

SENATE, No. 3635

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED APRIL 19, 2021

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

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.



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

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

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

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

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

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

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

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

1 beverage businesses including food innovation, and other
2 innovative industries that disrupt current technologies or business
3 models.

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

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

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10 STATEMENT

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

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

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

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

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

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

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