SENATE, No. 3054

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED SEPTEMBER 19, 2011

Sponsored by:
Senator STEPHEN M. SWEENEY
District 3 (Salem, Cumberland and Gloucester)
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)
Assemblywoman PAMELA R. LAMPTT
District 6 (Camden)

Co-Sponsored by:
Senators Stack, Sarlo, Cunningham, Van Drew, Beach, Oroho, Ruiz, Turner and Assemblyman Fuentes

SYNOPSIS
Extends certain business tax credit programs to the gross income tax.

CURRENT VERSION OF TEXT
As reported by the Assembly Commerce and Economic Development Committee on December 8, 2011, with amendments.

(Sponsorship Updated As Of: 1/10/2012)
AN ACT extending certain business tax credit programs to the gross income tax, amending various parts of the statutory law and supplementing Title 54A of the New Jersey Statutes.

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

1. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to read as follows:
2. As used in this act:
   “Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes;
   “Authority” means the New Jersey Economic Development Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);
   “Business retention or relocation grant of tax credits” or “grant of tax credits” means a grant which consists of the value of corporation business tax credits against the liability imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-1) or credits against liability imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., or credits against the taxes imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et al.), section 1 of P.L.1950, c.231 (C.17:32-15), and N.J.S.17B:23-5, provided to fund a portion of retention and relocation costs pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.);
   “Business” means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and which is subject to the provisions of R.S.43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside

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:
Assembly ACE committee amendments adopted December 8, 2011.
the State. A business shall include an affiliate of the business if that
business applies for a credit based upon any capital investment
made by an affiliate or based upon retained full-time jobs of an
affiliate;

“Capital investment” means expenses that the business incurs
following its submission of an application to the authority pursuant
to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the
Capital Investment Completion Date, as shall be defined in the
project agreement, for: (1) the site preparation and construction,
renovation, improvement, equipping of, or obtaining and installing
fixtures and machinery, apparatus or equipment in, a newly
constructed, renovated or improved building, structure, facility, or
improvement to real property in this State; and (2) obtaining and
installing fixtures and machinery, apparatus or equipment in a
building, structure, or facility in this State. Provided however, that
“capital investment” shall not include soft costs such as financing
and design, furniture or decorative items such as artwork or plants,
or office equipment if the office equipment is property with a
recovery period of less than five years. 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 business, determined in accordance with section 168 of the
federal Internal Revenue Code of 1986 (26 U.S.C. s.168);

“Certificate of compliance” means a certificate issued by the
authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);
“Chief executive officer” means the chief executive officer of the
New Jersey Economic Development Authority;
“Commitment duration” means the tax credit term and five years
from the end of the tax credit term specified in the project
agreement entered into pursuant to section 5 of P.L.1996, c.25
(C.34:1B-116);
“Designated industry” means an industry identified by the
authority as desirable for the State to maintain, which may be
designated and amended via the promulgation of rules by the
authority to reflect changing market conditions;
“Designated urban center” means an urban center designated in
the State Development and Redevelopment Plan adopted by the
State Planning Commission;
“Eligible position” means a full-time position retained by a
business in this State for which a business provides employee health
benefits under a group health plan as defined under section 14 of
P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined
under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or
contract of health insurance covering more than one person issued
pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey
Statutes;
“Full-time employee” means a person employed by the business
for consideration for at least 35 hours a week, or who renders any
other standard of service generally accepted by custom or practice, as determined by the authority, as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the authority, as full-time employment, and whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the authority, as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. “Fulltime employee” shall not include any person who works as an independent contractor or on a consulting basis for the business;

“New business location” means the premises to which a business will relocate that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than the commitment duration or eight years, whichever is greater, from the date of relocation. A “new business location” also means the business’s current location or locations if the business makes a capital investment equal to the total value of the business retention or relocation grant of tax credits to the business at that location or locations;

“Program” means the Business Retention and Relocation Assistance Grant Program created pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.);

“Project agreement” means an agreement between a business and the authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount and tax credit term of the applicable grant of tax credits, and other such provisions which further the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.);

“Retained full-time job” means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered the eligible positions of the business;
“Tax credit term” means the period of time commencing with the first issuance of tax credits and continuing during the period in which the recipient of a grant of tax credits is eligible to apply the tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3); and

“Yearly tax credit amount” means $1,500 times the number of retained full-time jobs. “Yearly tax credit amount” does not include the amount of any bonus award authorized pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).

(cf: P.L.2010, c.123, s.1)

2. Section 14 of P.L.2004, c.65 (C.34:1B-120.1) is amended to read as follows:

14. The authority is authorized to pursue, and shall adopt rules for, the recapture of all, or a portion of, the grant of tax credits, based on criteria established by the authority pursuant to regulation or under the terms of the project agreement. The rules shall allow for the authority to pursue the full or partial recapture or, in its discretion, to notify the Director of the Division of Taxation in the Department of the Treasury, who shall issue a recapture assessment which shall be based upon the proportionate value of the grant of tax credits that corresponds to the amount and period of noncompliance, in which case, the recapture of funds shall be subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. Recaptured funds shall be deposited in the General Fund of the State, except that recaptured funds from the grant of a tax credit against the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., shall be deposited into the Property Tax Relief Fund.

(cf: P.L.2010, c.123, s.13)

3. Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is amended to read as follows:

17. a. The authority shall establish a corporation business tax credit, gross income tax credit, and insurance premiums tax credit certificate transfer program to allow businesses in this State with unused amounts of tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and otherwise allowable, that cannot be applied by the business to which originally issued before the expiration of the credit, to surrender those tax credits for use by other corporation business, gross income tax, and insurance premiums taxpayers in this State. The tax credits may be used on the corporation business tax, gross income tax, and insurance premiums tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer, gross income taxpayer, or insurance premiums taxpayer that is the recipient of the [corporation business tax credit certificate or insurance premiums] tax credit certificate to assist in the funding of costs incurred by the relocating business.
b. Businesses may apply to the authority and the Director of the Division of Taxation for a tax credit transfer certificate, covering one or more years. Upon receipt thereof, the business may sell or assign the tax credit certificate in exchange for private financial assistance to be made by the purchaser in an amount equal to at least 75% of the amount of the surrendered tax credit of a business relocating in the State. The private financial assistance shall assist in funding expenses incurred in connection with the operation of the business in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fitout, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.).

c. The authority shall establish procedures to facilitate such transfers and encourage liquidity and simplicity in the market for the purchase and sale of such certificates, including, in the authority’s discretion, coordinating the applications for surrender and acquisition of unused but otherwise allowable tax credits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to businesses in this State.

d. The authority shall, in consultation with the Director of the Division of Taxation, develop criteria for the approval or disapproval of applications.

(cf: P.L.2010, c.123, s.14)

4. Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to read as follows:

2. As used in this act:
"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. s.414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-209).
"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a sole proprietorship, partnership, an S corporation, or a limited liability company. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

A business shall also include an entity whose owners' income in respect of the entity is, or may be, subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

"Capital investment" in a qualified business facility means expenses incurred after, but before the end of the eighth year after, the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a. the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility or improvement to real property; and b. obtaining and installing furnishings and machinery, apparatus or equipment for the operation of a business in a building, structure, facility or improvement to real property.

"Eligible municipality" means a municipality: (1) which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or which was continued to be a qualified municipality thereunder pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income,
gain, loss, or deduction, or whose guaranteed payments, or any
combination thereof, is subject to the payment of estimated taxes, as
et seq. "Full-time employee" shall not include any person who
works as an independent contractor or on a consulting basis for the
business.

"Mixed use project" means a project comprising both a qualified
business facility and a qualified residential project.

"Partnership" means an entity classified as a partnership for
federal income tax purposes.

"Professional employer organization" means an employee leasing
comp any registered with the Department of Labor and Workforce
Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

"Qualified business facility" means any building, complex of
buildings or structural components of buildings, and all machinery
and equipment located within a designated urban transit hub in an
eligible municipality, used in connection with the operation of a
business.

"Qualified residential project" shall have the meaning ascribed to
that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

"Residential unit" means a residential dwelling unit such as a
rental apartment, a condominium or cooperative unit, a hotel room,
or a dormitory room.

"Urban transit hub" means:

a. property located within a 1/2 mile radius surrounding the
mid point of a New Jersey Transit Corporation, Port Authority
Transit Corporation or Port Authority Trans-Hudson Corporation
rail station platform area, including all light rail stations, and
property located within a one mile radius of the mid point of the
platform area of such a rail station if the property is in a qualified
municipality under the "Municipal Rehabilitation and Economic

b. property located within a 1/2 mile radius surrounding the
mid point of one of up to two underground light rail stations’
platform areas that are most proximate to an interstate rail station;

c. property adjacent to, or connected by rail spur to, a freight
rail line if the business utilizes that freight line at any rail spur
located adjacent to or within a one mile radius surrounding the
entrance to the property for loading and unloading freight cars on
trains;

which property shall have been specifically delineated by the
authority pursuant to subsection e. of section 3 of P.L.2007, c.346
(C.34:1B-209).

A property which is partially included within the radius shall
only be considered part of the urban transit hub if over 50 percent
of its land area falls within the radius.
“Rail station” shall not include any rail station located at an international airport.

(cf: P.L.2009, P.L.2011, c.89, s.1)

5. Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to read as follows:

3. a. (1) A business, upon application to and approval from the authority, shall be allowed a credit of 100 percent of its capital investment, made after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility within an eligible municipality, pursuant to the restrictions and requirements of this section. To be eligible for any tax credits authorized under this section, a business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality. The value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall not exceed $1,500,000,000.

(2) A business, other than a tenant eligible pursuant to paragraph (3) of this subsection, shall make or acquire capital investments totaling not less than $50,000,000 in a qualified business facility, at which the business shall employ not fewer than 250 full-time employees to be eligible for a credit under this section. A business that acquires a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller.

(3) A business that is a tenant in a qualified business facility, the owner of which has made or acquired capital investments in the facility totaling not less than $50,000,000, shall occupy a leased area of the qualified business facility that represents at least $17,500,000 of the capital investment in the facility at which the tenant business and up to two other tenants in the qualified business facility shall employ not fewer than 250 full-time employees in the aggregate to be eligible for a credit under this section. The amount of capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility. Capital investments made by a tenant shall be deemed to be included in the calculation of the capital investment made or acquired by the owner, but only to the extent necessary to meet the owner's minimum capital investment of $50,000,000. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of $50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.
(4) A business shall not be allowed tax credits under this section if the business participates in a business employment incentive grant relating to the same capital and employees that qualify the business for this credit, or if the business receives assistance pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27B-BB-1 et al.). A business shall not qualify for a tax credit under this section, based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the “InvestNJ Business Grant Program Act,” P.L.2008, c.112 (C.34:1B-237 et seq.).

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

(6) The capital investment of the owner of a qualified business facility is that percentage of the capital investment made or acquired by the owner of the building that the percentage of net leasable area of the qualified business facility not leased to tenants is of the total net leasable area of the qualified business facility.

(7) A business shall be allowed a tax credit of 100 percent of its capital investment, made after the effective date of P.L.2011, c.89 but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility that is part of a mixed use project, provided that (a) the qualified business facility represents at least $17,500,000 of the total capital investment in the mixed use project, (b) the business employs not fewer than 250 full-time employees in the qualified business facility, and (c) the total capital investment in the mixed use project of which the qualified business facility is a part is not less than $50,000,000. The allowance of credits under this paragraph shall be subject to the restrictions and requirements, to the extent that those are not inconsistent with the provisions of this paragraph, set forth in paragraphs (1) through (6) of this subsection, including but not limited to the requirement that the business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality.

(8) In determining whether a proposed capital investment will yield a net positive benefit, the authority shall not consider the transfer of an existing job from one location in the State to another location in the State as the creation of a new job, unless (a) the business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality whether in-State or out-of-State, or (b) the business’s chief executive officer,
or equivalent officer, submits a certification to the authority indicating that the existing jobs are at risk of leaving the State and that the business’s chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility. In the event that this certification by the business’s chief executive officer, or equivalent officer, is found to be willfully false, the authority may revoke any award of tax credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to. When considering an application involving intra-State job transfers, the authority shall require the company to submit the following information as part of its application: a full economic analysis of all locations under consideration by the company; all lease agreements, ownership documents, or substantially similar documentation for the business’s current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the authority, the authority shall independently verify and confirm, by way of making a factual finding by separate vote of the authority’s board, the business’s assertion that the jobs are actually at risk of leaving the State, before a business may be awarded any tax credits under this section.

b. A business shall apply for the credit within five years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and shall submit its documentation for approval of its credit amount within eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.).

c. (1) The amount of credit allowed shall, except as otherwise provided, be equal to the capital investment made by the business, or the capital investment represented by the business’ leased area, or area owned by the business as a condominium, and shall be taken over a 10-year period, at the rate of one-tenth of the total amount of the business’ credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first approved by the authority as having met the investment capital and employment qualifications, subject to any reduction or disqualification as provided by subsection d. of this section as determined by annual review by the authority. In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

The credit amount for any tax period ending after the date eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) during which the documentation of a business’ credit amount remains unapproved shall be forfeited, although credit amounts for
the remainder of the years of the 10-year credit period shall remain
available to it. The credit amount that may be taken for a tax period
of the business that exceeds the final liabilities of the business for
the tax period may be carried forward for use by the business in the
next 20 successive tax periods, and shall expire thereafter, provided
that the value of all credits approved by the authority against tax
liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any
fiscal year shall not exceed $150,000,000. The amount of credit
allowed for a tax period to a business that is a tenant in a qualified
business facility shall not exceed the business' total lease payments
for occupancy of the qualified business facility for the tax period.
(2) A business that is a partnership shall not be allowed a credit
under this section directly, but the amount of credit of an owner of a
business shall be determined by allocating to each owner of the
partnership that proportion of the credit of the business that is equal
to the owner of the partnership's share, whether or not distributed,
of the total distributive income or gain of the partnership for its tax
period ending within or with the owner's tax period, or that
proportion that is allocated by an agreement, if any, among the
owners of the partnership that has been provided to the Director of
the Division of Taxation in the Department of the Treasury by such
time and accompanied by such additional information as the
director may require.
(3) The amount of credit allowed may be applied against the tax
liability otherwise due pursuant to section 5 of P.L.1945, c.162
(C.54:10A-5), pursuant to N.J.S.54A:1-1 et seq., pursuant to
sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3),
pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant
to N.J.S.17B:23-5.
d. (1) If, in any tax period, fewer than 200 full-time employees
of the business at the qualified business facility are employed in
new full-time positions, the amount of the credit otherwise
determined pursuant to final calculation of the award of tax credits
pursuant to subsection c. of this section shall be reduced by 20
percent for that tax period and each subsequent tax period until the
first period for which documentation demonstrating the restoration
of the 200 full-time employees employed in new full-time positions
at the qualified business facility has been reviewed and approved by
the authority, for which tax period and each subsequent tax period
the full amount of the credit shall be allowed; provided, however,
that for businesses applying before January 1, 2010, there shall be
no reduction if a business relocates to an urban transit hub from
another location or other locations in the same municipality. For the
purposes of this paragraph, a "new full-time position" means a
position created by the business at the qualified business facility
that did not previously exist in this State.
(2) If, in any tax period, the business reduces the total number of
full-time employees in its Statewide workforce by more than 20
percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under this section, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business’ Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(3) If, in any tax period, (a) the number of full-time employees employed by the business at the qualified business facility located in an urban transit hub within an eligible municipality drops below 250, or (b) the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to paragraph (8) of subsection a. of this section, employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its workforce in the last tax accounting or privilege period prior to the credit amount approval under this section, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 250 or an increase above the 20 percent reduction has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(4) (i) If the qualified business facility is sold in whole or in part during the 10-year eligibility period the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided however that any credits of tenants shall remain unaffected.

(ii) If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period the new tenant shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods.

e. (1) The Executive Director of the New Jersey Economic Development Authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement this act, including but not limited to: examples of and the determination of capital investment; the enumeration of eligible municipalities; specific delineation of urban transit hubs; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a
credit, including the enumeration of the certification procedures and
allocation of tax credits for different phases of a qualified business
facility or mixed use project; and provisions for credit applicants to
be charged an initial application fee, and ongoing service fees, to
cover the administrative costs related to the credit.

(2) Through regulation, the Economic Development Authority
shall establish standards based on the green building manual
prepared by the Commissioner of Community Affairs pursuant to
section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of
renewable energy, energy-efficient technology, and non-renewable
resources in order to reduce environmental degradation and
courage long-term cost reduction.

(cf: P.L.2011, c.89, s.2)

6. Section 33 of P.L.2009, c.90 (C.34:1B-209.1) is amended to
read as follows:

33. A business may apply to the Director of the Division of
Taxation in the Department of the Treasury and the executive
director of the authority for a tax credit transfer certificate, covering
one or more years, in lieu of the business being allowed any amount
of the credit against the tax liability of the business. The tax credit
transfer certificate, upon receipt thereof by the business from the
director and the executive director of the authority, may be sold or
assigned, in full or in part, to any other person that may have a tax
liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
pursuant to N.J.S.54A:1-1 et seq., pursuant to sections 2 and 3 of
P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
The certificate provided to the business shall include a statement
waiving the business's right to claim that amount of the credit
against the taxes that the business has elected to sell or assign. The
sale or assignment of any amount of a tax credit transfer certificate
allowed under this section shall not be exchanged for consideration
received by the business of less than 75 percent of the transferred
credit amount. Any amount of a tax credit transfer certificate used
by a purchaser or assignee against a tax liability shall be subject to
the same limitations and conditions that apply to the use of the
credit by the business that originally applied for and was allowed
the credit.

(cf: P.L.2009, c.90, s.33)

7. Section 54 of P.L.2002, c.43 (C.52:27BBB-53) is amended
to read as follows:

54. As used in this section and section 55 of P.L.2002, c.43
(C.52:27BBB-54):

a. "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 a qualified municipality, used in connection with the
operation of the business of a taxpayer subject to the "New Jersey
Gross Income Tax Act," N.J.S.54A:1-1 et seq., or corporation that
is subject to the tax imposed pursuant to section 5 of P.L.1945,
c.162 (C.54:10A-5) or the tax imposed pursuant to sections 2 and 3
of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of
P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, 'or an entity
whose owners are subject to one or more of those taxes4 and all
facility preparation and start-up costs of the taxpayer for the
business facility which it capitalizes for federal income tax
purposes.

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

(1) Business relocation or business expansion property shall
include only:

(a) improvements to real property placed in service or use as a
business facility by the taxpayer on or after the notification of the
Governor by the commissioner pursuant to section 4 of P.L.2002,
c.43 (C.52:27BBB-4) that the municipality in which the property is
situated fulfills the definition of a qualified municipality;

(b) tangible personal property placed in service or use by the
taxpayer on or after the notification of the Governor by the
commissioner pursuant to section 4 of P.L.2002, c.43
(C.52:27BBB-4) that the municipality in which the property is
situated fulfills the definition of a qualified municipality, with
respect to which depreciation, or amortization in lieu of
depreciation, is allowable for federal income tax purposes and
which has a remaining recovery period of three or more years at the
time the property is placed in service or use in a qualified
municipality; or

(c) tangible personal property owned and used by the taxpayer at
a business location outside a qualified municipality which is moved
into a qualified municipality on or after the notification of the
Governor by the commissioner pursuant to section 4 of P.L.2002,
c.43 (C.52:27BBB-4) that the municipality in which the property is
situated fulfills the definition of a qualified municipality, for use as
a component part of a new or expanded business facility located in
the qualified municipality; 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 a qualified municipality.

(2) Property purchased for business relocation or expansion shall
not include:
(a) 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;
(b) airplanes;
(c) property which is primarily used outside a qualified municipality with that use being determined based upon the amount of time the property is actually used both within and without the qualified municipality;
(d) property which is acquired incident to the purchase of the stock or assets of the seller.

(3) Property shall be deemed to have been purchased prior to a specified date only if:
(a) 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
(b) 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.

c. "Business relocation or business expansion" means capital investment in a new or expanded business facility in a qualified municipality.

d. "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.

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

f. "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 effective date of rehabilitation and economic recovery.

g. "Incentive payment" means: the amount of tax owed by a taxpayer for a privilege period or reporting period, as computed pursuant to N.J.S.54A:1-1 et seq., section 5 of P.L.1945, c.162 (C.54:10A-5) or section 7 of P.L.2002, c.40 (C.54:10A-5a), or sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), or section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, multiplied for each privilege period or reporting period by a fraction, the numerator of which is the average value of the
taxpayer's business relocation or business expansion property within a qualified municipality during the period covered by its report, and the denominator of which is the average value of all the taxpayer's real and tangible personal property, excluding improvements made after the date of a taxpayer's first acquisition of business relocation or business expansion property in the qualified municipality to business facilities in existence on that date outside of the qualified municipality, in New Jersey during such period which result is multiplied by 96 percent; provided, however, that for the purpose of determining average value for a taxpayer that is a corporation, the provisions with respect to depreciation as set forth in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving at such value whether the corporation is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), the tax imposed pursuant to section 1 of P.L.1950, c.231 (C.17:32-15) or the tax imposed pursuant to N.J.S.17B:23-5; and provided further that the value of a leasehold interest in realty located within a qualified municipality shall be based on no less than the fair market value of its rent; and provided further that incentive payments shall be made for a period not to exceed 10 years, commencing on the date of a taxpayer's first acquisition of business relocation or business expansion property in the qualified municipality following the notification of the Governor by the commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the municipality in which the property is situated fulfills the definition of a qualified municipality.  

h. “New business facility” means a business facility which:
   (1) is employed by a taxpayer in the conduct of a business which is or will be taxable under N.J.S.54A:1-1 et seq., P.L.1945, c.162 (C.54:10A-1 et seq.) or pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5. A business facility shall not be considered a new business facility in the hands of a taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person;
   (2) is purchased by a taxpayer and is placed in service or use on or after the effective date of rehabilitation and economic recovery;
   (3) was not purchased by a taxpayer from a related person; and
   (4) was not in service or use during the 90-day period immediately prior to transfer of the title to the facility.

i. “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.
j. “Purchase” means, with respect to the determination of whether business relocation or business expansion property was purchased, any acquisition of property, including an acquisition pursuant to a lease, and an acquisition pursuant to a lease under which the lessee or affiliates of the lessee are the primary occupants under a lease of ten years or more, but only if:

(1) 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. s.267 or s.707;

(2) the property is not acquired by one member of a controlled group from another member of the same controlled group; and

(3) the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(a) 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

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

k. “Related person” means:

(1) a corporation, partnership, association or trust controlled by the taxpayer;

(2) an individual, corporation, partnership, association or trust that is in control of the taxpayer;

(3) a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(4) a member of the same controlled group as the taxpayer.

cf: P.L.2003, c.194, s.1

8. Section 55 of P.L.2002, c.43 (C.52:27BBB-54) is amended to read as follows:

55. a. There is established in the authority the "Qualified Municipality Open for Business Incentive Program," the purpose of which is to foster business investment in qualified municipalities. Businesses that locate or expand in a qualified municipality during the period that the municipality is under rehabilitation and economic recovery shall be eligible to receive a rebate from the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the tax imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5 as provided herein.

b. For each year in which a taxpayer is eligible for a rebate of a portion of the incentive payment, the Director of the Division of Taxation shall certify to the State Treasurer (1) that the taxpayer's corporation business tax return, gross income tax return, or insurance premiums tax return has been filed; (2) that the taxpayer's
entire corporation business tax obligation, gross income tax, or insurance premiums tax obligation has been satisfied; and (3) the amount of the taxpayer's incentive payment entitlement. Upon such certification, the treasurer shall certify to the executive director of the authority the amount of the taxpayer's incentive payment and, subject to the approval of the Director of the Division of Budget and Accounting, transfer that incentive payment to the fund established with the proceeds of those funds appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43.

c. The executive director of the authority shall rebate to the taxpayer up to 75% of the incentive payment paid by the taxpayer and placed by the treasurer into a fund established using those funds appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43 if the taxpayer applies for a rebate within two years of deposit of the incentive payment into the fund and establishes to the satisfaction of the executive director of the authority that the taxpayer will utilize those monies for business relocation or business expansion property that will be placed in service or use by the taxpayer after the date of the rebate application. The authority may rebate to the taxpayer up to 100% of the incentive payment paid by the taxpayer and placed by the treasurer into a fund established using those funds appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43 if the taxpayer applies for a rebate and the authority determines that a particular business relocation or business expansion will more effectively contribute to the municipal rehabilitation and economic recovery in a qualified municipality as sought by the Legislature through the enactment of P.L.2002, c.43. In making this determination the authority shall consider: 1) the amount of private investment, 2) the number of jobs concerned, 3) the projected average salary of the employees, 4) whether the investment has the potential to attract additional investment, 5) the impact to the State Treasury, and 6) any other factors that uniquely contribute to the municipal rehabilitation and economic recovery of the qualified municipality. The taxpayer may apply for this incentive prior to its undertaking of the business relocation or business expansion and upon approval the authority may establish a rebate schedule for the incentive payment for a period not to exceed ten years, subject to the taxpayer's continued satisfaction of the criteria of this act and to annual appropriation. The cumulative amount of monies distributed to the taxpayer pursuant to this section shall not exceed the amount paid or to be paid by the taxpayer for the business relocation or business expansion property. In the event that the taxpayer does not establish its eligibility for a rebate of a portion of the incentive payment within two years of its deposit into the fund, the fund shall retain any remaining amount of the incentive payment 1 except that incentive payment deposits of a gross income taxpayer that failed to
establish eligibility for a rebate shall be remitted to the Property
Tax Relief Fund\).

(cf: P.L.2003, c.194, s.2)

9. Section 56 of P.L.2002, c.43 (C.52:27BBB-55) is amended
to read as follows:

56. a. A taxpayer engaged in the conduct of business within a
qualified municipality and who is not receiving a benefit under the
(C.52:27H-60 et seq.), may apply to receive a tax credit against the
amount of tax otherwise imposed under the "New Jersey Gross
Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the tax
imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et
seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-
5, equal to: $2,500 for each new full-time position at that location
in credit year one and $1,250 for each new full-time position at that
location in credit year two.

b. (1) The credit pursuant to subsection a. of this section for
credit year one shall be allowed for the privilege period or reporting
period in which or with which credit year one ends; the credit
pursuant to subsection a. of this section for credit year two shall be
allowed for the privilege period or reporting period in which or with
which credit year two ends.

(2) An unused credit may be carried forward, if necessary, for
use in the privilege periods or reporting periods following the
privilege period or reporting period for which the credit is allowed.

(3) The order of priority of the application of the credit allowed
under this section and any other credits allowed by law shall be as
prescribed by the Director of the Division of Taxation. The amount
of the credit applied under this section against the tax imposed
pursuant to N.J.S.54A:1-1 et seq. for a reporting period and section
5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, together
with any other credits allowed by law, shall not exceed 50% of the
tax liability otherwise due. The amount of the credit applied
under this section against the tax imposed pursuant to section 5 of
P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with
any other credits allowed by law, shall not reduce the tax liability to
an amount less than the statutory minimum provided in subsection
(e) of section 5 of P.L.1945, c.162.

c. (1) Notwithstanding the provisions of subsection b. of this
section to the contrary, the credit allowed for credit year one may
be refundable at the close of the privilege period or reporting period
in which or with which credit year two ends, pursuant to the
requirements and limitations of this subsection.

(2) That amount of the credit received for credit year one
remaining, if any, after the liabilities for the privilege period or
reporting period in which or with which credit year two ends and
for any prior period have been satisfied, multiplied by the sustained
effort ratio, shall be an overpayment for the purposes of section
R.S.54:49-15 or N.J.S.54A:9-7 for the period in which or with
which credit year two ends; that amount of the credit received for
credit year one remaining, if any, that is not an overpayment
pursuant to this paragraph may be carried forward pursuant to
subsection b. of this section.

d. The burden of proof shall be on the taxpayer to establish by
clear and convincing evidence that the taxpayer is entitled to the
credits or refund allowed pursuant to this section. The director
shall by regulation establish criteria for the determination of when
new or expanded operations have begun at a location. No taxpayer
shall be allowed more than a single 24-month continuous period in
which credits shall be allowed for activity at a location within a
qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et
al.).

e. For the purposes of this section:
"Credit year one" means the first twelve calendar months
following initial or expanded operations at a location within a
qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et
al.).
"Credit year two" means the twelve calendar months following
credit year one.
"Employee of the taxpayer" does not include an individual with
an ownership interest in the business, that individual's spouse or
dependants, or that individual's ancestors or descendants.
"Full time position" means a position filled by an employee of
the taxpayer for at least 140 hours per month on a permanent basis,
which does not include employment that is temporary or seasonal.
"New full time position" means a position that did not exist prior
to credit year one. New full time positions shall be measured by the
increase, from the twelve-month period preceding credit year one to
the measured credit year, in the average number of full-time
positions and full-time position equivalents employed by the
taxpayer at the location within a qualified municipality pursuant to
P.L.2002, c.43 (C.52:27BBB-1 et al.). The hours of employees
filling part-time positions shall be aggregated to determine the
number of full-time position equivalents.
"Part-time position" means a position filled by an employee of
the taxpayer for at least 20 hours per week for at least three months
during the credit year.
"Sustained effort ratio" means the proportion that the credit year
two new full-time positions bears to the credit year one new full-
time positions, not to exceed one.
(cf: P.L.2003, c.194, s.3)

10. Section 3 of P.L.2001, c.415 (C.52:27D-492) is amended to
read as follows:
3. A business entity shall be eligible for a certificate for neighborhood revitalization State tax credits if it has provided funding for a qualified project that has been approved in accordance with sections 4 and 5 of P.L.2001, c.415 (C.52:27D-493 and C.52:27D-494).

a. Credits may be granted in an amount up to 100 percent of the approved assistance provided to a nonprofit organization to implement a qualified neighborhood preservation and revitalization project.

b. The credit may be applied by the business entity receiving the certificate as credit against tax imposed on business related income, other than tax imposed under the New Jersey Gross Income Tax, including, but not limited to, business income subject to the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et al.), “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., "The Savings Institution Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the sewer and water utility excise tax imposed pursuant to section 6 of P.L.1940, c.5 (C.54:30A-54) and the petroleum products gross receipts tax imposed pursuant to section 3 of P.L.1990, c.42 (C.54:15B-3).

c. The credit allowed to a business entity under this section may not exceed for any taxable year $1,000,000 or the total amount of tax otherwise payable by the business entity for the taxable year and, in addition, shall not exceed limitations placed on the amounts of credits or carryforward credits allowed, if any, under the relevant statute as enumerated in subsection b. of this section concerning the tax for which a credit is being claimed.

d. Credit shall not be allowed for activities for which the business entity is receiving credit under any other provision against any tax on business related income [other than the New Jersey Gross Income Tax, including, but not limited to, the corporate business tax, New Jersey gross income tax, corporate income tax, insurance premiums tax, petroleum products gross receipts tax, public utilities franchise tax, public utilities gross receipts tax, public utility excise tax, and the railroad franchise tax], and the saving institution tax.

e. The tax credit shall be awarded only for assistance provided within the same year in which the commissioner issued the certificate, or if the commissioner approved assistance for more than one year, within the year in which payment was scheduled and made. The provisions of this subsection may be waived for good cause shown.

f. The total tax credits certified for all qualified projects
proposed in a fiscal year shall not exceed $10,000,000.
(cf: P.L.2007, c.89, s.1)

11. Section 18 of P.L.1983, c.303 (C.52:27H-77) is amended to read as follows:

18. Enterprise zone employee tax credits or enterprise zone investment tax credits provided under section 19 of [this act] P.L.1983, c.303 (C.52:27H-78) shall not reduce a taxpayer's tax liability under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) in any tax year by more than 50% of the amount otherwise due, but either employee tax credits or investment tax credits remaining and unused in a tax year may be carried forward by the taxpayer to the next succeeding tax year and applied against 50% of the amount of tax otherwise due in that succeeding tax year.
(cf: P.L.1988, c.93, s.8)

12. Section 19 of P.L.1983, c.303 (C.52:27H-78) is amended to read as follows:

19. Any qualified business subject to the provisions of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), as actively engaged in the conduct of business from a location within an enterprise zone designated pursuant to [this act] the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.), which business at that location consists primarily of manufacturing or other business which is not retail sales or warehousing oriented, shall receive an enterprise zone employee tax credit against the amount of tax imposed under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), as hereinafter provided:

a. A one-time credit of $1,500.00 for each new full-time, permanent employee employed at that location who is a resident of the qualifying municipality in which the designated enterprise zone is located, or any other qualifying municipality in which an urban enterprise zone is located, and who immediately prior to employment by the taxpayer was unemployed for at least 90 days, or was dependent upon public assistance as the primary source of income;

b. A one-time credit of $500.00 for each new full-time, permanent employee employed at that location who is a resident of a qualifying municipality in which a designated enterprise zone is located, or any other qualifying municipality in which an urban enterprise zone is located, who does not meet the requirements of subsection a. of this section, and who was not, immediately prior to
employment by the taxpayer, employed at a location within the qualifying municipality;

c. A qualified business which is not entitled to an employee tax credit under this section, but meets the eligibility criteria pursuant to the provisions of subsection c. of section 27 of P.L.1983, c.303 (C.52:27H-86), shall receive a one-time credit in an amount equal to 8% of each new investment made by the qualified business in the enterprise zone under an agreement approved by the authority.

This credit shall be applied against the taxpayer's gross income tax or corporation business tax liability subject to the limitations and carry forward provisions set forth in section 18 of P.L.1983, c.303 (C.52:27H-77); provided, however, that a qualified business shall not claim an employee tax credit and an investment tax credit authorized pursuant to this subsection in the same year regardless of whether those credits were earned for the tax year or carried forward from a previous year.

d. The enterprise zone employee tax credit shall be allowed in the tax year immediately following the tax year in which the new full-time, permanent employee was first employed by the taxpayer, and shall be permitted in any tax year of a 20 year period from the date of designation of the enterprise zone, or of a period of 20 tax years from the date within that designation period upon which the taxpayer is first subject to the provisions of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation Business Tax Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), whichever date is later and the termination of the designation of an enterprise zone at the end of a 20 year designation period shall not terminate the eligibility period provided under this section;

e. A tax credit shall be permitted under this section only for those new full-time, permanent employees who have been employed for at least six continuous months by the taxpayer during the tax year for which the tax credit is claimed.

f. A newly employed employee shall not be deemed a new full-time, permanent employee for the purposes of this section unless the total number of full-time, permanent employees, including the newly employed employee, employed by the employer in the zone during the calendar year exceeds the greatest number of full-time, permanent employees employed in the zone by the employer during any prior calendar year during the period commencing with the date of zone designation.

(cf: P.L.1988, c.93, s.4)

13. Section 6 of P.L.1993, c.171 (C.54:10A-5.21) is amended to read as follows:

6. The Director of the Division of Taxation shall prepare and transmit to the Governor[, and the Legislature[, and the State Revenue Forecasting Advisory Commission] pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) on or before the September 1
next following the January 1 next following enactment of this section and annually on or before each September 1 thereafter, a report concerning the revenue cost and distributional impact of this act sections 2 through 6 of P.L. 1993, c. 171 (C. 54:10A-5.17 through 54:10A-5.20) and sections 14 through 17 of P.L. , c. (pending before the Legislature as this bill) in such a manner as to facilitate an evaluation of its costs in State tax revenue forgone 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 new employees, the report shall include statistical analyses of the number and value of credits granted and anticipated to be granted, and the number of new employees. To facilitate an understanding of the distinction between the number of new employees resulting from the availability of the credits and the number of new employees not resulting from availability of the credits, the report shall include statistics concerning the mean cost, in State tax revenue forgone, of providing the credits resulting in employment of a single full-time employee in specific industries, the relative rate of increase in the number of new employees between [corporations] taxpayers 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.

[The State Revenue Forecasting Advisory Commission shall prepare and transmit to the Governor and Legislature, on or before the November 1 next following the January 1 next following the enactment of this section and biennially on or before each second November 1 thereafter, a report providing a cost-benefit analysis of the credits provided under this act and the retention and stimulation of employment in the manufacturing sector, together with its recommendations as to whether the credits provided under this act should remain permanent.]

(cf: P.L. 1993, c. 171, s.6)

14. (New section) As used in sections 14 through 17 of P.L. , c. (pending before the Legislature as this bill):

"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. s.267(c)), other than paragraph (3) of subsection (c) of that section. "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.

"Full-time employee" means an employee working for the taxpayer 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, on a permanent basis, which does not include employment that is temporary or seasonal.

"Investment credit base" means the cost of qualified equipment. The cost of qualified equipment shall not include the value of equipment given in trade or exchange for the equipment purchased for business relocation or expansion. If equipment is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the cost of replacement equipment shall not include any insurance proceeds received in compensation for the loss. In the case of self-constructed equipment, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law. 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 useful life of the equipment.

"Number of new employees" means the increase in the average number of full-time employees and full-time employee equivalents residing and domiciled in this State employed at work locations in this State from the employment base year to the employment measurement year. The employment base year is the taxable year immediately preceding the taxable year for which the credit pursuant to sections 14 through 17 of P.L. 1986, c. 16 (pending before the Legislature as this bill), is allowed, provided that if the taxpayer was not subject to tax and did not have a taxable year immediately preceding the taxable year for which a credit pursuant to sections 14 through 17 of P.L. 1986, c. 16 (pending before the Legislature as this bill), was allowed the employment base year is the taxable year in which the credit pursuant to sections 14 through 17 of P.L. 1986, c. 16 (pending before the Legislature as this bill), was allowed. The measurement year is the taxable year immediately following the taxable year in which the credit pursuant to sections 14 through 17 of P.L. 1986, c. 16 (pending before the Legislature as this bill), was allowed. The hours of part-time
employees shall be aggregated to determine the number of full-time
employee equivalents.

"Part-time employee" means an employee working for the
taxpayer for at least 20 hours per week for at least six months
during the taxable year.

"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. s.267 or s.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 person 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. s.1014(e)).

"Qualified equipment" means machinery, apparatus or equipment
acquired by purchase for use or consumption by the taxpayer
directly and primarily in the production of tangible personal
property by manufacturing, processing, assembling or refining, as
defined pursuant to subsection a. of section 25 of P.L.1980, c.105
(C.54:32B-8.13), having a useful life of four or more years, placed
in service in this State and machinery, apparatus or equipment
acquired by purchase for use or consumption directly and primarily
in the generation of electricity as defined pursuant to subsection b.
of section 25 of P.L.1980, c.105 (C.54:32B-8.13) to the point of
connection to the grid, or in the generation of thermal energy,
having a useful life of four or more years, placed in service in this
State. Qualified equipment does not include tangible personal
property which the taxpayer contracts or agrees to lease or rent to
another person or licenses another person to use.

"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.
15. (New section) a. A taxpayer shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 2% of the investment credit base of qualified equipment placed in service in the taxable year, up to a maximum allowed credit for the taxable year of $1,000,000; provided however, that if a taxpayer has 50 or fewer employees (an average number of full-time employees and full-time employee equivalents of 50 or less) and taxable income of less than $5,000,000 for the taxable year, the taxpayer shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 4% of the investment credit base of qualified equipment placed in service in the taxable year, up to a maximum allowed credit for the taxable year of $1,000,000.

b. The tax imposed for the taxable year pursuant to N.J.S.54A:1-1 et seq., shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the credits' taxable years. The amount of the credits applied under this section and section 16 of P.L. (C. ) (pending before the Legislature as this bill), against the tax imposed pursuant to N.J.S.54A:1-1 et seq., for a taxable year shall not exceed 50% of the tax liability otherwise due.

c. The amount of taxable year credit otherwise allowable under subsection a. of this section which cannot be applied for the taxable year due to the limitations of subsection b. of this section may be carried over, if necessary, to the seven taxable years following a credit's taxable year.

d. (1) With respect to equipment that is three-year property, as described in subsection (e) of section 168 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.168), which is disposed of or ceases to be qualified equipment prior to the end of the 36-month period following being placed in service in this State, the amount of credit allowed shall be that portion of the credit provided for in subsection a. of this section which represents the ratio which the months of qualified use bear to 36, and the difference between the credit taken and the credit allowed for actual use shall be forfeited. 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 for the taxable year of the credit by reducing the investment credit base by the cost of the amount of the disposed or disqualified equipment. If the redetermination of the credit results in an increase in final liability for any taxable year in which the credit was applied, then, notwithstanding the three year limitation of N.J.S.54A:9-4, the
amount of unpaid liability, if any, shall be considered a deficiency.
The amount of credit allowed for actual use shall be determined by
multiplying the original credit by the ratio which the months of
qualified use bear to 36.

(2) With respect to property other than that described in
subparagraph (1) of this subsection which is disposed of or ceases
to be qualified equipment prior to the end of the 60-month period
following being placed in service in this State, the amount of credit
allowed shall be that portion of the credit provided for in subsection
a. of this section which represents the ratio which the months of
qualified use bear to 60, and the difference between the credit taken
and the credit allowed for actual use shall be forfeited. 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 for the taxable year of the
credit by reducing the investment credit base by the cost of the
amount of the disposed or disqualified equipment. If the
redetermination of the credit results in an increase in final liability
for any taxable year in which the credit was applied, then,
notwithstanding the three year limitation of N.J.S.54A:9-4, the
amount of unpaid liability, if any, shall be considered a deficiency.
The amount of credit allowed for actual use shall be determined by
multiplying the original credit by the ratio which the months of
qualified use bear to 60.

16. (New section) a. A taxpayer allowed a credit under section
15 of P.L. , c. (C. ) (pending before the Legislature as this
bill), with respect to the investment credit base, shall be allowed a
credit for the increase in employment by the taxpayer determined by
the number of new employees for each of the two taxable years next
succeeding the taxable year for which the credit under section 15 of
P.L. , c. (C. ) (pending before the Legislature as this bill), is
allowed, in an amount equal to 3% of the investment credit base,
not to exceed a maximum allowed amount for each of the two
taxable years of $1,000 multiplied by the number of new
employees.

b. The tax imposed for the taxable year pursuant to
N.J.S.54A:1-1 et seq., shall first be reduced by the amount of any
credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-
78), then by any credit allowed pursuant to section 12 of P.L.1985,
c.227 (C.55:19-13), and then by any credit allowed pursuant to
section 15 of P.L. , c. (C. ) (pending before the Legislature
as this bill), prior to applying any credits allowable pursuant to this
section. Credits allowable pursuant to this section shall be applied
in the order of the taxable year of the credit allowed pursuant to
section 15 of P.L. , c. (C. ) (pending before the Legislature
as this bill), to which the credit under this section relates and then
by the order of the credits’ taxable years. The amount of the credits
applied under this section and section 15 of P.L. , c. (C. )
(pending before the Legislature as this bill), against the tax imposed
pursuant to N.J.S.54A:1-1 et seq., for a taxable year shall not
exceed 50% of the tax liability otherwise due.

c. The amount of taxable year credit otherwise allowable under
subsection a. of this section which cannot be applied for the taxable
year due to the limitations of subsection b. of this section may be
carried over, if necessary, to the seven taxable years following a
credit’s taxable year.

d. (1) With respect to equipment that is three-year property, as
described in subsection (e) of section 168 of the federal Internal
Revenue Code of 1986 (26 U.S.C. s.168), which is disposed of or
ceases to be qualified equipment prior to the end of the 36\(1/2\) month
period following being placed in service in this State, the amount of
credit allowed shall be that portion of the credit provided for in
subsection a. of this section which represents the ratio which the
months of qualified use bear to 36, and the difference between the
credit taken and the credit allowed for actual use shall be forfeited.
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 for the taxable year of the
credit by reducing the investment credit base by the cost of the
amount of the disposed or disqualified equipment. If the
redetermination of the credit results in an increase in final liability
for any taxable year in which the credit was applied, then,
notwithstanding the three year limitation of N.J.S.54A:9-4, the
amount of unpaid liability, if any, shall be considered a deficiency.
The amount of credit allowed for actual use shall be determined by
multiplying the original credit by the ratio which the months of
qualified use bear to 36.

(2) With respect to property other than that described in
subparagraph (1) of this subsection which is disposed of or ceases
to be qualified equipment prior to the end of the 60\(1/2\) month period
following being placed in service in this State, the amount of credit
allowed shall be that portion of the credit provided for in subsection
a. of this section which represents the ratio which the months of
qualified use bear to 60, and the difference between the credit taken
and the credit allowed for actual use shall be forfeited. 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 for the taxable year of the
credit by reducing the investment credit base by the cost of the
amount of the disposed or disqualified equipment. If the
redetermination of the credit results in an increase in final liability
for any taxable year in which the credit was applied, then,
notwithstanding the three year limitation of N.J.S.54A:9-4, the
amount of unpaid liability, if any, shall be considered a deficiency.
The amount of credit allowed for actual use shall be determined by
multiplying the original credit by the ratio which the months of
qualified use bear to 60.

17. (New section) a. A taxpayer that claims credit under
sections 14 through 16 of P.L. , c. (C. ) (pending before the
Legislature as this bill) shall maintain sufficient records to establish
the following facts for each item of qualified equipment:

1. its identity;
2. its actual or reasonably determined cost;
3. its useful depreciation life;
4. the month and taxable 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 equipment.

b. A taxpayer that does not keep records required for
identification of qualified equipment shall be treated as having
disposed of, during the taxable year, any qualified equipment 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 qualified equipment
reported for purposes of claiming this credit during a taxable year
was placed in service, the taxpayer shall be treated as having placed
it in service in the most recent prior taxable year in which similar
property was placed in service unless the taxpayer can establish that
the property placed in service in the most recent taxable 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 taxable year.

d. The burden of proof shall be on a taxpayer to establish by a
preponderance of the evidence that the taxpayer is entitled to the
credit allowed pursuant to sections 14 through 16 of P.L. , c.
(C. ) (pending before the Legislature as this bill).

18. Section 1 of P.L.2001, c.321 (C.54:10A-5.31) is amended to
read as follows:

1. a. (1) A taxpayer who in a privilege period purchases
treatment equipment or conveyance equipment for use exclusively
within this State, shall be allowed a credit as provided herein
against the tax imposed for that privilege period pursuant to section
5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 50% of
the cost of the treatment equipment or conveyance equipment less
the amount of any loan received pursuant to section 5 of P.L.1981,
c.278 (C.13:1E-96) and excluding the amount of any sales and use
tax paid pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), provided
that the Commissioner of the Department of Environmental
Protection has issued a determination under subsection b. of this
section that the operation of the system of equipment and the reuse
of wastewater effluent that results therefrom are or will be
beneficial to the environment. The amount of the credit claimed for
the privilege period in which the purchase of treatment equipment
or conveyance equipment is made, and the amount of credit claimed
therefor in each privilege period thereafter, shall not exceed 20% of
the amount of the total credit allowable, shall not, together with any
other credits allowed by law, exceed 50% of the tax liability which
would be otherwise due, and shall not reduce the amount of tax
liability to less than the statutory minimum provided in subsection
(e) of section 5 of P.L.1945, c.162 (C.54:10A-5). An unused credit
amount may be carried forward, if necessary, for use in future
privilege periods. Notwithstanding any other provision of law, the
order of priority in which the credit allowed under this section and
any other credits allowed by law may be taken shall be as
prescribed by the director.

A taxpayer who, in a privilege period, purchased treatment
equipment or conveyance equipment, but who did not receive
approval of an application for determination pursuant to subsection
b. of this section before filing a return for that privilege period,
may, in accordance with the provisions of the State Tax Uniform
Procedure Law, R.S.54:48-1 et seq., and subject to the provisions of
this section, file with the director a claim for the credit for that
privilege period and any subsequent privilege period, as
appropriate.

For the purposes of this section, "treatment equipment" means
any equipment that is used exclusively to treat effluent from a
primary wastewater treatment facility, which effluent would
otherwise have been discharged into the waters of the State, for
purposes of reuse in an industrial process thereafter, and
"conveyance equipment" means any equipment that is used
exclusively to transport that effluent to the facility in which the
treatment equipment has been or is to be installed and to transport
the product of that further treatment to the site of that reuse.

(2) [If a person who purchases treatment equipment or
conveyance equipment for which the Commissioner of the
Department of Environmental Protection has issued a determination
of environmentally beneficial operation pursuant to subsection b. of
this section is a partnership, limited liability company, or other
person classified as a partnership for federal tax purposes and not
subject to the tax imposed pursuant to section 5 of P.L.1945, c.162
(C.54:10A-5), a portion of the amount of the credit otherwise
allowed to the purchaser pursuant to paragraph (1) of this
subsection shall be allowed to each owner of that purchaser that is
subject to the tax in proportion to the owner's share of the income of
the purchaser. The purchaser shall be treated as the taxpayer for the
purpose of administering the provisions of this section] Deleted by
amendment, P.L. , c. ) (pending before the Legislature as this
bill).
b. In order to qualify for the tax credit pursuant to subsection a. of this section, the taxpayer shall apply for a determination from the Commissioner of the Department of Environmental Protection that the equipment with respect to which the credit is sought (1) qualifies as treatment equipment or conveyance equipment as defined in subsection a. of this section, and (2) is or will be in its operation, considered in conjunction with the reuse of the further treated wastewater effluent that results from that operation, beneficial to the environment. The application shall be submitted in writing in a form as the commissioner shall prescribe and shall specifically include; the date or anticipated date of purchase of the equipment, a physical and functional description of the equipment, the cost, the name and address or location of each primary wastewater treatment facility from which effluent is or is to be received for further treatment, the name and address or location of each facility to which the effluent is or is to be conveyed after the further treatment for reuse, the nature of the reuse, the location of any site at which the wastewater that has been or is to be further treated is being or is to be discharged either prior to or after reuse, the volume of such wastewater that is or is to be reused, the portion of that volume that is or is to be consumed in that reuse and the portion thereof that is or is to be discharged thereafter, and the taxpayer's explanation of how the operation of the system and the reuse of the wastewater effluent that has been further treated are or will be beneficial to the environment. The application shall also include the taxpayer's affidavit that, to the best of the taxpayer's knowledge, the equipment has not previously qualified for a credit pursuant to this section either for the taxpayer or other owner or for a previous owner. 

Upon approval of the application, the Commissioner of the Department of Environmental Protection shall submit a copy of the determination of equipment qualification and environmentally beneficial operation to the taxpayer and the Director of the Division of Taxation. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer shall include a copy of the determination and the taxpayer's affidavit that the treatment equipment or conveyance equipment is or will be used exclusively in New Jersey. Any credit shall be initially allowed for the privilege period in which the equipment is purchased, and any unused portion thereof may be carried forward into subsequent privilege periods as provided in subsection a. of this section. 

The Commissioner of the Department of Environmental Protection, in consultation with the Director of the Division of Taxation, shall adopt rules and regulations establishing technical and administrative requirements for the qualification of treatment equipment and conveyance equipment, and for the determination that the operation of a system of such equipment and the reuse of wastewater effluent that has been treated thereby are beneficial to
the environment, for the purpose of establishing a taxpayer's eligibility for a credit pursuant to this section. In the development and adoption of the rules and regulations prescribed under this act and of any procedure for making application for a credit under subsection a. of this section, the commissioner, in consultation with the director, shall to the greatest extent possible ensure that they are consolidated or consistent with any corresponding rules, regulations, and procedures established under [P.L. , c. (C. ) (now pending before the Legislature as Senate Bill No. 1210 (1R) and Assembly Bill No. 2695 of 2000) and] P.L.2001, c.322.

c. No amount of cost included in calculation of the credit allowed under this section shall be included in the costs for calculation of any other credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

d. On or before January 31 of each year, the Commissioner of the Department of Environmental Protection shall submit a report to the Governor, the State Treasurer, and the Legislature, in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), setting forth the number of taxpayer applications under subsection b. of this section and subsection b. of section 19 of P.L. , c. (C. ) (pending before the Legislature as this bill) that were approved during the preceding calendar year and the cost of each type of equipment which has been determined to qualify for the credit. (cf: P.L.2001, c.321, s.1)

19. (New section) a. A taxpayer who in a taxable year purchases treatment equipment or conveyance equipment for use exclusively within this State, shall be allowed a credit as provided herein against the tax imposed for that taxable year pursuant to N.J.S.54A:1-1 et seq., in an amount equal to 50% of the cost of the treatment equipment or conveyance equipment less the amount of any loan received pursuant to section 5 of P.L.1981, c.278 (C.13:1E-96) and excluding the amount of any sales and use tax paid pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), provided that the Commissioner of the Department of Environmental Protection has issued a determination under subsection b. of this section that the operation of the system of equipment and the reuse of wastewater effluent that results therefrom are or will be beneficial to the environment. The amount of the credit claimed for the taxable year in which the purchase of treatment equipment or conveyance equipment is made, and the amount of credit claimed therefor in each taxable year thereafter, shall not exceed 20% of the amount of the total credit allowable, shall not, together with any other credits allowed by law, exceed 50% of the tax liability which would be otherwise due. An unused credit amount may be carried forward, if necessary, for use in future taxable years. Notwithstanding any other provision of law, the order of priority in
which the credit allowed under this section and any other credits
allowed by law may be taken shall be as prescribed by the director.

A taxpayer who, in a taxable year, purchased treatment
equipment or conveyance equipment, but who did not receive
approval of an application for determination pursuant to subsection
b. of this section before filing a return for that taxable year, may, in
accordance 'with' this section, file with the director a claim for the
credit for that taxable year and any subsequent taxable year, as
appropriate.

For the purposes of this section, "treatment equipment" means
any equipment that is used exclusively to treat effluent from a
primary wastewater treatment facility, which effluent would
otherwise have been discharged into the waters of the State, for
purposes of reuse in an industrial process thereafter, and
"conveyance equipment" means any equipment that is used
exclusively to transport that effluent to the facility in which the
treatment equipment has been or is to be installed and to transport
the product of that further treatment to the site of that reuse.

b. In order to qualify for the tax credit pursuant to subsection a.
of this section, the taxpayer shall apply for a determination from the
Commissioner of the Department of Environmental Protection that
the equipment with respect to which the credit is sought (1)
qualifies as treatment equipment or conveyance equipment as
defined in subsection a. of this section, and (2) is or will be in its
operation, considered in conjunction with the reuse of the further
treated wastewater effluent that results from that operation,
beneficial to the environment. The application shall be submitted in
writing in a form as the commissioner shall prescribe and shall
specifically include; the date or anticipated date of purchase of the
equipment, a physical and functional description of the equipment,
the cost, the name and address or location of each primary
wastewater treatment facility from which effluent is or is to be
received for further treatment, the name and address or location of
each facility to which the effluent is or is to be conveyed after the
further treatment for reuse, the nature of the reuse, the location of
any site at which the wastewater that has been or is to be further
treated is being or is to be discharged either prior to or after reuse,
the volume of such wastewater that is or is to be reused, the portion
of that volume that is or is to be consumed in that reuse and the
portion thereof that is or is to be discharged thereafter, and the
taxpayer's explanation of how the operation of the system and the
reuse of the wastewater effluent that has been further treated are or
will be beneficial to the environment. The application shall also
include the taxpayer's affidavit that, to the best of the taxpayer's
knowledge, the equipment has not previously qualified for a credit
pursuant to this section either for the taxpayer or other owner or for
a previous owner.
Upon approval of the application, the Commissioner of the Department of Environmental Protection shall submit a copy of the determination of equipment qualification and environmentally beneficial operation to the taxpayer and the Director of the Division of Taxation. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer shall include a copy of the determination and the taxpayer’s affidavit that the treatment equipment or conveyance equipment is or will be used exclusively in New Jersey. Any credit shall be initially allowed for the privilege period in which the equipment is purchased, and any unused portion thereof may be carried forward into subsequent privilege periods as provided in subsection a. of this section.

The Commissioner of the Department of Environmental Protection, in consultation with the Director of the Division of Taxation, shall adopt rules and regulations establishing technical and administrative requirements for the qualification of treatment equipment and conveyance equipment, and for the determination that the operation of a system of such equipment and the reuse of wastewater effluent that has been treated thereby are beneficial to the environment, for the purpose of establishing a taxpayer's eligibility for a credit pursuant to this section. In the development and adoption of the rules and regulations prescribed under this section and of any procedure for making application for a credit under subsection a. of this section, the commissioner, in consultation with the director, shall to the greatest extent possible ensure that they are consolidated or consistent with any corresponding rules, regulations, and procedures established under P.L.2001, c.321 and P.L.2001, c.322.

c. No amount of cost included in calculation of the credit allowed under this section shall be included in the costs for calculation of any other tax credit.

20. (New section) a. A taxpayer, upon application to the Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority, shall be allowed a credit against the tax imposed pursuant to section N.J.S.54A:1-1 et seq., in an amount up to 20 percent, as determined by the authority of the qualified digital media content production expenses of the taxpayer during a taxable year commencing after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), provided that at least $2,000,000 of the total digital media content production expenses of the taxpayer will be incurred for services performed and goods used or consumed in New Jersey and at least a significant percentage, as determined by the authority, of the qualified digital media content production expenses of the taxpayer will include wages and salaries paid to one or more new full-time employees in New Jersey. For purposes of this subsection, “new full-time employee” means a person
employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer that is an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., and who is determined by the authority to work in a newly created permanent position according to criteria it develops. “New full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for the taxpayer. In determining the amount of any grant of tax credits made pursuant to this subsection, the authority shall consider the number of new full-time positions created by the taxpayer as well as the quality of the full-time positions created, including but not limited to the salaries and benefits provided to new full-time employees. The authority, in consultation with the Division of Taxation, shall establish rules for the recapture of all, or a portion of, the grant of tax credits pursuant to this subsection in the event the taxpayer fails to maintain the new full-time positions that were included in calculating the qualified digital media content production expenses of the taxpayer.

b. The amount of the credit applied under this section against the tax imposed pursuant to N.J.S.54A:1-1 et seq., for a taxable year, when taken together with any other credits allowed against the tax imposed pursuant to N.J.S.54A:1-1 et seq., shall not exceed 50 percent of the tax liability otherwise due. The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be as determined by the Director of the Division of Taxation. The amount of the credit otherwise allowable under this section which cannot be applied for the taxable year due to the limitations of this subsection or under other provisions of N.J.S.54A:1-1 et seq. may be carried over, if necessary, to the seven taxable years following the taxable year for which the credit was allowed.

c. A taxpayer may, with an application for a credit provided for in subsection a. of this section, apply to the director and the executive director of the authority for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the credit against the tax liability of the taxpayer. The director and the executive director of the authority may consult with the New Jersey Motion Picture and Television Development Commission in consideration of any application for approval of a tax credit or tax
credit transfer certificate under this section. The tax credit transfer
certificate, upon receipt thereof by the taxpayer from the director
and the authority, may be sold or assigned, in full or in part, to any
other taxpayer that may have a tax liability under P.L. 1945, c.162
or N.J.S.54A:1-1 et seq., in exchange for private financial
assistance to be provided by the purchaser or assignee to the
taxpayer that has applied for and been granted the credit. The
certificate provided to the taxpayer shall include a statement
waiving the taxpayer's right to claim that amount of the credit
against the tax imposed pursuant to N.J.S.54A:1-1 et seq., that the
taxpayer has elected to sell or assign. The sale or assignment of any
amount of a tax credit transfer certificate allowed under this section
shall not be exchanged for consideration received by the taxpayer of
less than 75% of the transferred credit amount. Any amount of a tax
credit transfer certificate used by a purchaser or assignee against a
tax liability under N.J.S.54A:1-1 et seq., shall be subject to the
same limitations and conditions that apply to the use of a credit
pursuant to subsection b. of this section. Any amount of a tax credit
transfer certificate obtained by a purchaser or assignee under
subsection a. of this section may be applied against the purchaser's
or assignee's tax liability under P.L. 1945, c.162 and shall be subject
to the same limitations and conditions that apply to the use of a credit

As used in this section:

“Digital media content” means any data or information that is
produced in digital form, including data or information created in
analog form but reformatted in digital form, text, graphics,
photographs, animation, sound and video content. “Digital media
content” does not mean content offerings generated by the end user
(including postings on electronic bulletin boards and chat rooms);
content offerings comprised primarily of local news, events,
weather or local market reports; public service content; electronic
commerce platforms (such as retail and wholesale websites);
websites or content offerings that contain obscene material as
defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or
content that are produced or maintained primarily for private,
industrial, corporate or institutional purposes; or digital media
content acquired or licensed by the taxpayer for distribution or
incorporation into the taxpayer’s digital media content.

“Qualified digital media content production expenses” means an
expense incurred in New Jersey for the production of digital media
content. Qualified digital media content production expenses shall
include but shall not be limited to wages and salaries of individuals
employed in the production of digital media content on which the
tax imposed by the "New Jersey Gross Income Tax Act,”
N.J.S.54A:1-1 et seq, has been paid or is due; the costs of computer
software and hardware, data processing, visualization technologies,
sound synchronization, editing, and the rental of facilities and
equipment. Qualified digital media content production expenses shall not include expenses incurred in marketing, promotion or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer’s digital media content shall not be qualified digital media content production expenses.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

e. The Director of the Division of Taxation in the Department of the Treasury, in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic Development Authority, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to implement this section including examples of digital media content production expenses and the procedures and forms to apply for a credit and for a tax credit transfer certificate necessary for a taxpayer to sell or assign an amount of tax credit under this section. The tax credit transfer certificate program shall be administered pursuant to the rules and limitations of subsection f. of section 1 of P.L.2005, c.345 (C.54:10A-5.39) and subsection f. of section 2 of P.L.2005, c.345 (C.54A:4-12).

f. For the purpose of determining eligibility for or the amount of any grant of tax credits pursuant to this section, the authority shall not include any job that is included in the calculation of a business employment incentive grant pursuant to the provisions of P.L.1996, c.26 (C.34:1B-124 et al.) or a business retention and relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.).

21. (New section) a. A taxpayer shall be allowed a credit, subject to the provisions of subsection b. of this section, against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to

(1) 10% of the excess of the qualified research expenses for the taxable year over the base amount; and

(2) 10% of the basic research payments for the taxable year determined in accordance with section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, and provided that subsection (h) of 26 U.S.C. s.41 relating to termination shall not apply. Provided however, that the terms "qualified research expenses," "base amount," "qualified organization base amount period," "basic research" and any other terms determined by the Director of the Division of Taxation to affect the calculation of the credit shall include only expenditures for research conducted in this State.
b. No credit shall be allowed under this section for property or expenditures for which another credit is allowed under any other section of N.J.S.54A:1-1 et seq.

The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law shall be as prescribed by the director. Credits allowable pursuant to this section shall be applied in the order of the taxable years for which the credits were allowed.

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

c. Notwithstanding the provisions of subsections a. and b. of this section to the contrary, a taxpayer that has acquired a gross income tax benefit certificate pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a research and development tax credit carryover shall attach that certificate to any return the taxpayer is required to file under N.J.S.54A:1-1 et seq., and shall otherwise apply the credit carryover as evidenced by the certificate according to the provisions of subsections a. and b. of this section and any rules or regulations the director may adopt to carry out the provisions of this section.

A new or expanding emerging technology or biotechnology business that has surrendered an unused research and development tax credit carryover pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), shall not be allowed a research and development tax credit carryover based upon the right to such a credit carryover as evidenced by the gross income tax benefit certificate and shall attach a copy of the certificate to any return the taxpayer is required to file under N.J.S.54A:1-1 et seq.

d. Notwithstanding the provisions of subsections a. and b. of this section to the contrary, a taxpayer that has been allowed a credit pursuant to subsections a. and b. of this section for the taxable year in which the qualified research expenses have been incurred, and basic research payments have been made, for research conducted in this State in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology, shall be allowed to carry over the amount of the taxable year credit which cannot be applied for the taxable year to each of the 15 taxable years following the credit's taxable year.

e. As used in this section:

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment;
"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials;

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge;

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

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

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

22. Section 1 of P.L.1997, c.334 (C.34:1B-7.42a) is amended to read as follows:

1. a. The New Jersey Economic Development Authority shall establish within the New Jersey Emerging Technology and Biotechnology Financial Assistance Program established pursuant to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a [corporation business] tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology [companies] businesses in this State with unused amounts of research and development tax credits otherwise allowable which cannot be applied for the credit's tax year due to the limitations of subsection b. of section 1 of P.L.1993, c.175 (C.54:10A-5.24) or subsection b. of section 21 of P.L., c. (C.) (pending before the Legislature as this bill) and unused net operating loss carryover pursuant to subparagraph (B) of paragraph (6) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use by other [corporation business] taxpayers in this State, provided that the taxpayer receiving the surrendered tax benefits is not affiliated with [a corporation] the taxpayer that is surrendering its tax benefits under the program established under P.L.1997, c.334. For the purposes of this section, the test of affiliation is whether the same entity directly or indirectly owns or controls 5% or more of the voting rights or 5% or more of the value of all classes of stock of...
both the taxpayer receiving the benefits and a corporation that is surrendering the benefits or a related taxpayer pursuant to section 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. 267). The tax benefits may be used on the corporation business tax or gross income tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer or gross income taxpayer that is the recipient of the [corporation business] tax benefit certificate to assist in the funding of costs incurred by the new or expanding emerging technology and biotechnology [company] business.

b. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by new or expanding emerging technology and biotechnology [companies] businesses in this State with unused but otherwise allowable carryover of research and development tax credits pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) or section 21 of P.L. , c. (C. ) (pending before the Legislature as this bill), and unused but otherwise allowable net operating loss carryover pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits in exchange for private financial assistance to be made by the corporation business taxpayer or gross income taxpayer that is the recipient of the [corporation business] tax benefit certificate in an amount equal to at least 80% of the amount of the surrendered tax benefit. Provided that the amount of the surrendered tax benefit for a surrendered research and development tax credit carryover is the amount of the credit, and provided that the amount of the surrendered tax benefit for a surrendered net operating loss carryover is the amount of the loss multiplied by the new or expanding emerging technology or biotechnology [company's] business' anticipated allocation factor, as determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6) or the regulations adopted pursuant to N.J.S.54A:5-7, as appropriate, for the tax year in which the benefit is transferred and subsequently multiplied by the maximum corporation business tax rate provided pursuant to subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) or the maximum tax rate provided by N.J.S.54A:2-1, as appropriate. The authority shall be authorized to approve the transfer of no more than $60,000,000 of tax benefits in a State fiscal year. If the total amount of transferable tax benefits requested to be surrendered by approved applicants exceeds $60,000,000 for a State fiscal year, the authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall not be authorized to approve the transfer of more than $60,000,000 for that State fiscal year and shall allocate the transfer of tax benefits by approved companies using the following method:
(1) an eligible applicant with $250,000 or less of transferable tax benefits shall be authorized to surrender the entire amount of its transferable tax benefits;

(2) an eligible applicant with more than $250,000 of transferable tax benefits shall be authorized to surrender a minimum of $250,000 of its transferable tax benefits;

(3) (Deleted by amendment, P.L.2009, c.90.)

(4) an eligible applicant with more than $250,000 shall also be authorized to surrender additional transferable tax benefits determined by multiplying the applicant’s transferable tax benefits less the minimum transferable tax benefits that the company is authorized to surrender under paragraph (2) of this subsection by a fraction, the numerator of which is the total amount of transferable tax benefits that the authority is authorized to approve less the total amount of transferable tax benefits approved under paragraphs (1), (2), and (5) of this subsection and the denominator of which is the total amount of transferable tax benefits requested to be surrendered by all eligible applicants less the total amount of transferable tax benefits approved under paragraphs (1), (2), and (5) of this subsection;

(5) The authority shall establish the boundaries for three innovation zones to be geographically distributed in the northern, central, and southern portions of this State. Of the $60,000,000 of transferable tax benefits authorized for each State fiscal year, $10,000,000 shall be allocated for the surrender of transferable tax benefits exclusively by new and expanding emerging technology and biotechnology companies that operate within the boundaries of the innovation zones, except that any portion of the $10,000,000 that is not so approved shall be available for that State fiscal year for the surrender of transferable tax benefits by new and expanding emerging technology and biotechnology companies that do not operate within the boundaries of an innovation zone.

If the total amount of transferable tax benefits that would be authorized using the above method exceeds $60,000,000 for a State fiscal year, then the authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall limit the total amount of tax benefits authorized to be transferred to $60,000,000 by applying the above method on an apportioned basis.

For purposes of this section transferable tax benefits include an eligible applicant’s unused but otherwise allowable carryover of net operating losses multiplied by the applicant’s anticipated allocation factor as determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6) "or the regulations adopted pursuant to N.J.S.54A:5-7, as appropriate," for the tax year in which the benefit is transferred and subsequently multiplied by the "maximum", corporation business tax rate as provided in subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) "or the maximum tax
rate provided by N.J.S.54A:2-1, as appropriate, plus the total amount of the applicant’s unused but otherwise allowable carryover of research and development tax credits. An eligible applicant’s transferable tax benefits shall be limited to net operating losses and research and development tax credits that the applicant requests to surrender in its application to the authority and shall not, in total, exceed the maximum amount of tax benefits that the applicant is eligible to surrender.

No application for a [corporation business] tax benefit transfer certificate shall be approved in which the new or expanding emerging technology or biotechnology company (1) has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board; or (2) is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board.

The maximum lifetime value of surrendered tax benefits that a corporation shall be permitted to surrender pursuant to the program is $15,000,000. Applications must be received on or before June 30 of each State fiscal year. The authority, in consultation with the Division of Taxation, shall establish rules for the recapture of all, or a portion of, the amount of a grant of a [corporation business] tax benefit certificate from the new or expanding emerging technology and biotechnology [company] business having surrendered tax benefits pursuant to this section in the event the taxpayer fails to use the private financial assistance received for the surrender of tax benefits as required by this section or fails to maintain a headquarters or a base of operation in this State during the five years following receipt of the private financial assistance; except if the failure to maintain a headquarters or a base of operation in this State is due to the liquidation of the new or expanding emerging technology and biotechnology [company] business.

c. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and "New Jersey
Gross Income Tax Act," N.J.S.54A:1-1 et seq., to acquire surrendered tax benefits approved pursuant to subsection b. of this section which shall be issued in the form of corporation business tax benefit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 80% of the amount of the surrendered tax benefit of an emerging technology or biotechnology [company] business in the State. A corporation business tax benefit transfer certificate shall not be issued unless the applicant certifies that as of the date of the exchange of the corporation business tax benefit certificate it is operating as a new or expanding emerging technology or biotechnology [company] business and has no current intention to cease operating as a new or expanding emerging technology or biotechnology [company] business.

The private financial assistance shall assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology [company] business in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

The authority shall require a corporation business taxpayer or gross income taxpayer that acquires a corporation business tax benefit certificate to enter into a written agreement with the new or expanding emerging technology or biotechnology [company] business concerning the terms and conditions of the private financial assistance made in exchange for the certificate. The written agreement may contain terms concerning the maintenance by the new or expanding emerging technology or biotechnology [company] business of a headquarters or a base of operation in this State.

d. (Deleted by amendment, P.L.2009, c.90.)

(cf: P.L.2009, c.90, s.29)

23. Section 1 of P.L.1999, c.140 (C.34:1B-7.42b) is amended to read as follows:

1. As used in P.L.1997, c.334 (C.34:1B-7.42a et al.):
   "Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).
   "Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies
developed as a result of insights gained from research advances that add to that body of fundamental knowledge.

"Biotechnology business” means a biotechnology company, sole proprietorship, limited liability company, partnership, or any other business entity that is emerging and that has its headquarters or base of operations in this State; that owns, has filed for, or has a valid license to use protected, proprietary intellectual property; and that is engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes.

"Biotechnology company” means an emerging corporation that has its headquarters or base of operations in this State; that owns, has filed for, or has a valid license to use protected, proprietary intellectual property; and that is engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes.

"Full-time employee” means a person employed by a new or expanding emerging technology or biotechnology company for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., or who is a partner of a new or expanding emerging technology or biotechnology company who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits under a group health plan as defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes.

"Full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology company business.
"New or expanding" means a technology or biotechnology company that (1) on June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L.1997, c.334 (C.34:1B-7.42a et al.) and on the date of the exchange of the corporation business tax benefit certificate, has fewer than 225 employees in the United States of America; (2) on June 30 of the year in which the company business files such an application, has at least one full-time employee working in this State if the company business has been incorporated, or for unincorporated business has been operated for commercial purposes in its present form, for less than three years, has at least five full-time employees working in this State if the company business has been incorporated, or for unincorporated business has been operated for commercial purposes in its present form, for more than three years but less than five years, and has at least 10 full-time employees working in this State if the company business has been incorporated, or for unincorporated business has been operated for commercial purposes in its present form, for more than five years; and (3) on the date of the exchange of the corporation business tax benefit certificate, the company business has the requisite number of full-time employees in New Jersey that were required on June 30 as set forth in part (2) of this definition.

“Technology business” means a technology company, sole proprietorship, limited liability company, partnership, S corporation, or any other business entity that is emerging and that has its headquarters or base of operations in this State; that owns, has filed for, or has a valid license to use protected, proprietary intellectual property; and that employs some combination of the following: highly educated or trained managers and workers, or both, employed in this State who use sophisticated scientific research service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service.

"Technology company" means an emerging corporation that has its headquarters or base of operations in this State; that owns, has filed for, or has a valid license to use protected, proprietary intellectual property; and that employs some combination of the following: highly educated or trained managers and workers, or both, employed in this State who use sophisticated scientific research service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service.

(cf: P.L.2010, c.10, s.2)
24. (New section) As used in any sections 24 through 32 of P.L. , c. (pending before the Legislature as this bill) 1:

“Business” means a sole proprietorship, a partnership, limited liability company, or other entity classified as a partnership for federal income tax purposes, or a New Jersey S Corporation.

“Business relocation or expansion or investment” 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 taxpayer that is subject to the tax imposed pursuant to N.J.S.54A:1-1 et seq., 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.

"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 "in taxable years beginning" on or after the "operative" date of "enactment of" this section, but only to the extent of a taxpayer’s qualified investment in such improvements or additions.

"New business facility” means a business facility that meets the following conditions:

a. is employed by a business in the conduct of the business, the gross income of which is or will be taxable under N.J.S.54A:1-1 et seq. Such facility shall not be considered a new business facility in the hands of a business if the business' only activity with respect to such facility is to lease it to another person;

b. is purchased by a business and is placed in service or use "in taxable years beginning" on or after the "operative" date of "enactment of" this section;

c. was not purchased by a business from a related person, provided however, 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; and

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 business to fill a position or a job in this State.
which previously did not exist in the business' 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. s.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. s.267);
   c. the individual is not an individual who worked for the
      business during the six-month period ending on the date the
      business' qualified investment is placed in service or use and is
      rehired by the business during the six-month period beginning on
      the date the business' 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 another State tax credit.

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 26 and 28 of P.L. c. (C )
(pending before the Legislature as this bill); and "part-
time" means customarily performing such duties at least 20 hours
per week for at least six months during the taxable 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 sections 24 through 32 of P.L. c. (C ) (pending before
the Legislature as this bill) exceed the total increase in the
taxpayer's average employment in this State for the taxable year
over the average employment in this State for the previous taxable
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 sections 24 through 32 of P.L. c. (C )
(pending before the Legislature as this bill) exceed one-half of the
average employment in this State for the taxable year; and provided,
that the director may require that the net increase in the business'
employment in this State be determined and certified for the
business' controlled group.

Provided further, however, that individuals filling jobs saved as a
direct result of the business' qualified investment in property
purchased for business relocation or expansion in taxable years
beginning on or after the date of enactment of this
section may be treated as new employees filling new jobs if the
business 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 the business' 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. s.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 business' 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 business, 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 in taxable years beginning on or after the date of enactment of this section by the business;

(2) tangible personal property placed in service or use by the business in taxable years beginning on or after the date of enactment of this section, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the gross income tax liability of the business under N.J.S.54A:1-1 et seq., and which has a remaining recovery period of three or more taxable 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 business at a business location outside this State which is moved into this State in taxable years beginning on or after the date of enactment of this section by the business.
enactment of this section, 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 taxable 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 in taxable years beginning on or after the operative date of enactment of this section, unless pursuant to a written contract to purchase executed prior to the taxable years beginning on or after the operative date of enactment of this section, 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 27 of P.L. (pending before the Legislature as this bill) 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 business prior to the specified date, or was acquired by the business 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. s.267 or s.707); and

b. 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. s.1014).

"Related person" means:

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

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

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

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

As used in the definition of related person and as is applicable to the definitions of purchase and small or mid-size business, "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. s.267(c)), other than paragraph (3) of subsection (c) of that section.

"Small or mid-size business" means a business that has an annual payroll of $5,000,000 or less and annual gross receipts of not more than $10,000,000 for the taxable year in which property purchased for business relocation or expansion is placed in service or use by the business; provided that beginning with taxable years commencing on and after January 1 next following the operative date of this section the director shall prescribe the amount of annual payroll and annual gross receipts which shall apply by increasing each such amount hereinafore 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 taxable year begins, by that index for September of the calendar year two years prior to the
calendar year in which the taxable year begins] that do not exceed
the limits for annual payroll and annual gross receipts promulgated
by the director pursuant to the definition of "small or mid-size
business taxpayer" by section 2 of P.L.1993, c.170 (C.54:10A-5.5).1

The annual payroll of a business 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 business has not been in existence for 12 months, the
payroll of the business 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 business for purposes of this definition.
The annual gross receipts of a business shall include the annual
gross receipts of its foreign and domestic affiliates. The annual
gross receipts of a business which has been in business for three or
more complete taxable years means the average of the annual gross
receipts of the business for the last three taxable years. For
purposes of this definition, the gross receipts of the business
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 business that has been in business for less
than three complete taxable 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.

25. (New section) a. A business shall be allowed a credit
against the portion of the tax imposed in N.J.S.54A:1-1 et seq., that
is attributable to and the direct consequence of the business' qualified investment in a new or expanded business facility in this State which results in the creation of at least five new jobs in the case of a small or mid-size business, or at least 50 new jobs in the case of any other business, provided that the median compensation of all new jobs included in the business' determination of the new jobs factor shall not be less than $27,000 per year, provided that beginning with taxable years commencing on and after January 1 next following the operative date of this section the director shall adjust the median annual compensation which shall apply as provided in subsection e. of this section. The median compensation determined by the director pursuant to subsection e. of section 3 of P.L.1993, c.170 (C.54:10A-5.6). 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 business' "qualified investment," determined under section 27 of P.L. , c. (C. ) (pending before the Legislature as this bill), in "property purchased for business relocation or expansion" by the business' new jobs factor determined under section 28 of P.L. , c. (C. ) (pending before the Legislature as this bill). The product of this calculation shall establish the maximum amount of credit allowed under this section 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 taxable year, beginning with the taxable 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 taxable years:

(1) The taxable year in which, under the business' 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 taxable years commencing on and after January 1 next following the operative date of section 3 of P.L.1993, c.170 (C.54:10A-5.6) 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 taxable year begins, by that index for
September of the calendar year two years prior to the calendar year
in which the taxable year begins.] ¹

26. (New section) a. The aggregate annual credit allowed for a
taxable year shall be an amount equal to the sum of:
   (1) The one-fifth part allowed under section 25 P.L. , c. 
(C. ) (pending before the Legislature as this bill) for qualified
investment placed into service or use during a prior taxable year,
plus
   (2) The one-fifth part allowed under section 25 P.L. , c. 
(C. ) (pending before the Legislature as this bill) for qualified
investment placed into service or use during the current taxable
year.

b. (1) The amount determined under subsection a. shall be
allowed as a credit against that portion of the business' gross
income tax liability which is attributable to and the direct result of
the business' qualified investment. The amount determined under
subsection a. and allowed as a credit against the tax imposed
pursuant to N.J.S.54A:1-1 et seq., for a taxable year shall not reduce
that tax liability by more than 50% of that portion of the business'
tax liability otherwise due for the taxable year which is attributable
to and the direct result of the business' qualified investment.

(2) If any amount of credit determined under subsection a. ²
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 business. The amount refunded to the
business 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 N.J.S.54A:1-1 (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 business' 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
taxable year (determined before application of allowable credits
against tax) by a fraction, the numerator of which is all
compensation paid during the taxable year to all employees of the
business 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 business employed in this State.

(2) Any credits allowable under 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 gross income
tax not apportioned to the qualified investment used for this credit.
Provided, that any excess of those credits may be applied against
the amount of gross income tax apportioned to the qualified
investment under this credit that is not offset by the amount of
annual credit against the tax allowed under this act for the taxable
year, unless their application is otherwise prohibited by P.L.1987,

(3) If any credit for the taxable 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 taxable year or carryback to a prior taxable 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.

27. (New section) 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 business during the taxable year. Provided, that
only the cost of property purchased for business relocation or
expansion placed in service or use in this State during the taxable
year for which the average value of the business' real and tangible
personal property within the State, 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:

<table>
<thead>
<tr>
<th>Recovery Period</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>three year recovery period</td>
<td>35%</td>
</tr>
<tr>
<td>five year recovery period</td>
<td>70%</td>
</tr>
<tr>
<td>seven year or more recovery period</td>
<td>100%</td>
</tr>
</tbody>
</table>

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 business, determined in accordance with section 168 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.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 business 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 business less straight line depreciation allowable for the taxable years or portions thereof the business 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 which qualifies for the credits allowed under sections 14 through 17 of P.L. , c. (C. ) (pending before the Legislature as this bill), shall be allowed as qualified investment under this section.

28. (New section) a. The new jobs factor used to determine the amount of credit allowed under this act by sections 24 through 32 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be based on the number of new jobs created in this State that are directly attributable to the qualified investment of the business.

b. (1) (a) For a business that is not a small or mid-size business taxpayer, if 50 new jobs are created and filled during the taxable 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 business shall redetermine the new jobs factor for the taxable year on the annual return based on the average number of new employees employed in new jobs during that taxable year (determined on a monthly basis) created as the direct result of the business' qualified investment.

(2) (a) For a business that is a small or mid-size business taxpayer, if five new jobs are created and filled during the taxable year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.01. For each five additional new jobs over the initial five, up to 100 total new jobs, the applicable new jobs factor of 0.01 shall be increased by adding thereto 0.01, up to a maximum new jobs factor of 0.20.

(b) During each of the remaining four years of the five-year credit period, the taxpayer shall redetermine the new jobs factor for the taxable year on the annual return based on the average number of new employees employed in new jobs during that taxable year (determined on a monthly basis) created as the direct result of the 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 gross income tax return filed under N.J.S.54A:1-1 et seq., for each taxable year during the five-year credit period for a qualified investment, the business shall certify to the taxpayer and the Division of Taxation:

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

(2) the amount of the credit allowed for that taxable 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 taxable year, the date of disposition, and that such property was not disposed of prior to expiration of its recovery period, as determined under section 27 of P.L. , c. (C. ) (pending before the Legislature as this bill); 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 25 of P.L. , c. (C. ) (pending before the Legislature as this bill).
e. With the annual return for the gross income tax imposed under N.J.S.54A:1-1 et seq., filed for the taxable year in which the qualified investment is first placed in service or use in this State, the business 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 business.

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 N.J.S.54A:1-1 et seq., filed for the third taxable year in which the qualified investment is in service or use in this State, the business shall certify the actual number of new jobs created by it in this State, that are directly attributable to the qualified investment of the business.

   (1) If the actual number of jobs created would result in a higher new jobs factor, the credit allowed under [this act] sections 24 through 32 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be redetermined and amended returns filed for the first and second taxable 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 taxable years. Any additional taxes due under N.J.S.54A:1-1 et seq., 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.

29. (New section) a. If during any taxable year, property with respect to which a tax credit has been allowed under section 24 through 32 P.L. , c. (C. ) (pending before the Legislature as this bill):

   (1) is disposed of prior to the end of its recovery period, as determined under section 27 of P.L. , c. (C. ) (pending before the Legislature as this bill); 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 27 of P.L. , c. (C. ) (pending before the Legislature as this bill), then the unused portion of the credit allowed for such property shall be forfeited for the taxable 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 business shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of
such property allowed under section 27 of P.L. , c. (C. )
(pending before the Legislature as this bill), 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 business. The business shall then file a reconciliation
statement with its annual gross income tax return for the year in
which the forfeiture occurs with the Division of Taxation and the
pertinent taxpayers and the taxpayers shall 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.

b. If during any taxable year the business ceases operation of a
new or expanded business facility in this State for which a credit
was allowed under section 24 through 32 P.L. , c. (C. )
pending before the Legislature as this bill), before expiration of the
recovery period of the property with respect to which a tax credit
has been allowed under this credit, then the unused portion of the
allowed credit shall be forfeited for the taxable year and all ensuing
years. Additionally, except when the cessation is due to fire, flood,
storm or other casualty, the business shall redetermine the amount
of credit allowed in earlier years by reducing the applicable
percentage of cost of such property allowed under section 27 of
P.L. , c. (C. ) (pending before the Legislature as this bill), 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 business that is subject to tax
under N.J.S.54A:1-1 et seq. The business shall then file a
reconciliation statement with its annual gross income tax return for
the taxable year in which the forfeiture occurs with the Division of
Taxation and the pertinent taxpayers and the taxpayers shall 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.

c. If during any taxable year subsequent to the taxable year in
which the new jobs factor is redetermined as provided in section 28
of P.L. , c. (C. ) (pending before the Legislature as this bill),
the average number of employees of the business, for the then
current taxable 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 business' 
annual credit allowance is based, the business 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 taxable year, employed
in positions created because of and directly attributable to the
qualified investment. The difference between the result of this
calculation and the business’ annual credit allowance for the
qualified investment as determined under section 25 of P.L. , c.
(C. ) (pending before the Legislature as this bill), shall be forfeited for the then current taxable year, and for each succeeding taxable year unless for a succeeding taxable year the business' average employment in positions directly attributable to the qualified investment once again meets the level required to enable the business to utilize its full annual credit allowance for that taxable year.

30. (New section) a. (1) Property of a small or mid-size business shall not be treated as disposed of under section 29 of P.L. , c. (C. ) (pending before the Legislature as this bill) 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 or mid-size business in this State, and the business 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 or mid-size business-transferor shall not be required to redetermine the amount of credit allowed in earlier taxable years.

(2) Property of a business that is not a small or mid-size business taxpayer shall not be treated as disposed of under section 29 of P.L. , c. (C. ) (pending before the Legislature as this bill) 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 business retains a controlling interest in the successor business. In this event, the owners of 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 taxable years.

b. (1) Property of a small or mid-size business shall be treated as disposed of under section 29 of P.L. , c. (C. ) (pending before the Legislature as this bill) by reason of a change in the form of conducting the business if the property is not retained in a business of a small or mid-size business in this State in which the small or mid-size business retains a controlling interest.

(2) Property of a small or mid-size business shall not be treated as disposed of under section 29 of P.L. , c. (C. ) (pending before the Legislature as this bill) by reason of any transfer or sale to a successor small or mid-size business 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 credit for each subsequent taxable year and the business-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 or mid-size business shall not be treated as disposed of under section 29 of P.L. , c. (C. ) (pending before the Legislature as this bill) by reason of
any transfer or sale to a successor business which continues to
close 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 credit for each subsequent taxable year
and the business-transferor shall not be required to redetermine the
amount of credit allowed in earlier years.

(4) Property of a small or mid-size business shall be treated as
disposed of under section 29 of P.L. , c. (C. ) (pending
before the Legislature as this bill) by reason of any transfer or sale
to a successor that is not a small or mid-size business, 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 credit and the business-transferor shall
redetermine, as required by sections 24 through 32 of P.L. , c.
(C. ) (pending before the Legislature as this bill), the amount of
credit allowed in earlier years.

31. (New section) a. A business whose owner claims credit
under sections 24 through 32 of P.L. , c. (C. ) (pending
before the Legislature as this bill) 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 taxable 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 business that does not keep records required for
identification of investment credit property shall be treated as
having disposed of, during the taxable 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 business cannot establish when investment credit
property reported for purposes of claiming this credit during a
taxable year was placed in service, the business 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 business can
establish that the property placed in service in the most recent year
is still on hand. In that event, the business shall be treated as
having placed the property in service in the next most recent year.

32. (New section) 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 sections 24 through 32 of
P.L. , c. (C. ) (pending before the Legislature as this bill).

b. Notwithstanding any provision of sections 24 through 32 of
P.L. , c. (C. ) (pending before the Legislature as this bill) to
the contrary, no credit shall be allowed or applied for any qualified
investment property placed in service or use until the person
asserting a claim for the allowance of credit 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 N.J.S.54A:1-1 et seq., for the
taxable 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 sections 24 through 32 of P.L. , c. (C. )
(pending before the Legislature as this bill). This penalty shall
apply annually until such application is filed.

33. Section 11 of P.L.1993, c.170 (C.54:10A-5.14) is amended
to read as follows:

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 and sections 24 through 32 of
P.L. , c. (C. ) (pending before the Legislature as this bill) in
such a manner as to facilitate an evaluation of its costs in State tax
revenue forgone 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.

(cf: P.L.1993, c.170, s.11)

34. Section 12 of P.L.1993, c.170 (C.54:10A-5.15) is amended to read as follows:

12. Notwithstanding the provisions of subsection (g) of R.S.43:21-11 to the contrary, the Commissioner of the Department of Labor and Workforce Development 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] P.L.1993, c.170 (C.54:10A-5.4 et seq.) and sections 24 through 32 of P.L. , c. (C. ) (pending before the Legislature as this bill).

The director shall not use the reports provided for any purpose other than the administration of the credits allowed under [this act] P.L.1993, c.170 (C.54:10A-5.4 et seq.) and sections 24 through 32 of P.L. , c. (C. ) (pending before the Legislature as this bill), and reports so provided shall be deemed files and records of the director pursuant to R.S.54:50-8.

(cf: P.L.1993, c.170, s.12)

35. Section 12 of P.L.1985, c.227 (C.55:19-13) is amended to read as follows:

12. Any person, firm or corporation actively engaged in the conduct of business at a location within a project, as defined in this act, which is subject to the provisions of the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) or the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the business of which at that location consists primarily of manufacturing or other business that is not retail sales or warehousing oriented, shall, for a period of two years from the date upon which an agreement for the undertaking of the project was entered into pursuant to section 8 or 9 of [this act] P.L.1985, c.227 (C.55:19-8 et seq.), be entitled to an annual credit against the amount of tax imposed under that act of $1,500.00 for each new employee employed at that location who is a resident of the qualified municipality and who immediately prior to such employment was unemployed at least 90 days or was dependent upon public assistance as the primary source of income. A credit for which an employer taxpayer qualifies under this section shall be allowed in the tax year next following the tax year of qualification, and may be continued into a second tax year if such qualification continues, but it shall be allowed only for those new employees who
were employed for at least six consecutive months by the employer taxpayer in the year of qualification. (cf: P.L.1985, c.227, s.12)

36. Section 7 of P.L.1995, c.137 (C.34:1B-7.43) is amended to read as follows:

7. Not later than one year following the effective date of this act the “New Jersey Emerging Technology and Biotechnology Financial Assistance Act,” P.L.1995, c.137 (C.34:1B-7.37 et seq.)¹, and for each succeeding year in which a financial assistance agreement entered into under this act the “New Jersey Emerging Technology and Biotechnology Financial Assistance Act,” P.L.1995, c.137 (C.34:1B-7.37 et seq.)¹ is in effect, the authority shall prepare a report on the program. The report shall include, but need not be limited to, a description of the demand for the program from emerging technology and biotechnology businesses and companies and financial institutions, the efforts made by the authority to promote the program, the total amount of financial assistance approved by the authority pursuant to the program and an assessment of the effectiveness of the program in meeting the goals of this act the “New Jersey Emerging Technology and Biotechnology Financial Assistance Act,” P.L.1995, c.137 (C.34:1B-7.37 et seq.)¹. The authority shall submit its report to the Governor and the Legislature, including therein any recommendations for legislation to improve the effectiveness of the program.

(cf: P.L.1995, c.137, s.7)

37. Section 8 of P.L.1995, c.137 (C.34:1B-7.44) is amended to read as follows:

8. The authority shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to effectuate the purposes of this act the “New Jersey Emerging Technology and Biotechnology Financial Assistance Act,” P.L.1995, c.137 (C.34:1B-7.37 et seq.)¹. In developing procedures and forms to be used in connection with the application for and approval of financial assistance pursuant to this act the “New Jersey Emerging Technology and Biotechnology Financial Assistance Act,” P.L.1995, c.137 (C.34:1B-7.37 et seq.)¹, the authority shall consider the special needs and problems of emerging technology and biotechnology businesses and companies in the State.

(cf: P.L.1995, c.137, s.8)
38. Section 1 of P.L.2005, c.345 (C.54:10A-5.39) is amended to read as follows:

1. a. A taxpayer, upon application to the Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 20 percent of the qualified film production expenses of the taxpayer during a privilege period commencing after the effective date of P.L.2005, c.345, provided that (1) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer will be incurred for services performed and goods used or consumed in New Jersey, and (2) principal photography of the film commences within 150 days after the approval of the application for the credit.

b. A taxpayer, upon application to the Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount up to 20 percent, as determined by the authority of the qualified digital media content production expenses of the taxpayer during a privilege period commencing after the effective date of P.L.2007, c.257, provided that at least $2,000,000 of the total digital media content production expenses of the taxpayer will be incurred for services performed and goods used or consumed in New Jersey and at least a significant percentage, as determined by the authority, of the qualified digital media content production expenses of the taxpayer will include wages and salaries paid to one or more new full-time employees in New Jersey. For purposes of this subsection, "new full-time employee" means a person employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer that is an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and who is determined by the authority to work in a newly created permanent position according to criteria it develops. "New full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the taxpayer. In determining the amount of any grant of tax credits made pursuant to this subsection, the authority shall consider the number of new full-time positions created by the taxpayer as well as the quality of the
full-time positions created, including but not limited to the salaries and benefits provided to new full-time employees. The authority, in consultation with the Division of Taxation, shall establish rules for the recapture of all, or a portion of, the grant of tax credits pursuant to this subsection in the event the taxpayer fails to maintain the new full-time positions that were included in calculating the qualified digital media content production expenses of the taxpayer.

c. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a privilege period, when taken together with any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c.162, shall not exceed 50 percent of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162. The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be as determined by the Director of the Division of Taxation. The amount of the credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 may be carried over, if necessary, to the seven privilege periods following the privilege period for which the credit was allowed.

d. A taxpayer may, with an application for a credit provided for in subsection a. or subsection b. of this section, apply to the director and the executive director of the authority for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the credit against the tax liability of the taxpayer. The director and the executive director of the authority may consult with the New Jersey Motion Picture and Television Development Commission in consideration of any application for approval of a tax credit or tax credit transfer certificate under this section. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the director and the authority, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under P.L.1945, c.162 or N.J.S.54A:1-1 et seq., in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the credit. The certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75% of the transferred credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under P.L.1945, c.162 shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection c. of this section. Any
amount of a tax credit transfer certificate obtained by a purchaser or
assignee under subsection a. of this section may be applied against
the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et
seq. and shall be subject to the same limitations and conditions that
apply to the use of a credit pursuant to section 2 of P.L.2005, c.345
(C.54A:4-12).

As used in this section:

"Digital media content" means any data or information that is
produced in digital form, including data or information created in
analog form but reformatted in digital form, text, graphics,
photographs, animation, sound and video content. "Digital media
content" does not mean content offerings generated by the end user
(including postings on electronic bulletin boards and chat rooms);
content offerings comprised primarily of local news, events,
weather or local market reports; public service content; electronic
commerce platforms (such as retail and wholesale websites);
websites or content offerings that contain obscene material as
defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or
content that are produced or maintained primarily for private,
industrial, corporate or institutional purposes; or digital media
content acquired or licensed by the taxpayer for distribution or
incorporation into the taxpayer's digital media content.

"Film" means a feature film, a television series or a television
show of 15 minutes or more in length, intended for a national
audience. "Film" shall not include a production featuring news,
current events, weather and market reports or public programming,
talk show, game show, sports event, award show or other gala
event, a production that solicits funds, a production containing
obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
3, or a production primarily for private, industrial, corporate or
institutional purposes.

"Qualified digital media content production expenses" means an
expense incurred in New Jersey for the production of digital media
content. Qualified digital media content production expenses shall
include but shall not be limited to wages and salaries of individuals
employed in the production of digital media content on which the
tax imposed by the "New Jersey Gross Income Tax Act."
N.J.S.54A:1-1 et seq. has been paid or is due; the costs of computer
software and hardware, data processing, visualization technologies,
sound synchronization, editing, and the rental of facilities and
equipment. Qualified digital media content production expenses
shall not include expenses incurred in marketing, promotion or
advertising digital media or other costs not directly related to the
production of digital media content. Costs related to the acquisition
or licensing of digital media content by the taxpayer for distribution
or incorporation into the taxpayer's digital media content shall not
be qualified digital media content production expenses.
"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including post-production costs incurred in New Jersey. Qualified film production expenses shall include but shall not be limited to wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories and the cost of rental of facilities and equipment. Qualified film production expenses shall not include expenses incurred in marketing or advertising a film.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

"Post-production costs" means the costs of the phase of production that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

f. The Director of the Division of Taxation in the Department of the Treasury, in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic Development Authority, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to implement this act including examples of qualified film production and digital media content production expenses and the procedures and forms to apply for a credit and for a tax credit transfer certificate necessary for a taxpayer to sell or assign an amount of tax credit under this section. The value of credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section, section 20 of P.L. , c. (C. ) (pending before the Legislature as this bill), and pursuant to section 2 of P.L.2005, c.345 (C.54A:4-12) shall not exceed a cumulative total of $10,000,000 in any fiscal year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative total amount of credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section, section 20 of P.L. , c. (C. ) (pending before the Legislature as this bill), and section 2 of P.L.2005, c.345 (C.54A:4-12) exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a
credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section, section 20 of P.L. , c. (C. ) (pending before the Legislature as this bill), and section 2 of P.L.2005, c.345 (C.54A:4-12) are not in excess of the amount of credits available. The value of credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection b. of this section shall not exceed a total of $5,000,000 in any fiscal year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the total amount of credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section are not in excess of the amount of credits available. The Executive Director of the New Jersey Economic Development Authority, in conjunction with the Director of the Division of Taxation shall prepare and submit a report to the Governor and the Legislature on the effectiveness of the credit as an incentive for encouraging film productions and digital media content productions to locate in New Jersey which shall be completed before the third taxable year or privilege period in which a credit may be claimed.

g. For the purpose of determining eligibility for or the amount of any grant of tax credits pursuant to this section, the authority shall not include any job that is included in the calculation of a business employment incentive grant pursuant to the provisions of P.L.1996, c.26 (C.34:1B-124 et al.) or a business retention and relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). (cf: P.L.2007, c.257, s.1)

39. Section 34 of P.L.2009, c.90 (C.34:1B-209.2) is amended to read as follows:

34. As used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-209.2 and C.34:1B-209.3), the terms "affiliate," "authority," "capital investment," "eligible municipality," "partnership," "residential unit," and "urban transit hub" [shall] have the same meanings as [ascribed thereto in] defined by the "Urban Transit Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.), [as
amended by P.L.2009, c.90 (C.52:27D-489a et al.), provided that
all references therein to "business" and "qualified business facility"
[shall be] are deemed to refer respectively to "developer" and
"qualified residential project," as [such] those terms are defined in
this section. Provided however, for purposes of a "mixed use
project" as that term is defined and used pursuant to subparagraph
(b) of paragraph (4) of subsection a. of section 35 of P.L.2009, c.90
(C.34:1B-209.3), "qualified business facility" means that term as
defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208). In
addition, as used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-
209.2 and C.34:1B-209.3):
"Developer" [shall have the same meaning as] means
"business," as [such term is] defined in the "Urban Transit Hub
Tax Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.) [as
amended by P.L.2009, c.90 (C.52:27D-489a et al.).]
"Qualified residential project" means any building, complex of
buildings or structural components of buildings consisting
predominantly of residential units, located in an urban transit hub
within an eligible municipality.¹
(cf: P.L.2011, c.89, s.3)
¹[39] 40¹. (New section) The gross income tax credits
authorized pursuant to P.L. , c. (C. ) (pending before the
Legislature as this bill) shall be subject to the conditions of this
section.
A credit shall not be allowed for a creditable activity if that
activity has already been used by the taxpayer for any other State
tax credit authorized under law.
The maximum amount of the taxpayer’s liability against which a
credit may be applied for a taxable year is that share of a taxpayer’s
total liability attributable to the inclusion of the income of the
taxpayer’s credited business entity in the taxpayer’s gross income,
determined according to the following ratio. The numerator of the
ratio is that proportion of the taxpayer’s income for the taxable year
in respect of the credited business entity that the net income from
the category of gross income in which the income from the credited
business entity for the taxable year falls bears to all sources of gross
income in that category for the taxable year. The denominator of
the ratio is the gross income of the taxpayer for the taxable year
determined pursuant to N.J.S.54A:5-1 and N.J.S.54A:5-2, before
itemized exclusions and deductions. This ratio shall be multiplied
by the taxpayer’s total tax liability for the taxable year, before
credits, to determine the share of the taxpayer’s liability against
which a credit may be applied for a taxable year. Any amount of
credit which may not be applied to liability because of this
subsection may be carried forward pursuant to the terms of
allowable carry forward, if any, under each credit. This subsection
shall not reduce the amount of credit that may otherwise be
available for a tax credit transfer certificate.

A business entity that elects to be treated as a partnership for
federal income tax purposes shall not be allowed a credit directly
under the gross income tax, but the amount of credit of a taxpayer
in respect of a distributive share of partnership income, shall be
determined by allocating to the taxpayer that proportion of the
credit acquired by the partnership that is equal to the taxpayer's
share, whether or not distributed, of the total distributive income or
gain of the partnership for its taxable year ending within or with the
taxpayer's taxable year except as otherwise provided by law.

A New Jersey S Corporation shall not be allowed a credit
directly under the gross income tax, but the amount of credit of a
taxpayer in respect of a pro rata share of S Corporation income,
shall be determined by allocating to the taxpayer that proportion of
the credit acquired by the New Jersey S Corporation that is equal to
the taxpayer's share, whether or not distributed, of the total pro rata
share of S Corporation income of the New Jersey S Corporation for
its privilege period ending within or with the taxpayer's taxable
year.

Applications for credits or transfer certificates authorized
pursuant to P.L. , c. (C. ) (pending before the Legislature as
this bill) shall be made by the business entity of a taxpayer, except
as otherwise prescribed by the director.

The Director of the Division of Taxation in the Department of
the Treasury shall adopt regulations in accordance with the
seq.) that the director deems necessary to administer the gross
income tax credits authorized pursuant to P.L. , c. (C. )
(pending before the Legislature as this bill) on substantially similar
terms to the related corporation business tax credits.

This act shall take effect immediately and apply to
creditable activity occurring in taxable years beginning on or after
the date of enactment.