

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3111

STATE OF NEW JERSEY
211th LEGISLATURE

ADOPTED JUNE 21, 2004

Sponsored by:

Assemblyman ALBIO SIRES

District 33 (Hudson)

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman LOUIS MANZO

District 31 (Hudson)

Co-Sponsored by:

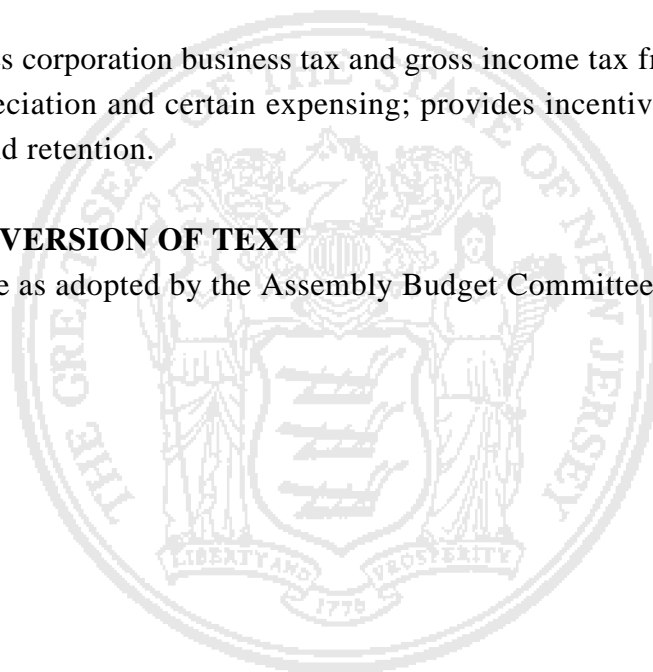
Assemblyman Caraballo, Senators Bryant and Doria

SYNOPSIS

Decouples corporation business tax and gross income tax from changes in federal depreciation and certain expensing; provides incentives for business relocation and retention.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Budget Committee.



(Sponsorship Updated As Of: 6/25/2004)

1 AN ACT concerning the timing of tax deductions for certain business
2 expenses and providing incentives for business relocation and
3 retention, amending and supplementing P.L.1996, c.25, amending
4 P.L.1997, c.334, supplementing chapter 1B of Title 34 of the
5 Revised Statutes and P.L.1983, c.303 (C.52:27H-60 et seq.),
6 amending P.L.1945, c.162 and P.L.1993, c.171, and supplementing
7 Title 54A of the Revised Statutes.

8
9 **BE IT ENACTED** by the Senate and General Assembly of the State
10 of New Jersey:

11
12 1. Section 1 of P.L.1996, c.25 (C.34:1B-112) is amended to read
13 as follows:

14 1. This act shall be known and may be cited as the "Business
15 Retention and Relocation Assistance Act."
16 (cf: P.L.1996, c.25, s.1)

17
18 2. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to read
19 as follows

20 2. As used in this act:

21 "Advanced computing" means a technology used in the designing
22 and developing of computing hardware and software, including
23 innovations in designing the full spectrum of hardware from hand-held
24 calculators to super computers, and peripheral equipment;

25 "Advanced computing company" means a person with headquarters
26 or base of operations located in New Jersey and engaged in the
27 research, development, production, or provision of advanced
28 computing for the purpose of developing or providing products or
29 processes for specific commercial or public purposes;

30 "Advanced materials" means materials with engineered properties
31 created through the development of specialized processing and
32 synthesis technology, including ceramics, high value-added metals,
33 electronic materials, composites, polymers, and biomaterials;

34 "Advanced materials company" means a person with headquarters
35 or base of operations located in New Jersey and engaged in the
36 research, development, production, or provision of advanced materials
37 for the purpose of developing or providing products or processes for
38 specific commercial or public purposes;

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

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 add to that body of fundamental knowledge;

2 "Biotechnology company" means a person with headquarters or
3 base of operations located in New Jersey and engaged in the research,
4 development, production, or provision of biotechnology for the
5 purpose of developing or providing products or processes for specific
6 commercial or public purposes, including, but not limited to, medical,
7 pharmaceutical, nutritional, and other health-related purposes,
8 agricultural purposes, and environmental purposes, or a person with
9 headquarters or base of operations located in New Jersey and engaged
10 in providing services or products necessary for such research,
11 development, production, or provision;

12 "Business retention or relocation grant of tax credits" or "grant of
13 tax credits" means a grant which consists of the value of corporation
14 business tax credits against the liability imposed pursuant to section 5
15 of P.L.1945, c.162 (C.54:10A-5) or credits against the taxes imposed
16 on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section
17 1 of P.L.1950, c.231 (C.17:32-15), and N.J.S.17B:23-5, provided to
18 fund a portion of retention and relocation costs pursuant to [this act]
19 P.L.1996, c.25 (C.34:1B-112 et seq.);

20 "Commissioner" means the [Commissioner of the Department of
21 Commerce and Economic Development] Chief Executive Officer and
22 Secretary of the New Jersey Commerce and Economic Growth
23 Commission;

24 "Department" means the [Department of Commerce and Economic
25 Development] New Jersey Commerce and Economic Growth
26 Commission;

27 "Business" means an employer located in this State that has
28 operated continuously in the State, in whole or in part, in its current
29 form or as a predecessor entity for at least 10 years prior to filing an
30 application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and
31 which is subject to the provisions of R.S.43:21-1 et seq. and may
32 include a sole proprietorship, a partnership, or a corporation that has
33 made an election under Subchapter S of Chapter One of Subtitle A of
34 the Internal Revenue Code of 1986, or any other business entity
35 through which income flows as a distributive share to its owners,
36 limited liability company, nonprofit corporation, or any other form of
37 business organization located either within or outside the State[,
38 including a cooperative association. A grant received under this act
39 by a partnership, Subchapter S-Corporation, or other such business
40 entity shall be apportioned among the persons to whom the income or
41 profit of the partnership, Subchapter S-Corporation, or other entity is
42 distributed, in the same proportions as those in which the income or
43 profit is distributed.

44 "Cooperative association" shall include financial, stock or
45 commodities exchanges];

46 "Commitment duration" means five years from the date specified

1 in the project agreement entered into pursuant to section 5 of
2 P.L.1996, c.25 (C.34:1B-116);

3 "Designated industry" means a business engaged in the field of
4 biotechnology, pharmaceuticals, manufacturing, financial services or
5 transportation and logistics, advanced computing, advanced materials,
6 electronic device technology, environmental technology or medical
7 device technology;

8 "Designated urban center" means an urban center designated in the
9 State Development and Redevelopment Plan adopted by the State
10 Planning Commission;

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

16 "Electronic device technology company" means a person with
17 headquarters or base of operations located in New Jersey and engaged
18 in the research, development, production, or provision of electronic
19 device technology for the purpose of developing or providing products
20 or processes for specific commercial or public purposes;

21 "Eligible position" means a full-time position retained by a business
22 in this State for which a business provides employee health benefits
23 under a group health plan as defined under section 14 of P.L.1997,
24 c.146 (C.17B:27-54), a health benefits plan as defined under section
25 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health
26 insurance covering more than one person issued pursuant to Article 2
27 of Title 17B of the New Jersey Statutes;

28 "Full-time employee" means a person who is employed for
29 consideration for at least thirty-five hours a week, or who renders any
30 other standard of service generally accepted by custom or practice as
31 full-time employment, [provided that a person shall be determined by
32 the department to be employed in a permanent position in accordance
33 with criteria developed by the department. In determining if
34 employees are full-time, the commissioner shall give greater
35 consideration to employees who earn an average of at least 1.5 times
36 the minimum hourly wage] whose wages are subject to withholding as
37 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
38 et seq., and who is determined by the commissioner to be employed in
39 a permanent position according to criteria as the commissioner may
40 prescribe. "Full-time employee" shall not include any person who
41 works as an independent contractor or on a consulting basis for the
42 business. "Full-time employee" shall not include a child, grandchild,
43 parent, or spouse of an individual who has direct or indirect ownership
44 of at least 5% of the profits, capital, or value of the business;

45 "Headquarters" of a business means the single location that serves
46 as the national administrative center of the business, at which the

1 primary office of the chief executive officer or chief operating officer
2 of the business, as well as the offices of the management officials
3 responsible for key businesswide functions such as finance, legal,
4 marketing, and human resources, are located;

5 "High-technology business" means an advanced computing
6 company, advanced materials company, electronic device technology
7 company, environmental technology company or medical device
8 technology company;

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

13 "Medical device technology company" means a person with
14 headquarters or base of operations located in New Jersey and engaged
15 in the research, development, production, or provision of medical
16 device technology for the purpose of developing or providing products
17 or processes for specific commercial or public purposes;

18 "New business location" means the premises that the business has
19 either purchased or built or for which the business has entered into a
20 purchase agreement or a written lease for a period of no less than eight
21 years from the date of relocation;

22 ["New full-time job" means a job held by a full-time employee that
23 did not exist in this State prior to the business relocating to the new
24 business location;

25 "New income tax revenue" means the total amount withheld by the
26 business during the taxable year from the wages of employees in new
27 full-time jobs pursuant to the "New Jersey Gross Income Tax Act,"
28 N.J.S.54A:1-1 et seq., as certified by the Director of the Division of
29 Taxation;]

30 "Manufacturing facility" means a business location at which more
31 than 50% of the business personal property that is housed in the
32 facility is eligible for the sales tax exemption pursuant to subsection a.
33 of section 25 of P.L.1980, c.105 (C.54:32B-8.13) for machinery,
34 apparatus or equipment used in the production of tangible personal
35 property;

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

39 ["Relocation costs" means the costs incurred by the business in
40 moving and installing furniture, files, office equipment or other
41 machinery or equipment in the new business location; the cost of
42 installation of telephones and other communication equipment; and the
43 cost incurred in the purchase of office furniture and fixtures]

44 "Project agreement" means an agreement between a business and
45 the department that sets the forecasted schedule for completion and
46 occupancy of the project, the date the commitment duration shall

1 commence, the amount of the applicable grant of tax credits, and other
2 such provisions which further the purposes of P.L.1996, c.25
3 (C.34:1B-112 et seq.):

4 "Research and development facility" means a business location at
5 which more than 50% of the business personal property that is
6 purchased for the facility is eligible for the sales tax exemption
7 pursuant to section 26 of P.L.1980, c.105 (C.54:32B-8.14) for
8 property used in research and development;

9 "Retained full-time job" means an eligible position that currently
10 exists in New Jersey and is filled by a full-time employee but which,
11 because of a relocation by the business, is at risk of being lost to
12 another state or country. For the purposes of determining a number
13 of retained full-time jobs, the eligible positions of the members of a
14 "controlled group of corporations" as defined pursuant to section 1563
15 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, shall
16 be considered the eligible positions of a single employer; and

17 "Total allowable relocation costs" means [the lesser of total
18 relocation costs or \$400] \$1,500 times the number of [new] retained
19 full-time jobs [created]. "Total allowable relocation costs" does not
20 include the amount of any bonus award authorized pursuant to section
21 5 of P.L. , c. (C.)(now pending before the Legislature as this
22 bill).

23 (cf: P.L.1996, c.25, s.2)

24
25 3. Section 3 of P.L.1996, c.25 (C.34:1B-114) is amended to read
26 as follows:

27 3. The Business Retention and Relocation Assistance Grant
28 Program is hereby established as program under the jurisdiction of the
29 [in the Department of Commerce and Economic Development] New
30 Jersey Commerce and Economic Growth Commission and shall be
31 administered by the [Commissioner of the Department of Commerce
32 and Economic Development] Chief Executive Officer and Secretary
33 of the New Jersey Commerce and Economic Growth Commission.
34 The purpose of the program is to encourage economic development
35 and job creation and to preserve jobs that currently exist in New
36 Jersey but which are in danger of being relocated to premises outside
37 of the State. To implement that purpose, and to the extent that
38 funding for the program is available, the program may provide grants
39 [in an amount up to and including 50% of the total allowable
40 relocation costs,] of tax credits but in no case shall the amount of an
41 individual grant of tax credits exceed 80% of the projected [new
42 income] State tax revenues from the [new] retained full-time jobs
43 [created] covered by [a grant] the project agreement of an applicant
44 for a grant of tax credits.

45 (cf: P.L.1996, c.25, s.3)

1 4. Section 4 of P.L.1996, c.25 (C.34:1B-115) is amended to read
2 as follows:

3 4. a. To qualify for a grant of tax credits, a business shall enter
4 into an agreement to undertake a project to:

5 [a.] (1) relocate a minimum of [25 new] 250 retained full-time
6 jobs [to] from one or more locations within this State to a new
7 business location or locations in this State; [or

8 b. move to expanded facilities within the State and create a
9 minimum of 25 new full-time jobs in the State] and

10 (2) maintain the retained full-time jobs pursuant to the project
11 agreement for the commitment duration.

12 b. A project that consists solely of point-of-final-purchase retail
13 facilities shall not be eligible for a grant of tax credits. If a project
14 consists of both point-of-final-purchase retail facilities and non-retail
15 facilities, only the portion of the project consisting of non-retail
16 facilities shall be eligible for a grant of tax credits. If a warehouse
17 facility is part of a point-of-final-purchase retail facility and supplies
18 only that facility, the warehouse facility shall not be eligible for a grant
19 of tax credits. For the purposes of this section, catalog distribution
20 centers shall not be considered point-of-final-purchase retail facilities.

21 (cf: P.L.1996, c.25, s.4)

22

23 5. (New section) In addition to any grant of tax credits
24 determined pursuant to section 7 of P.L. , c. (C.) (now pending
25 before the Legislature as this bill), a bonus award equivalent to 50%
26 of the amount of the original grant of tax credits shall be made to any
27 business that relocates more than 2,000 full-time employees covered
28 by the project agreement from one or more locations outside of a
29 designated urban center into a designated urban center, provided that
30 all other applicable requirements of P.L.1996, c.25 (C.34:1B-112 et
31 seq.) are satisfied; and provided further that no grant of tax credits
32 shall be awarded pursuant to this section for any job that is moved
33 from its current location in an urban enterprise zone designated
34 pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983,
35 c.303 (C.52:27H-60 et seq.) to a location that is not within an urban
36 enterprise zone; however, that if the move from the urban enterprise
37 zone is to a facility already owned or leased by the same business and
38 that business already employs at least the same number of persons as
39 those being relocated from the urban enterprise zone a grant of tax
40 credits may still be awarded pursuant to this section.

41

42 6. (New section) To qualify for a grant of tax credits pursuant to
43 P.L.1996, c.25 (C.34:1B-112 et seq.), a business shall demonstrate
44 that the receipt of assistance pursuant to P.L.1996, c.25, will be a
45 material factor in the business' decision not to relocate outside of New
46 Jersey; provided however, that a business that relocates 1,500 or more

1 retained full-time jobs covered by a project agreement from outside of
2 a designated urban center to one or more new locations within a
3 designated urban center shall not be required to make such a
4 demonstration if the business applies for a grant of tax credits within
5 six months of signing its lease or purchase agreement.

6
7 7. (New section) a. The total value of the grants of tax credits
8 issued pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) shall not
9 exceed an aggregate annual limit of \$20,000,000 for a fiscal year. A
10 tax credit issued pursuant to P.L.1996, c.25 may be applied against
11 liability arising in the tax period in which the tax credit is issued and
12 the tax period next following, and shall expire thereafter.

13 b. Grants of tax credits shall be awarded and issued to qualifying
14 businesses as follows, subject to the limitations of subsection c. of this
15 section:

16 (1) for a project that covers a business relocating a minimum of
17 500 full-time employees, a grant of tax credits made pursuant to
18 P.L.1996, c.25 (C.34:1B-112 et seq.) shall equal total allowable
19 relocation costs plus any applicable bonus award determined pursuant
20 to section 5 of P.L. , c. (C.) (now pending before the Legislature
21 as this bill) and shall be issued immediately upon the entry of the
22 project agreement between the commissioner and the business with an
23 approved project, up to the aggregate annual limit; and

24 (2) for a project that covers a business relocating between 250 and
25 499 full-time employees, a grant of tax credits shall not be issued until
26 the end of the fiscal year in which the application is approved.

27 c. If the sum of the amount of tax credits issued pursuant to
28 paragraph (1) of subsection b. of this section in a fiscal year, plus the
29 amount of tax credits approved pursuant to paragraph (2) of
30 subsection b. of this section exceeds the \$20,000,000 aggregate annual
31 limit, the commissioner shall reduce, on a pro rata basis, the award to
32 each business receiving a grant of tax credits pursuant to paragraph (2)
33 of subsection b. as necessary to comply with the aggregate annual
34 limit.

35
36 8. Section 5 of P.L.1996, c.25 (C.34:1B-116) is amended to read
37 as follows:

38 5. Each business seeking a grant of tax credits for a project shall
39 submit an application for approval of the project to the commissioner
40 in a form and manner prescribed in regulations adopted by the
41 commissioner. The application must be submitted to the **[department]**
42 commissioner for approval at least 45 days prior to moving to the new
43 business location; provided however, a business relocating 1,500 or
44 more retained full-time jobs to one or more new locations within a
45 designated urban center shall, if relocating to a leased location, submit
46 an application within six months of executing its lease. The

1 application for approval of a project shall include:

2 a. A schedule of short-term and long-term employment projections
3 of the business in the State based upon the relocation;

4 b. ~~[An estimate of the projected relocation costs] (Deleted by~~
5 ~~amendment, P.L. , c.)(now pending before the Legislature as this~~
6 ~~bill);~~

7 c. Terms of any lease agreements or details of the purchase or
8 building of the new business location;

9 d. An estimate of the projected ~~[new income]~~ retained State tax
10 revenues resulting from the relocation;

11 e. A description of the type of contribution the business can make
12 to the long-term growth of the State's economy and a description of
13 the potential impact on the State's economy if the jobs are not
14 retained; [and]

15 f. Evidence that the business or a predecessor entity has been
16 operating, in whole or in part, in this State for at least 10 years prior
17 to the filing of the application;

18 g. Evidence of alternative relocation plans, such as an analysis of
19 the cost effectiveness of remaining in this State versus relocation
20 under the alternative plans;

21 h. A written commitment by the business to maintain 95% of the
22 retained full-time jobs for at least the first two years of the
23 commitment duration, and to maintain a minimum of 90% of the
24 retained full-time jobs for the commitment duration; and

25 i. Any other necessary and relevant information as determined by
26 the commissioner.

27 The commissioner may provide whatever assistance ~~[deemed]~~ the
28 commissioner deems appropriate in the preparation of an application
29 for approval of a project and may issue grants of tax credits pursuant
30 to the project agreement entered between the commissioner and the
31 business with an approved project at the commissioner's discretion
32 subject to the provisions of ~~[this act]~~ P.L.1996, c.25 (C.34:1B-112 et
33 seq.).

34 The project agreement shall include terms establishing the starting
35 date, or event that will determine the starting date, of the commitment
36 duration and any other terms or conditions as determined by the
37 commissioner.

38 [A cooperative association may apply, in one consolidated
39 application on a form and in a manner determined by the
40 commissioner, for a grant on its own behalf as a business and for
41 grants on behalf of the members of the association who may qualify
42 under this act. If a cooperative association is applying for grants on
43 behalf of its members, the members for whom the application is
44 submitted shall assign to the association any claim of right the
45 members may have under this act to apply for grants individually, and
46 shall agree to cooperate with the association in providing to the

1 commissioner all the information required for the initial application
2 and any other information the commissioner may require for the
3 purposes of this act. If a cooperative association applies for a grant
4 on behalf of its members, the members included in the application may
5 be permitted to meet the qualifications for a grant collectively, the
6 amount of a grant for the members shall be calculated as if the
7 members included in the application are one business entity, and any
8 restrictions on the qualification for a grant shall apply to each member
9 for whom an application for a grant is submitted. The grants awarded
10 shall be paid in a lump sum to the cooperative association. A grant
11 received under this act by a cooperative association may be
12 apportioned to the members of the association in a manner determined
13 by the association.]

14 (cf: P.L.1996, c.25, s.5)

15

16 9. Section 6 of P.L.1996, c.25 (C.34:1B-117) is amended to read
17 as follows:

18 6. No [amount shall be disbursed to a recipient] tax credits shall
19 be issued as a grant of tax credits under [this act] P.L.1996, c.25
20 (C.34:1B-112 et seq.) in any year until the State Treasurer has
21 certified that the amount of [new income] retained State tax revenue
22 received in [that year] the most recently completed State tax periods
23 by the Director of the Division of Taxation from the business equals
24 or exceeds the amount of the grant of tax credits.

25 (cf: P.L.1996, c.25, s.6)

26

27 10. Section 7 of P.L.1996, c.25 (C.34:1B-118) is amended to read
28 as follows:

29 7. a. A business that is receiving a business employment incentive
30 grant pursuant to the provisions of P.L.1996, c.26 (C.34:1B-124 et
31 al.) shall not be eligible to receive a grant of tax credits under [this act
32 except upon the approval of the State Treasurer] P.L.1996, c.25
33 (C.34:1B-112 et seq.) with respect to a job which is included in the
34 calculation of a grant pursuant to P.L.1996, c.26.

35 b. A business that is receiving any other grant by operation of
36 State law shall be eligible to receive a grant of tax credits under
37 P.L.1996, c.25 (C.34:1B-112 et seq.); provided, however, that a
38 business that is receiving another State grant shall not be eligible to
39 receive assistance with respect to any job that is currently the subject
40 of any other State grant, except for grants from the Office of
41 Customized Training pursuant to the "1992 New Jersey Employment
42 and Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et
43 seq.), and provided further that a business shall not receive an amount
44 as a grant of tax credits pursuant to [this act] P.L.1996, c.25
45 (C.34:1B-112 et seq.) which, when combined with such other grants,

1 exceeds 80% of the [new income] retained State tax revenue
2 [generated by employees in new full-time jobs], except upon the
3 approval of the State Treasurer. Amounts received as grants from the
4 Office of Customized Training pursuant to the "1992 New Jersey
5 Employment and Workforce Development Act," P.L.1992, c.43
6 (C.34:15D-1 et seq.), shall be excluded from the calculation of the
7 total amount permitted under this subsection.

8 (cf: P.L.1996, c.25, s.7)

9

10 11. (New section) In determining the amount of any grant of tax
11 credits made pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), the
12 commissioner shall consider, as part of the commissioner's overall
13 calculation process, the following factors:

14 a. The number of full-time jobs retained;

15 b. The quality of the full-time jobs retained, including but not
16 limited to the salaries and benefits provided to retained full-time
17 employees;

18 c. Any capital investments made by the business at the new
19 business location;

20 d. The nature of the business' operations, including but not limited
21 to whether the business is a designated industry;

22 e. The potential impact on the State if the business were to
23 relocate to another state;

24 f. The site of the new business location and its consistency with
25 the smart growth goals, strategies and policies of the State
26 Development and Redevelopment Plan established pursuant to section
27 5 of P.L.1985, c.398 (C.52:18A-200);

28 g. Whether positions average at least 1.5 times the minimum
29 hourly wage during the commitment duration; and

30 h. The duration and extent of past operations by the business in
31 New Jersey and any other information indicating the business' level of
32 commitment to the State and the likelihood that the business will
33 continue to operate in this State in the future.

34

35 12. Section 8 of P.L.1996, c.25 (C.34:1B-119) is amended to read
36 as follows:

37 8. The commissioner shall, after consultation with the Director of
38 the Division of Taxation, pursuant to the "Administrative Procedure
39 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and
40 regulations necessary to govern the proper conduct and operation of
41 the program consistent with the provisions of [this act] P.L.1996,
42 c.25 (C.34:1B-112 et seq.) including, but not limited to, a procedure
43 for recapturing relocation grants of tax credits awarded pursuant to
44 [this act] P.L.1996, c.25 (C.34:1B-112 et seq.) in those cases in
45 which the commissioner determines that the business receiving the
46 grant of tax credits fails to meet or comply with any condition or

1 requirement attached by the commissioner to the receipt of the grant
2 of tax credits or included in rules and regulations adopted by the
3 commissioner governing the implementation of the program. [The
4 rules also shall include the procedures to clarify the application of the
5 various provisions of this act to cooperative associations that submit
6 applications on behalf of their members.] The Director of the Division
7 of Taxation is authorized to promulgate such rules and regulations as
8 may be necessary to effect the tax-related provisions of the program.
9 (cf: P.L.1996, c.25, s.8)

10
11 13. Section 9 of P.L.1996, c.25 (C.34:1B-120) is amended to read
12 as follows:

13 9. As determined by the commissioner, a business which is
14 awarded a grant of tax credits under [this act] P.L.1996, c.25
15 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st
16 of each year, commencing the year following the calendar year in
17 which the business was approved for the grant of tax credits and for
18 the remainder of the commitment duration, a copy of the State tax
19 return for the business showing business income or activity,
20 appropriate to its form of ownership together with an annual report
21 listing the full-time employees in eligible positions employed at the
22 location or locations approved for the grant of tax credits, to the
23 commissioner. Failure to submit a copy of [this document may result
24 in the suspension or termination of a grant] its annual report or
25 submission of the annual report without the information required
26 above, may result in the forfeiture of any grant of tax credits to be
27 received by the business and the recapture of any tax credits issued to
28 the business unless the commissioner determines that there are
29 extenuating circumstances excusing the business from the timely filing
30 required.

31 (cf: P.L.1996, c.25, s.9).

32
33 14. (New section) The commissioner shall adopt rules for the
34 recapture of all, or a portion of, the grant of tax credits, based on
35 criteria established by the commissioner pursuant to regulation or
36 under the terms of the project agreement if the business fails to
37 maintain the retained full-time jobs at the location or locations
38 approved for the grant of tax credits for the commitment duration or
39 fails to meet or comply with any condition or requirement under the
40 terms of the project agreement or included in rules and regulations
41 adopted by the commissioner governing the implementation of the
42 program. The rules shall allow for the commissioner to notify the
43 Director of the Division of Taxation in the Department of the
44 Treasury, who shall issue a recapture assessment which shall be based
45 upon the proportionate value of the grant of tax credits that
46 corresponds to the amount and period of noncompliance. The

1 recapture of funds shall be subject to the State Uniform Tax Procedure
2 Law, R.S.54:48-1 et seq. Recaptured funds shall be deposited in the
3 General Fund of the State.

4
5 15. Section 10 of P.L.1996, c.25 (C.34:1B-121) is amended to
6 read as follows:

7 10. The commissioner shall prepare and transmit to the Governor
8 and the Legislature on or before November 1st of each year, a report
9 concerning the impact of the program on job retention in
10 the State.

11 (cf: P.L.1996, c.25, s.10)

12
13 16. Section 12 of P.L.1996, c.25 (C.34:1B-123) is amended to
14 read as follows:

15 12. There is appropriated to the [Department of Commerce and
16 Economic Development]New Jersey Commerce and Economic
17 Growth Commission from the General Fund such sums as may be
18 necessary, as certified by the commissioner and the Director of the
19 Division of Budget and Accounting, to fund business retention and
20 relocation grants of tax credits made under [this act] P.L.1996, c.25
21 (C.34:1B-112 et seq.), the amount of which shall not exceed the [new
22 income] retained State tax revenues as defined in section 2 of [this
23 act] P.L.1996, c.25 (C.34:1B-113).

24 (cf: P.L.1996, c.25, s.12)

25
26 17. (New section) a. The commissioner shall establish a
27 corporation business tax credit and insurance premiums tax credit
28 certificate transfer program to allow businesses in this State with
29 unused amounts of tax credits issued under P.L.1996, c.25 (C.34:1B-
30 112 et seq.), and otherwise allowable, that cannot be applied by the
31 business to which originally issued before the expiration of the credit,
32 to surrender those tax credits for use by other corporation business
33 and insurance premiums taxpayers in this State, provided that the
34 taxpayer receiving the surrendered tax credits is not affiliated with the
35 business that is surrendering its tax credits. For the purposes of this
36 section, the test of affiliation is whether the same entity directly or
37 indirectly owns or controls 5% or more of the voting rights or 5% or
38 more of the value of all classes of stock of both the taxpayer receiving
39 the tax credits and the business that is surrendering the tax credits. The
40 tax credits may be used on the corporation business tax and insurance
41 premiums tax returns to be filed by those taxpayers in exchange for
42 private financial assistance to be provided by the corporation business
43 taxpayer or insurance premiums taxpayer that is the recipient of the
44 corporation business tax credit certificate or insurance premiums tax
45 credit certificate to assist in the funding of costs incurred by the
46 relocating business.

1 b. The commissioner, in cooperation with the Director of the
2 Division of Taxation in the Department of the Treasury, shall review
3 and approve applications by taxpayers under the Corporation Business
4 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and by
5 taxpayers under the taxes imposed on insurers pursuant to P.L.1945,
6 c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15)
7 and N.J.S.17B:23-5 to acquire surrendered tax benefits, which shall be
8 issued in the form of corporation business tax credit and insurance
9 premiums tax credit transfer certificates, in exchange for private
10 financial assistance to be made by the taxpayer in an amount equal to
11 at least 75% of the amount of the surrendered tax credit of a business
12 relocating in the State. The private financial assistance shall assist in
13 funding expenses incurred in connection with the operation of the
14 business in the State, including but not limited to the expenses of fixed
15 assets, such as the construction and acquisition and development of
16 real estate, materials, start-up, tenant fit-out, working capital, salaries,
17 research and development expenditures and any other expenses
18 determined by the commissioner to be necessary to carry out the
19 purposes of P.L.1996, c.25 (C.34:1B-112 et seq.).

20 c. The commissioner shall coordinate the applications for
21 surrender and acquisition of unused but otherwise allowable tax credits
22 pursuant to this section in a manner that can best stimulate and
23 encourage the extension of private financial assistance to businesses
24 in this State.

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

28

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

31 1. a. The New Jersey Economic Development Authority shall
32 establish within the New Jersey Emerging Technology and
33 Biotechnology Financial Assistance Program established pursuant to
34 P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business tax
35 benefit certificate transfer program to allow new or expanding
36 emerging technology and biotechnology companies in this State with
37 unused amounts of research and development tax credits otherwise
38 allowable which cannot be applied for the credit's tax year due to the
39 limitations of subsection b. of section 1 of P.L.1993, c.175
40 (C.54:10A-5.24) and unused net operating loss carryover pursuant to
41 subparagraph (B) of paragraph (6) of subsection (k) of section 4 of
42 P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use
43 by other corporation business taxpayers in this State, provided that the
44 taxpayer receiving the surrendered tax benefits is not affiliated with a
45 corporation that is surrendering its tax benefits under the program
46 established under P.L.1997, c.334. For the purposes of this section,

1 the test of affiliation is whether the same entity directly or indirectly
2 owns or controls 5% or more of the voting rights or 5% or more of
3 the value of all classes of stock of both the taxpayer receiving the
4 benefits and a corporation that is surrendering the benefits. The tax
5 benefits may be used on the corporation business tax returns to be filed
6 by those taxpayers in exchange for private financial assistance to be
7 provided by the corporation business taxpayer that is the recipient of
8 the corporation business tax benefit certificate to assist in the funding
9 of costs incurred by the new or expanding emerging technology and
10 biotechnology company.

11 b. The authority, in cooperation with the Division of Taxation in
12 the Department of the Treasury, shall review and approve applications
13 by new or expanding emerging technology and biotechnology
14 companies in this State with unused but otherwise allowable carryover
15 of research and development tax credits pursuant to section 1 of
16 P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable
17 net operating loss carryover pursuant to paragraph (6) of subsection
18 (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those
19 tax benefits in exchange for private financial assistance to be made by
20 the corporation business taxpayer that is the recipient of the
21 corporation business tax benefit certificate in an amount equal to at
22 least 75% of the amount of the surrendered tax benefit. Provided that
23 the amount of the surrendered tax benefit for a surrendered research
24 and development tax credit carryover is the amount of the credit, and
25 provided that the amount of the surrendered tax benefit for a
26 surrendered net operating loss carryover is the amount of the loss
27 multiplied by the new or expanding emerging technology or
28 biotechnology company's anticipated allocation factor, as determined
29 pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6) for the tax year
30 in which the benefit is transferred and subsequently multiplied by the
31 corporation business tax rate provided pursuant to subsection (c) of
32 section 5 of P.L.1945, c.162 (C.54:10A-5). The authority shall be
33 authorized to approve the transfer of no more than \$50,000,000 of
34 tax benefits over State fiscal year 2000 [and], \$40,000,000 of tax
35 benefits over each State fiscal year 2001 through 2004, and
36 \$60,000,000 over State fiscal year 2005 and each State fiscal year
37 thereafter. If the total amount of transferable tax benefits requested
38 to be surrendered by approved applicants exceeds \$50,000,000 for
39 State fiscal year 2000 [or], \$40,000,000 for each State fiscal year
40 2001 through 2004, or \$60,000,00 for State fiscal year 2005 and for
41 each State fiscal year thereafter, the authority, in cooperation with the
42 Division of Taxation in the Department of the Treasury, shall not be
43 authorized to approve the transfer of more than \$50,000,000 for State
44 fiscal year 2000 [or], more than \$40,000,000 for each State fiscal
45 2001 through 2004, or \$60,000,00 for State fiscal year 2005 and for
46 each State fiscal year thereafter and shall allocate the transfer of tax

1 benefits by approved companies using the following method:

2 (1) an eligible applicant with \$250,000 or less of transferable tax
3 benefits shall be authorized to surrender the entire amount of its
4 transferable tax benefits;

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

8 (3) an eligible applicant with more than \$250,000 of transferable
9 tax benefits that was approved to surrender tax benefits in the prior
10 fiscal year shall be authorized to surrender a minimum of 50% of the
11 transferable tax benefits surrendered in the prior fiscal year or
12 \$250,000 whichever is greater, provided that the amount of
13 transferable tax benefits authorized shall not exceed the applicant's
14 transferable tax benefits for the current fiscal year;

15 (4) an eligible applicant with more than \$250,000 shall also be
16 authorized to surrender additional transferable tax benefits determined
17 by multiplying the applicant's transferable tax benefits less the
18 minimum transferable tax benefits that company is authorized to
19 surrender under paragraph (2) or (3) of this subsection by a fraction,
20 the numerator of which is the total amount of transferable tax benefits
21 that the authority is authorized to approve less the total amount of
22 transferable tax benefit approved under paragraphs (1), (2) ~~and~~, (3)
23 and (5) of this subsection and the denominator of which is the total
24 amount of transferable tax benefits requested to be surrendered by all
25 eligible applicants less the total amount of transferable tax benefits
26 approved under paragraphs (1), (2) ~~and~~, (3) and (5) of this
27 subsection;

28 (5) The authority shall establish the boundaries for three
29 innovation zones to be geographically distributed in the northern,
30 central, and southern portions of this State. Of the \$60,000,000 of
31 transferable tax benefits authorized for each State fiscal year,
32 \$5,000,000 shall be allocated for the surrender of transferable tax
33 benefits exclusively by eligible companies that operate within the
34 boundaries of the innovation zones during State fiscal year 2005, and
35 \$10,000,000 shall be so allocated for State fiscal year 2006 and for
36 each State fiscal year thereafter.

37 If the total amount of transferable tax benefits that would be
38 authorized using the above method exceeds \$50,000,000 for State
39 fiscal year 2000 ~~or~~, \$40,000,000 for each State fiscal year 2001
40 through 2004, or \$60,000,00 for State fiscal year 2005 and for each
41 State fiscal thereafter, then the authority, in cooperation with the
42 Division of Taxation in the Department of the Treasury, shall limit the
43 total amount of tax benefits authorized to be transferred to
44 \$50,000,000 for State fiscal year 2000 ~~or~~, \$40,000,000 for each
45 State fiscal year 2001 through 2004, or \$60,000,00 for State fiscal
46 year 2005 and for each State fiscal thereafter by applying the above

1 method on an apportioned basis.

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

16 The maximum lifetime value of surrendered tax benefits that a
17 corporation shall be permitted to surrender pursuant to the program
18 is \$10,000,000. Applications must be received within 30 days from
19 enactment of P.L.1999, c.140 (C.34:1B-7.42b et al.) for State fiscal
20 year 2000 and on or before June 30 for each subsequent State fiscal
21 year.

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

31 c. The authority, in cooperation with the Division of Taxation in
32 the Department of the Treasury, shall review and approve applications
33 by taxpayers under the Corporation Business Tax Act (1945),
34 P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax
35 benefits approved pursuant to subsection b. of this section which shall
36 be issued in the form of corporation business tax benefit transfer
37 certificates, in exchange for private financial assistance to be made by
38 the taxpayer in an amount equal to at least 75% of the amount of the
39 surrendered tax benefit of an emerging technology or biotechnology
40 company in the State. A corporation business tax benefit transfer
41 certificate shall not be issued unless the applicant certifies that as of
42 the date of the exchange of the corporation business tax benefit
43 certificate it is operating as a new or expanding emerging technology
44 or biotechnology company and has no current intention to cease
45 operating as a new or expanding emerging technology or
46 biotechnology company.

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

10 d. The authority shall coordinate the applications for surrender
11 and acquisition of unused but otherwise allowable tax benefits
12 pursuant to this section in a manner that can best stimulate and
13 encourage the extension of private financial assistance to new and
14 expanding emerging technology and biotechnology companies in this
15 State. The applications shall be submitted and the authority shall
16 approve or disapprove the applications.

17 The authority shall, in consultation with the New Jersey Commerce
18 and Economic Growth Commission, the New Jersey Commission on
19 Science and Technology and any institution of higher education in
20 New Jersey, develop criteria for the approval or disapproval of
21 applications. Such criteria shall include, but need not be limited to, an
22 evaluation of the new or expanding emerging technology or
23 biotechnology company's actual or potential scientific and
24 technological viability, a determination that the new or expanding
25 emerging technology or biotechnology company's principal products
26 or services are sufficiently innovative to provide a competitive
27 advantage, a determination that the proposed financial assistance will
28 result in significant growth in permanent, full-time employment in the
29 State, a determination made by the authority that the new or
30 expanding emerging technology or biotechnology company does not
31 have sufficient resources to operate in the short term or cannot secure
32 financial assistance from venture capital, stock issuance, product sales
33 revenue, a parent corporation or other affiliates, bank or any other
34 method of obtaining capital, and a determination that the financial
35 assistance provided pursuant to this act demonstrates the prospect of
36 a significant positive change in the applicant's net income. The
37 authority shall establish the weight of importance to be given each
38 criterion utilized in its application approval process. No application
39 shall be approved in which the new or expanding technology or
40 biotechnology company (1) has demonstrated positive net income in
41 any of the two previous full years of ongoing operations as determined
42 on its financial statements; or (2) has demonstrated a ratio in excess of
43 110% or greater of operating revenues divided by operating expenses
44 in any of the two previous full years of operations as determined on its
45 financial statements; or (3) is directly or indirectly at least 50% owned
46 or controlled by another corporation that has demonstrated positive

1 net income in any of the two previous full years of ongoing operations
2 as determined on its financial statements or is part of a consolidated
3 group of affiliated corporations, as filed for federal income tax
4 purposes, that in the aggregate has demonstrated positive net income
5 in any of the two previous full years of ongoing operations as
6 determined on its combined financial statements.

7 Once an application has been approved, the applicant shall be
8 permitted to surrender, subject to the limitations set forth in subsection
9 b. of this section and the net operating loss carryover and research and
10 development tax credit carryover time periods pursuant to
11 subparagraph (B) of paragraph (6) of subsection (k) of section 4 of
12 P.L.1945, c.162 (C.54:10A-4) and subsection b. of section 1 of
13 P.L.1993, c.175 (C.54:10A-5.24), the surrendered tax benefits that are
14 requested in the application regardless of whether the applicant
15 continues to meet the eligibility criteria set forth in the act in
16 subsequent years.

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

25 (cf: P.L.1999, c.140, s.2)

26

27 19. (New section) As used in sections 19 through 22 of P.L. ,
28 c. (C.) (now pending before the Legislature as this bill) the
29 following terms shall have the following meanings:

30 "Eligible property" means machinery, equipment, furniture and
31 furnishings, fixtures, and building materials, but "eligible property"
32 shall not include "motor vehicles" as defined pursuant to section 2 of
33 P.L.1976, c.30 (C.54:32B-2), parts with a useful life of one year or
34 less, or tools or supplies used in connection with the eligible property;

35 "Headquarters" means the single location that serves as the
36 national administrative center of a business, at which the primary
37 office of the chief executive officer or chief operating officer of the
38 business, as well as the offices of the management officials responsible
39 for key businesswide functions such as finance, legal, marketing, and
40 human resources, are located;

41 "Life sciences business" means a business engaged principally in
42 the production of medical equipment, ophthalmic goods, medical or
43 dental instruments, diagnostic substances, biopharmaceutical products;
44 or physical and biological research; or biotechnology;

45 "Manufacturing facility" means a business location at which more
46 than 50% of the business personal property that is housed in the

1 facility is eligible for the sales tax exemption pursuant to subsection a.
2 of section 25 of P.L.1980, c.105 (C. 54:32B-8.13) for machinery,
3 apparatus or equipment used in the production of tangible personal
4 property;

5 "Research and development facility" means a business location at
6 which more than 50% of the business personal property that is
7 purchased for the facility is eligible for the sales tax exemption
8 pursuant to section 26 of P.L.1980, c.105 (C.54:32B-8.14) for
9 property used in research and development; and

10 "Secretary" means the Chief Executive Officer and Secretary of the
11 New Jersey Commerce and Economic Growth Commission.

12

13 20. (New section) The secretary shall establish and administer a
14 program to approve the issuance of sales and use tax exemption
15 certificates to qualifying businesses as specified in sections 19 through
16 22 of P.L. , c. (C.)(now pending before the Legislature as this
17 bill). The receipts from the certificate holder's purchase of eligible
18 property located or placed at the business location covered by the
19 project approval within the period established pursuant to the terms
20 and conditions of the project approval for the approved business
21 location shall be exempt from the tax imposed under the "Sales and
22 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

23

24 21. (New section) a. A business seeking to participate in the
25 sales and use tax exemption certificate program established pursuant
26 to sections 19 through 22 of P.L. , c. (C.)(now pending before
27 the Legislature as this bill) shall submit a project application to the
28 secretary in such form as required by the secretary.

29 b. The location for the project shall be situated in designated
30 Planning Area 1 or 2, as defined in the State Development and
31 Redevelopment Plan adopted by the State Planning Commission;
32 provided however, that a business project involving the renovation or
33 expansion of an existing facility that is not located in designated
34 Planning Area 1 or 2 may be eligible to participate in the program, at
35 the determination of the secretary, if all other applicable criteria are
36 satisfied.

37 A business located in an urban enterprise zone designated pursuant
38 to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303
39 (C.52:27H-60 et seq.) as of the effective date of this section shall not
40 be eligible to participate in this program if the relocation project is
41 from a facility within the urban enterprise zone to a facility outside an
42 urban enterprise zone; provided however, that if the relocation is to
43 a facility already owned or leased by the same business and that
44 business already employs at least the same number of persons as those
45 being relocated from the urban enterprise zone, it may be eligible to
46 apply.

1 c. To be eligible to apply for the sales and use tax exemption
2 certificate program, a business shall have operated continuously in this
3 State, in whole or in part, in its current form or as a predecessor
4 entity, for at least 10 years prior to filing an application and shall
5 satisfy at least one of the following criteria:

6 (1) the business has 1,000 or more full-time employees in the State
7 and the project involves relocating 500 or more full-time employees
8 into a new business location or locations;

9 (2) the business is a life sciences business or a manufacturing
10 facility and the project is: constructing one or more new research and
11 development facilities, constructing one or more new manufacturing
12 facilities in this State, or relocating to a new headquarters in this State
13 that will employ 250 or more full-time employees;

14 (3) the business is a life sciences business or a manufacturing
15 business and the project is constructing a new, or substantially
16 rehabilitating a vacant, property that will separately or collectively:

17 (a) be predominately a new research and development facility;

18 (b) be predominately a new manufacturing facility;

19 (c) house the headquarters of the business; or

20 (d) separately or collectively be a combination of subparagraphs
21 (a), (b) and (c);

22 provided, that the new or substantially rehabilitated facility will house
23 a minimum of 250 full-time employees. For the purposes of this
24 subparagraph, "predominantly" means a majority of the employees
25 housed in the new facility are engaged in that activity, or a majority of
26 the square footage of the new facility is used in that activity; or a
27 majority of the total value of the investment made will be employed in
28 that activity; or other measures of activity as may determined by the
29 secretary that demonstrate that a critical concentration of research and
30 development, manufacturing, or both, will occur at the new facility; or

31 (4) the business is, at the time of enactment of this section,
32 currently receiving a structured finance special guarantee pursuant to
33 N.J.A.C.19:31-2.1(c)3.ii(5) for the project.

34 d. For the purposes of determining a number of full-time
35 employees pursuant to subsection c. of this section, the full-time
36 employees of the members of a "controlled group of corporations" as
37 defined pursuant to section 1563 of the federal Internal Revenue Code
38 of 1986, 26 U.S.C. s.1563, shall be considered the employees of a
39 single employer.

40 e. A project may be completed in up to two phases provided that
41 it will be the national headquarters of a life sciences or manufacturing
42 company, and will include a significant research and development, a
43 significant manufacturing facility, or combination thereof if : (1) the
44 first completed phase will house at least 200 full-time employees and
45 the second phase will house at least 100 additional employees; and (2)
46 the project is pre-approved for phases and that all phases are

1 completed within 30 months of project approval.

2 f. Upon approval of a project, the secretary shall notify the
3 Director of the Division of Taxation in the Department of the Treasury
4 of the terms and conditions of the project approval and the director
5 shall issue a certificate of exemption pursuant to the terms and
6 conditions of the project approval. In general, the sales and use tax
7 exemption certificate provided by sections 19 through 22 of P.L. ,
8 c. (C.)(now pending before the Legislature as this bill) should
9 not apply to a purchases initiated by the business after the date that
10 the temporary certificate of occupancy is issued, or in cases where no
11 temporary certificate of occupancy is issued should not apply to a
12 purchases initiated by the business more than one year from the project
13 commencement date; however, the duration of the certificate of
14 exemption shall be pursuant to the terms and conditions of the project
15 approval.

16

17 22. (New section) The secretary shall, after consultation with the
18 Director of the Division of Taxation in the Department of the
19 Treasury, adopt rules and regulations pursuant to the "Administrative
20 Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) necessary to
21 govern the proper conduct and operation of the program consistent
22 with the provisions of sections 19 through 22 of P.L. , c. (C.)
23 (now pending before the Legislature as this bill).

24

25 23. (New section) a. Retail sales of energy and utility service to:

26 (1) a qualified business that employs at least 500 people within an
27 enterprise zone, at least 50%percent of whom are directly employed
28 in a manufacturing process, for the exclusive use or consumption of
29 such business within an enterprise zone, and

30 (2) a group of two or more persons: (a) each of which is a
31 qualified business that are all located within a single redevelopment
32 area adopted pursuant to the "Local Redevelopment and Housing
33 Law," P.L.1992, c.79 (C.40A:12A-1 et seq.); (b) that collectively
34 employ at least 500 people within an enterprise zone, at least 50% of
35 whom are directly employed in a manufacturing process; (c) are each
36 engaged in a vertically integrated business, evidenced by the
37 manufacture and distribution of a product or family of products that,
38 when taken together, are primarily used, packaged and sold as a single
39 product; and (d) collectively use the energy and utility service for the
40 exclusive use or consumption of each the persons that comprise group
41 within an enterprise zone;

42 are exempt from the taxes imposed under the "Sales and Use Tax
43 Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

44 A qualified business will continue to be subject to applicable Board
45 of Public Utilities tariff regulations except that its bills from utility
46 companies and third party suppliers for energy and utility service shall

1 not include charges for sales and use tax.

2 b. A business that meets the requirement of subsection a. of this
3 section shall not be allowed the exemption granted pursuant to this
4 section until it has complied with such requirements for obtaining the
5 exemption as may be provided pursuant to P.L.1983, c.303
6 (C.52:27H-60 et seq.) and P.L.1966, c.30 (C.54:32B-1 et seq.). The
7 Chief Executive Officer and Secretary of the Commerce and Economic
8 Growth Commission shall provide prompt notice to the President of
9 the Board of Public Utilities and to the Director of the Division of
10 Taxation in the Department of the Treasury, of a qualified business
11 that has qualified for the exemption under this subsection, shall
12 provide the president and the director an annual list of all businesses
13 that qualify.

14

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

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

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

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

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

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

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

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

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

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

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

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

45 (h) "Taxpayer" shall mean any corporation, and any partnership
46 required, or consenting, to report or to pay taxes, interest or penalties

1 under this act. "Taxpayer" shall not include a partnership that is listed
2 on a United States national stock exchange.

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

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

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

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

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

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

31 (A) The amount of any specific exemption or credit allowed in any
32 law of the United States imposing any tax on or measured by the
33 income of corporations;

34 (B) Any part of any income from dividends or interest on any kind
35 of stock, securities or indebtedness, except as provided in paragraph
36 (5) of subsection (k) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

44 (3) The commissioner may, whenever necessary to properly reflect
45 the entire net income of any taxpayer, determine the year or period in
46 which any item of income or deduction shall be included, without

1 being limited to the method of accounting employed by the taxpayer.

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

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

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

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

19 (ii) Making or placing deposits with foreign persons which are
20 banks or foreign branches of banks (including foreign subsidiaries) or
21 foreign branches of the taxpayers or with other international banking
22 facilities;

23 (iii) Entering into foreign exchange trading or hedging
24 transactions related to any of the transactions described in this
25 paragraph; or

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

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

31 (5) Entire net income shall exclude 100% of dividends which were
32 included in computing such taxable income for federal income tax
33 purposes, paid to the taxpayer by one or more subsidiaries owned by
34 the taxpayer to the extent of the 80% or more ownership of investment
35 described in subsection (d) of this section and shall exclude 50% of
36 dividends which were included in computing such taxable income for
37 federal income tax purposes, paid to the taxpayer by one or more
38 subsidiaries owned by the taxpayer to the extent of 50% or more
39 ownership of investment, such ownership of investment calculated in
40 the same manner as the 80% or more of ownership of investment is
41 calculated as described in subsection (d) of this section.

42 (6) (A) Net operating loss deduction. There shall be allowed as
43 a deduction for the privilege period the net operating loss carryover to
44 that period.

45 (B) Net operating loss carryover. A net operating loss for any
46 privilege period ending after June 30, 1984 shall be a net operating

1 loss carryover to each of the seven privilege periods following the
2 period of the loss. The entire amount of the net operating loss for any
3 privilege period (the "loss period") shall be carried to the earliest of
4 the privilege periods to which the loss may be carried. The portion of
5 the loss which shall be carried to each of the other privilege periods
6 shall be the excess, if any, of the amount of the loss over the sum of
7 the entire net income, computed without the exclusions permitted in
8 paragraphs (4) and (5) of this subsection or the net operating loss
9 deduction provided by subparagraph (A) of this paragraph, for each of
10 the prior privilege periods to which the loss may be carried.

11 (C) Net operating loss. For purposes of this paragraph the term
12 "net operating loss" means the excess of the deductions over the gross
13 income used in computing entire net income without the net operating
14 loss deduction provided for in subparagraph (A) of this paragraph and
15 the exclusions in paragraphs (4) and (5) of this subsection.

16 (D) Change in ownership. Where there is a change in 50% or more
17 of the ownership of a corporation because of redemption or sale of
18 stock and the corporation changes the trade or business giving rise to
19 the loss, no net operating loss sustained before the changes may be
20 carried over to be deducted from income earned after such changes.
21 In addition where the facts support the premise that the corporation
22 was acquired under any circumstances for the primary purpose of the
23 use of its net operating loss carryover, the director may disallow the
24 carryover.

25 (E) Notwithstanding the provisions of this paragraph (6) of
26 subsection (k) of this section to the contrary, for privilege periods
27 beginning during calendar year 2002 and calendar year 2003, no
28 deduction for any net operating loss carryover shall be allowed. If and
29 only to the extent that any net operating loss carryover deduction is
30 disallowed by reason of this subparagraph (E), the date on which the
31 amount of the disallowed net operating loss carryover deduction
32 would otherwise expire shall be extended by two years.

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

38 (7) The entire net income of gas, electric and gas and electric
39 public utilities that were subject to the provisions of P.L.1940, c.5
40 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting
41 the New Jersey depreciation allowance for federal tax depreciation
42 with respect to assets placed in service prior to January 1, 1998. For
43 gas, electric, and gas and electric public utilities that were subject to
44 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,
45 the New Jersey depreciation allowance shall be computed as follows:
46 All depreciable assets placed in service prior to January 1, 1998 shall

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

16 (A) Depreciation for property placed in service prior to January
17 1, 1998 shall be adjusted as follows:

18 (i) Depreciation for federal income tax purposes shall be
19 disallowed in full.

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

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

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

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

46 (9) Notwithstanding paragraph (1) of this subsection, entire net

1 income shall not include the income derived by a corporation
2 organized in a foreign country from the international operation of a
3 ship or ships, or from the international operation of aircraft, if such
4 income is exempt from federal taxation pursuant to section 883 of the
5 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

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

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

33 (12) (A) Notwithstanding the provisions of subsection (k) of
34 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.
35 s.168, [and] subsection (b) of section 1400L of the federal Internal
36 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal law,
37 for property acquired after September 10, 2001 [and before
38 September 11, 2004], the depreciation deduction otherwise allowed
39 pursuant to section 167 of the federal Internal Revenue Code of 1986,
40 26 U.S.C. s.167, shall be determined pursuant to [the requirements
41 and limitations of section 168 of the federal Internal Revenue Code of
42 1986, 26 U.S.C. s.168, and section 280F of the federal Internal
43 Revenue Code of 1986, 26 U.S.C. s.280F, as if that subsection (k) and
44 that section 1400L were not in effect] the provisions of the federal
45 Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
46 December 31, 2001.

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

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

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

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

21 (m) "Financial business corporation" shall mean any corporate
22 enterprise which is (1) in substantial competition with the business of
23 national banks and which (2) employs moneyed capital with the object
24 of making profit by its use as money, through discounting and
25 negotiating promissory notes, drafts, bills of exchange and other
26 evidences of debt; buying and selling exchange; making of or dealing
27 in secured or unsecured loans and discounts; dealing in securities and
28 shares of corporate stock by purchasing and selling such securities and
29 stock without recourse, solely upon the order and for the account of
30 customers; or investing and reinvesting in marketable obligations
31 evidencing indebtedness of any person, copartnership, association or
32 corporation in the form of bonds, notes or debentures commonly
33 known as investment securities; or dealing in or underwriting
34 obligations of the United States, any state or any political subdivision
35 thereof, or of a corporate instrumentality of any of them. This shall
36 include, without limitation of the foregoing, business commonly
37 known as industrial banks, dealers in commercial paper and
38 acceptances, sales finance, personal finance, small loan and mortgage
39 financing businesses, as well as any other enterprise employing
40 moneyed capital coming into competition with the business of national
41 banks; provided that the holding of bonds, notes, or other evidences
42 of indebtedness by individual persons not employed or engaged in the
43 banking or investment business and representing merely personal
44 investments not made in competition with the business of national
45 banks, shall not be deemed financial business. Nor shall "financial
46 business" include national banks, production credit associations

1 organized under the Farm Credit Act of 1933 or the Farm Credit Act
2 of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
3 insurance companies duly authorized to transact business in this State,
4 security brokers or dealers or investment companies or bankers not
5 employing moneyed capital coming into competition with the business
6 of national banks, real estate investment trusts, or any of the following
7 entities organized under the laws of this State: credit unions, savings
8 banks, savings and loan and building and loan associations,
9 pawnbrokers, and State banks and trust companies.

10 (n) "International banking facility" shall mean a set of asset and
11 liability accounts segregated on the books and records of a depository
12 institution, United States branch or agency of a foreign bank, or an
13 Edge or Agreement Corporation that includes only international
14 banking facility time deposits and international banking facility
15 extensions of credit as such terms are defined in section 204.8(a)(2)
16 and section 204.8(a)(3) of Regulation D of the board of governors of
17 the Federal Reserve System, 12 CFR Part 204, effective December 3,
18 1981. In the event that the United States enacts a law, or the board
19 of governors of the Federal Reserve System adopts a regulation which
20 amends the present definition of international banking facility or of
21 such facilities' time deposits or extensions of credit, the Commissioner
22 of Banking and Insurance shall forthwith adopt regulations defining
23 such terms in the same manner as such terms are set forth in the laws
24 of the United States or the regulations of the board of governors of the
25 Federal Reserve System. The regulations of the Commissioner of
26 Banking and Insurance shall thereafter provide the applicable
27 definitions.

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

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

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

38 (r) "Qualified investment partnership" means a partnership under
39 this act that has more than 10 members or partners with no member or
40 partner owning more than a 50% interest in the entity and that derives
41 at least 90% of its gross income from dividends, interest, payments
42 with respect to securities loans, and gains from the sale or other
43 disposition of stocks or securities or foreign currencies or
44 commodities or other similar income (including but not limited to gains
45 from swaps, options, futures or forward contracts) derived with
46 respect to its business of investing or trading in those stocks,

1 securities, currencies or commodities, but "investment partnership"
2 shall not include a "dealer in securities" within the meaning of section
3 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

4 (s) "Savings institution" means a state or federally chartered
5 building and loan association, savings and loan association, or savings
6 bank.

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

9 (cf: P.L.2002, c.40, s.3)

10

11 25. Section 3 of P.L.1993, c.171 (C.54:10A-5.18) is amended to
12 read as follows:

13 3. a. A taxpayer shall be allowed a credit against the tax imposed
14 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount
15 equal to 2% of the investment credit base of qualified equipment
16 placed in service in the tax year, up to a maximum allowed credit for
17 the tax year of \$1,000,000; provided however, that if a taxpayer has
18 50 or fewer employees (an average number of full-time employees and
19 full-time employee equivalents of 50 or less) and entire net income to
20 be used as a measure of the tax determined pursuant to section 6 of
21 P.L.1945, c.162 (C.54:10A-6) of less than \$5,000,000 for the tax year,
22 the taxpayer shall be allowed a credit against the tax imposed pursuant
23 to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to
24 4% of the investment credit base of qualified equipment placed in
25 service in the tax year, up to a maximum allowed credit for the tax
26 year of \$1,000,000.

27 b. The tax imposed for the tax year pursuant to section 5 of
28 P.L.1945, c.162, shall first be reduced by the amount of any credit
29 allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78),
30 then by any credit allowed pursuant to section 12 of P.L.1985, c.227
31 (C.55:19-13), then by any credit allowed pursuant to section 42 of
32 P.L.1987, c.102 (C.54:10A-5.3), prior to applying any credits
33 allowable pursuant to this section. Credits allowable pursuant to this
34 section shall be applied in the order of the credits' tax years. The
35 amount of the credits applied under this section and section 4 of
36 P.L.1993, c.171 (C.54:10A-5.19), against the tax imposed pursuant to
37 section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of
38 the tax liability otherwise due and shall not reduce the tax liability to
39 an amount less than the statutory minimum provided in subsection (e)
40 of section 5 of P.L.1945, c.162.

41 c. The amount of tax year credit otherwise allowable under
42 subsection a. of this section which cannot be applied for the tax year
43 due to the limitations of subsection b. of this section may be carried
44 over, if necessary, to the seven tax years following a credit's tax year.
45 Provided however, that a taxpayer may not carry over any amount of
46 credit or credits allowed under subsection a. of this section to a tax

1 year during which a corporate acquisition with respect to which the
2 taxpayer was a target corporation occurred or during which the
3 taxpayer was a party to a merger or a consolidation, or to any
4 subsequent tax year, if the credit was allowed for a tax year prior to
5 the year of acquisition, merger or consolidation; provided further,
6 however, that if in the case of a corporate merger or corporate
7 consolidation the taxpayer can demonstrate, through the submission
8 of a copy of the plan of merger or consolidation and such other
9 evidence as may be required by the director, the identity of the
10 constituent corporation which was the acquiring person, a credit
11 allowed to the acquiring person may be carried over by the taxpayer.
12 "Acquiring person" means the constituent corporation the stockholders
13 of which own the largest proportion of the total voting power in the
14 surviving or consolidated corporation after the merger or
15 consolidation.

16 d. (1) With respect to equipment that is three-year property, as
17 described in subsection (e) of section 168 of the federal Internal
18 Revenue Code of 1986, 26 U.S.C. s.168, which is disposed of or
19 ceases to be qualified equipment prior to the end of the 36 month
20 period following being placed in service in this State, the amount of
21 credit allowed shall be that portion of the credit provided for in
22 subsection a. of this section which represents the ratio which the
23 months of qualified use bear to 36, and the difference between the
24 credit taken and the credit allowed for actual use shall be forfeited.
25 Additionally, except when the property is damaged or destroyed by
26 fire, flood, storm or other casualty, or is stolen, the taxpayer shall
27 redetermine the amount of credit allowed for the tax year of the credit
28 by reducing the investment credit base by the cost of the amount of the
29 disposed or disqualified equipment. If the redetermination of the
30 credit results in an increase in final liability for any tax year in which
31 the credit was applied, then, notwithstanding the four year limitation
32 of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid
33 liability, if any, shall be considered a deficiency for the purposes of the
34 State Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount
35 of credit allowed for actual use shall be determined by multiplying the
36 original credit by the ratio which the months of qualified use bear to
37 36.

38 (2) With respect to property other than that described in
39 subparagraph (1) of this subsection which is disposed of or ceases to
40 be qualified equipment prior to the end of the 60 month period
41 following being placed in service in this State, the amount of credit
42 allowed shall be that portion of the credit provided for in subsection
43 a. of this section which represents the ratio which the months of
44 qualified use bear to 60, and the difference between the credit taken
45 and the credit allowed for actual use shall be forfeited. Additionally,
46 except when the property is damaged or destroyed by fire, flood,

1 storm or other casualty, or is stolen, the taxpayer shall redetermine the
2 amount of credit allowed for the tax year of the credit by reducing the
3 investment credit base by the cost of the amount of the disposed or
4 disqualified equipment. If the redetermination of the credit results in
5 an increase in final liability for any tax year in which the credit was
6 applied, then, notwithstanding the four year limitation of subsection b.
7 of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any,
8 shall be considered a deficiency for the purposes of the State Tax
9 Uniform Procedure Law, R.S.54:48-1 et seq. The amount of credit
10 allowed for actual use shall be determined by multiplying the original
11 credit by the ratio which the months of qualified use bear to 60.
12 (cf: P.L.1993, c.171, s.3)

13

14 26. (New section) a. For taxable years beginning on or after
15 January 1, 2004, notwithstanding the provisions of N.J.S.54A:5-1, if
16 any, or any other law to the contrary, for the purposes of determining
17 the amount of a category of income pursuant to N.J.S.54A:5-1 that is
18 net of expenses:

19 (1) notwithstanding the provisions of subsection (k) of section 168
20 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168,
21 subsection (b) of section 1400L of the federal Internal Revenue Code
22 of 1986, 26 U.S.C. s.1400L, or any other federal law, for property
23 placed in service on or after January 1, 2004, the depreciation
24 deduction otherwise allowed pursuant to section 167 of the federal
25 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined
26 pursuant to the provisions of the federal Internal Revenue Code of
27 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001; and

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

35 b. The director shall prescribe the rules and regulations necessary
36 to carry out the provisions of this section, including, among others,
37 those for determining the adjusted basis of the acquired property for
38 the purposes of the "New Jersey Gross Income Tax Act,"
39 N.J.S.54A:1-1 et seq.

40

41 27. This act shall take effect immediately; sections 1 through 17
42 shall apply to State fiscal years beginning July 1, 2004 and thereafter;
43 and section 25 shall apply to qualified equipment placed in service
44 during privilege periods beginning on or after July 1, 2004.