

ASSEMBLY, No. 5406

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 1, 2021

Sponsored by:

Assemblyman CHRISTOPHER P. DEPHILLIPS

District 40 (Bergen, Essex, Morris and Passaic)

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Increases qualified research expenses tax credit for corporation business taxpayers engaged in targeted industries; increases basic research payment tax credit; allows research tax credit to be refundable.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/8/2021)

1 AN ACT concerning corporation business tax credits for research
2 expenses and amending P.L.1993, c.175.

3

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

6

7 1. Section 1 of P.L.1993, c.175 (C.54:10A-5.24) is amended to
8 read as follows:

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

13 (1) **【10%】** 10 percent of the excess of the qualified research
14 expenses for the privilege period over the base amount, or 15
15 percent of the excess of the qualified research expenses for the
16 privilege period over the base amount if the taxpayer is primarily
17 engaged in business in one or more targeted industries; and

18 (2) **【10%】** 15 percent of the basic research payments for the
19 privilege period determined in accordance with section 41 of the
20 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

21 (3) Provided however, that the terms "qualified research
22 expenses," "base amount," "qualified organization base amount
23 period," "basic research" and any other terms determined by the
24 Director of the Division of Taxation to affect the calculation of the
25 credit shall include only expenditures for research conducted in this
26 State. For privilege periods beginning on and after January 1, 2018,
27 amounts paid or incurred by the taxpayer in carrying on any trade or
28 business of the taxpayer during the privilege period, including as
29 contributions, to an energy research consortium for energy research
30 shall also qualify as a basic research payment for purposes of this
31 subsection.

32 b. No credit shall be allowed under section 42 of P.L.1987,
33 c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and
34 Employment Investment Tax Credit Act," P.L.1993, c.171
35 (C.54:10A-5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et
36 seq.), for property or expenditures for which a credit is allowed, or
37 which are includable in the calculation of a credit allowed, under
38 this section.

39 The order of priority of the application of the credit allowed
40 pursuant to this section and any other credits allowed by law shall
41 be as prescribed by the director. Credits allowable pursuant to this
42 section shall be applied in the order of the privilege periods for
43 which the credits were allowed.

44 For privilege periods beginning before January 1, 2012, but
45 before the effective date of P.L. , c. (pending before the

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Legislature as this bill), the amount of the credits applied under this
2 section against the tax imposed pursuant to section 5 of P.L.1945,
3 c.162, for the privilege period shall not exceed **【50%】** 50 percent of
4 the tax liability otherwise due and shall not reduce the tax liability
5 to an amount less than the statutory minimum provided in
6 subsection (e) of section 5 of P.L.1945, c.162.

7 For privilege periods beginning on or after January 1, 2012, but
8 before the effective date of P.L. , c. (pending before the
9 Legislature as this bill), the amount of the credits applied under this
10 section against the tax imposed pursuant to section 5 of P.L.1945,
11 c.162, for the privilege period shall not reduce the tax liability to an
12 amount less than the statutory minimum provided in subsection (e)
13 of section 5 of P.L.1945, c.162.

14 For privilege periods beginning on or after January 1, 2018, but
15 before the effective date of P.L. , c. (pending before the
16 Legislature as this bill), the credit taken under this section shall not
17 be refundable.

18 **【The】** For privilege periods beginning on or after the effective
19 date of P.L. , c. (pending before the Legislature as this bill), the
20 amount of credit otherwise allowable under this section which
21 cannot be applied for the privilege period **【due to the limitations of**
22 **this subsection】** against tax liability otherwise due for that privilege
23 period may, at the election of the taxpayer, be carried over, if
24 necessary, to the seven privilege periods following a credit's
25 privilege period, or be claimed as and treated as an overpayment for
26 the purposes of R.S.54:49-15, except that section 7 of P.L.1992,
27 c.175 (C.54:49-15.1) shall not apply.

28 c. No provision terminating section 41 of the federal Internal
29 Revenue Code, 26 U.S.C. s.41, shall apply.

30 d. For privilege periods beginning on and after January 1,
31 2020, the portion of qualified research expenses and qualified
32 payments of a taxpayer that is a qualified small business within the
33 meaning of section 41(h)(3) of the federal Internal Revenue Code
34 (26 U.S.C. s.41) that were disallowed for the section 41(h) tax
35 credit because the taxpayer made an election pursuant to sections
36 41(h) and 3111(f) of the federal Internal Revenue Code (26 U.S.C.
37 s.41 and s.3111) to take the 3111(f) credit in lieu of the 41(h) credit,
38 shall be allowed for the purposes of calculating the New Jersey
39 credit provided for by this section.

40 e. As used in this section, “targeted industry” means any
41 industry identified from time to time by the New Jersey Economic
42 Development Authority, which industries shall initially include, but
43 not be limited to, advanced transportation and logistics,
44 manufacturing, aviation, autonomous vehicle and zero-emission
45 vehicle research or development, clean energy, life sciences, hemp
46 processing, information and high technology, finance and insurance,
47 professional services, film and digital media, non-retail food and
48 beverage businesses including food innovation, and other

1 innovative industries that disrupt current technologies or business
2 models.

3 (cf: P.L.2020, c.118, s.10)
4

5 2. This act shall take effect immediately and shall apply to
6 privilege periods beginning on or after the date of enactment.
7

8

9 STATEMENT

10

11 This bill makes several changes to the research tax credit
12 provided under the corporation business tax, including increasing
13 the qualified research expenses credit for taxpayers engaged in
14 targeted industries, increasing the basic research payments tax
15 credit for all taxpayers, and allowing the total credit to be
16 refundable.

17 Under current law, a corporation business taxpayer may receive a
18 research tax credit in an amount equal to (1) 10 percent of the
19 excess of qualified research expenses for the privilege period over
20 the base amount; and (2) 10 percent of the basic research payments
21 for the privilege period.

22 This bill increases the qualified research expenses tax credit
23 from 10 percent to 15 percent for taxpayers who are primarily
24 engaged in business in one or more targeted industries. For the
25 purpose of calculating the qualified research expenses tax credit, the
26 base amount is determined based on a fixed percentage of the
27 taxpayer's average annual gross receipts. Qualified research
28 expenses are also defined to include the sum of in-house research
29 expenses and contract research expenses that are paid or incurred
30 during the privilege period.

31 Under the bill, the New Jersey Economic Development Authority
32 would be responsible for periodically identifying a list of targeted
33 industries. However, the bill requires the initial list of targeted
34 industries to include advanced transportation and logistics,
35 manufacturing, aviation, autonomous vehicle and zero-emission
36 vehicle research or development, clean energy, life sciences, hemp
37 processing, information and high technology, finance and insurance,
38 professional services, film and digital media, non-retail food and
39 beverage businesses including food innovation, and other
40 innovative industries that disrupt current technologies or business
41 models.

42 Additionally, the bill increases the basic research payments tax
43 credit from 10 percent to 15 percent for all taxpayers. State
44 regulations define basic research payments to include cash
45 payments provided by a corporation to qualified organizations (e.g.,
46 institutions of higher education, certain scientific research
47 organizations, and certain scientific tax-exempt organization) for
48 the performance of basic research. Under state regulations, the

1 credit is calculated based on the provisions of section 41 of the
2 federal Internal Revenue Code of 1986 (26 U.S.C. s.41), as in effect
3 on June 30, 1992.

4 The bill also allows the research tax credit to be refundable for
5 privilege periods beginning on or after the date of enactment.
6 Under current law, the research tax credit cannot be refunded, and
7 taxpayers are permitted to carry forward the unused portion of the
8 credit for seven privilege periods. Under the bill, a taxpayer may
9 instead elect to receive the unused portion of the credit as a tax
10 refund, or carry forward the unused credit. When a tax credit is
11 refundable, the State is required to provide the taxpayer with a cash
12 payment in the amount of the unused credit, which represents an
13 overpayment of tax.