

# ASSEMBLY, No. 3621

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 12, 2018

**Sponsored by:**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Provides gross income tax and corporation business tax credits for qualified business expenses incurred by business that cultivates marijuana located in UEZ.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT providing gross income tax and corporation business tax  
2 credits to certain businesses that cultivate marijuana and  
3 supplementing P.L.1974, c.80 (C.34:1B-1 et seq.), Title 54A of  
4 the New Jersey Statutes, and P.L.1945, c.162 (C.54:10A-1 et  
5 seq.).

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

9  
10 1. As used in this act:

11 “Authority” means the New Jersey Economic Development  
12 Authority, created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.).

13 “Director” means the Director of Taxation in the New Jersey  
14 Department of the Treasury.

15 “Eligible zone” means an urban enterprise zone that, at any time,  
16 has been designated pursuant to the "New Jersey Urban Enterprise  
17 Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.), irrespective of  
18 whether the urban enterprise zone designation for that area has  
19 expired.

20 “Marijuana” means all parts of the plant genus *Cannabis L.*,  
21 whether growing or not; the seeds thereof, and every compound,  
22 manufacture, salt, derivative, mixture, or preparation of the plant or  
23 its seeds, except those containing resin extracted from the plant; but  
24 shall not include the weight of any other ingredient combined with  
25 marijuana to prepare topical or oral administrations, food, drink, or  
26 other product.

27 “Marijuana cultivation facility” means a business that is licensed  
28 by the State to cultivate marijuana.

29 “Qualified business expense” means the costs, as determined by  
30 the authority pursuant to subsection e. of section 2 of P.L. ,  
31 c. (C. ) (pending before the Legislature as this bill), incurred  
32 by a business related to the installation, operation, or maintenance  
33 of a marijuana cultivation facility.

34  
35 2. a. The authority, in consultation with the Department of  
36 Law and Public Safety and the Department of the Treasury, shall  
37 establish a five year pilot program, entitled the “New Jersey Green  
38 Development and Growth Program,” to permit a qualifying  
39 business, which is engaged in the industry of marijuana cultivation  
40 in an eligible zone, to claim credits against the business’s gross  
41 income tax liability, pursuant to section 3 of P.L. , c. (C. )  
42 (pending before the Legislature as this bill), or credits against the  
43 business’s corporation business tax liability, pursuant to section 4  
44 of P.L. , c. (C. ) (pending before the Legislature as this  
45 bill).

46 b. (1) A business seeking to participate in the pilot program  
47 established pursuant to this section shall apply to the authority, in a  
48 form and manner as determined by the authority. In addition to the

1 criteria adopted pursuant to subsection e. of this section, the  
2 business shall submit, as part of an application, a detailed business  
3 plan with demonstrable information sufficient to establish to the  
4 satisfaction of the authority that the business's participation in the  
5 pilot program will result in:

6 (a) the creation of full time jobs in an eligible zone in which the  
7 business's marijuana cultivation facility is located;

8 (b) utilization of property that has been abandoned, under-  
9 utilized, in need of rehabilitation, or otherwise designated pursuant  
10 to the "Abandoned Properties Rehabilitation Act," P.L.2003, c.210  
11 (C.55:19-78 et seq.); and

12 (c) the implementation of community safeguards to support  
13 public safety and welfare in the eligible zone in which the  
14 business's marijuana cultivation facility is located.

15 (2) The authority shall review a completed application and, if  
16 meeting the requirements established pursuant to this subsection  
17 and subsection e. of this section, approve the application within 60  
18 days after receipt thereof.

19 c. The authority may, in its discretion, require a business that  
20 qualifies to participate in the pilot program pursuant to this section  
21 to submit audited financial statements to the authority in order to  
22 ensure the continued viability of the business's operations.

23 d. The authority, in cooperation with the Department of Law  
24 and Public Safety and the Department of the Treasury, shall submit  
25 to the Governor and, pursuant to section 2 of P.L.1991, c.164  
26 (C.52:14-19.1), the Legislature, annually until expiration of the  
27 pilot program, a report summarizing and detailing the effectiveness  
28 of the pilot program in promoting job growth and community  
29 investment in eligible zones.

30 e. The authority, in consultation with the Department of Law  
31 and Public Safety and the Department of the Treasury, shall adopt,  
32 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
33 (C.52:14B-1 et seq.), and immediately upon filing with the Office  
34 of Administrative Law, rules and regulations necessary to effectuate  
35 the purposes of this section, including but not limited to:

36 (1) the criteria and procedures necessary for a business to  
37 qualify for participation in the pilot program established pursuant to  
38 this section;

39 (2) the costs that shall be deemed qualified business expenses;

40 (3) the requirements for a business to qualify as a marijuana  
41 cultivation facility; and

42 (4) community safeguards required to be implemented by a  
43 business that qualifies for the pilot program,

44 which shall be effective for a period not to exceed 360 days  
45 following enactment of P.L. , c. (C. ) (pending before the  
46 Legislature as this bill) and may thereafter be amended, adopted, or  
47 readopted by the authority in accordance with the requirements of  
48 P.L.1968, c.410.

1           3. a. For taxable years beginning on or after January 1, 2019, but  
2 before January 1, 2024, a taxpayer that has been approved by the  
3 authority to participate in the pilot program established pursuant to  
4 section 2 of P.L. , c. (C. ) (pending before the Legislature as  
5 this bill) shall be allowed a credit against the tax otherwise due for the  
6 taxable year pursuant to the “New Jersey Gross Income Tax Act,”  
7 N.J.S.54A:1-1 et seq., in an amount equal to 25 percent of the  
8 qualified business expenses incurred by the taxpayer in relation to a  
9 marijuana cultivation facility located in an eligible zone.

10           b. The total value of the grants of tax credits approved by the  
11 director, pursuant to subsection a. of this section and subsection a. of  
12 section 4 of P.L. , c. (C. ) (pending before the Legislature as this  
13 bill), that may be applied against tax liability for a taxable year shall  
14 not exceed an aggregate annual limit of \$6,000,000. The total amount  
15 of tax credits allowed for a taxpayer by this subsection shall not  
16 exceed \$500,000, to be applied for over no more than a period of five  
17 taxable years. The amount applied against a tax liability for a taxable  
18 year for a taxpayer may not exceed \$250,000. If the amount of tax  
19 credits applied for by taxpayers in a taxable year, pursuant to sections  
20 3 and 4 of P.L. , c. (C. ) (pending before the Legislature as this  
21 bill), exceeds the aggregate annual limit of \$6,000,000, then a taxpayer  
22 who has first applied for and has not been allowed a tax credit amount  
23 for that reason shall be allowed, in the order in which the taxpayer  
24 submitted an application, the taxpayer’s approved amount of tax credit  
25 on the first day of the next succeeding taxable year in which tax credits  
26 are issued pursuant to P.L. , c. (C. ) (pending before the  
27 Legislature as this bill) and are not in excess of the amount of credits  
28 available.

29           c. To obtain a tax credit pursuant to this section, a taxpayer shall  
30 apply for a certification from the director that certifies: (1) that the  
31 taxpayer’s expenses are qualified business expenses pursuant to  
32 section 2 of P.L. , c. (C. ) (pending before the Legislature as  
33 this bill); and (2) the amount of the tax credit. The application shall be  
34 made thereto in a form and manner as determined by the director and  
35 shall include such information as the director deems relevant. Upon  
36 certification, the director shall submit a copy thereof to the taxpayer,  
37 the Attorney General, and the executive director of the authority.  
38 When filing a tax return that includes a claim for a credit pursuant to  
39 this section, the taxpayer shall include a copy of the certification  
40 issued by the director.

41           d. The order of priority of the application of the credit allowed  
42 pursuant to this section and any other credits allowed against the tax  
43 imposed pursuant to N.J.S.54A:1-1 et seq. for a taxable year shall be  
44 as prescribed by the director. The amount of credit allowed pursuant  
45 to subsection a. of this section shall be taken by the taxpayer to reduce  
46 the tax otherwise due and required to be paid for the taxable year to  
47 which the credit applies, but shall not reduce a taxpayer’s tax liability  
48 for a taxable year to an amount less than zero. The amount of credit

1 otherwise allowable pursuant to this section that cannot be applied for  
2 the taxable year against the tax liability otherwise due for that taxable  
3 year may be carried over, if necessary, for the five taxable years next  
4 following the taxable year for which the credit was allowed or until  
5 depleted, whichever is earlier.

6 e. A business entity that is classified as a partnership for federal  
7 income tax purposes shall not be allowed the credit directly under  
8 N.J.S.54A:1-1 et seq., but the amount of credit of the taxpayer in  
9 respect of a distributive share of partnership income shall be  
10 determined by allocating to the taxpayer that proportion of the credit  
11 acquired by the partnership that is equal to the taxpayer's share,  
12 whether or not distributed, of the total distributive income or gain of  
13 the partnership for its taxable year ending within or with the taxpayer's  
14 taxable year.

15 A taxpayer that is a New Jersey S corporation shall not be allowed  
16 the credit directly under N.J.S.54A:1-1 et seq., but the amount of credit  
17 of a taxpayer in respect of a pro rata share of S corporation income  
18 shall be determined by allocating to the taxpayer that proportion of the  
19 credit acquired by the New Jersey S corporation that is equal to the  
20 taxpayer's share, whether or not distributed, of the total pro rata share  
21 of S corporation income of the New Jersey S corporation for its  
22 taxable year ending within or with the taxpayer's taxable year.

23

24 4. a. For privilege periods beginning on or after January 1, 2019,  
25 but before January 1, 2024, a taxpayer that has been approved by the  
26 authority to participate in the pilot program established pursuant to  
27 section 2 of P.L. , c. (C. ) (pending before the Legislature as  
28 this bill) shall be allowed a credit against the tax imposed pursuant to  
29 section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 25  
30 percent of the qualified business expenses incurred by the taxpayer in  
31 relation to a marijuana cultivation facility located in an eligible zone.

32 b. The total value of the amount of tax credits approved by the  
33 director, pursuant to subsection a. of this section and subsection a. of  
34 section 3 of P.L. , c. (C. ) (pending before the Legislature as this  
35 bill), that may be applied against tax liability for a privilege period  
36 shall not exceed an aggregate annual limit of \$6,000,000. The total  
37 amount of tax credits allowed for a taxpayer by this subsection shall  
38 not exceed \$500,000, to be applied for over no more than a period of  
39 five privilege periods. The amount applied against a tax liability for a  
40 privilege period for an individual taxpayer may not exceed \$250,000.  
41 If the amount of tax credits applied for by taxpayers in a privilege  
42 period, pursuant to sections 3 and 4 of P.L. , c. (C. ) (pending  
43 before the Legislature as this bill), exceeds the aggregate annual limit  
44 of \$6,000,000, then a taxpayer who has first applied for and has not  
45 been allowed a tax credit amount for that reason shall be allowed, in  
46 the order in which the taxpayer has submitted an application, the  
47 taxpayer's approved amount of tax credit on the first day of the next  
48 succeeding privilege period in which tax credits are issued pursuant to

1 P.L. , c. (C. ) (pending before the Legislature as this bill) and  
2 are not in excess of the amount of credits available.

3 c. To obtain a tax credit pursuant to this section, a taxpayer shall  
4 apply for a certification from the director that certifies: (1) that the  
5 taxpayer's expenses are qualified business expenses pursuant to  
6 section 2 of P.L. , c. (C. ) (pending before the Legislature as  
7 this bill); and (2) the amount of the tax credit. The application shall be  
8 made thereto in a form and manner as determined by the director and  
9 shall include such information as the director deems relevant. Upon  
10 certification, the director shall submit a copy thereof to the taxpayer,  
11 the Attorney General, and the executive director of the authority.  
12 When filing a tax return that includes a claim for a credit pursuant to  
13 this section, the taxpayer shall include a copy of the certification  
14 issued by the director.

15 d. The order of priority of the application of the credit allowed  
16 pursuant to this section and any other credits allowed against the tax  
17 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a  
18 privilege period shall be as prescribed by the director. The amount of  
19 the credit applied pursuant to this section against the tax imposed  
20 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege  
21 period, when taken together with any other credits allowed against the  
22 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)  
23 shall not reduce the tax liability of a taxpayer for a privilege period to  
24 an amount less than the statutory minimum provided in subsection (e)  
25 of section 5 of P.L.1945, c.162 (C.54:10A-5). Except as provided in  
26 subsection e. of this section, the amount of credit otherwise allowable  
27 under this section which cannot be used to reduce the taxpayer's  
28 corporation business tax liability for the privilege period may be  
29 carried over, if necessary, for the five privilege periods following the  
30 privilege period for which the credit was allowed or until depleted,  
31 whichever is earlier.

32 e. A taxpayer may not carry over any amount of credit allowed  
33 under subsection a. of this section to a privilege period during which a  
34 corporate acquisition with respect to which the taxpayer was a target  
35 corporation occurred or during which the taxpayer was a party to a  
36 merger or a consolidation, or to any subsequent privilege period, if the  
37 credit was allowed for a privilege period prior to the year of  
38 acquisition, merger, or consolidation, except that if in the case of a  
39 corporate merger or corporate consolidation, the taxpayer can  
40 demonstrate, through the submission of a copy of the plan of merger or  
41 consolidation and any other evidence that may be required by the  
42 director, the identity of the constituent business which was the  
43 acquiring business, a credit allowed to the acquiring person may be  
44 carried over by the taxpayer.

45  
46 5. This act shall take effect immediately but remain inoperative  
47 until the enactment into law of an act legalizing the possession,

1 personal use, sale, cultivation, and distribution of marijuana for  
2 purposes other than medicinal.

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STATEMENT

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7 This bill provides gross income tax and corporation business tax  
8 credits for qualified business expenses incurred by businesses that  
9 cultivate marijuana located in UEZ, establishes a five year pilot  
10 program, called the “New Jersey Green Development and Growth  
11 Program,” which authorizes credits against the New Jersey gross  
12 income tax or corporation business tax, in an amount equal to 25  
13 percent of qualified business expenses, available to a business that  
14 operates a marijuana cultivation facility located in a current or  
15 formerly-designated Urban Enterprise Zone.

16 The bill provides that the total value of the amount of tax credits  
17 available to businesses to be applied against a gross income tax and  
18 corporation business tax liability for a tax year is not to exceed an  
19 aggregate annual limit of \$6 million. Each individual taxpayer, or  
20 business paying the corporation business tax, is allowed a total of  
21 \$500,000 in tax credits to be taken over a period up to five tax  
22 years, but no more than \$250,000 per tax year. If the amount of tax  
23 credits applied for exceeds the aggregate annual limit of \$6 million,  
24 a taxpayer who has applied for but has not been allowed a tax credit  
25 amount because the annual limit has been reached is then allowed,  
26 in the order in which the applications have been submitted, their  
27 approved amount of tax credits on the first day of the next  
28 succeeding year in which tax credits are issued and are not in excess  
29 of the amount of credits available. A taxpayer may carry forward  
30 the amount of any unused credits up to a period of five years,  
31 though the taxpayer may not reduce its gross income tax liability to  
32 an amount less than zero or an amount below the corporation  
33 business tax statutory minimum provided by subsection (e) of  
34 N.J.S.A.54:10A-5.

35 The term “qualified business expense” is defined in the bill to  
36 mean those costs incurred by a business, located in an area that is  
37 presently, or formerly was, designated an Urban Enterprise Zone,  
38 pursuant to N.J.S.A.52:27H-60 et seq., related to the installation,  
39 operation, and maintenance of a marijuana cultivation facility. The  
40 Executive Director of the New Jersey Economic Development  
41 Authority (the “EDA”), in consultation with the Department of Law  
42 and Public Safety and the Department of the Treasury, is required to  
43 promulgate rules and regulations to further define the scope of  
44 “qualified business expense,” as well as the scope of the term  
45 “marijuana cultivation facility.”

46 In order to be eligible to receive tax credits pursuant to this pilot  
47 program, a business is required to submit an application to the  
48 EDA. The EDA is required to establish procedures and criteria to

1 be evaluated in the application, but at a minimum the application is  
2 required to demonstrate that the business will create full-time jobs;  
3 utilize abandoned property or property in need of rehabilitation; and  
4 implement community safeguards. Within 60 days after an  
5 application is received, the authority is required to make a  
6 determination as to whether the applicant qualifies for the pilot  
7 program. Each year, the EDA is required to submit a report to the  
8 Governor and the Legislature that evaluates the effectiveness of the  
9 pilot program.

10 The effective date of this bill is contingent upon the enactment  
11 into law of an act legalizing the possession, personal use, sale,  
12 cultivation, and distribution of marijuana for purposes other than  
13 medicinal.