

54.10A-1

LEGISLATIVE HISTORY CHECKLIST
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(Corporation Business Tax--
credit for research)

NJSA: 54:10A-1

LAWS OF: 1993 **CHAPTER:** 175

BILL NO: A1033

SPONSOR(S) Doria and others

DATE INTRODUCED: February 27, 1993

COMMITTEE: **ASSEMBLY:** Appropriations; Economic and
Community Development
SENATE: Budget

AMENDED DURING PASSAGE: No Assembly Committee
Substitute enacted

DATE OF PASSAGE: **ASSEMBLY:** June 10, 1993
SENATE: June 17, 1993

DATE OF APPROVAL: July 7, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes 6-3-93 & 6-15-92
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE:

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: Yes

(over)

974.90 New Jersey. Joint Legislative Committee on Economic Recovery.
E19 Committee meeting, held 2-17-93, 3-24-92 and 4-21-93.
1993 Trenton, East Brunswick, Elizabeth, NJ, 1993.
[see especially Vol I- pp25-26]

974.90 New Jersey. Joint Legislative Committee on Economic Recovery.
E19 Committee meeting, held 1-28-93, Trenton, 1993.
1993a [see especially p.78]

KBG:pp

P.L.1993, CHAPTER 175, approved July 7, 1993
Assembly Committee Substitute for
1993 Assembly No. 1033

1 AN ACT providing a credit under the corporation business tax for
2 certain increased research activities, supplementing P.L.1945,
3 c.162 (C.54:10A-1 et seq.).
4

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

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

11 (1) 10% of the excess of the qualified research expenses for
12 the fiscal or calendar accounting year (referred to hereafter in
13 this section as the "tax year") over the base amount; and

14 (2) 10% of the basic research payments
15 determined in accordance with section 41 of the federal Internal
16 Revenue Code of 1986, 26 U.S.C. §41, as in effect on June 30,
17 1992, and provided that subsection (h) of 26 U.S.C. §41 relating to
18 termination shall not apply. Provided however, that the terms
19 "qualified research expenses," "base amount," "qualified
20 organization base amount period," "basic research" and any other
21 terms determined by the Director of the Division of Taxation to
22 affect the calculation of the credit shall include only
23 expenditures for research conducted in this State.

24 b. No credit shall be allowed under section 42 of P.L.1987,
25 c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and
26 Employment Investment Tax Credit Act," P.L. , c. (C.) (Now
27 pending before the Legislature as Senate Bill No. 1820 (Sca) of
28 1993 or Assembly Bill No. 2675 (Aca) of 1993), or under P.L. ,
29 c. (C.) (Now pending before the Legislature as Senate Bill
30 No. 1784 (Sca) of 1993 or Assembly Bill No. 2475 (Acs) of 1993),
31 for property or expenditures for which a credit is allowed, or
32 which are includable in the calculation of a credit allowed, under
33 this section.

34 The tax imposed for a fiscal or calendar accounting year
35 pursuant to section 5 of P.L.1945, c.162, shall first be reduced by
36 the amount of any credit allowed pursuant to section 19 of
37 P.L.1983, c.303 (C.52:27H-78), then by any credit allowed
38 pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), then by
39 any credit allowed pursuant to section 42 of P.L.1987, c.102
40 (C.54:10A-5.3), then by any credit allowed under section 3 of
41 P.L. , c. (C.) (Now pending before the Legislature as
42 Senate Bill No. 1784 of 1993 or Assembly Bill No. of 1993), and
43 then by any credit allowed under sections 3 or 4 of P.L. , c.
44 (C.) (Now pending before the Legislature as Senate Bill No.
45 1820 of 1993 or Assembly Bill No. 2675 of 1993), prior to applying

1 any credits allowable pursuant to this section. Credits allowable
2 pursuant to this section shall be applied in the order of the
3 credits' tax years. The amount of the credits applied under this
4 section against the tax imposed pursuant to section 5 of P.L.1945,
5 c.162, for an accounting year shall not exceed 50% of the tax
6 liability otherwise due and shall not reduce the tax liability to an
7 amount less than the statutory minimum provided in subsection
8 (e) of section 5 of P.L.1945, c.162. The amount of tax year credit
9 otherwise allowable under this section which cannot be applied
10 for the tax year due to the limitations of this subsection may be
11 carried over, if necessary, to the seven accounting years
12 following a credit's tax year.

13 2. This act shall take effect immediately and apply to
14 expenditures incurred in taxable years beginning on and after
15 January 1, 1994.

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20 Provides corporation business tax credit for qualified research
21 expenses in New Jersey.

ASSEMBLY, No. 1033

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1992

By Assemblymen DORIA, HAYTAIAN, Albohn, Roberts, Singer,
Kenny, Imprevuto, Felice, Franks, DeCroce, Catania,
Sosa, Pascrell, Assemblywoman Bush, Assemblymen Kamin,
Watson, Bryant, Collins, Kronick and Lance

1 AN ACT providing a credit under the corporation business tax for
2 certain increased research activities, supplementing P.L.1945,
3 c.162 (C.54:10A-1 et seq.).
4

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

7 1. a. A taxpayer who engages in qualified research within this
8 State shall be allowed a credit, subject to the provisions of
9 subsection b. of this section, against the tax imposed pursuant to
10 section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to
11 15% of the excess of the qualified research expenses for the
12 fiscal or calendar accounting year (referred to hereafter in this
13 section as the "tax year") over the base amount; provided
14 however that the base amount shall not be less than 50% of the
15 qualified research expenses for the tax year.

16 b. The tax imposed for a fiscal or calendar accounting year
17 pursuant to section 5 of P.L.1945, c.162, shall first be reduced by
18 the amount of any credit allowed pursuant to section 19 of
19 P.L.1983, c.303 (C.52:27H-78), and then by any credit allowed
20 pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), prior to
21 applying any credits allowable pursuant to this section. Credits
22 allowable pursuant to this section shall be applied in the order of
23 the credits' tax years. The amount of the credits applied under
24 this section against the tax imposed pursuant to section 5 of
25 P.L.1945, c.162, for an accounting year shall not exceed 50% of
26 the tax liability otherwise due and shall not reduce the tax
27 liability to an amount less than the statutory minimum provided
28 in subsection (e) of section 5 of P.L.1945, c.162. The amount of
29 tax year credit otherwise allowable under this section which
30 cannot be applied for the tax year due to the limitations of this
31 subsection may be carried over, if necessary, to the ten
32 accounting years following a credit's tax year.

33 c. For the purposes of this section:

34 (1) "Base amount" means the average annual amount of
35 qualified research expenses of the taxpayer for the three fiscal or
36 calendar accounting years immediately preceding the tax year for
37 which a credit pursuant to this section is allowable, except as
38 provided in subsection a. of this section.

39 (2) "Qualified research expenses" means amounts paid or
40 incurred by the taxpayer in a trade or business for wages, supplies
41 and rentals directly attributable to the conduct within this State
42 of qualified research by the taxpayer in the tax year, and shall
43 include 100% of the amount paid by the taxpayer to a college or
44 university for the conduct of qualified research by that

1 institution within this State on behalf of the taxpayer in the tax
2 year and 65% of the amount paid by the taxpayer to any other
3 person not an employee of the taxpayer for the conduct of
4 qualified research within this State on behalf of the taxpayer in
5 the tax year. Expenses that are not qualified research expenses
6 for a tax year solely because they are attributable to qualified
7 research to be conducted after the close of that year shall be
8 treated as paid or incurred in the accounting year in which the
9 qualified research to which they relate is conducted.

10 (3) "Qualified research" means research in the experimental or
11 laboratory sense that has as its goal or purpose:

12 (a) basic research in a scientific or technical field of endeavor,

13 (b) the advancement of technology by experimentation in a
14 scientific or technical field of endeavor,

15 (c) the development of new products or processes,

16 (d) the improvement of existing products or processes, or

17 (e) the development of new uses for existing products or
18 processes.

19 (4) "Qualified research" shall not include:

20 (a) research in the social sciences, arts or humanities,

21 (b) routine or ordinary testing or inspection for quality control,

22 (c) research related to the adaptation of an existing product,
23 process, technique, formula or invention to a particular
24 customer's requirements or needs,

25 (d) research for the purpose of duplicating or reproducing an
26 existing product, process, technique, formula or invention from a
27 physical examination thereof or from an examination of
28 blueprints, specifications, data compilations or publicly available
29 information,

30 (e) research with respect to computer software developed by
31 the taxpayer primarily for internal use in the taxpayer's trade or
32 business, other than for use in an activity that constitutes
33 qualified research,

34 (f) research that relates solely to matters of fashion or
35 personal preference, or

36 (g) research that is funded by any party other than the taxpayer.

37 (5) "Rentals" means amounts paid for the use of tangible
38 personal property used in the conduct of qualified research.

39 (6) "Supplies" means any tangible property other than land,
40 improvements to land and property of a character subject to an
41 allowance for depreciation used in the conduct of qualified
42 research, provided however that the amount of depreciation
43 allowance permitted pursuant to subparagraph (i) of
44 subparagraph (F) of paragraph (2) of subsection (k) of section 4 of
45 P.L.1945, c.162 (C.54:10A-4) for tangible personal property
46 subject to an allowance for depreciation and used in the conduct
47 of qualified research shall be an amount paid or incurred for
48 supplies.

49 (7) "Wages" means only that compensation, including amounts
50 paid by an employer for benefit programs such as health
51 insurance, retirement benefits, life insurance, bonus payments
52 and employee prizes or awards the value of which are not
53 normally includable in periodic wage payments, paid to or for the
54 benefit of employees for engaging in the conduct of qualified

1 research or engaging in the direct supervision or direct support of
2 qualified research activities. If substantially all of the services
3 performed by an individual in a tax year are the conduct of
4 qualified research or the direct supervision or direct support of
5 qualified research activities all compensation to that individual
6 for services performed during that tax year shall be wages.

7 2. Notwithstanding any provisions of section 1 of this act to
8 the contrary, the "base amount" for the taxpayer fiscal or
9 calendar accounting year in which this act takes effect means the
10 greater of:

11 a. the base amount determined pursuant to section 1 of this
12 act, or

13 b. the qualified research expenses paid or incurred
14 (1) in that fiscal or calendar accounting year, and
15 (2) prior to the effective date of this act.

16 3. This act shall take effect immediately.

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19 SPONSOR'S STATEMENT

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21 This bill provides a credit under the corporation business tax
22 for increasing research expenditures in New Jersey. The increase
23 in research expenditure is measured by the excess of certain New
24 Jersey research expenditures in the tax year over the average
25 level of those expenses for the three years prior to the tax year,
26 but limited to 50% of the tax year expenditures. Fifteen percent
27 of the amount of the increase is allowed as a credit. The credit
28 cannot reduce the tax below 50% of the amount otherwise due or
29 below the statutory minimum tax, and credits that are not usable
30 in the current year can be carried forward for use in up to ten
31 following years.

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36 Provides corporation business tax credit for certain increased
37 research activities.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1033

STATE OF NEW JERSEY

DATED: JUNE 3, 1993

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1033 by Assembly committee substitute.

This Assembly Committee Substitute for Assembly Bill No. 1033 supplements the Corporation Business Tax Act to provide a credit against the taxes which would otherwise be due under the corporation business tax. The credit is equal to 10 percent of the increase in qualified research expenses in a fiscal or calendar accounting year over the base amount and 10% of the basic research payments for an accounting year.

This substitute is based on the same credit base, rules and restrictions as the federal research and development credit provided under the federal Internal Revenue Code of 1986, provided that the credit under the bill is limited to expenditures made in New Jersey. This use of existing federal laws should simplify the administration of the tax and reduce compliance costs. The credit cannot reduce the tax below 50% of the amount otherwise due or below the statutory minimum tax, and credits that are not usable in the current year can be carried forward for use in up to seven following years.

FISCAL IMPACT:

The Division of Taxation, Department of the Treasury, has estimated that at current expenditure rates and research activity levels in New Jersey this substitute would decrease net corporation business tax revenues by \$30 million annually.

ASSEMBLY ECONOMIC AND COMMUNITY DEVELOPMENT
AGRICULTURE AND TOURISM COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1033

STATE OF NEW JERSEY

DATED: JUNE 15, 1992

The Assembly Economic and Community Development, Agriculture and Tourism Committee reports favorably Assembly Bill No. 1033.

As reported, this bill supplements the Corporation Business Tax Act to provide a credit against the taxes which would otherwise be due under the corporation business tax. The credit is equal to 15 percent of the increase in research expenditures in New Jersey.

The increase in research expenditure is measured by the excess of certain New Jersey research expenditures in the tax year over the average level of those expenses for the three years prior to the tax year, but limited to 50% of the tax year expenditures. Fifteen percent of the amount of the increase is allowed as a credit. The credit cannot reduce the tax below 50% of the amount otherwise due or below the statutory minimum tax, and credits that are not usable in the current year can be carried forward for use in up to ten following years.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1033

STATE OF NEW JERSEY

DATED: JUNE 14, 1993

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The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1033.

Assembly Bill No. 1033 provides a credit against the taxes which would otherwise be due under the corporation business tax. The credit is equal to 10 percent of the taxpayer's increase in qualified research expenses in a fiscal or calendar accounting year over the base amount and 10% of the basic research payments for an accounting year.

This bill is based on the same credit base, rules and restrictions as the federal research and development credit provided under the federal Internal Revenue Code of 1986, provided that the credit under the bill is limited to expenditures made in New Jersey. This use of existing federal laws should simplify the administration of the tax and reduce compliance costs. The credit cannot reduce the tax below 50% of the amount otherwise due or below the statutory minimum tax, and credits that are not usable in the current year can be carried forward for use in up to seven following years.

As reported, this bill is identical to Senate Bill No. 1964 of 1993.

FISCAL IMPACT

The Division of Taxation in the Department of the Treasury has estimated that at current expenditure rates and research activity levels in New Jersey this bill would decrease net corporation business tax revenues by approximately \$30 million annually.

FISCAL NOTE TO
ASSEMBLY, No. 1033
STATE OF NEW JERSEY

DATED: September 23, 1992

Assembly Bill No. 1033 of 1992 provides a credit to corporations for increasing research and development expenditures in New Jersey. This credit is taken against the taxes otherwise due under the corporate business tax. The credit is equal to 15 percent of the increase in research expenditures over the average level of those expenditures for the three years prior to the tax year (the base amount), provided that the base amount is not less than 50 percent of the qualified research for the tax year. Under provisions of this bill, this credit cannot reduce the tax below 50 percent of the amount otherwise due or below the statutory minimum tax. Any credits not usable in the current year can be carried forward and used within a ten year period.

The Division of Taxation in the Department of the Treasury estimates that this bill would result in a \$43 million revenue loss in FY 1993 and FY 1994 and that the loss would be a continuing one. This estimate uses the 1985 federal research and development tax credit as its basis for analysis; it assumes that national expenditures on research are distributed proportionately among states to corporate income; and it assumes inflation of 13 percent since 1985, which is based on reported net corporate income growth in New Jersey from 1985 to 1991.

The Division of Taxation's estimate is based on a revenue loss to the federal government of \$1.6 billion in 1985 from the 25 percent federal research and development tax credit. The division estimates that New Jersey net corporate income was approximately 3.9 percent of total national net corporate income in 1985. By multiplying the \$1.6 billion federal tax credit by the 3.9 percent ratio applicable to New Jersey corporations, the division estimates a New Jersey research and development tax credit at the 25 percent federal rate of \$63.5 million. Adjusting the \$63.5 million for this bill's lower 15 percent tax credit yields \$38.1 million. Adjusting the \$38.1 million by the 13 percent income growth rate assumed by the division for the period 1985 to 1991 yields a revenue loss to the State from the research and development tax credit of \$43.1 million. The Division of Taxation's estimate apparently assumes no growth after 1991 since it has made no adjustments for growth after that date.

The Office of Legislative Services (OLS) does not concur with the Division of Taxation's estimate and believes the potential revenue loss from this credit could be substantially higher. Although a precise estimate of the fiscal impact of this bill cannot be determined due to the limited data available, it is possible to estimate a potential maximum revenue loss to the State of approximately \$93 million in 1992 if this bill is enacted for tax year 1992.

The OLS estimate, which is based on National Science Foundation data, yields a gross revenue loss to the corporate

business tax of \$93 million in tax year 1992. This estimate uses the following facts and assumptions: New Jersey corporations invested \$5.8 billion of their own funds in research and development in 1989; the inflation rate in New Jersey between 1989 and 1991 averaged 5 percent a year; no additional investments were made in research and development by these corporations beyond those needed to keep up with inflation; 100 percent of research and development expenditures qualify for the credit. Company funded research and development is estimated for the base year at \$6.1 billion and for the 1992 calendar year at \$6.7 billion, an increase of \$600 million. A 15 percent credit applied against the \$600 million, results in a revenue loss of \$93 million in calendar year 1992.

The primary limitation of this methodology is that it assumes that all research and development expenses will qualify for this credit and that every company will avail itself of this credit. Because no data are available on individual companies' research and development expenditures and on the individual corporate income taxes paid by these New Jersey companies, it is impossible to tell what portion of this \$93 million will actually be lost. It also is impossible to tell whether revenues lost to the tax credit would all be lost in calendar year 1992 or whether some of these losses would carry forward under the ten year provision. Although not all research and development expenditures would qualify for the credit, experience with the federal research and development tax credit suggests that there is substantial evidence that these tax incentives result in a considerable redefinition of activities as research and development, particularly in the first few years after the introduction of the tax incentive.

A primary limitation of the methodology used by the Division of Taxation is its assumption that national expenditures on research are distributed proportionately to corporate income. The division uses 3.9 percent as a proxy for New Jersey's share of national corporate research and development. If New Jersey's share is understated, the revenue loss from this credit will also be understated. The Division of Taxation, itself, admits that using 3.9 percent as its proxy may understate the amount of New Jersey expenditures due to the high technology status of the State. If the division's proxy for research and development expenditures in New Jersey were increased to 6 percent and no other variables were changed, the division's estimate would be \$65.1 million; at 9 percent it would be \$97.6 million.

There is evidence to indicate that New Jersey corporations account for more than 3.9 percent of total national investments on research and development. The National Science Foundation and the Research and Development Council of New Jersey indicate that New Jersey corporations are heavy investors in research and development and that they annually spend between 8 and 11 percent of the total company funds invested nationally. The National Science Foundation conducts a biennial survey of State research and development investment in the U.S. The most recent data available are for the calendar year 1989. In 1989, corporations throughout the U.S. spent \$70.6 billion of their own resources on research and development. New Jersey corporations spent approximately \$5.8

billion, or 8 percent, of that total. In 1985, 1987 and 1989, New Jersey companies ranked fourth, third then fourth (after California, Michigan and New York) in terms of the amount of company funds invested in research and development. The two industry types in New Jersey which invest heavily in research and development are classified as electrical (radio and television receiving, communications equipment and electronic components) and chemical (drugs and medicine).

A second limitation to the Division of Taxation's estimate is that it assumes that corporate net income growth from 1985 to 1991 is an appropriate inflation factor for research expenditures. Since this bill provides for a credit against tax liabilities, the annual growth in research and development expenditures is a more relevant cost inflation measure than changes in corporate net incomes that are reported for tax purposes and which are influenced by many extraneous factors.

No attempt has been made either by the Division of Taxation or OLS to determine the administrative costs of this bill. If the federal research and development credit were to lapse and the State could not piggy-back on federal audit procedures, State audits would be necessary to insure compliance.

This fiscal note has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1033

STATE OF NEW JERSEY

ADOPTED JUNE 3, 1993

Sponsored by Assemblymen DORIA and HAYTAIAN

1 AN ACT providing a credit under the corporation business tax for
2 certain increased research activities, supplementing P.L.1945,
3 c.162 (C.54:10A-1 et seq.).
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16 Revenue Code of 1986, 26 U.S.C. §41, as in effect on June 30,
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5 c.162, for an accounting year shall not exceed 50% of the tax
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