

SENATE, No. 1875

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
Senator JOSEPH A. LAGANA
District 38 (Bergen and Passaic)

SYNOPSIS

Provides gross income tax credits to support development of New Jersey-based small business start-ups.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing gross income tax credits to support the
2 development of New Jersey-based small business start-ups,
3 supplementing chapter 4 of Title 54A of the New Jersey Statutes.
4

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

8 1. As used in sections 1 through 5 of
9 P.L. , c. (C.) (pending before the Legislature as this bill):

10 “Employee” means an individual who is employed by, or
11 otherwise performs work or renders services for, a qualified small
12 business for consideration on a full-time, part-time, seasonal, or
13 other basis. “Employee” includes an employee who is obtained by a
14 qualified small business from a temporary employee agency,
15 professional employer organization, or employee leasing agency,
16 and, if a qualified small business is classified as a partnership for
17 federal income tax purposes, each partner of the partnership.

18 “Qualified small business” means a business that:

19 is registered to do business in this State,

20 maintains a business location or otherwise derives a majority of
21 its income from business activities or operations conducted within
22 this State,

23 has no more than 50 employees in any calendar month during the
24 first taxable year in which the business is conducted or operated for
25 a profit by the taxpayer, and

26 has net income of not more than \$100,000 from all business
27 activities or operations conducted within and without this State
28 during the first taxable year in which the business is conducted or
29 operated for a profit by the taxpayer.
30

31 2. a. A taxpayer that is a qualified small business shall be
32 allowed a credit against the tax imposed pursuant to the “New
33 Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in an amount
34 equal to:

35 (1) 75 percent of the New Jersey gross income tax liability that
36 is incurred and required to be paid by the taxpayer in connection
37 with the conduct or operation of the qualified small business during
38 the first taxable year in which the qualified small business is
39 conducted or operated for a profit by the taxpayer,

40 (2) 50 percent of the New Jersey gross income tax liability that
41 is incurred and required to be paid by the taxpayer in connection
42 with the conduct or operation of the qualified small business during
43 the second taxable year in which the qualified small business is
44 conducted or operated for a profit by the taxpayer, and

45 (3) 25 percent of the New Jersey gross income liability that is
46 incurred and required to be paid by the taxpayer in connection with
47 the conduct or operation of the qualified small business during the

1 third taxable year in which the qualified small business is conducted
2 or operated for a profit by the taxpayer.

3 b. The amount of credit allowed pursuant to paragraph (1), (2),
4 or (3) of subsection a. of this section shall be taken by the taxpayer
5 to reduce the tax otherwise due and required to be paid for the
6 taxable year to which the credit applies. A credit allowed pursuant
7 to paragraph (1) of subsection a. of this section shall only be taken
8 by the taxpayer to reduce the tax otherwise due and required to be
9 paid for the first taxable year in which the qualified small business
10 is conducted or operated for a profit by the taxpayer. A credit
11 allowed pursuant to paragraph (2) of subsection a. of this section
12 shall only be taken by the taxpayer to reduce the tax otherwise due
13 and required to be paid for the second taxable year in which the
14 qualified small business is conducted or operated for a profit by the
15 taxpayer. A credit allowed pursuant to paragraph (3) of subsection
16 a. of this section shall only be taken by the taxpayer to reduce the
17 tax otherwise due and required to be paid for the third taxable year
18 in which the qualified small business is conducted or operated for a
19 profit by the taxpayer.

20 c. The priority in which a credit allowed pursuant to paragraph
21 (1), (2), or (3) of subsection a. of this section and any other credits
22 or deductions or adjustments that are allowed by law shall be taken
23 shall be prescribed by the director.

24 d. A qualified small business that is classified as a partnership
25 for federal income tax purposes shall not be allowed a credit
26 directly, but the amount of credit of a taxpayer in respect of a
27 distributive share of partnership income shall be determined by
28 allocating to the taxpayer that proportion of the credit acquired by
29 the partnership that is equal to the taxpayer's share, whether or not
30 distributed, of the total distributive income or gain of the
31 partnership for its taxable year ending within or with the taxpayer's
32 taxable year except as otherwise provided by law. A qualified small
33 business that is a New Jersey S Corporation shall not be allowed a
34 credit directly, but the amount of credit of a taxpayer in respect of a
35 pro rata share of S Corporation income shall be determined by
36 allocating to the taxpayer that proportion of the credit acquired by
37 the New Jersey S Corporation that is equal to the taxpayer's share,
38 whether or not distributed, of the total pro rata share of S
39 Corporation income of the New Jersey S Corporation for its
40 privilege period ending within or with the taxpayer's taxable year
41 except as otherwise provided by law.

42
43 3. a. Notwithstanding the provisions of section 2 of
44 P.L. , c. (C.) (pending before the Legislature as this bill) to
45 the contrary, a taxpayer shall not be permitted to take any credits
46 allowed in accordance with section 2 of P.L. , c. (C.)
47 (pending before the Legislature as this bill) to reduce or offset the
48 New Jersey gross income tax liability that is incurred and required

1 to be paid by the taxpayer in connection with the conduct or
2 operation of a qualified small business unless the taxpayer has
3 obtained prior written authorization from the director in accordance
4 with this section.

5 b. The director shall establish an application process and
6 prescribe the form and manner through which a taxpayer may make
7 and file an application to obtain the director's written authorization
8 for the allowance of a credit. The application shall, at a minimum,
9 require the taxpayer to demonstrate, in a form and manner as shall
10 be prescribed by the director, that the qualified small business for
11 which the taxpayer is seeking the director's written authorization
12 for the allowance of a credit is unrelated to the conduct or operation
13 of any other business that was, or is currently, conducted or
14 operated by the taxpayer or, if the qualified small business and any
15 other business that was, or is currently, conducted or operated by
16 the taxpayer are determined by the director to be related by
17 common ownership, the use of similar business names, trademarks,
18 or service marks, or the conduct of similar business activities or
19 operations, that the qualified small business was not established or
20 acquired for the purpose of enjoying the benefit of the credit.

21 c. The director shall review each application made and filed by
22 a taxpayer in accordance with subsection b. of this section and
23 make a determination regarding the approval of an application
24 seeking the director's written authorization for the allowance of a
25 credit within 90 calendar days of the date a complete application is
26 received.

27 d. The director shall issue a written authorization for the
28 allowance of a credit to each taxpayer that made and filed a
29 complete application that has been reviewed and approved by the
30 director in accordance with subsection c. of this section within five
31 calendar days of the date the director's determination is made. Each
32 taxpayer issued a written authorization for the allowance of a credit
33 shall include a copy of the director's authorization when filing a
34 return that includes a claim for the credit allowed in accordance
35 with section 2 of P.L. , c. (C.) (pending before the
36 Legislature as this bill).

37 e. If the director fails to make a determination regarding the
38 approval of an application seeking the director's written
39 authorization for the allowance of a credit within 90 calendar days
40 of the date a complete application is received, or if the director fails
41 to issue a written authorization for the allowance of a credit within
42 five calendar days of the date the director's determination is made,
43 the application shall be deemed to have been approved and the
44 written authorization shall be deemed to have been issued by the
45 director. Each taxpayer that made and filed a complete application
46 in accordance with subsection b. of this section but fails to receive a
47 determination from the director within 90 calendar days of the date
48 a complete application is received, or fails to receive a written

1 authorization for the allowance of a credit within five calendar days
2 of the date the director's determination is made, shall include a
3 copy of the taxpayer's application when filing a return that includes
4 a claim for the credit allowed in accordance with section 2 of
5 P.L. , c. (C.) (pending before the Legislature as this bill).

6
7 4. Notwithstanding any provisions of the "Administrative
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
9 contrary, the director may adopt immediately upon filing with the
10 Office of Administrative Law such rules and regulations as the
11 director determines to be necessary and appropriate to effectuate the
12 purposes of P.L. , c. (C.) (pending before the Legislature as
13 this bill), which rules and regulations shall be effective for a period
14 not to exceed 360 calendar days following the effective date of
15 P.L. , c. (C.) (pending before the Legislature as this bill) and
16 may thereafter be amended, adopted, or readopted by the director in
17 accordance with the requirements of P.L.1968, c.410 (C.52:14B-
18 1 et seq.).

19
20 5. This act shall take effect immediately and apply to tax
21 liabilities incurred and required to be paid in connection with
22 qualified small businesses first conducted or operated for a profit in
23 taxable years beginning on or after January 1 next following the
24 date of enactment.

25 26 27 STATEMENT

28
29 This bill provides credits against the New Jersey gross income
30 tax to support the development of certain New Jersey-based small
31 business start-ups.

32 Under the bill, taxpayers that meet the definition of a qualified
33 small business are allowed gross income tax credits that can be
34 taken to reduce the taxpayer's liability for tax during the first,
35 second, and third taxable years in which the business is conducted
36 or operated for a profit by the taxpayer. The bill provides that the
37 amount of credit permitted to be taken is determined based upon a
38 fixed percentage of the taxpayer's New Jersey gross income tax
39 liability incurred and required to be paid in connection with the
40 conduct or operation of the qualified small business.

41 The bill provides that the fixed percentage of the credit is
42 weighted in favor of tax liabilities incurred during the first few
43 years of profitability. The bill specifies that in the first taxable year
44 the business is conducted or operated for a profit, the taxpayer is
45 allowed a credit equal to 75 percent of the New Jersey gross income
46 tax liability that is incurred and required to be paid in connection
47 with the conduct or operation of the qualified small business. In the
48 second year of profitability, the credit is equal to 50 percent of the

1 tax liability incurred and required to be paid in connection with the
2 conduct or operation of the business. In the third year, the credit is
3 25 percent of the tax liability incurred and required to be paid in
4 connection with the business.

5 The bill limits the application of the allowable credits to the tax
6 otherwise due and required to be paid for the taxable year to which
7 the credit applies. This means, for example, that a credit allowed for
8 tax liabilities incurred in connection with the conduct or operation
9 of a qualified small business during the second taxable year in
10 which the business is conducted or operated for a profit can only be
11 taken to reduce the tax liabilities required to be paid by the taxpayer
12 during the second taxable year the business is profitable; the credit
13 cannot be carried back or carried forward to reduce a past or future
14 tax liability.

15 The bill establishes a mandatory pre-approval process in
16 connection with the credits. The bill provides that taxpayers seeking
17 a credit to offset a tax liability incurred and required to be paid in
18 connection with the conduct or operation of a qualified small
19 business must make and file an application with the Director of the
20 Division of Taxation to obtain the director's written authorization
21 prior to taking the allowable credit.

22 The bill authorizes the director to establish an application
23 process and prescribe the form and manner through which a
24 taxpayer may make and file an application to obtain the director's
25 authorization for the credit, but stipulates that the taxpayer must
26 demonstrate that the qualified small business (for which the
27 taxpayer is seeking a credit) is unrelated to the conduct or operation
28 of any other business that was, or is currently, conducted or
29 operated by the taxpayer or, if the qualified small business and any
30 other business that was, or is currently, conducted or operated by
31 the taxpayer are related, that the qualified small business was not
32 established or acquired for the purpose of enjoying the benefit of
33 the credit. The bill provides that taxpayer applications are deemed
34 approved and written authorizations are deemed issued if the
35 director fails to make a determination regarding the approval of an
36 application within 90 calendar days of the date a complete
37 application is received or if the director fails to issue a written
38 authorization within five calendar days of the date the
39 determination is made.

40 The bill authorizes the director to adopt rules and regulations
41 necessary to effectuate the purposes of the bill, and allows for the
42 immediate filing of those rules and regulations with the Office of
43 Administrative Law, effective for a period not exceeding 360
44 calendar days following the bill's effective date.

45 The bill takes effect immediately and applies to tax liabilities
46 incurred and required to be paid in connection with qualified small
47 businesses first conducted or operated for a profit in taxable years

1 beginning on or after January 1 next following the date of
2 enactment.

3 For purposes of the bill, a “qualified small business” is a
4 business that:

5 -- is registered to do business in this State,

6 -- maintains a business location or otherwise derives a majority
7 of its income from business activities or operations conducted
8 within this State,

9 -- has no more than 50 employees in any calendar month during
10 the first taxable year in which the business is conducted or operated
11 for a profit by the taxpayer, and

12 -- has net income of not more than \$100,000 from all business
13 activities or operations conducted within and without this State
14 during the first taxable year in which the business is conducted or
15 operated for a profit by the taxpayer.

16 The purpose of this bill is to support the development of start-up
17 small businesses that are based in New Jersey. The credit provided
18 by the bill will significantly reduce the tax liabilities associated
19 with the conduct or operation of small businesses during the first
20 few years of profitability, and provide small business owners with
21 the opportunity to reinvest additional resources back into their
22 businesses during the most critical period in the life of any small
23 business.