54:10A-1

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(Corporation business tax--credits for investments that create jobs)

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AMENDED DURING PASSAGE:		Yes	Amendments during passage denoted by superscript numbers
DATE OF PASSAGE:	**ASSEMBLY:**	June 17, 1993	
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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

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New Jersey. Legislature. Joint Legislative Committee on Economic Recovery.

Committee meeting of "factors" influencing business retention and expansion, and the attration of new business to the State, held 2-17-93, 3-24-93, and 4-21-93. East Brunswick, Marlboro, Elizabeth, NJ 1993.

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New Jersey. Legislature. Joint Legislative Committee on Economic Recovery.

Committee meeting on "The State's ability of retain and attract business," held 1-28-93. Trenton, 1993.

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[FIRST REPRINT]

SENATE, No. 1784

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1993

By Senator DiFRANCESCO

AN ACT providing a credit against corporation business tax liability and allowed in certain cases as a property tax offset for investment in certain new or expanded business facilities that create new jobs in this State, supplementing P.L.1945, c.162 (C.54:10A-1 et seq.).

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

1. This act shall be known and may be cited as the "New Jobs Investment Tax Credit Act."

2. As used in this act:

"Business relocation or expansion" means capital investment in a new or expanded business facility in this State.

"Business facility" means any factory, mill, plant, refinery, warehouse, building, complex of buildings or structural components of buildings, and all machinery, equipment and personal property located within this State, used in connection with the operation of the business of a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and all facility preparation and start-up costs of the taxpayer for the business facility which it capitalizes for federal income tax purposes.

"Compensation" means wages, salaries, commissions or any other form of remuneration paid to employees for personal services.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50% of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least 50% of the voting power of all classes of stock of at least one of the other corporations.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Expanded business facility" means any business facility, other than a new business facility, resulting from acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property if such improvements or additions are purchased on or after the operative date of this act, but only to the extent of a taxpayer's qualified investment in such improvements or additions.

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.
Matter enclosed in superscript numerals has been adopted as follows:
1 SCER committee amendments adopted June 10, 1993.

"New business facility" means a business facility which:

a. is employed by a taxpayer in the conduct of a business which is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.). Such facility shall not be considered a new business facility in the hands of a taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person;

b. is purchased by a taxpayer and is placed in service or use on or after the operative date of this act;

c. was not purchased by a taxpayer from a related person. The director may waive this requirement if the facility was acquired from a related person for its fair market value and the acquisition was not tax motivated;

d. was not in service or use during the 90 day period immediately prior to transfer of the title to the facility, provided that this restriction for the 90 day period may be waived by the director if the director determines that individuals employed at the facility may be considered as "new employees" as defined in this section.

"New employee" means an individual residing and domiciled in this State, hired by a taxpayer to fill a position or a job in this State which previously did not exist in the taxpayer's business enterprise in this State prior to the date on which the taxpayer's qualified investment is placed in service or use in this State provided that:

a. the individual's duties in connection with the operation of the business facility are on a regular, full-time and permanent basis or regular part-time and permanent basis;

b. the individual is not a related individual as defined in subsection (i) of section 51 of the federal Internal Revenue Code of 1986, 26 U.S.C. §51, or does not own 10% or more of the business with such ownership interest to be determined under the rules set forth in section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. §267;

c. the individual is not an individual who worked for the taxpayer during the six month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six month period beginning on the date the taxpayer's qualified investment is placed in service or use in this State; and

d. the individual is not an employee for whom the taxpayer is allowed a credit pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78) or section 12 of P.L.1985, c.227 (C.55:19-13).

As used in this definition: "full-time" means employment for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is applicable to the business and "permanent basis" does not include employment that is temporary or seasonal and therefore the compensation paid to temporary or seasonal employees will not be considered for purposes of sections 4 and 6 of this act: and "part-time" means customarily performing such duties at least 20 hours per week for at least six months during the tax year. In no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed the total increase in the taxpayer's average employment in this State for the tax year over the average employment in this State for the previous tax year and in no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed one half of the average employment in this State for the tax year; and provided, that the director may require that the net increase in the taxpayer's employment in this State be determined and certified for the taxpayer's controlled group.

Provided further, however, that individuals filling jobs saved as a direct result of taxpayer's qualified investment in property purchased for business relocation or expansion on or after the operative date of this act may be treated as new employees filling new jobs if the taxpayer certifies the material facts to the director and the director expressly finds that: but for the new employer purchasing the assets of a business in bankruptcy under chapter 7 or 11 of the United States Bankruptcy Code and such new employer making qualified investment in property purchased for business relocation or expansion, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs so saved would have been lost; or but for taxpayer's qualified investment in property purchased for business relocation or expansion in this State, the business facility in this State would have closed and the employees located at the facility would have lost their jobs; provided that the director shall not make this certification unless the director finds that the business is insolvent as defined in paragraph (32) of 11 U.S.C. §101 or that the business facility was destroyed in whole or in significant part by fire, flood or act of God.

"New job" means a job which did not exist in the business of the taxpayer in this State prior to the taxpayer's qualified investment being made, and which is filled by a new employee.

"Partnership" means a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

"Property purchased for business relocation or expansion" means improvements to real property and tangible personal property, but only if that improvement or personal property was constructed or purchased and placed in service or use by the taxpayer, for use as a component part of a new or expanded business facility located in this State.

a. Property purchased for business relocation or expansion shall include only:

(1) improvements to real property placed in service or use on or after the operative date of this act by the taxpayer;

(2) tangible personal property placed in service or use by the taxpayer on or after the operative date of this act, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the corporation business tax liability of the taxpayer under P.L.1945, c.162, and which has a remaining recovery period of three or more years at the time the property

is placed in service or use in this State; or

(3) tangible personal property owned and used by the taxpayer at a business location outside this State which is moved into this State on or after the operative date of this act, for use as a component part of a new or expanded business facility located in this State; provided that the property is depreciable or amortizable personal property for income tax purposes, and has a remaining recovery period of three or more years at the time the property is placed in service or use in this State.

b. Property purchased for business relocation or expansion shall not include:

(1) Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(2) Airplanes;

(3) Property which is primarily used outside this State with that use being determined based upon the amount of time the property is actually used both within and without this State;

(4) Property which is acquired incident to the purchase of the stock or assets of the seller unless for good cause shown, the director consents to waiving this disqualification; or

(5) Property purchased on or after the operative date of this act, unless pursuant to a written contract to purchase executed prior to the operative date of this act, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use; provided that if the contract of purchase specifies a minimum purchase price the amount thereof shall be used to determine the qualified investment in such property under section 5 of this act if the property otherwise qualifies as property purchased for business relocation or expansion.

c. Property shall be deemed to have been purchased prior to a specified date only if:

(1) the physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the purchase prior to the specified date; or

(2) the machinery or equipment was owned by the taxpayer prior to the specified date, or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the specified date.

"Purchase" means any acquisition of property, including an acquisition pursuant to a lease, but only if:

a. the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or subsection (b) of section 707 of the federal Internal Revenue Code of 1986, 26 U.S.C. §267 or §707.

b. the property is not acquired by one member of a controlled group from another member of the same controlled group. The director may waive this requirement if the property was acquired from a related party for its then fair market value; and

c. the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(1) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(2) under subsection (e) of section 1014 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1014.

"Related person" means:

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

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

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

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

As used in the definition of related person and as is applicable to the definitions of purchase and small business taxpayer, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; "control," with respect to a trust, means ownership, directly or indirectly, of 50% or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. §267, other than paragraph (3) of subsection (c) of that section.

"Small business taxpayer" means a taxpayer that has an annual payroll[1], as calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),[1] of $2,000,000 or less and annual gross receipts[1], as calculated pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),[1] of not more than $6,000,000 for the tax year in which property purchased for business relocation or expansion is placed in service or use by the taxpayer: provided that beginning with tax years commencing on and after January 1 next following the operative date of this act the director shall prescribe the amount of annual payroll and annual gross receipts which shall apply by increasing each such amount hereinabove by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins. The annual payroll of a taxpayer shall include the employees of its domestic and foreign affiliates, whether employed on a full-time, part-time, temporary, or other basis, during the preceding 12 months. If a taxpayer has not been in existence for 12 months, the payroll of the taxpayer shall be divided by the number of weeks, including fractions of a week, that it has been in business, and the result multiplied by 52. That amount shall then be added to the 12 month payrolls of its domestic and foreign affiliates to determine the annual payroll of the taxpayer for purposes of this definition. The annual gross receipts of a taxpayer shall include the annual gross receipts of its foreign and domestic affiliates. The annual gross receipts of a taxpayer which has been in business for three or more complete tax years means the average of the annual gross receipts of the business for the last three tax years. For purposes of this definition, the gross receipts of the taxpayer includes receipts from sales of tangible personal property and services, interests, rents, royalties, fees, commissions and receipts from any other source, but less returns and allowances, sales of fixed assets, interaffiliated transactions between a business and its domestic and foreign affiliates, and taxes collected for remittance to a third party, as shown on its books for federal income tax purposes. The annual receipts of a taxpayer that has been in business for less than three complete tax years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. "Affiliates" includes all concerns that are affiliates of each other when either directly or indirectly one concern controls the other or a third party or parties controls both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, the director shall consider all appropriate factors, including common ownership, common management and contractual relationships. "Concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity), having a place of business located in this State, and which makes a contribution to the economy of this State through payment of taxes, or the sale or use in this State of tangible personal property, or the procurement or providing of services in this State, or the hiring of employees who work in this State. "Concern" includes but is not limited to any person as defined in R.S.1:1-2.

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

3. a. A taxpayer shall be allowed a credit against the portion of the tax imposed in section 5 of P.L.1945, c.162 (C.54:10A-5), that is attributable to and the direct consequence of the taxpayer's qualified investment in a new or expanded business facility in this State which results in the creation of at least 5 new jobs in the case of a small business taxpayer or at least 50 new jobs in the case of any other taxpayer, provided that the median compensation of all new jobs included in the taxpayer's determination of the new jobs factor shall not be less than $27,000 per year, provided that beginning with tax years commencing on and after January 1 next following the operative date of this act the director shall adjust the median annual compensation which shall apply as provided in subsection e. of this section. The amount of this credit shall be determined and applied as hereinafter provided.

b. The amount of the credit allowed shall be determined by multiplying the amount of the taxpayer's "qualified investment," determined under section 5 of this act, in "property purchased for business relocation or expansion" by the taxpayer's new jobs factor determined under section 6 of this act. The product of this calculation shall establish the maximum amount of credit allowed under this act due to the qualified investment.

c. The amount of credit allowed shall be taken over a five year period, at the rate of one-fifth of the amount thereof per tax year, beginning with the tax year in which the taxpayer places the qualified investment in service or use in this State.

d. For purposes of the credit allowed by this section, property shall be considered placed in service or use in the earlier of the following tax years:

(1) The tax year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

e. Beginning with tax years commencing on and after January 1 next following the operative date of this act the director shall prescribe the annual median compensation of all new jobs included in the taxpayer's determination of new jobs factor by increasing the amount of median compensation set forth in subsection a. of this section by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins.

4. a. The aggregate annual credit allowed for a tax year shall be an amount equal to the sum of:

(1) The one-fifth part allowed under section 3 for qualified investment placed into service or use during a prior tax year, plus

(2) The one-fifth part allowed under section 3 for qualified investment placed into service or use during the current tax year.

b. (1) The amount determined under subsection a. shall be allowed as a credit against that portion of the taxpayer's corporation business tax liability which is attributable to and the direct result of the taxpayer's qualified investment. The amount determined under subsection a. and allowed as a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not reduce that tax liability by more than 50% of that portion of the taxpayer's tax liability otherwise due for the tax year which is attributable to and the direct result of the taxpayer's qualified investment and shall not reduce the tax liability for the tax year to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

(2) If any amount of credit determined under subsection a.

remains after the amount allowed as a credit under the limitations of paragraph (1) of this subsection, that amount of credit remaining shall be refunded to the taxpayer. The amount refunded to the taxpayer shall not exceed 50% of the sum of the amount of property taxes timely paid in the taxable year pursuant to R.S.54:4-1 et seq. and the amount of implicit property taxes paid through rent or lease payments in respect of property taxable pursuant to R.S.54:4-1 et seq., and for which taxes another party that is not a related person is liable, which is attributable to and the direct result of the taxpayer's qualified investment.

c. (1) If the taxes due under section 5 of P.L.1945, c.162 (determined before application of allowable credits against the tax), the sum of the amount of property taxes timely paid in the taxable year pursuant to R.S.54:4-1 et seq. and the amount of implicit property taxes paid through rent or lease payments in respect of property taxable pursuant to R.S.54:4-1 et seq., and for which taxes another party that is not a related person is liable, are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of those taxes which are so attributable shall be determined by multiplying the amount of taxes due under those acts for the tax year (determined before application of allowable credits against tax) by a fraction, the numerator of which is all compensation paid during the tax year to all employees of the taxpayer employed in this State whose positions are directly attributable to the qualified investment. The denominator of the fraction is the compensation paid during the taxable year to all employees of the taxpayer employed in this State.

(2) Any credits allowable under section 42 of P.L.1987, c.102 (C.54:10A-5.3), section 19 of P.L.1983, c.303 (C.52:27H-78), and section 12 of P.L.1985, c.227 (C.55:19-13), shall be applied against and reduce only the amount of corporation business tax not apportioned to the qualified investment under this act. Provided, that any excess of those credits may be applied against the amount of corporation business tax apportioned to the qualified investment under this act that is not offset by the amount of annual credit against the tax allowed under this act for the tax year, unless their application is otherwise prohibited by P.L.1987, c.102, P.L.1983, c.303, or P.L.1985, c.227.

(3) If any credit for the tax year pursuant to this section remains after application of the provisions of subsections a. and b. of this section, the amount thereof shall be forfeited. No carryover to a subsequent tax year or carryback to a prior tax year shall be allowed for the amount of any unused portion of any annual credit allowance.

d. For the purposes of this act, "implicit property taxes" means 15% of the amount of the rent or lease payments made by the taxpayer in respect of property taxable pursuant to R.S.54:4-1 et seq., and for which taxes another party that is not a related person is liable.

5. a. The qualified investment in property purchased for business relocation or expansion shall be the applicable percentage of the cost of each property purchased for business

relocation or expansion which is placed in service or use in this State by the taxpayer during the tax year. Provided, that only the cost of property purchased for business relocation or expansion placed in service or use in this State during the tax year for which the average value of the taxpayer's real and tangible personal property within the State as shall be determined pursuant to subsection (A) of section 6 of P.L.1945, c.162 (C.54:10A-6), is greater than that average value for the previous tax year, shall be considered in determining qualified investment.

b. For the purpose of subsection a., the applicable percentage of any cost of property purchased for business relocation or expansion shall be determined under the following table:

If property has a:	The applicable percentage is:
3 year recovery period	35%
5 year recovery period	70%
7 year or more recovery period	100%

The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the taxpayer, determined in accordance with section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. §168.

c. For purposes of subsection a., the cost of each property purchased for business relocation or expansion shall be determined under the following restrictions:

(1) cost shall not include the value of property given in trade or exchange for the property purchased for business relocation or expansion;

(2) if property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the cost of replacement property shall not include any insurance proceeds received in compensation for the loss;

(3) in the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law; and

(4) the cost of property used by the taxpayer out-of-State and then brought into this State shall be determined based on the remaining recovery period of the property at the time it is placed in service or use in this State, and the cost shall be the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer used the property outside this State.

(5) The cost of equipment acquired by written lease is the minimum amount required by the agreement, agreements, contract or contracts to be paid over the term of the lease, provided however, that the minimum amount shall not include any amount required to be paid. as determined by the director, after the expiration of the recovery period of the equipment.

d. No amount of cost for property the cost of which qualifies for the credit allowable under section 42 of P.L.1987, c.102

(C.54:10A-5.3), or for the credits allowed under the "Manufacturing Equipment and Employment Investment Tax Credit Act," P.L. , c. (C.)(now pending before the Legislature as Senate, No. or Assembly, No.), shall be allowed as qualified investment under this section.

6. a. The new jobs factor used to determine the amount of credit allowed under this act shall be based on the number of new jobs created in this State that are directly attributable to the qualified investment of the taxpayer.

b. (1) (a) For a taxpayer that is not a small business taxpayer, if 50 new jobs are created and filled during the tax year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.005. For each 50 additional new jobs over the initial 50, up to 1000 total new jobs, the applicable new jobs factor of 0.005 shall be increased by adding thereto 0.005, up to a maximum new jobs factor of 0.10.

(b) During each of the remaining four years of the five year credit period, the taxpayer shall redetermine the new jobs factor for the tax year on the annual return based on the average number of new employees employed in new jobs during that tax year (determined on a monthly basis) created as the direct result of taxpayer's qualified investment.

(2) (a) For a taxpayer that is a small business taxpayer, if 5 new jobs are created and filled during the tax year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.005. For each 5 additional new jobs over the initial 5, up to 100 total new jobs, the applicable new jobs factor of 0.005 shall be increased by adding thereto 0.005, up to a maximum new jobs factor of 0.10.

(b) During each of the remaining four years of the five year credit period, the taxpayer shall redetermine the new jobs factor for the tax year on the annual return based on the average number of new employees employed in new jobs during that tax year (determined on a monthly basis) created as the direct result of taxpayer's qualified investment.

c. An employee's position shall be directly attributable to the qualified investment if:

(1) the employee's service is performed or the employee's base of operations is at the new or expanded business facility;

(2) the position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(3) but for the qualified investment, the position would not have existed.

d. With the annual corporation business tax return filed under P.L.1945, c.162, for each tax year during the five-year credit period for a qualified investment, the taxpayer shall certify:

(1) the new jobs factor for that tax year for the qualified investment;

(2) the amount of the credit allowed for that year for the qualified investment;

(3) that the qualified investment property continued to be used in the business, or if any of it was disposed of during the year, the date of disposition, and that such property was not disposed of

prior to expiration of its recovery period, as determined under section 5 of this act; and

(4) that the new jobs are directly attributable to the qualified investment, are filled by individuals who meet the definition of new employee, and the median annual compensation of all new employees is equal to or greater than the minimum median annual compensation required by section 3 of this act.

e. With the annual return for the corporation business tax imposed under P.L.1945, c.162, filed for the tax year in which the qualified investment is first placed in service or use in this State, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this State within the period prescribed in subsection g. of this section, that are, or will be directly attributable to the qualified investment of the taxpayer.

f. The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of determining the new jobs factor pursuant to subsection b. of this section but shall not be so aggregated for the purposes of subsection c. of this section.

g. With the annual return for the tax imposed under P.L.1945, c.162, filed for the third tax year in which the qualified investment is in service or use in this State, the taxpayer shall certify the actual number of new jobs created by it in this State, that are directly attributable to the qualified investment of the taxpayer.

(1) If the actual number of jobs created would result in a higher new jobs factor, the credit allowed under this act shall be redetermined and amended returns filed for the first and second tax years that the qualified investment was in service or use in this State.

(2) If the actual number of jobs created would result in a lower new jobs factor, the credit previously allowed under this act shall be redetermined and amended returns filed for the first and second tax years. Any additional taxes due under P.L.1945, c.162, shall be remitted with the amended returns filed with the director, together with any penalty and interest, for failure to pay any such tax when due as provided in the State Tax Uniform Procedure Act, R.S.54:48-et seq.

7. a. If during any tax year, property with respect to which a tax credit has been allowed under this act:

(1) is disposed of prior to the end of its recovery period, as determined under section 5 of this act; or

(2) ceases to be used in a new or expanded business facility of the taxpayer in this State prior to the end of its recovery period, as determined under section 5 of this act, then the unused portion of the credit allowed for such property shall be forfeited for the tax year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed under section 5 of this act, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this State in the new or expanded business facility of the taxpayer.

The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs and pay any additional tax owed due to reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Tax Uniform Procedure Act, R.S.54:48-1 et seq.

b. If during any tax year the taxpayer ceases operation of a new or expanded business facility in this State for which a credit was allowed under this act, before expiration of the recovery period of the property with respect to which a tax credit has been allowed under this act, then the unused portion of the allowed credit shall be forfeited for the tax year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section 5 of this act, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this State in a new or expanded business facility of the taxpayer that is subject to tax under P.L.1945, c.162. The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs, and pay any additional taxes owed due to reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Tax Uniform Procedure Act. R.S.54:48-1 et seq.

c. If during any tax year subsequent to the tax year in which the new jobs factor is redetermined as provided in section 6 of this act, the average number of employees of the taxpayer, for the then current tax year, employed in positions created because of and directly attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit allowance is based, the taxpayer shall calculate what the taxpayer's annual credit allowance would have been had the taxpayer's new jobs factor been determined based upon the average number of employees, for the then current tax year, employed in positions created because of and directly attributable to the qualified investment. The difference between the result of this calculation and the taxpayer's annual credit allowance for the qualified investment as determined under section 3 of this act, shall be forfeited for the then current tax year, and for each succeeding tax year unless for a succeeding tax year the taxpayer's average employment in positions directly attributable to the qualified investment once again meets the level required to enable the taxpayer to utilize its full annual credit allowance for that tax year.

8. a. (1) Property of a small business taxpayer shall not be treated as disposed of under section 7 of this act by reason of a mere change in the form of conducting the business as long as the property is retained in a business of a small business taxpayer in this State, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be

allowed to claim the amount of credit still available with respect to the new or expanded business facility or facilities transferred, and the small business taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier tax years.

(2) Property of a taxpayer that is not a small business taxpayer shall not be treated as disposed of under section 7 of this act by reason of a mere change in the form of conducting the business as long as the property is retained in a business of a taxpayer in this State, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the new or expanded business facility or facilities transferred, and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier tax years.

b. (1) Property of a small business taxpayer shall be treated as disposed of under section 7 of this act by reason of a change in the form of conducting the business if the property is not retained in a business of a small business taxpayer in this State in which the small business taxpayer retains a controlling interest.

(2) Property of a small business taxpayer shall not be treated as disposed of under section 7 of this act by reason of any transfer or sale to a successor small business taxpayer which continues to operate the new or expanded business facility in this State. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this act for each subsequent tax year and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier years.

(3) Property of a business that is not a small business taxpayer shall not be treated as disposed of under section 7 of this act by reason of any transfer or sale to a successor taxpayer which continues to operate the new or expanded business facility in this State. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this act for each subsequent tax year and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier years.

(4) Property of a small business taxpayer shall be treated as disposed of under section 7 by reason of any transfer or sale to a successor that is not a small business taxpayer, whether or not the successor continues to operate the business in this State. Upon such transfer or sale, the successor shall not acquire any amount of credit under this act and the taxpayer-transferor shall redetermine, as required by this act, the amount of credit allowed in earlier years.

9. a. A taxpayer that claims credit under this act shall maintain sufficient records to establish the following facts for each item of qualified property:

(1) its identity;

(2) its actual or reasonably determined cost;

(3) its straight-line depreciation life;

(4) the month and tax year in which it was placed in service;

(5) the amount of credit taken; and

(6) the date it was disposed of or otherwise ceased to be

qualified property.

b. A taxpayer that does not keep records required for identification of investment credit property shall be treated as having disposed of, during the tax year, any investment credit property which the taxpayer cannot establish was still on hand in this State at the end of that year.

c. If a taxpayer cannot establish when investment credit property reported for purposes of claiming this credit during a tax year was placed in service, the taxpayer shall be treated as having placed it in service in the most recent prior year in which similar property was placed in service unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer shall be treated as having placed the property in service in the next most recent year.

10. a. The burden of proof shall be on a taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the credit allowed pursuant to this act.

b. Notwithstanding any provision of this act to the contrary, no credit shall be allowed or applied under this act for any qualified investment property placed in service or use until the person asserting a claim for the allowance of credit under this act makes written application to the director for allowance of the credit as provided in this subsection and receives written acknowledgement of its receipt from the director. An application for credit is timely made if filed no later than the last day of the due date without extensions, for filing the tax return required under section 15 of P.L.1945, c.162 (C.54:10A-15), for the tax year in which the property to which the credit relates is placed in service or use and all information required by the director is provided as part of the application.

c. The failure to timely apply for the credit shall result in the forfeiture of 50% of the annual credit allowance otherwise allowable under this act. This penalty shall apply annually until such application is filed.

11. The Director of the Division of Taxation shall prepare and transmit to the Governor and the Legislature, on or before the second March 1 following the operative date of this section and annually thereafter, a report concerning the revenue cost and distributional impact of this act in such a manner as to facilitate an evaluation of its costs in State tax revenue foregone and its benefits in new job creation. To facilitate an understanding of the gross amount and percentage of credits claimed in relation to the size, number and income of corporations and the number of jobs created, the report shall include statistical analyses of the number and value of applications for credits, credits granted and anticipated to be granted, and the number of new jobs created and anticipated to be created. To facilitate an understanding of the distribution of the use of the credit, or any concentration of such use in a particular industry or by a particular taxpayer, and the creation of new jobs among corporations, the report shall include statistics of credit use and new jobs creation segregated by specific industry, displayed in a manner that facilitates an understanding of the relative distribution of credit claims and

uses and the relative distribution of new jobs created. To facilitate an understanding of the distinction between the new jobs created as a result of the credit and the new jobs not resulting from the credit, the report shall include statistics concerning the mean cost in State tax revenue forgone of creating a new job in specific industries, the relative new job creation rates between corporations using the credit and those not using the credit, and increases in employment in the State and the region. The director shall include in the report such further observations and recommendations about the use or administration of the credit as the director deems appropriate.

[1]12. Notwithstanding the provisions of subsection (g) of R.S.43:21-11 to the contrary, the Commissioner of the Department of Labor shall provide the Director of the Division of Taxation such copies of the quarterly reports filed by taxpayers with the Department of Labor pursuant to subparagraph (A) of paragraph (2) of subsection (a) of R.S.43:21-14 as the director may request to verify the qualifications of the taxpayers to the credits allowed under this act. The director shall not use the reports provided for any purpose other than the administration of the credits allowed under this act, and reports so provided shall be deemed files and records of the director pursuant to R.S.54:50-8.[1]

[1][12.] 13.[1] The director shall promulgate rules and regulations pursuant to "Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the purpose of this act.

[1][13] 14.[1] This act shall take effect immediately but sections 1 through [1][11]12[1] shall remain inoperative until the first day of the tax year next commencing after enactment and shall apply to property placed in service or use on or after that date.

Allows corporation business tax credit or property tax offset for certain investments that create new jobs in this State.

creating a new job in specific industries, the relative new job creation rates between corporations using the credit and those not using the credit, and increases in employment in the State and the region. The director shall include in the report such further observations and recommendations about the use or administration of the credit as the director deems appropriate.

12. The director shall promulgate rules and regulations pursuant to "Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the purpose of this act.

13. This act shall take effect immediately but sections 1 through 11 shall remain inoperative until the first day of the tax year next commencing after enactment and shall apply to property placed in service or use on or after that date.

Sponsors

STATEMENT

This bill provides a tax credit to businesses that make investments that create new jobs in this State. The bill allows a credit against the corporation business tax equal to a percentage of certain costs of new or expanded business facilities in this State. The percentage of credit allowed depends upon the kind of investment made and the number of new jobs created, but can equal up to 10% of the investment costs.

A taxpayer is allowed a credit for investment through direct ownership or by lease in buildings, building components, equipment and capitalized start-up costs of new or expanded business facilities in New Jersey. The credit is applicable to investments in most industrial sectors including manufacturing, wholesale distribution, warehousing, retailing and service businesses. If manufacturing equipment is allowed a credit under the "Manufacturing Equipment and Employment Investment Tax Credit Act," which is now pending before the Legislature as Senate, No. or Assembly, No. , the credit under this bill is not available for that manufacturing investment.

The cost of property considered as a "qualified investment" and allowed in the calculation of the credit is based upon the expected depreciation life of the property for federal income tax purposes. The cost of new investment property with a depreciation life of three years is allowed at 35% of cost, five years at 70% of cost and seven or more years at 100% of cost.

The credit is also conditioned on the number of new jobs created by the new investment. A "new job" is the employment of a New Jersey resident at the new or expanded business facility on a full or full-time equivalent (but not seasonal) basis in a position created by the qualified investment. The qualified investment amount is allowed as a credit amount to the extent new jobs are created. The number of new jobs that a taxpayer must create depends on the size of the taxpayer.

A small business taxpayer, defined as a taxpayer with annual payroll of $2 million or less and annual gross receipts of $6 million or less, must create a minimum of 5 new jobs to be allowed a credit of one half of one percent of the qualified investment. That new jobs factor is increased one-half of one percent for each additional 5 new jobs created over the 5 new job minimum, up to a 10 percent credit for 100 new jobs created.

A taxpayer that is not a small business must create a minimum of 50 new jobs to be allowed a credit of one half of one percent of the qualified investment. That new jobs factor is increased one-half of one percent for each additional 50 new jobs created over the 50 new job minimum, up to a 10 percent credit for 1000 new jobs created.

One-fifth of the credit may be used to offset up to 50% of the corporation business tax liability of a taxpayer resulting from the increased investment and employment in the year that the investment property is put into service, any remaining credit may be rebated in an amount not to exceed 50% of the property tax liability of a taxpayer resulting from the increased investment and employment, and one-fifth of the credit may be used in a similar manner in each of the four years thereafter. If the corporation business tax liability resulting from the increased investment cannot be readily determined, the liability is apportioned on the basis of the compensation paid to the new employees relative to total New Jersey compensation paid by the corporation. The annual credit amount cannot reduce the annual tax attributable to the increased investment below 50% of the amount otherwise due on the attributable investment or below the statutory minimum tax, and credit amounts that are not usable in a tax year may not be carried forward for use in subsequent tax years.

Annual Department of Treasury summary reports will assure that the Legislature is made aware of the total dollar value of the credits granted per year and to date, the relationship of a taxpayer's size and business line to credits granted, and provide a warning of any problems with the implementation of the credit. Regular review of individual taxpayers' credits will assure that they receive the benefits of their investment. The review process will include an in-depth review of the credit relating to a particular investment in the third year of the credit, and annual recalculation of a credit allowance, if necessary. The review of individual taxpayers' use of the credit will provide the input for the annual Treasury report summarizing credit use.

Allows corporation business tax credit or property tax offset for certain investments that create new jobs in this State.

JOINT LEGISLATIVE COMMITTEE
ON ECONOMIC RECOVERY

STATEMENT TO

SENATE, No. 1784

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 2, 1993

The Joint Legislative Committee on Economic Recovery reports favorably Senate Bill No. 1784 with committee amendments.

This bill, as amended, provides a tax credit to businesses that make investments that create new jobs in this State. The bill allows a credit against the corporation business tax equal to a percentage of certain costs of new or expanded business facilities in this State. The percentage of credit allowed depends upon the kind of investment made and the number of new jobs created, but can equal up to 10% of the investment costs.

A taxpayer is allowed a credit for investment through direct ownership or by lease in buildings, building components, equipment and capitalized start-up costs of new or expanded business facilities in New Jersey. The credit is applicable to investments in most industrial sectors including manufacturing, wholesale distribution, warehousing, retailing and service businesses. If manufacturing equipment is allowed a credit under the "Manufacturing Equipment and Employment Investment Tax Credit Act," contained in S-1820 or A-2675, the credit under this bill is not available for that manufacturing investment.

The cost of property considered as a "qualified investment" and allowed in the calculation of the credit is based upon the expected depreciation life of the property for federal income tax purposes. The cost of new investment property with a depreciation life of three years is allowed at 35% of cost, five years at 70% of cost and seven or more years at 100% of cost.

The credit is also conditioned on the number of new jobs created by the new investment. A "new job" is the employment of a New Jersey resident at the new or expanded business facility on a full or full-time equivalent (but not seasonal) basis in a position created by the qualified investment. The qualified investment amount is allowed as a credit amount to the extent new jobs are created. The number of new jobs that a taxpayer must create depends on the size of the taxpayer.

A small business taxpayer, defined as a taxpayer with annual payroll of $2 million or less and annual gross receipts of $6 million or less, must create a minimum of 5 new jobs to be allowed a credit of one half of one percent of the qualified investment. That new jobs factor is increased one-half of one percent for each additional 5 new jobs created over the 5 new job minimum, up to a 10 percent credit for 100 new jobs created.

A taxpayer that is not a small business must create a minimum of 50 new jobs to be allowed a credit of one half of one percent of the qualified investment. That new jobs factor is increased one-half of one percent for each additional 50 new jobs created over the 50 new job minimum, up to a 10 percent credit for 1000 new jobs created.

One-fifth of the credit may be used to offset up to 50% of the corporation business tax liability of a taxpayer resulting from the increased investment and employment in the year that the investment property is put into service; any remaining credit may be rebated in an amount not to exceed 50% of the property tax liability of a taxpayer resulting from the increased investment and employment, and one-fifth of the credit may be used in a similar manner in each of the four years thereafter. If the corporation business tax liability resulting from the increased investment cannot be readily determined, the liability is apportioned on the basis of the compensation paid to the new employees relative to total New Jersey compensation paid by the corporation. The annual credit amount cannot reduce the annual tax attributable to the increased investment below 50% of the amount otherwise due on the attributable investment or below the statutory minimum tax, and credit amounts that are not usable in a tax year may not be carried forward for use in subsequent tax years.

Annual Department of Treasury summary reports will assure that the Legislature is made aware of the total dollar value of the credits granted per year and to date, the relationship of a taxpayer's size and business line to credits granted, and provide a warning of any problems with the implementation of the credit. Regular review of individual taxpayers' credits will assure that they receive the benefits of their investment. The review process will include an in-depth review of the credit relating to a particular investment in the third year of the credit, and annual recalculation of a credit allowance, if necessary. The review of individual taxpayers' use of the credit will provide the input for the annual Treasury report summarizing credit use.

FISCAL IMPACT:

The Division of Taxation, Department of the Treasury, has estimated that approximately $10 million of investment credits will be granted in the first year of the bill's implementation, which will have primary impact on the fiscal year following the fiscal year of implementation. That estimate is based on assumptions about the utilization of the credit and the level of business investment in the State that may be affected in future years by changes in the business environment and the availability of the credit. In years following the first year in which investment credits are granted further credits are granted with revenue impact that, because the credits depend on the creation of additional jobs in New Jersey, cannot be determined at this time.

COMMITTEE AMENDMENTS:

The committee adopted amendments to clarify the definition of "small business taxpayer", and to permit the Department of Labor to release information to the Division of Taxation necessary to verify the qualifications of taxpayers applying for the credits under this bill. With these amendments, this bill is identical to the Assembly Committee Substitute for A-2475, as released by the committee on this date.