (n), the foregoing
5 aggregate of values shall also be reduced by retained earnings of the
6 international banking facility. Retained earnings means the
7 earnings accumulated over the life of such facility and shall not
8 include the distributive share of dividends paid and federal income
9 taxes paid or payable during the tax year.

10 If in the opinion of the commissioner, the corporation's books do
11 not disclose fair valuations the commissioner may make a
12 reasonable determination of the net worth which, in his opinion,
13 would reflect the fair value of the assets, exclusive of subsidiary
14 investments as defined aforesaid, carried on the books of the
15 corporation, in accordance with sound accounting principles, and
16 such determination shall be used as net worth for the purpose of this
17 act.

18 (e) (Deleted by amendment, P.L.1998, c.114.)

19 (f) "Investment company" shall mean any corporation whose
20 business during the period covered by its report consisted, to the
21 extent of at least 90% thereof of holding, investing and reinvesting
22 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
23 and other securities for its own account, but this shall not include
24 any corporation which: (1) is a merchant or a dealer of stocks,
25 bonds and other securities, regularly engaged in buying the same
26 and selling the same to customers; or (2) had less than 90% of its
27 average gross assets in New Jersey, at cost, invested in stocks,
28 bonds, debentures, mortgages, notes, patents, patent rights or other
29 securities or consisting of cash on deposit during the period covered
30 by its report; or (3) is a banking corporation, a savings institution,
31 or a financial business corporation as defined in the Corporation
32 Business Tax Act.

33 (g) "Regulated investment company" shall mean any corporation
34 which for a period covered by its report, is registered and regulated
35 under the Investment Company Act of 1940 (54 Stat. 789), as
36 amended.

37 (h) "Taxpayer" shall mean any corporation, and any partnership
38 required, or consenting, to report or to pay taxes, interest or
39 penalties under this act. "Taxpayer" shall not include a partnership
40 that is listed on a United States national stock exchange.

41 (i) "Fiscal year" shall mean an accounting period ending on any
42 day other than the last day of December on the basis of which the
43 taxpayer is required to report for federal income tax purposes.

44 (j) Except as herein provided, "privilege period" shall mean the
45 calendar or fiscal accounting period for which a tax is payable
46 under this act.

47 (k) "Entire net income" shall mean total net income from all
48 sources, whether within or without the United States, and shall

1 include the gain derived from the employment of capital or labor, or
2 from both combined, as well as profit gained through a sale or
3 conversion of capital assets.

4 For the purpose of this act, the amount of a taxpayer's entire net
5 income shall be deemed prima facie to be equal in amount to the
6 taxable income, before net operating loss deduction and special
7 deductions, which the taxpayer is required to report, or, if the
8 taxpayer is classified as a partnership for federal tax purposes,
9 would otherwise be required to report, to the United States Treasury
10 Department for the purpose of computing its federal income tax,
11 provided however, that in the determination of such entire net
12 income,

13 (1) Entire net income shall exclude for the periods set forth in
14 paragraph (2)(F)(i) of this subsection, any amount, except with
15 respect to qualified mass commuting vehicles as described in
16 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect
17 immediately prior to January 1, 1984, which is included in a
18 taxpayer's federal taxable income solely as a result of an election
19 made pursuant to the provisions of paragraph (8) of that section.

20 (2) Entire net income shall be determined without the exclusion,
21 deduction or credit of:

22 (A) The amount of any specific exemption or credit allowed in
23 any law of the United States imposing any tax on or measured by
24 the income of corporations.

25 (B) Any part of any income from dividends or interest on any
26 kind of stock, securities or indebtedness, except as provided in
27 paragraph (5) of subsection (k) of this section.

28 (C) Taxes paid or accrued to the United States, a possession or
29 territory of the United States, a state, a political subdivision thereof,
30 or the District of Columbia, or to any foreign country, state,
31 province, territory or subdivision thereof, on or measured by profits
32 or income, or business presence or business activity, or the tax
33 imposed by this act, or any tax paid or accrued with respect to
34 subsidiary dividends excluded from entire net income as provided
35 in paragraph (5) of subsection (k) of this section.

36 (D) (Deleted by amendment, P.L.1985, c.143.)

37 (E) (Deleted by amendment, P.L.1995, c.418.)

38 (F) (i) The amount by which depreciation reported to the United
39 States Treasury Department for property placed in service on and
40 after January 1, 1981, but prior to taxpayer fiscal or calendar
41 accounting years beginning on and after the effective date of
42 P.L.1993, c.172, for purposes of computing federal taxable income
43 in accordance with section 168 of the Internal Revenue Code in
44 effect after December 31, 1980, exceeds the amount of depreciation
45 determined in accordance with the Internal Revenue Code
46 provisions in effect prior to January 1, 1981, but only with respect
47 to a taxpayer's accounting period ending after December 31, 1981;
48 provided, however, that where a taxpayer's accounting period

1 begins in 1981 and ends in 1982, no modification shall be required
2 with respect to this paragraph (F) for the report filed for such period
3 with respect to property placed in service during that part of the
4 accounting period which occurs in 1981. The provisions of this
5 subparagraph shall not apply to assets placed in service prior to
6 January 1, 1998 of a gas, gas and electric, and electric public utility
7 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
8 seq.) prior to 1998.

9 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
10 (2) of this subsection, any amount, except with respect to qualified
11 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
12 the Internal Revenue Code as in effect immediately prior to January
13 1, 1984, which the taxpayer claimed as a deduction in computing
14 federal income tax pursuant to a qualified lease agreement under
15 paragraph (8) of that section.

16 The director shall promulgate rules and regulations necessary to
17 carry out the provisions of this section, which rules shall provide,
18 among others, the manner in which the remaining life of property
19 shall be reported.

20 (G) (i) The amount of any civil, civil administrative, or criminal
21 penalty or fine, including a penalty or fine under an administrative
22 consent order, assessed and collected for a violation of a State or
23 federal environmental law, an administrative consent order, or an
24 environmental ordinance or resolution of a local governmental
25 entity, and any interest earned on the penalty or fine, and any
26 economic benefits having accrued to the violator as a result of a
27 violation, which benefits are assessed and recovered in a civil, civil
28 administrative, or criminal action, or pursuant to an administrative
29 consent order. The provisions of this paragraph shall not apply to a
30 penalty or fine assessed or collected for a violation of a State or
31 federal environmental law, or local environmental ordinance or
32 resolution, if the penalty or fine was for a violation that resulted
33 from fire, riot, sabotage, flood, storm event, natural cause, or other
34 act of God beyond the reasonable control of the violator, or caused
35 by an act or omission of a person who was outside the reasonable
36 control of the violator.

37 (ii) The amount of treble damages paid to the Department of
38 Environmental Protection pursuant to subsection a. of section 7 of
39 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
40 department in removing, or arranging for the removal of, an
41 unauthorized discharge upon failure of the discharger to comply
42 with a directive from the department to remove, or arrange for the
43 removal of, the discharge.

44 (H) The amount of any sales and use tax paid by a utility vendor
45 pursuant to section 71 of P.L.1997, c.162.

46 (I) Interest paid, accrued or incurred for the privilege period to
47 a related member, as defined in section 5 of P.L.2002, c.40
48 (C.54:10A-4.4), except that a deduction shall be permitted to the

1 extent that the taxpayer establishes by clear and convincing
2 evidence, as determined by the director, that: (i) a principal purpose
3 of the transaction giving rise to the payment of the interest was not
4 to avoid taxes otherwise due under Title 54 of the Revised Statutes
5 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
6 pursuant to arm's length contracts at an arm's length rate of interest,
7 and (iii)(aa) the related member was subject to a tax on its net
8 income or receipts in this State or another state or possession of the
9 United States or in a foreign nation, (bb) a measure of the tax
10 includes the interest received from the related member, and (cc) the
11 rate of tax applied to the interest received by the related member is
12 equal to or greater than a rate three percentage points less than the
13 rate of tax applied to taxable interest by this State.

14 A deduction shall also be permitted if the taxpayer establishes by
15 clear and convincing evidence, as determined by the director, that
16 the disallowance of a deduction is unreasonable, or the taxpayer and
17 the director agree in writing to the application or use of an
18 alternative method of apportionment under section 8 of P.L.1945,
19 c.162 (C.54:10A-8); nothing in this subsection shall be construed to
20 limit or negate the director's authority to otherwise enter into
21 agreements and compromises otherwise allowed by law.

22 A deduction shall also be permitted to the extent that the
23 taxpayer establishes by a preponderance of the evidence, as
24 determined by the director, that the interest is directly or indirectly
25 paid, accrued or incurred to (i) a related member in a foreign nation
26 which has in force a comprehensive income tax treaty with the
27 United States, provided however that the taxpayer shall disclose on
28 its return for the privilege period the name of the related member,
29 the amount of the interest, the relevant foreign nation, and such
30 other information as the director may prescribe or (ii) to an
31 independent lender and the taxpayer guarantees the debt on which
32 the interest is required.

33 (J) Amounts deducted for federal tax purposes pursuant to
34 section 199 of the federal Internal Revenue Code of 1986, 26
35 U.S.C. s.199, except that this exclusion shall not apply to amounts
36 deducted pursuant to that section that are exclusively based upon
37 domestic production gross receipts of the taxpayer which are
38 derived only from any lease, rental, license, sale, exchange, or other
39 disposition of qualifying production property which the taxpayer
40 demonstrates to the satisfaction of the director was manufactured or
41 produced by the taxpayer in whole or in significant part within the
42 United States but not qualified production property that was grown
43 or extracted by the taxpayer. "Manufactured or produced" as used
44 in this paragraph shall be limited to performance of an operation or
45 series of operations the object of which is to place items of tangible
46 personal property in a form, composition, or character different
47 from that in which they were acquired. The change in form,
48 composition, or character shall be a substantial change, and result in

1 a transformation of property into a different or substantially more
2 usable product.

3 (3) The commissioner may, whenever necessary to properly
4 reflect the entire net income of any taxpayer, determine the year or
5 period in which any item of income or deduction shall be included,
6 without being limited to the method of accounting employed by the
7 taxpayer.

8 (4) There shall be allowed as a deduction from entire net income
9 of a banking corporation, to the extent not deductible in
10 determining federal taxable income, the eligible net income of an
11 international banking facility determined as follows:

12 (A) The eligible net income of an international banking facility
13 shall be the amount remaining after subtracting from the eligible
14 gross income the applicable expenses;

15 (B) Eligible gross income shall be the gross income derived by
16 an international banking facility, which shall include, but not be
17 limited to, gross income derived from:

18 (i) Making, arranging for, placing or carrying loans to foreign
19 persons, provided, however, that in the case of a foreign person
20 which is an individual, or which is a foreign branch of a domestic
21 corporation (other than a bank), or which is a foreign corporation or
22 foreign partnership which is controlled by one or more domestic
23 corporations (other than banks), domestic partnerships or resident
24 individuals, all the proceeds of the loan are for use outside of the
25 United States;

26 (ii) Making or placing deposits with foreign persons which are
27 banks or foreign branches of banks (including foreign subsidiaries)
28 or foreign branches of the taxpayers or with other international
29 banking facilities;

30 (iii) Entering into foreign exchange trading or hedging
31 transactions related to any of the transactions described in this
32 paragraph; or

33 (iv) Such other activities as an international banking facility
34 may, from time to time, be authorized to engage in;

35 (C) Applicable expenses shall be any expense or other
36 deductions attributable, directly or indirectly, to the eligible gross
37 income described in subparagraph (B) of this paragraph.

38 (5) Entire net income shall exclude 100% of dividends which
39 were included in computing such taxable income for federal income
40 tax purposes, paid to the taxpayer by one or more subsidiaries
41 owned by the taxpayer to the extent of the 80% or more ownership
42 of investment described in subsection (d) of this section and shall
43 exclude 50% of dividends which were included in computing such
44 taxable income for federal income tax purposes, paid to the
45 taxpayer by one or more subsidiaries owned by the taxpayer to the
46 extent of 50% or more ownership of investment, such ownership of
47 investment calculated in the same manner as the 80% or more of

1 ownership of investment is calculated as described in subsection (d)
2 of this section.

3 (6) (A) Net operating loss deduction. There shall be allowed as a
4 deduction for the privilege period the net operating loss carryover to
5 that period.

6 (B) Net operating loss carryover. A net operating loss for any
7 privilege period ending after June 30, 1984 shall be a net operating
8 loss carryover to each of the seven privilege periods following the
9 period of the loss and a net operating loss for any privilege period
10 ending after June 30, 2009 shall be a net operating loss carryover to
11 each of the twenty privilege periods following the period of the
12 loss. The entire amount of the net operating loss for any privilege
13 period (the "loss period") shall be carried to the earliest of the
14 privilege periods to which the loss may be carried. The portion of
15 the loss which shall be carried to each of the other privilege periods
16 shall be the excess, if any, of the amount of the loss over the sum of
17 the entire net income, computed without the exclusions permitted in
18 paragraphs (4) and (5) of this subsection or the net operating loss
19 deduction provided by subparagraph (A) of this paragraph, for each
20 of the prior privilege periods to which the loss may be carried.

21 (C) Net operating loss. For purposes of this paragraph the term
22 "net operating loss" means the excess of the deductions over the
23 gross income used in computing entire net income without the net
24 operating loss deduction provided for in subparagraph (A) of this
25 paragraph and the exclusions in paragraphs (4) and (5) of this
26 subsection.

27 (D) Change in ownership. Where there is a change in 50% or
28 more of the ownership of a corporation because of redemption or
29 sale of stock and the corporation changes the trade or business
30 giving rise to the loss, no net operating loss sustained before the
31 changes may be carried over to be deducted from income earned
32 after such changes. In addition where the facts support the premise
33 that the corporation was acquired under any circumstances for the
34 primary purpose of the use of its net operating loss carryover, the
35 director may disallow the carryover.

36 (E) Notwithstanding the provisions of this paragraph (6) of
37 subsection (k) of this section to the contrary, for privilege periods
38 beginning during calendar year 2002 and calendar year 2003, no
39 deduction for any net operating loss carryover shall be allowed and
40 for privilege periods beginning during calendar year 2004 and
41 calendar year 2005, there shall be allowed as a deduction for the
42 privilege period so much of the net operating loss carryover as
43 reduces entire net income otherwise calculated by 50%. If and only
44 to the extent that any net operating loss carryover deduction is
45 disallowed by reason of this subparagraph (E), the date on which
46 the amount of the disallowed net operating loss carryover deduction
47 would otherwise expire shall be extended by a period equal to the

1 period for which application of the net operating loss was
2 disallowed by this subparagraph.

3 Provided, that this subparagraph (E) shall not restrict the
4 surrender or acquisition of corporation business tax benefit
5 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
6 7.42a) and shall not restrict the application of corporation business
7 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
8 (C.54:10A-4.2).

9 (F) Reduction for discharge of indebtedness. A net operating
10 loss for any privilege period ending after June 30, 2014, and any net
11 operating loss carryover to such privilege period, shall be reduced
12 by the amount excluded from federal taxable income under
13 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
14 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),
15 for the privilege period of the discharge of indebtedness.

16 (7) The entire net income of gas, electric and gas and electric
17 public utilities that were subject to the provisions of P.L.1940, c.5
18 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
19 substituting the New Jersey depreciation allowance for federal tax
20 depreciation with respect to assets placed in service prior to January
21 1, 1998. For gas, electric, and gas and electric public utilities that
22 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
23 seq.) prior to 1998, the New Jersey depreciation allowance shall be
24 computed as follows: All depreciable assets placed in service prior
25 to January 1, 1998 shall be considered a single asset account. The
26 New Jersey tax basis of this depreciable asset account shall be an
27 amount equal to the carryover adjusted basis for federal income tax
28 purposes on December 31, 1997 of all depreciable assets in service
29 on December 31, 1997, increased by the excess, of the "net carrying
30 value," defined to be adjusted book basis of all assets and liabilities,
31 excluding deferred income taxes, recorded on the public utility's
32 books of account on December 31, 1997, over the carryover
33 adjusted basis for federal income tax purposes on December 31,
34 1997 of all assets and liabilities owned by the gas, electric, or gas
35 and electric public utility as of December 31, 1997. "Books of
36 account" for gas, gas and electric, and electric public utilities means
37 the uniform system of accounts as promulgated by the Federal
38 Energy Regulatory Commission and adopted by the Board of Public
39 Utilities. The following adjustments to entire net income shall be
40 made pursuant to this section:

41 (A) Depreciation for property placed in service prior to January
42 1, 1998 shall be adjusted as follows:

43 (i) Depreciation for federal income tax purposes shall be
44 disallowed in full.

45 (ii) A deduction shall be allowed for the New Jersey
46 depreciation allowance. The New Jersey depreciation allowance
47 shall be computed for the single asset account described above
48 based on the New Jersey tax basis as adjusted above as if all assets

1 in the single asset account were first placed in service on January 1,
2 1998. Depreciation shall be computed using the straight line
3 method over a thirty-year life. A full year's depreciation shall be
4 allowed in the initial tax year. No half-year convention shall apply.
5 The depreciable basis of the single account shall be reduced by the
6 adjusted federal tax basis of assets sold, retired, or otherwise
7 disposed of during any year on which gain or loss is recognized for
8 federal income tax purposes as described in subparagraph (B) of
9 this paragraph.

10 (B) Gains and losses on sales, retirements and other dispositions
11 of assets placed in service prior to January 1, 1998 shall be
12 recognized and reported on the same basis as for federal income tax
13 purposes.

14 (C) The Director of the Division of Taxation shall promulgate
15 regulations describing the methodology for allocating the single
16 asset account in the event that a portion of the utility's operations
17 are separated, spun-off, transferred to a separate company or
18 otherwise desegregated.

19 (8) In the case of taxpayers that are gas, electric, gas and
20 electric, or telecommunications public utilities as defined pursuant
21 to subsection (q) of this section, the director shall have authority to
22 promulgate rules and issue guidance correcting distortions and
23 adjusting timing differences resulting from the adoption of
24 P.L.1997, c.162 (C.54:10A-5.25 et al.).

25 (9) Notwithstanding paragraph (1) of this subsection, entire net
26 income shall not include the income derived by a corporation
27 organized in a foreign country from the international operation of a
28 ship or ships, or from the international operation of aircraft, if such
29 income is exempt from federal taxation pursuant to section 883 of
30 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

31 (10) Entire net income shall exclude all income of an alien
32 corporation the activities of which are limited in this State to
33 investing or trading in stocks and securities for its own account,
34 investing or trading in commodities for its own account, or any
35 combination of those activities, within the meaning of section 864
36 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
37 effect on December 31, 1998. Notwithstanding the previous
38 sentence, if an alien corporation undertakes one or more infrequent,
39 extraordinary or non-recurring activities, including but not limited
40 to the sale of tangible property, only the income from such
41 infrequent, extraordinary or non-recurring activity shall be subject
42 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
43 seq.), and that amount of income subject to tax shall be determined
44 without regard to the allocation to that specific transaction of any
45 general business expense of the taxpayer and shall be specifically
46 assigned to this State for taxation by this State without regard to
47 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this
48 paragraph, "alien corporation" means a corporation organized under

1 the laws of a jurisdiction other than the United States or its political
2 subdivisions.

3 (11) No deduction shall be allowed for research and
4 experimental expenditures, to the extent that those research and
5 experimental expenditures are qualified research expenses or basic
6 research payments for which an amount of credit is claimed
7 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless
8 those research and experimental expenditures are also used to
9 compute a federal credit claimed pursuant to section 41 of the
10 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

11 (12) (A) Notwithstanding the provisions of subsection (k) of
12 section 168 of the federal Internal Revenue Code of 1986, 26
13 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
14 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
15 law, for property acquired after September 10, 2001, the
16 depreciation deduction otherwise allowed pursuant to section 167 of
17 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
18 be determined pursuant to the provisions of the federal Internal
19 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
20 December 31, 2001.

21 (B) The director shall prescribe the rules and regulations
22 necessary to carry out the provisions of this paragraph, including,
23 among others, those for determining the adjusted basis of the
24 acquired property for the purposes of the Corporation Business Tax
25 Act (1945), P.L.1945, c.162.

26 (13) (A) Notwithstanding the provisions of section 179 of the
27 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
28 property placed in service on or after January 1, 2004, the costs that
29 a taxpayer may otherwise elect to treat as an expense which is not
30 chargeable to a capital account shall be determined pursuant to the
31 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.
32 s.1 et seq.) in effect on December 31, 2002.

33 (B) The director shall prescribe the rules and regulations
34 necessary to carry out the provisions of this paragraph, including,
35 among others, those for determining the adjusted basis of the
36 acquired property for the purposes of the Corporation Business Tax
37 Act (1945), P.L.1945, c.162.

38 (14) Notwithstanding the provisions of subsection (i) of section
39 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
40 for privilege periods beginning after December 31, 2008 and before
41 January 1, 2011, entire net income shall include the amount of
42 discharge of indebtedness income excluded for federal income tax
43 purposes pursuant to subsection (i) of section 108 of the federal
44 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
45 periods beginning on or after January 1, 2014 and before January 1,
46 2019, entire net income shall exclude the amount of discharge of
47 indebtedness income included for federal income tax purposes,

1 pursuant to subsection (i) of section 108 of the federal Internal
2 Revenue Code of 1986 (26 U.S.C. s.108).

3 (15) Entire net income shall exclude the gain or income derived
4 from the sale or assignment of a tax credit transfer certificate
5 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
6 10 of P.L.2014, c.63 (C.34:1B-251).

7 (l) "Real estate investment trust" shall mean any corporation,
8 trust or association qualifying and electing to be taxed as a real
9 estate investment trust under federal law.

10 (m) "Financial business corporation" shall mean any corporate
11 enterprise which is (1) in substantial competition with the business
12 of national banks and which (2) employs moneyed capital with the
13 object of making profit by its use as money, through discounting
14 and negotiating promissory notes, drafts, bills of exchange and
15 other evidences of debt; buying and selling exchange; making of or
16 dealing in secured or unsecured loans and discounts; dealing in
17 securities and shares of corporate stock by purchasing and selling
18 such securities and stock without recourse, solely upon the order
19 and for the account of customers; or investing and reinvesting in
20 marketable obligations evidencing indebtedness of any person,
21 copartnership, association or corporation in the form of bonds,
22 notes or debentures commonly known as investment securities; or
23 dealing in or underwriting obligations of the United States, any
24 state or any political subdivision thereof, or of a corporate
25 instrumentality of any of them. This shall include, without
26 limitation of the foregoing, business commonly known as industrial
27 banks, dealers in commercial paper and acceptances, sales finance,
28 personal finance, small loan and mortgage financing businesses, as
29 well as any other enterprise employing moneyed capital coming
30 into competition with the business of national banks; provided that
31 the holding of bonds, notes, or other evidences of indebtedness by
32 individual persons not employed or engaged in the banking or
33 investment business and representing merely personal investments
34 not made in competition with the business of national banks, shall
35 not be deemed financial business. Nor shall "financial business"
36 include national banks, production credit associations organized
37 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
38 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
39 insurance companies duly authorized to transact business in this
40 State, security brokers or dealers or investment companies or
41 bankers not employing moneyed capital coming into competition
42 with the business of national banks, real estate investment trusts, or
43 any of the following entities organized under the laws of this State:
44 credit unions, savings banks, savings and loan and building and
45 loan associations, pawnbrokers, and State banks and trust
46 companies.

47 (n) "International banking facility" shall mean a set of asset and
48 liability accounts segregated on the books and records of a

1 depository institution, United States branch or agency of a foreign
2 bank, or an Edge or Agreement Corporation that includes only
3 international banking facility time deposits and international
4 banking facility extensions of credit as such terms are defined in
5 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
6 board of governors of the Federal Reserve System, 12 CFR Part
7 204, effective December 3, 1981. In the event that the United
8 States enacts a law, or the board of governors of the Federal
9 Reserve System adopts a regulation which amends the present
10 definition of international banking facility or of such facilities' time
11 deposits or extensions of credit, the Commissioner of Banking and
12 Insurance shall forthwith adopt regulations defining such terms in
13 the same manner as such terms are set forth in the laws of the
14 United States or the regulations of the board of governors of the
15 Federal Reserve System. The regulations of the Commissioner of
16 Banking and Insurance shall thereafter provide the applicable
17 definitions.

18 (o) "S corporation" means a corporation included in the
19 definition of an "S corporation" pursuant to section 1361 of the
20 federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

21 (p) "New Jersey S corporation" means a corporation that is an S
22 corporation; which has made a valid election pursuant to section 3
23 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
24 corporation continuously since the effective date of the valid
25 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
26 5.22).

27 (q) "Public Utility" means "public utility" as defined in
28 R.S.48:2-13.

29 (r) "Qualified investment partnership" means a partnership
30 under this act that has more than 10 members or partners with no
31 member or partner owning more than a 50% interest in the entity
32 and that derives at least 90% of its gross income from dividends,
33 interest, payments with respect to securities loans, and gains from
34 the sale or other disposition of stocks or securities or foreign
35 currencies or commodities or other similar income (including but
36 not limited to gains from swaps, options, futures or forward
37 contracts) derived with respect to its business of investing or
38 trading in those stocks, securities, currencies or commodities, but
39 "investment partnership" shall not include a "dealer in securities"
40 within the meaning of section 1236 of the federal Internal Revenue
41 Code of 1986, 26 U.S.C. s.1236.

42 (s) "Savings institution" means a state or federally chartered
43 building and loan association, savings and loan association, or
44 savings bank.

45 (t) "Partnership" means an entity classified as a partnership for
46 federal income tax purposes.

47 (cf: P.L.2014, c.13, s.3)

1 5. N.J.S.54A:5-1 is amended to read as follows:

2 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
3 income shall consist of the following categories of income:

4 a. Salaries, wages, tips, fees, commissions, bonuses, and other
5 remuneration received for services rendered whether in cash or in
6 property, and amounts paid or distributed, or deemed paid or
7 distributed, out of a medical savings account that are not excluded
8 from gross income pursuant to section 5 of P.L.1997, c.414
9 (C.54A:6-27).

10 b. Net profits from business. The net income from the
11 operation of a business, profession or other activity after provision
12 for all costs and expenses incurred in the conduct thereof,
13 determined either on a cash or accrual basis in accordance with the
14 method of accounting allowed for federal income tax purposes but
15 without deduction of the amount of:

16 (1) taxes based on income;

17 (2) a civil, civil administrative, or criminal penalty or fine,
18 including a penalty or fine under an administrative consent order,
19 assessed and collected for a violation of a State or federal
20 environmental law, an administrative consent order, or an
21 environmental ordinance or resolution of a local governmental
22 entity, and any interest earned on the penalty or fine, and any
23 economic benefits having accrued to the violator as a result of a
24 violation, which benefits are assessed and recovered in a civil, civil
25 administrative, or criminal action, or pursuant to an administrative
26 consent order. The provisions of this paragraph shall not apply to a
27 penalty or fine assessed or collected for a violation of a State or
28 federal environmental law, or local environmental ordinance or
29 resolution, if the penalty or fine was for a violation that resulted
30 from fire, riot, sabotage, flood, storm event, natural cause, or other
31 act of God beyond the reasonable control of the violator, or caused
32 by an act or omission of a person who was outside the reasonable
33 control of the violator; and

34 (3) treble damages paid to the Department of Environmental
35 Protection pursuant to subsection a. of section 7 of P.L.1976, c.141
36 (C.58:10-23.11f) for costs incurred by the department in removing,
37 or arranging for the removal of, an unauthorized discharge upon the
38 failure of the discharger to comply with a directive from the
39 department to remove, or arrange for the removal of, a discharge.

40 c. Net gains or income from disposition of property. Net gains
41 or net income, less net losses, derived from the sale, exchange or
42 other disposition of property, including real or personal, whether
43 tangible or intangible as determined in accordance with the method
44 of accounting allowed for federal income tax purposes. For the
45 purpose of determining gain or loss, the basis of property shall be
46 the adjusted basis used for federal income tax purposes, except as
47 expressly provided for under this act, but without a deduction for
48 penalties, fines, or economic benefits excepted pursuant to

1 paragraph (2), or for treble damages excepted pursuant to paragraph
2 (3) of subsection b. of this section.

3 A taxpayer's net gain or loss on the sale, exchange or other
4 disposition of a share of an S corporation shall be calculated by
5 increasing the adjusted basis of the share by an amount equal to the
6 shareholder's net losses and deductions in respect of the share
7 allowed and deducted from income for federal income tax purposes,
8 not including any personal net operating loss deductions, to the
9 extent that such net losses were not offset by the taxpayer's pro rata
10 share of S corporation income otherwise subject to taxation
11 pursuant to subsection p. of this section in respect of another S
12 corporation, subject to rules of priority and assignment determined
13 by the director.

14 For the tax year 1976, any taxpayer with a tax liability under this
15 subsection, or under the "Tax on Capital Gains and Other Unearned
16 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be
17 subject to payment of an amount greater than the amount he would
18 have paid if either return had covered all capital transactions during
19 the full tax year 1976; provided, however, that the rate which shall
20 apply to any capital gain shall be that in effect on the date of the
21 transaction. To the extent that any loss is used to offset any gain
22 under P.L.1975, c.172, it shall not be used to offset any gain under
23 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

24 The term "net gains or income" shall not include gains or income
25 derived from obligations which are referred to in clause (1) or (2) of
26 N.J.S.54A:6-14 of this act or from securities which evidence
27 ownership in a qualified investment fund as defined in section 2 of
28 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or income"
29 shall not include gains or income derived from the sale or
30 assignment of a tax credit transfer certificate pursuant to section 7
31 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63
32 (C.34:1B-251). The term "net gains or net income" shall not include
33 gains or income from transactions to the extent to which
34 nonrecognition is allowed for federal income tax purposes. The
35 term "sale, exchange or other disposition" shall not include the
36 exchange of stock or securities in a corporation a party to a
37 reorganization in pursuance of a plan of reorganization, solely for
38 stock or securities in such corporation or in another corporation a
39 party to the reorganization and the transfer of property to a
40 corporation by one or more persons solely in exchange for stock or
41 securities in such corporation if immediately after the exchange
42 such person or persons are in control of the corporation. For
43 purposes of this clause, stock or securities issued for services shall
44 not be considered as issued in return for property.

45 For purposes of this clause, the term "reorganization" means--

- 46 (i) A statutory merger or consolidation;
47 (ii) The acquisition by one corporation, in exchange solely for
48 all or part of its voting stock (or in exchange solely for all or a part

1 of the voting stock of a corporation which is in control of the
2 acquiring corporation) of stock of another corporation if,
3 immediately after the acquisition, the acquiring corporation has
4 control of such other corporation (whether or not such acquiring
5 corporation had control immediately before the acquisition);

6 (iii) The acquisition by one corporation, in exchange solely for
7 all or part of its voting stock (or in exchange solely for all or a part
8 of the voting stock of a corporation which is in control of the
9 acquiring corporation), of substantially all of the properties of
10 another corporation, but in determining whether the exchange is
11 solely for stock the assumption by the acquiring corporation of a
12 liability of the other, or the fact that property acquired is subject to
13 a liability, shall be disregarded;

14 (iv) A transfer by a corporation of all or a part of its assets to
15 another corporation if immediately after the transfer the transferor,
16 or one or more of its shareholders (including persons who were
17 shareholders immediately before the transfer), or any combination
18 thereof, is in control of the corporation to which the assets are
19 transferred;

20 (v) A recapitalization;

21 (vi) A mere change in identity, form, or place of organization
22 however effected; or

23 (vii) The acquisition by one corporation, in exchange for stock
24 of a corporation (referred to in this subclause as "controlling
25 corporation") which is in control of the acquiring corporation, of
26 substantially all of the properties of another corporation which in
27 the transaction is merged into the acquiring corporation shall not
28 disqualify a transaction under subclause (i) if such transaction
29 would have qualified under subclause (i) if the merger had been into
30 the controlling corporation, and no stock of the acquiring
31 corporation is used in the transaction;

32 (viii) A transaction otherwise qualifying under subclause (i)
33 shall not be disqualified by reason of the fact that stock of a
34 corporation (referred to in this subclause as the "controlling
35 corporation") which before the merger was in control of the merged
36 corporation is used in the transaction, if after the transaction, the
37 corporation surviving the merger holds substantially all of its
38 properties and of the properties of the merged corporation (other
39 than stock of the controlling corporation distributed in the
40 transaction); and in the transaction, former shareholders of the
41 surviving corporation exchanged, for an amount of voting stock of
42 the controlling corporation, an amount of stock in the surviving
43 corporation which constitutes control of such corporation.

44 For purposes of this clause, the term "control" means the
45 ownership of stock possessing at least 80% of the total combined
46 voting power of all classes of stock entitled to vote and at least 80%
47 of the total number of shares of all other classes of stock of the
48 corporation.

1 For purposes of this clause, the term "a party to a reorganization"
2 includes a corporation resulting from a reorganization, and both
3 corporations, in the case of a reorganization resulting from the
4 acquisition by one corporation of stock or properties of another. In
5 the case of a reorganization qualifying under subclause (i) by reason
6 of subclause (vii) the term "a party to a reorganization" includes the
7 controlling corporation referred to in such subclause (vii).

8 Notwithstanding any provisions hereof, upon every such
9 exchange or conversion, the taxpayer's basis for the stock or
10 securities received shall be the same as the taxpayer's actual or
11 attributed basis for the stock, securities or property surrendered in
12 exchange therefor.

13 d. Net gains or net income derived from or in the form of rents,
14 royalties, patents, and copyrights.

15 e. Interest, except interest referred to in clause (1) or (2) of
16 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
17 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
18 extent provided in that section.

19 f. Dividends. "Dividends" means any distribution in cash or
20 property made by a corporation, association or business trust that is
21 not an S corporation, (1) out of accumulated earnings and profits, or
22 (2) out of earnings and profits of the year in which such dividend is
23 paid and any distribution in cash or property made by an S
24 corporation, as specifically determined pursuant to section 16 of
25 P.L.1993, c.173 (C.54A:5-14).

26 The term "dividends" shall not include distributions paid by a
27 qualified investment fund as defined in section 2 of P.L.1987, c.310
28 (C.54A:6-14.1), to the extent provided in that section.

29 g. Gambling winnings.

30 h. Net gains or income derived through estates or trusts.

31 i. Income in respect of a decedent.

32 j. Amounts distributed or withdrawn from an employee trust
33 attributable to contributions to the trust which were excluded from
34 gross income under the provisions of chapter 6 of Title 54A of the
35 New Jersey Statutes, amounts rolled over from an IRA, as defined
36 pursuant to subsection (a) of section 408 of the federal Internal
37 Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as
38 defined pursuant to subsection b. of section 2 of P.L.1998,c.57
39 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and
40 annuities except to the extent of exclusions in N.J.S.54A:6-10
41 hereunder, notwithstanding the provisions of N.J.S.18A:66-51,
42 P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53
43 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965,
44 c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22
45 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954,
46 c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60),
47 R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44,
48 and P.L.1943, c.189, s.5 (C.43:13-37.5).

1 k. Distributive share of partnership income, excluding the gain
2 or income derived from the sale or assignment of a tax credit
3 transfer certificate pursuant to section 7 of P.L.2011, c.149
4 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).

5 l. Amounts received as prizes and awards, except as provided
6 in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

7 m. Rental value of a residence furnished by an employer or a
8 rental allowance paid by an employer to provide a home.

9 n. Alimony and separate maintenance payments to the extent
10 that such payments are required to be made under a decree of
11 divorce or separate maintenance but not including payments for
12 support of minor children.

13 o. Income, gain or profit derived from acts or omissions
14 defined as crimes or offenses under the laws of this State or any
15 other jurisdiction.

16 p. Net pro rata share of S corporation income, excluding the
17 gain or income derived from the sale or assignment of a tax credit
18 transfer certificate pursuant to section 7 of P.L.2011, c.149
19 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).
20 (cf: P.L.1998, c.57, s.1)

21
22 6. This act shall take effect immediately and section 4 shall
23 apply to accounting and privilege periods beginning on and after
24 January 1, 2017 and section 5 shall apply to taxable years beginning
25 on and after January 1, 2017.

26 27 28 STATEMENT

29
30 This bill revises the tax credit transfer certificate provisions for
31 the “Grow New Jersey Assistance Act” (Grow NJ) and the Public
32 Infrastructure Project Tax Credit Program. The bill revises the tax
33 treatment of gains and income associated with the sale or
34 assignment of those tax credit transfer certificates.

35 Certain businesses that receive tax credits under the Grow NJ
36 Assistance Program and the Public Infrastructure Project Tax Credit
37 Program are unable to apply these tax credits directly to their tax
38 liabilities. Instead, these businesses may apply to the Director of
39 the Division of Taxation in the Department of the Treasury and the
40 chief executive officer of the EDA for a tax credit transfer
41 certificate. However, if a business sells a tax credit transfer
42 certificate, the amount the credit is sold for is likely to be less than
43 the amount of the original tax credit award, reducing the economic
44 development power of these incentive-based tax credits.

45 Moreover, various limitations and conditions are imposed upon
46 tax credit transfer certificates, including a time period of three
47 successive tax periods for a transferee to use the tax credit and that
48 a business may not sell a tax credit transfer certificate for an

1 amount less than 75 percent of the transferred credit amount, further
2 restricting a business's ability to obtain a fair selling price.

3 The bill would extend the time period for transferees from three
4 years to 20 years, making the time period for redemption identical
5 to the period permitted for the original tax certificate holder.
6 Further, the bill exempts from the 75 percent minimum value
7 requirement the sale or assignment of a tax credit transfer certificate
8 to an affiliate irrespective of whether the affiliate met the capital
9 investment and employment requirements specified in the incentive
10 agreement.

11 Finally, tax credits utilized to reduce the tax liability of the
12 original tax credit recipient are not considered to be income and are
13 not subject to the gross income tax (GIT) or the corporation
14 business tax (CBT). However, if a business sells the tax credit
15 transfer certificate, the amounts gained or derived from the sale of
16 the tax credit transfer certificate are subject to the GIT or CBT.
17 Since these sales are currently considered income, imposing the
18 GIT or CBT reduces the value of the tax credit transfer certificate
19 for the business transferring the tax credit. The bill would exclude
20 the gain or income derived from the sale or assignment of certain
21 tax credit transfer certificates from taxation so those businesses
22 which cannot apply the tax credits to their tax liability may receive
23 gains closer to the original incentive amounts.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5035

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2017

Assembly Appropriations Committee reports favorably Assembly Bill No. 5035.

This bill revises the tax credit transfer certificate provisions for the “Grow New Jersey Assistance Act” (Grow NJ) and the Public Infrastructure Project (PIP) Tax Credit Program. The bill revises the tax treatment of gains and income associated with the sale or assignment of those tax credit transfer certificates.

The bill extends the time period for transferees from three years to 20 years, making the time period for redemption identical to the period permitted for the original tax certificate holder.

The bill exempts from the 75 percent minimum value requirement the sale or assignment of a tax credit transfer certificate to an affiliate irrespective of whether the affiliate met the capital investment and employment requirements specified in the incentive agreement.

The bill excludes the gain or income derived from the sale or assignment of certain tax credit transfer certificates from taxation.

As reported, this bill is identical to Senate Bill No. 3305 (SCS), as reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate annual State revenue reduction to the State General Fund and the Property Tax Relief Fund for the lifespan of tax credits awarded through the Grow NJ Assistance Program and the PIP Tax Credit Program. The OLS is unable to determine the magnitude of the impact due to imperfect information regarding the number taxpayers that will benefit from the exclusion of gains or income derived from the sale or assignment of Grow NJ and PIP tax credit transfer certificates from taxation and the changes made to certain limitations and conditions imposed upon tax credit transfer certificates.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 5035
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: JANUARY 11, 2018

SUMMARY

- Synopsis:** Revises tax credit transfer provisions for certain tax incentive programs and revises certain tax treatment of tax credit transfer certificates.
- Type of Impact:** Indeterminate revenue loss to State General Fund and Property Tax Relief Fund.
- Agencies Affected:** Department of the Treasury; and New Jersey Economic Development Authority.

Office of Legislative Services Estimate

Fiscal Impact	Multi-Year Lifespan of Tax Credit Awards
State Revenue Loss	Indeterminate — See comments below

- The Office of Legislative Services (OLS) concludes that an indeterminate annual State revenue reduction to the State General Fund or the Property Tax Relief Fund (PTRF) will result from the enactment of this bill. The OLS is unable to determine the magnitude of the impact due to imperfect information regarding the number taxpayers that will benefit from the exclusion of gains or income derived from the sale or assignment of “Grow New Jersey Assistance Act (Grow NJ)” and Public Infrastructure Project (PIP) tax credit transfer certificates from taxation and the changes made to certain limitations and conditions imposed upon tax credit transfer certificates.

BILL DESCRIPTION

This bill revises the tax credit transfer provisions for the Grow NJ Assistance Program and the PIP Tax Credit Program and revises the tax treatment of gains and income associated with the sale or assignment of tax credit transfer certificates obtained through those programs.

The bill permits the sale or assignment of a tax credit transfer certificate, obtained under Grow NJ Assistance Program or the PIP Tax Credit Program, to an affiliate for an amount less than 75 percent of the transferred credit amount irrespective of whether the affiliate met the capital investment and employment requirements specified in the incentive agreement.



Additionally, the bill extends the time period for transferees to use the tax credits from three successive tax periods to 20 successive tax periods, making the time period for redemption identical to the period permitted for the original tax credit certificate holder.

The bill excludes the gain or income derived from the sale or assignment of certain tax credit transfer certificates from taxation so those businesses which cannot apply the tax credits to their tax liability may receive gains closer to the original incentive amounts.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that an indeterminate annual State revenue reduction to the State General Fund or the PTRF will result from the enactment of this bill. The OLS is unable to determine the magnitude of the impact due to imperfect information regarding the number taxpayers that will benefit from the exclusion from taxation of gains or income derived from the sale or assignment of Grow NJ and PIP tax credit transfer certificates and the changes made to certain limitations and conditions imposed upon tax credit transfer certificates.

Under current law, if a business sells a tax credit transfer certificate, the gain or income derived from this sale is subject to the GIT or the CBT depending upon the business's tax liability. If enacted, the bill would exclude the gain or income derived from the sale of a Grow NJ or PIP tax credit transfer certificate from taxation under the GIT or CBT, subsequently reducing State revenues. The OLS is unaware of the number of tax credit transfer certificates sold from the Grow NJ Assistance Program and the PIP Tax Credit Program, the value of those tax credit transfer certificates, and the amount of revenue generated from the taxes imposed on the gains or income derived from those sales. The OLS notes that actual revenue losses will vary since the amount of tax revenue forgone is dependent upon each taxpayer's tax bracket and existing tax liability which the OLS cannot quantify given the lack of available data.

Moreover, various limitations and conditions are placed upon these tax credit transfer certificates. Under current law, if a taxpayer purchases a tax credit transfer certificate from the original tax credit holder under the Grow NJ Assistance Program or the PIP Tax Credit Program, the taxpayer must utilize the total tax credit amount within a time frame of three successive tax periods or the outstanding amount of the tax credit award is forgone. However, the bill provides a taxpayer who purchases a tax credit transfer certificate under the Grow NJ Assistance Program and the PIP Tax Credit Program with an additional 17 tax periods, for a total of 20 tax periods, to utilize the full tax credit award. Thus, the outstanding balance of a tax credit award, obtained through a tax credit transfer certificate, which may have been forgone after three years, absent the enactment of the bill, may be carried forward into additional tax years and applied against future tax liabilities. Any revenue loss to the State would be the direct result of any additional tax credits applied to a taxpayer's tax liability which would have otherwise been forgone absent the bill's additional 17 successive tax periods.

Further, the bill exempts from the 75 percent minimum value requirement the sale or assignment of a tax credit transfer certificate, obtained under Grow NJ Assistance Program or the PIP Tax Credit Program, to an affiliate irrespective of whether the affiliate met the capital

investment and employment requirements specified in the incentive agreement. The OLS notes that this exemption only applies to the sale of a tax credit transfer certificate to an affiliate, and by eliminating the 75 percent minimum value requirement for sales to an affiliate, the bill would increase the population of potential recipients to whom the original tax credit holder may sell. If the bill results in the sale of a tax credit transfer certificate to an affiliate, which otherwise may not have occurred absent the bill's enactment, the State would realize a direct revenue loss to either the State General Fund or PTRF from the affiliate utilizing the tax credit to reduce its tax liability (assuming the original tax credit holder was unable to sell the tax credit transfer certificate prior to the bill's enactment).

Section: Revenue, Finance and Appropriations

*Analyst: Jordan M. DiGiovanni
Associate Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

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