

SENATE, No. 2620

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED JANUARY 10, 2011

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Provides corporation business tax incentives for life sciences research.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing corporation business tax incentives for life
2 sciences research, amending P.L.1945, c.162 and P.L.1993,
3 c.175.

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

7
8 1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to
9 read as follows:

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

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

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

17 (c) "Corporation" shall mean any corporation, joint-stock
18 company or association and any business conducted by a trustee or
19 trustees wherein interest or ownership is evidenced by a certificate
20 of interest or ownership or similar written instrument, any other
21 entity classified as a corporation for federal income tax purposes,
22 and any state or federally chartered building and loan association or
23 savings and loan association.

24 (d) "Net worth" shall mean the aggregate of the values disclosed
25 by the books of the corporation for (1) issued and outstanding
26 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
27 undivided profits, and (4) surplus reserves which can reasonably be
28 expected to accrue to holders or owners of equitable shares, not
29 including reasonable valuation reserves, such as reserves for
30 depreciation or obsolescence or depletion. Notwithstanding the
31 foregoing, net worth shall not include any deduction for the amount
32 of the excess depreciation described in paragraph (2)(F) of
33 subsection (k) of this section. The foregoing aggregate of values
34 shall be reduced by 50% of the amount disclosed by the books of
35 the corporation for investment in the capital stock of one or more
36 subsidiaries, which investment is defined as ownership (1) of at
37 least 80% of the total combined voting power of all classes of stock
38 of the subsidiary entitled to vote and (2) of at least 80% of the total
39 number of shares of all other classes of stock except nonvoting
40 stock which is limited and preferred as to dividends. In the case of
41 investment in an entity organized under the laws of a foreign
42 country, the foregoing requisite degree of ownership shall effect a
43 like reduction of such investment from the net worth of the
44 taxpayer, if the foreign entity is considered a corporation for any
45 purpose under the United States federal income tax laws, such as

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 (but not by way of sole examples) for the purpose of supplying
2 deemed paid foreign tax credits or for the purpose of status as a
3 controlled foreign corporation. In calculating the net worth of a
4 taxpayer entitled to reduction for investment in subsidiaries, the
5 amount of liabilities of the taxpayer shall be reduced by such
6 proportion of the liabilities as corresponds to the ratio which the
7 excluded portion of the subsidiary values bears to the total assets of
8 the taxpayer.

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

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

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

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

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

43 (h) "Taxpayer" shall mean any corporation, and any partnership
44 required, or consenting, to report or to pay taxes, interest or
45 penalties under this act. "Taxpayer" shall not include a partnership
46 that is listed on a United States national stock exchange.

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

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

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

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

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

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

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

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

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

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

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

46 (F) (i) The amount by which depreciation reported to the United
47 States Treasury Department for property placed in service on and
48 after January 1, 1981, but prior to taxpayer fiscal or calendar

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

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

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

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

45 (ii) The amount of treble damages paid to the Department of
46 Environmental Protection pursuant to subsection a. of section 7 of
47 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
48 department in removing, or arranging for the removal of, an

1 unauthorized discharge upon failure of the discharger to comply
2 with a directive from the department to remove, or arrange for the
3 removal of, the discharge.

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

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

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

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

41 (J) Amounts deducted for federal tax purposes pursuant to
42 section 199 of the federal Internal Revenue Code of 1986, 26
43 U.S.C. s.199, except that this exclusion shall not apply to amounts
44 deducted pursuant to that section that are exclusively based upon
45 domestic production gross receipts of the taxpayer which are
46 derived only from any lease, rental, license, sale, exchange, or other
47 disposition of qualifying production property which the taxpayer
48 demonstrates to the satisfaction of the director was manufactured or

1 produced by the taxpayer in whole or in significant part within the
2 United States but not qualified production property that was grown
3 or extracted by the taxpayer. "Manufactured or produced" as used
4 in this paragraph shall be limited to performance of an operation or
5 series of operations the object of which is to place items of tangible
6 personal property in a form, composition, or character different
7 from that in which they were acquired. The change in form,
8 composition, or character shall be a substantial change, and result in
9 a transformation of property into a different or substantially more
10 usable product.

11 (3) The commissioner may, whenever necessary to properly
12 reflect the entire net income of any taxpayer, determine the year or
13 period in which any item of income or deduction shall be included,
14 without being limited to the method of accounting employed by the
15 taxpayer.

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

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

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

26 (i) Making, arranging for, placing or carrying loans to foreign
27 persons, provided, however, that in the case of a foreign person
28 which is an individual, or which is a foreign branch of a domestic
29 corporation (other than a bank), or which is a foreign corporation or
30 foreign partnership which is controlled by one or more domestic
31 corporations (other than banks), domestic partnerships or resident
32 individuals, all the proceeds of the loan are for use outside of the
33 United States;

34 (ii) Making or placing deposits with foreign persons which are
35 banks or foreign branches of banks (including foreign subsidiaries)
36 or foreign branches of the taxpayers or with other international
37 banking facilities;

38 (iii) Entering into foreign exchange trading or hedging
39 transactions related to any of the transactions described in this
40 paragraph; or

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

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

46 (5) Entire net income shall exclude 100% of dividends which
47 were included in computing such taxable income for federal income
48 tax purposes, paid to the taxpayer by one or more subsidiaries

1 owned by the taxpayer to the extent of the 80% or more ownership
2 of investment described in subsection (d) of this section and shall
3 exclude 50% of dividends which were included in computing such
4 taxable income for federal income tax purposes, paid to the
5 taxpayer by one or more subsidiaries owned by the taxpayer to the
6 extent of 50% or more ownership of investment, such ownership of
7 investment calculated in the same manner as the 80% or more of
8 ownership of investment is calculated as described in subsection (d)
9 of this section.

10 (6) (A) Net operating loss deduction. There shall be allowed as a
11 deduction for the privilege period the net operating loss carryover to
12 that period.

13 (B) Net operating loss carryover. A net operating loss for any
14 privilege period ending after June 30, 1984 shall be a net operating
15 loss carryover to each of the seven privilege periods following the
16 period of the loss and a net operating loss for any privilege period
17 ending after June 30, 2009 shall be a net operating loss carryover to
18 each of the twenty privilege periods following the period of the
19 loss. The entire amount of the net operating loss for any privilege
20 period (the "loss period") shall be carried to the earliest of the
21 privilege periods to which the loss may be carried. The portion of
22 the loss which shall be carried to each of the other privilege periods
23 shall be the excess, if any, of the amount of the loss over the sum of
24 the entire net income, computed without the exclusions permitted in
25 paragraphs (4) and (5) of this subsection or the net operating loss
26 deduction provided by subparagraph (A) of this paragraph, for each
27 of the prior privilege periods to which the loss may be carried.

28 (C) Net operating loss. For purposes of this paragraph the term
29 "net operating loss" means the excess of the deductions over the
30 gross income used in computing entire net income without the net
31 operating loss deduction provided for in subparagraph (A) of this
32 paragraph and the exclusions in paragraphs (4) and (5) of this
33 subsection.

34 (D) Change in ownership. Where there is a change in 50% or
35 more of the ownership of a corporation because of redemption or
36 sale of stock and the corporation changes the trade or business
37 giving rise to the loss, no net operating loss sustained before the
38 changes may be carried over to be deducted from income earned
39 after such changes. In addition where the facts support the premise
40 that the corporation was acquired under any circumstances for the
41 primary purpose of the use of its net operating loss carryover, the
42 director may disallow the carryover.

43 (E) Notwithstanding the provisions of this paragraph (6) of
44 subsection (k) of this section to the contrary, for privilege periods
45 beginning during calendar year 2002 and calendar year 2003, no
46 deduction for any net operating loss carryover shall be allowed and
47 for privilege periods beginning during calendar year 2004 and
48 calendar year 2005, there shall be allowed as a deduction for the

1 privilege period so much of the net operating loss carryover as
2 reduces entire net income otherwise calculated by 50%. If and only
3 to the extent that any net operating loss carryover deduction is
4 disallowed by reason of this subparagraph (E), the date on which
5 the amount of the disallowed net operating loss carryover deduction
6 would otherwise expire shall be extended by a period equal to the
7 period for which application of the net operating loss was
8 disallowed by this subparagraph.

9 Provided, that this subparagraph (E) shall not restrict the
10 surrender or acquisition of corporation business tax benefit
11 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
12 7.42a) and shall not restrict the application of corporation business
13 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
14 (C.54:10A-4.2).

15 (7) The entire net income of gas, electric and gas and electric
16 public utilities that were subject to the provisions of P.L.1940, c.5
17 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
18 substituting the New Jersey depreciation allowance for federal tax
19 depreciation with respect to assets placed in service prior to January
20 1, 1998. For gas, electric, and gas and electric public utilities that
21 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
22 seq.) prior to 1998, the New Jersey depreciation allowance shall be
23 computed as follows: All depreciable assets placed in service prior
24 to January 1, 1998 shall be considered a single asset account. The
25 New Jersey tax basis of this depreciable asset account shall be an
26 amount equal to the carryover adjusted basis for federal income tax
27 purposes on December 31, 1997 of all depreciable assets in service
28 on December 31, 1997, increased by the excess, of the "net carrying
29 value," defined to be adjusted book basis of all assets and liabilities,
30 excluding deferred income taxes, recorded on the public utility's
31 books of account on December 31, 1997, over the carryover
32 adjusted basis for federal income tax purposes on December 31,
33 1997 of all assets and liabilities owned by the gas, electric, or gas
34 and electric public utility as of December 31, 1997. "Books of
35 account" for gas, gas and electric, and electric public utilities means
36 the uniform system of accounts as promulgated by the Federal
37 Energy Regulatory Commission and adopted by the Board of Public
38 Utilities. The following adjustments to entire net income shall be
39 made pursuant to this section:

40 (A) Depreciation for property placed in service prior to January
41 1, 1998 shall be adjusted as follows:

42 (i) Depreciation for federal income tax purposes shall be
43 disallowed in full.

44 (ii) A deduction shall be allowed for the New Jersey
45 depreciation allowance. The New Jersey depreciation allowance
46 shall be computed for the single asset account described above
47 based on the New Jersey tax basis as adjusted above as if all assets
48 in the single asset account were first placed in service on January 1,

1 1998. Depreciation shall be computed using the straight line
2 method over a thirty-year life. A full year's depreciation shall be
3 allowed in the initial tax year. No half-year convention shall apply.
4 The depreciable basis of the single account shall be reduced by the
5 adjusted federal tax basis of assets sold, retired, or otherwise
6 disposed of during any year on which gain or loss is recognized for
7 federal income tax purposes as described in subparagraph (B) of
8 this paragraph.

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

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

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

24 (9) Notwithstanding paragraph (1) of this subsection, entire net
25 income shall not include the income derived by a corporation
26 organized in a foreign country from the international operation of a
27 ship or ships, or from the international operation of aircraft, if such
28 income is exempt from federal taxation pursuant to section 883 of
29 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

30 (10) Entire net income shall exclude all income of an alien
31 corporation the activities of which are limited in this State to
32 investing or trading in stocks and securities for its own account,
33 investing or trading in commodities for its own account, or any
34 combination of those activities, within the meaning of section 864
35 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
36 effect on December 31, 1998. Notwithstanding the previous
37 sentence, if an alien corporation undertakes one or more infrequent,
38 extraordinary or non-recurring activities, including but not limited
39 to the sale of tangible property, only the income from such
40 infrequent, extraordinary or non-recurring activity shall be subject
41 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
42 seq.), and that amount of income subject to tax shall be determined
43 without regard to the allocation to that specific transaction of any
44 general business expense of the taxpayer and shall be specifically
45 assigned to this State for taxation by this State without regard to
46 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this
47 paragraph, "alien corporation" means a corporation organized under

1 the laws of a jurisdiction other than the United States or its political
2 subdivisions.

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

11 (12) (A) Notwithstanding the provisions of subsection (k) of
12 section 168 of the federal Internal Revenue Code of 1986, 26
13 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
14 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
15 law, for property acquired after September 10, 2001, the
16 depreciation deduction otherwise allowed pursuant to section 167 of
17 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
18 be determined pursuant to the provisions of the federal Internal
19 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
20 December 31, 2001.

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

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

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

38 (14) Notwithstanding the provisions of subsection (i) of section
39 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
40 for privilege periods beginning after December 31, 2008 and before
41 January 1, 2011, entire net income shall include the amount of
42 discharge of indebtedness income excluded for federal income tax
43 purposes pursuant to subsection (i) of section 108 of the federal
44 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
45 periods beginning on or after January 1, 2014 and before January 1,
46 2019, entire net income shall exclude the amount of discharge of
47 indebtedness income included for federal income tax purposes,

1 pursuant to subsection (i) of section 108 of the federal Internal
2 Revenue Code of 1986 (26 U.S.C. s.108).

3 (15) (A) For the five privilege periods beginning on or after the
4 July 1 next following enactment of P.L. , c. (pending before the
5 Legislature as this bill), a corporation which is a “United States
6 shareholder” as that term is defined pursuant to section 951 of the
7 federal Internal Revenue Code of 1986 (26 U.S.C. s.951) and for
8 which the election under this paragraph is in effect for the privilege
9 period, shall be allowed as a deduction an amount equal to 100
10 percent of the cash dividends which are received during that
11 privilege period from controlled foreign corporations.

12 If, within the privilege period for which the election under this
13 section is in effect, a United States shareholder receives a cash
14 distribution from a controlled foreign corporation which is excluded
15 from gross income under subsection (a) of section 959 of the federal
16 Internal Revenue Code of 1986 (26 U.S.C. s.959), the distribution
17 shall be treated for purposes of this paragraph as a cash dividend to
18 the extent of any amount included in income by the taxpayer
19 pursuant to section 951 of the federal Internal Revenue Code of
20 1986 (26 U.S.C. s.951), including as a result of any cash dividend
21 during the privilege period to:

22 (i) the controlled foreign corporation from another controlled
23 foreign corporation that is in a chain of ownership described in
24 subsection (a) of section 958 of the federal Internal Revenue Code
25 of 1986 (26 U.S.C. s.958), or

26 (ii) any other controlled foreign corporation in that chain of
27 ownership from another controlled foreign corporation in that chain
28 of ownership, but only to the extent of cash distributions described
29 in subsection (b) of section 959 of the federal Internal Revenue
30 Code of 1986 (26 U.S.C. s.959) which are made during that
31 privilege period to the controlled foreign corporation from which
32 the taxpayer received the distribution.

33 (B) The amount of dividends taken into account under
34 subparagraph (A) shall not exceed the lesser of--

35 (i) \$150,000,000, or

36 (ii) the amount shown on the applicable financial statement as
37 earnings permanently reinvested outside the United States; the
38 amount of earnings permanently reinvested outside the United
39 States shall be treated as being zero if there is no applicable
40 financial statement or the applicable statement fails to show a
41 specific amount of those earnings.

42 (C) Subparagraph (A) shall not apply to any dividend received
43 by a United States shareholder unless the amount of the dividend is
44 invested solely in the United States and solely for the purpose of:

45 (i) the new hiring of additional scientists, researchers, and
46 comparable personnel engaged in life sciences research,

1 (ii) payments to universities, qualified research incubators, and
2 other qualified organizations which are used by those organizations
3 to conduct life sciences research, or

4 (iii) the building or leasing of new facilities to be used in the
5 conduct of life sciences research.

6 (D) Subparagraph (A) shall not apply to any dividend any
7 amount of which is used by the taxpayer to pay compensation to
8 any officer or executive of the taxpayer other than one whose
9 principal occupation is the conduct of life sciences research, to pay
10 dividends to the shareholders of the taxpayer, or to pay interest or
11 principal on any debt security of the taxpayer.

12 (E) Subparagraph (A) shall not apply to any dividend if the
13 taxpayer's compliance with this section is uncertain and requires a
14 provision or reserve on the taxpayer's applicable financial
15 statements.

16 (F) Subparagraph (A) shall not apply to any dividend unless the
17 amount of the dividend is held in a separate account, trust, or other
18 arrangement that segregates the amount from other funds of the
19 taxpayer until the amount is used solely for the purposes described
20 in subparagraph (C).

21 (G) (i) The taxpayer shall substantiate its compliance with
22 subparagraphs (B) through (F) of this paragraph with written
23 documents and such other credible evidence as the director may
24 reasonably require, and shall bear the burden of proof with respect
25 to that substantiation.

26 (ii) The chief executive officer and the independent director
27 serving as head of the audit committee of the taxpayer, or
28 comparable corporate officials, shall attest in writing to the
29 taxpayer's compliance with each of the requirements of
30 subparagraphs (B) through (F) of this paragraph

31 (H) For the purposes of this paragraph:

32 "Applicable financial statement" has the meaning provided by
33 subsection (c) of section 965 of the federal Internal Revenue Code
34 of 1986 (26 U.S.C. s.965).

35 "Dividend" has the meaning provided by subsection (c) of
36 section 965 of the federal Internal Revenue Code of 1986 (26
37 U.S.C. s.965).

38 "Life sciences research" means any qualified research with
39 respect to the branch of knowledge or study of biology,
40 biochemistry, biophysics, bioengineering, microbiology, genetics,
41 or physiology (in each case as that knowledge or study relates to
42 human beings), but does not include sociology or psychology.

43 "Qualified organization" means an organization described in
44 subparagraph (A), (B), or (C) of paragraph (6) of subsection (e) of
45 section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C.
46 s.41).

47 "Qualified research incubator" means an entity created by and
48 operated under State law exclusively to conduct qualified life

1 sciences research on behalf of the taxpayer and one or more
2 unrelated taxpayers.

3 (I) No deduction shall be allowed under this paragraph for any
4 dividend that is excluded pursuant to paragraph (5) of this
5 subsection, and no deduction shall be allowed under this paragraph
6 for any privilege period for which the taxpayer is claiming a credit
7 pursuant to subsection c. of section 1 of P.L.1993, c.175 (C.54:10A-
8 5.24).

9 (J) An election under this paragraph shall be made in the
10 manner as may be prescribed by the director, and shall be made
11 with respect to a privilege period not later than the due date
12 (including extensions of time) for filing the taxpayer's return for
13 that privilege period.

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

17 (m) "Financial business corporation" shall mean any corporate
18 enterprise which is (1) in substantial competition with the business
19 of national banks and which (2) employs moneyed capital with the
20 object of making profit by its use as money, through discounting
21 and negotiating promissory notes, drafts, bills of exchange and
22 other evidences of debt; buying and selling exchange; making of or
23 dealing in secured or unsecured loans and discounts; dealing in
24 securities and shares of corporate stock by purchasing and selling
25 such securities and stock without recourse, solely upon the order
26 and for the account of customers; or investing and reinvesting in
27 marketable obligations evidencing indebtedness of any person,
28 copartnership, association or corporation in the form of bonds,
29 notes or debentures commonly known as investment securities; or
30 dealing in or underwriting obligations of the United States, any
31 state or any political subdivision thereof, or of a corporate
32 instrumentality of any of them. This shall include, without
33 limitation of the foregoing, business commonly known as industrial
34 banks, dealers in commercial paper and acceptances, sales finance,
35 personal finance, small loan and mortgage financing businesses, as
36 well as any other enterprise employing moneyed capital coming
37 into competition with the business of national banks; provided that
38 the holding of bonds, notes, or other evidences of indebtedness by
39 individual persons not employed or engaged in the banking or
40 investment business and representing merely personal investments
41 not made in competition with the business of national banks, shall
42 not be deemed financial business. Nor shall "financial business"
43 include national banks, production credit associations organized
44 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
45 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
46 insurance companies duly authorized to transact business in this
47 State, security brokers or dealers or investment companies or
48 bankers not employing moneyed capital coming into competition

1 with the business of national banks, real estate investment trusts, or
2 any of the following entities organized under the laws of this State:
3 credit unions, savings banks, savings and loan and building and
4 loan associations, pawnbrokers, and State banks and trust
5 companies.

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

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

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

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

36 (r) "Qualified investment partnership" means a partnership
37 under this act that has more than 10 members or partners with no
38 member or partner owning more than a 50% interest in the entity
39 and that derives at least 90% of its gross income from dividends,
40 interest, payments with respect to securities loans, and gains from
41 the sale or other disposition of stocks or securities or foreign
42 currencies or commodities or other similar income (including but
43 not limited to gains from swaps, options, futures or forward
44 contracts) derived with respect to its business of investing or
45 trading in those stocks, securities, currencies or commodities, but
46 "investment partnership" shall not include a "dealer in securities"
47 within the meaning of section 1236 of the federal Internal Revenue
48 Code of 1986, 26 U.S.C. s.1236.

1 (s) "Savings institution" means a state or federally chartered
2 building and loan association, savings and loan association, or
3 savings bank.

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

6 (cf: P.L.2009, c.72, s.2.)
7

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

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

14 (1) 10% of the excess of the qualified research expenses for the
15 **【fiscal or calendar accounting year (referred to hereafter in this**
16 **section as the "tax year")】** privilege period over the base amount;
17 and

18 (2) 10% of the basic research payments for the privilege period
19 determined in accordance with section 41 of the federal Internal
20 Revenue Code of 1986 **【,】** (26 U.S.C. s.41) **【,】** as in effect on
21 June 30, 1992, and provided that subsection (h) of 26 U.S.C. s.41
22 relating to termination shall not apply. Provided however, that the
23 terms "qualified research expenses," "base amount," "qualified
24 organization base amount period," "basic research" and any other
25 terms determined by the Director of the Division of Taxation to
26 affect the calculation of the credit shall include only expenditures
27 for research conducted in this State.

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

35 The tax imposed for a **【fiscal or calendar accounting year】**
36 privilege period pursuant to section 5 of P.L.1945, c.162, shall first
37 be reduced by the amount of any credit allowed pursuant to section
38 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed
39 pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), then by any
40 credit allowed pursuant to section 42 of P.L.1987, c.102 (C.54:10A-
41 5.3), then by any credit allowed under section 3 of P.L.1993, c.170
42 (C.54:10A-5.6), and then by any credit allowed under section 3 or 4
43 of P.L.1993, c.171 (C.54:10A-5.18 or C.54:10A-5.19), prior to
44 applying any credits allowable pursuant to this section. Credits
45 allowable pursuant to this section shall be applied in the order of
46 the credits' **【tax years】** privilege periods. The amount of the credits
47 applied under this section against the tax imposed pursuant to

1 section 5 of P.L.1945, c.162, for **【an accounting year】** a privilege
2 period shall not exceed 50% of the tax liability otherwise due and
3 shall not reduce the tax liability to an amount less than the statutory
4 minimum provided in subsection (e) of section 5 of P.L.1945,
5 c.162. The amount of tax year credit otherwise allowable under this
6 section which cannot be applied for the **【tax year】** privilege period
7 due to the limitations of this subsection may be carried over, if
8 necessary, to the seven **【accounting years】** privilege periods
9 following a credit's **【tax year】** privilege period.

10 c. (1) For the five privilege periods beginning on or after the
11 July 1 next following enactment of P.L. _____, c. _____ (pending before
12 the Legislature as this bill), a taxpayer shall, notwithstanding the
13 provisions of subsection a. of this section, be allowed a credit,
14 subject to the provisions of subsection b. of this section, against the
15 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
16 in an amount equal to

17 (a) 20% of the excess of the qualified research expenses for life
18 sciences research for the privilege period over the base amount; and

19 (b) 20% of the basic research payments for life sciences
20 research for the privilege period,

21 provided that a taxpayer's qualified research expenses and basic
22 research payments for life sciences research for a privilege period
23 creditable under this subsection shall not exceed \$150,000,000; and
24 provided further that, notwithstanding the provision of subsection a.
25 of this section that amounts be determined in accordance with
26 section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C.
27 s.41) as in effect on June 30, 1992, the basic research payments for
28 life sciences research shall be determined as if "contract research
29 expenses" determined pursuant to subparagraph (A) of paragraph
30 (3) of subsection (b) of section 41 of the federal Internal Revenue
31 Code of 1986 (26 U.S.C. s.41) were determined as 100 percent of
32 any amount paid or incurred by the taxpayer for qualified research;
33 and provided further qualified research shall include amounts paid
34 to a qualified research incubator.

35 (2) For the purposes of this section:

36 "Life sciences research" means any qualified research with
37 respect to the branch of knowledge or study of biology,
38 biochemistry, biophysics, bioengineering, microbiology, genetics,
39 or physiology (in each case as that knowledge or study relates to
40 human beings), but does not include sociology or psychology.

41 "Qualified research incubator" means an entity created by and
42 operated under State law exclusively to conduct qualified life
43 sciences research on behalf of the taxpayer and one or more
44 unrelated taxpayers.

45 (3) This subsection shall not apply with respect to a taxpayer for
46 a privilege period for which an election is in effect under paragraph
47 (15) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).
48 (cf: P.L.1993, c.175, s.1)

1 3. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill provides corporation business tax incentives for life
7 sciences research investments made over the next five years. Life
8 sciences research is defined by the bill as research with respect to
9 the branch of knowledge or study of biology, biochemistry,
10 biophysics, bioengineering, microbiology, genetics, or physiology
11 (in each case as that knowledge or study relates to human beings),
12 but not including sociology or psychology.

13 The bill encourages companies to elect to repatriate earnings
14 from their foreign subsidiaries by allowing a 100 percent deduction
15 for those dividends if they are invested in life sciences jobs,
16 research or facilities. The election applies to actual cash dividends.

17 The dividends eligible for the deduction are limited to the greater
18 of 1) \$150 million, or 2) the earnings shown as permanently
19 invested outside the United States on the most recently audited
20 certified financial statements. For the dividends to qualify for the
21 repatriation deduction, they must be invested in the United States
22 solely for the purpose of:

23 (1) the new hiring of additional scientists, researchers, and
24 comparable personnel engaged in life sciences research,

25 (2) payments to universities, qualified research incubators, and
26 other qualified organizations which are used by those organizations
27 to conduct life sciences research, or

28 (3) the building or leasing of new facilities to be used in the
29 conduct of life sciences research.

30 The burden of substantiating compliance with reinvestment
31 requirements is on the taxpayer, and the company's chief executive
32 officer and the independent director serving as head of the audit
33 committee must attest in writing to the taxpayer's compliance.

34 The bill also encourages companies to increase their
35 expenditures for life sciences research by doubling the credit for
36 research and development in New Jersey if the research is life
37 sciences research.

38 Currently, a credit is allowed for 10 percent of the increase in
39 qualified research expenses in a tax year over a base amount and 10
40 percent of the basic research payments made to institutions of
41 higher education, scientific research organizations and institutions
42 that make grants for scientific research.

43 This bill increases those percentages of expenditure for research
44 to 20 percent of the amount expended if the research is life sciences
45 research and includes in qualifying basic research payments any
46 payments made to a "qualified research incubator," an entity
47 created by and operated under State law exclusively to conduct

1 qualified life sciences research on behalf of the taxpayer and one or
2 more unrelated taxpayers.

3 Both of the incentives are available for the five tax years
4 following the enactment of the bill, but a taxpayer must, for any tax
5 year, choose one incentive or the other.

6 The dividend exclusion and the increased credit provide
7 incentives for investors to put investments in New Jerseys' life
8 sciences industry. An already growing industry in New Jersey will
9 continue to grow. Innovation in biotechnology will create ripple
10 effects for the entire State economy.