

“Useful life” used to distinguish three-year property from all other property, is determined in accordance with section 168 of the Federal Internal Revenue Code.

(b) A corporate taxpayer that acquires qualified manufacturing equipment either by purchase or lease and/or has an increase in New Jersey employees due to the equipment investment is entitled to a corporation business tax credit.

1. The credit earned is subject to the following limitations:

i. The manufacturing equipment portion is limited to two percent of the cost of qualified equipment placed in service up to a maximum credit for the tax year of \$1,000,000.

ii. The employment investment portion is limited to three percent of the cost of qualified equipment, not to exceed a maximum allowed amount of \$1,000 multiplied by the increase in the average number of qualified employees and/or employee equivalents. It is valid for each of the two tax years next succeeding the tax year for which the manufacturing equipment portion is allowed.

2. The two portions combined plus any carryover (the credit available as defined herein) is also subject to the following limitations:

i. The amount of the tax credit shall not reduce the tax liability below 50 percent of the tax liability otherwise due for any tax year or below the statutory minimum tax provided at N.J.S.A. 54:10A-5(e).

ii. See N.J.A.C. 18:7-3.20.

(c) If the total credit earned in the current or prior years is unused due to the limitations contained in (b)2i and ii

above, the unused portion may be carried over to the seven tax years succeeding the year in which the credit was earned.

(d) The credit assigned to property that has been disposed of, or which ceases to be qualified equipment prior to the end of its categorized useful life, should be redetermined using the ratios specified below:

THREE-YEAR PROPERTY Number of months qualified use 36	ALL OTHER PROPERTY Number of months qualified use 60
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(e) Property subject to lease agreements shall have a minimum term of four years with a maximum not to exceed 20 years to be considered qualified equipment.

(f) The following example illustrates the application of the credit:

Example:	1993	1994	1995	1996
Cost of qualified equipment placed in service	None	\$3,000,000	\$5,000,000	\$1,000,000
Average employees and/or employee equivalents	125	140	150	160

1994: XYZ Corporation places qualified manufacturing equipment in service in New Jersey during 1994. The cost of the manufacturing equipment, excluding shipping and installation, is \$3,000,000. The taxpayer receives a recycling equipment tax credit of \$10,000 and its corporate tax liability is \$400,000. The manufacturing equipment portion of the credit is \$60,000 (\$3,000,000 cost × two percent, not to exceed \$1,000,000), and the employment investment portion is unavailable until the two years following placement of equipment in service. Therefore, the credit is the lesser of \$60,000 or \$190,000 (50 percent of the tax liability less the recycling equipment credit). In this case the allowable credit for XYZ Corporation is \$60,000, the lesser of the two amounts.

1995: XYZ Corporation places additional qualified equipment in service during 1995, which was acquired through a lease agreement. The lease agreement required \$5,000,000 to be paid over the term of the lease. The taxpayer is not eligible for any other tax credits, and its corporate tax liability is \$220,000. The manufacturing equipment portion of the credit is \$100,000 (\$5,000,000 total lease cost \times two percent, not to exceed \$1,000,000). The employment investment portion is \$25,000 (150 measurement year average $-$ 125 base year average = average increase of $25 \times \$1,000$, not to exceed three percent of the cost of qualified equipment placed in service in New Jersey in 1994). Therefore, the credit is the lesser of \$125,000 (\$100,000 + \$25,000) or \$110,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is \$110,000, the lesser of the two amounts. The difference between the total of the two credit portions (\$125,000) and the credit allowable (\$110,000), or \$15,000 may be carried over for a maximum of seven years.

1996: Qualified equipment is placed in service during 1996 at a cost of \$1,000,000. The taxpayer is not eligible for any other tax credits, and its corporate tax liability is \$350,000. The manufacturing equipment portion of the credit is \$20,000 (\$1,000,000 total lease cost \times two percent, not to exceed \$1,000,000). The employment investment portion is \$45,000, based on calculations for the 1994 and 1995 investments (150 measurement year average $-$ 125 base year average = average increase of $25 \times \$1,000$ or \$25,000 for the 1994 investment AND 160 measurement year average $-$ 140 base year average = average increase of $20 \times \$1,000$ or \$20,000 for the 1995 investment). Therefore, the credit is the lesser of \$80,000 (\$20,000 + \$45,000 + \$15,000 carryover from 1995) or \$175,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is \$80,000, the lesser of the two amounts.

New Rule, R.1995 d.460, effective August 21, 1995.
See: 27 N.J.R. 838(a), 27 N.J.R. 3208(a).

18:7-3.22 New jobs investment tax credit

(a) Corporate taxpayers are allowed a credit against the portion of the corporation business tax that is attributable to, and the direct consequence of, the taxpayer's qualified investment in a new or expanded business facility in this State which results in the creation of new jobs.

1. For a small business taxpayer, as defined in N.J.S.A. 54:10A-5.5, at least five new jobs must be created. For any other taxpayer, at least 50 new jobs must be created. The median annual compensation for the new jobs must be at least \$27,000, adjusted for inflation beginning January 1, 1994 as provided in N.J.S.A. 54:10A-5.6e. Notice of the adjustment shall be published in the New Jersey Register. The employer should rank the new employees by annual compensation. If the middle employee has compensation less than \$27,000, the lowest ranking jobs should be deleted from the list until the median of the remaining list is at least \$27,000. (If there

are an even number on the list, the top half must be greater than \$27,000.) The number of employees on this revised list is the number of new jobs created for purposes of this credit.

2. For privilege periods beginning on and after January 1, 2002, the eligibility standards for the New Jobs Investment Tax Credit Act have been expanded to include small or mid-size business taxpayers. For tax year 2002 such taxpayers shall have annual payroll of \$5,000,000 or less and annual gross receipts of not more than \$10,000,000. Such amounts will be adjusted annually for inflation commencing January 1, 2003 by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of \$50.00. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins.

i. In addition for privilege periods beginning on and after January 1, 2002, for eligible taxpayers the applicable new jobs factor for five new jobs is 0.01. For each five additional new jobs over the additional five, up to 100 total new jobs, the applicable new jobs factor of 0.01 shall be increased by adding to it 0.01, up to a maximum new jobs factor 0.20.

(b) The amount of the credit shall be determined by multiplying the amount of the taxpayer's qualified investment, as defined in N.J.S.A. 54:10A-5.8, in property purchased for business relocation or expansion, as defined in N.J.S.A. 54:10A-5.5, by the taxpayer's new job factor determined under N.J.S.A. 54:10A-5.9.

1. The amount of the credit shall be taken over a five year period, at the rate of one-fifth of the amount per tax year, beginning with the tax year in which the taxpayer places the qualified investment into service or use in this State.

(c) The aggregate annual credit allowed for a tax year shall be an amount equal to the sum of one-fifth of the allowable credit for qualified investment placed into service or use during a prior tax year, plus one-fifth of the allowable credit for qualified investment placed into service or use during the current tax year.

1. The amount of the credit shall not reduce the tax liability by more than 50 percent of that portion of the taxpayer's tax liability otherwise due for all tax years which is attributable to and the direct result of the taxpayer's qualified investment.

2. The amount of the tax credit shall not reduce the tax liability below the statutory minimum tax provided at N.J.S.A. 54:10A-5.7b.

3. If the credit exceeds the limitations in (c) through (c)2 above, the amount of credit remaining shall be refunded to the taxpayer. The amount refunded to the taxpayer shall not exceed 50 percent of the sum of the amount of property taxes timely paid in the taxable year pursuant to N.J.S.A. 54:4-1 et seq. and the amount of implicit property taxes paid through rent or lease payments in respect of property taxable pursuant to N.J.S.A. 54:4-1 et seq., and for which taxes another party that is not a related person is liable, which is attributable to and the direct result of the taxpayer's qualified investment. Any excess amount may not be carried forward.

(d) The credit shall only be applied against corporation business tax liability attributable to, and the direct result of, the taxpayer's qualified investment.

1. If the taxpayer's liability for corporation business tax, local property tax, and implicit property tax paid through rental or lease on property subject to local tax and for which taxes another party that is not a related person is liable, are not solely attributable to the taxpayer's qualified investment, then the amount of such taxes so attributable may be determined by multiplying the amount of tax due under those tax acts for the tax year by the ratio of compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey whose positions are directly attributable to the qualified investment, to total compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey.

2. Any credits allowable under N.J.S.A. 54:10A-5.3 (recycling tax credit), N.J.S.A. 52:27H-78 (urban enterprise zone credit), and N.J.S.A. 55:19-13 (urban development corporation credit) shall be applied against and reduce only the amount of corporation business tax not apportioned to the qualified investment under this act. Any excess of those credits may be applied against the amount of corporation business tax apportioned to the qualified investment under this act that is not offset by the amount of annual credit against the tax allowed under the act for the tax year, unless their application is otherwise prohibited by the applicable credit statutes.

(e) The unused portion of the credit shall be forfeited if the property is disposed of prior to the end of its recovery period, or ceases to be used in a new or expanded business facility, except where the cessation is due to fire, flood, storm or other casualty, pursuant to the provisions of N.J.S.A. 54:10A-5.10 and 5.11. Except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years pursuant to the calculation under N.J.S.A. 54:10A-5.10b. The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Tax Uniform Procedure Law.

1. If the average number of employees attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit was based, the credit shall be redetermined and the excess forfeited for the current tax year and for each succeeding year pursuant to the calculations required under N.J.S.A. 54:10A-5.10c.

(f) N.J.S.A. 54:10A-5.13 requires the taxpayer to make written application to the Director of the Division of Taxation for allowance of the credit. No prior approval will be required if the return and Form 304 claiming the credit are filed on or before the original due date of the return. However, the return will be reviewed upon filing, and the Division will notify the taxpayer if the credit is disallowed. If the taxpayer applies for an extension to file Form CBT-100 or CBT-100S, a letter application from the taxpayer requesting allowance of the credit must accompany the request for extension, Form CBT-200T. The record-keeping requirements of N.J.S.A. 54:10A-5.12 for qualified property must be followed.

EXAMPLE

New Jersey Investment Tax Credit Calculation

Corporation ABC in 1994 purchases and installs the following at location D in New Jersey:

1. A newly constructed building for \$1,000,000;
2. Equipment with three year life for \$100,000;
3. Equipment with five year life for \$200,000; and
4. An airplane for \$100,000.

At location E in New Jersey, the corporation makes repairs on existing facilities for \$250,000.

At location F in New Jersey, the corporation purchases a building, owned and used by an unrelated party, for \$500,000.

All locations are in New Jersey. None of the locations are in an urban enterprise zone.

ABC in 1993 had 50 employees, all at location E, with annual payroll of \$2,000,000 and gross receipts of \$5,000,000. In 1994 ABC employs 120 people, 50 at location E, 65 at location D, and five at location F, all with income above \$30,000, and has gross receipts of \$10,000,000 and payroll of \$5,000,000. The 65 employees at location D are all newly hired New Jersey residents with total compensation of \$3,000,000. The corporation business tax liability for ABC in 1994 is \$10,000.

ABC should compute its 1994 New Jersey investment tax credit this way: (Line reference numbers are to Form 304 (1-95) New Jobs Investment Tax Credit.)

First, calculate the allowable investment base as follows:

Qualified investment:		
line 4(a) with three year life	$0.35 \times$	\$ 100,000 = \$ 35,000
line 4(b) with five year life	$0.70 \times$	200,000 = 140,000
line 4(c) with seven year or more life	$1.00 \times$	1,000,000 = 1,000,000
line 5 Sum of lines 4(a), 4(b), and 4(c)		\$1,175,000
The investment base is \$1,175,000.		

(The airplane purchase does not qualify; the repairs at location E do not qualify; and the purchase of existing property at location F does not qualify. See N.J.S.A. 54:10A-5.5 and N.J.A.C. 18:7-3.22(b).)

Second, calculate the number of eligible new jobs created as follows in order to arrive at the new jobs factor:

line 6(a) Average New Jersey employment for this tax year		120
line 6(b) Average New Jersey employment for last tax year		50
line 6(c) Subtract line 6(b) from line 6(a)		70
line 6(d) Divide line 6(a) by 2		60
line 6(e) Number of eligible new jobs		65
line 6(f) Smaller of 6(c), 6(d), or 6(e)		60
line 7(a) Divide line 6(f) by 50 with no remainder		1
line 7(b) Multiply line 7(a) by .005		.005
line 7(c) Enter the smaller of .10 or line 7(b)		.005

(The number of eligible jobs is limited to 60, one-half total employment. ABC is, with \$10,000,000 in gross receipts, not a small taxpayer in 1994.)

The new jobs factor is .005.

Third, calculate the maximum annual credit:

line 8 Multiply line 7(c) \times line 2 \times .2		
	$.005 \times \$1,175,000 \times .2 =$	\$1,175
line 9 Qualified investment from prior two years		0
line 10 Aggregate Annual Credit: (Sum of lines 8, 9(a), 9(b), 9(c), and 9(d))		\$1,175

Fourth, calculate tax attributable to new investment which is eligible to be offset by the credit (which is proportional to compensation of new employees relative to all employees).

line 11 Compensation of all new jobs in New Jersey attributable to the qualified investment		\$3,000,000
line 12 Total compensation of all employees in New Jersey		\$5,000,000
line 13 Divide line 11 by line 12		.60
line 14 Enter tax liability from front page of CBT		
line 15 Multiply line 13 by line 11 CBT-100 page 1		6,000

Fifth, arrive at the allowable credit:

line 16 Multiply line 15 by 50 percent		\$3,000
line 17 Enter the smaller of line 10 or line 16		1,175

New Rule, R.1995 d.461, effective August 21, 1995.
 See: 27 N.J.R. 840(a), 27 N.J.R. 3209(a).
 Administrative correction.
 See: 27 N.J.R. 4908(a).
 Public Notice: Inflation adjustments.
 See: 27 N.J.R. 4921(a).
 Public Notice: Inflation adjustments.
 See: 29 N.J.R. 708(a).
 Public Notice: Inflation adjustments.

See: 30 N.J.R. 1330(c).
 Public Notice: Inflation adjustments.
 See: 31 N.J.R. 1112(a).
 Public Notice: Inflation adjustments.
 See: 32 N.J.R. 1087(b).
 Public Notice: Inflation adjustments.
 See: 33 N.J.R. 903(a).
 Public Notice: Inflation adjustments.
 See: 34 N.J.R. 1057(a).
 Public Notice: Notice of Corporation Business Tax; New Jobs Investment Tax Credit Revised Inflation Adjustment.
 See: 35 N.J.R. 280(a).
 Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
 See: 35 N.J.R. 1573(a).
 In (a), added 2.
 Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
 See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
 Provisions of R.2003 d.135 adopted without change.
 Petition for Rulemaking.
 See: 36 N.J.R. 589(b).

18:7-3.23 Research credit

(a) A taxpayer shall be allowed a credit against its corporation business tax liability in an amount equal to 10 percent of the excess of the qualified research expenses for the fiscal or calendar accounting year over the base amount, and 10 percent of the basic research payments determined in accordance with IRC Section 41 as in effect on June 30, 1992, provided that IRC Section 41(h) relating to termination of the availability of the credit in 1995 shall not apply.

(b) For purposes of this section, the term "qualified research expenses" means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer:

1. In-house research expenses; and
2. Contract research expenses.

(c) In general, the term "in-house research expenses" means:

1. Any wages paid or incurred to an employee for qualified services performed by such employee;
2. Any amount paid or incurred for supplies used in the conduct of qualified research; and
3. Under Federal regulations prescribed, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

i. Paragraph (c)3 above shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection IRC 41(f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(d) "Qualified services" means services consisting of engaging in qualified research, or engaging in the direct supervision or direct support of research activities which

constitute qualified research. If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of engaging in qualified research or engaging in the direct supervision or direct support of research activities which constitute qualified research, the term "qualified services" means all of the services performed by such individual for the taxpayer during the taxable year.

(e) The term "supplies" means any tangible property other than:

1. Land or improvements to land; and
2. Property of a character subject to allowance for depreciation.

(f) The term "wages" means:

1. In general, the term "wages" has the meaning given such term by IRC Section 3401(a).
2. For self-employed individuals and owner-employees, in the case of an employee (within the meaning of IRC Section 401(c)(1)), the term "wages" includes the earned income (as defined in IRC Section 401(c)(2)) of such employee.
3. Exclusion for wages to which targeted jobs credit applies, the term "wages" shall not include any amount taken into account in determining the targeted jobs credit under IRC Section 51(a).

(g) In general, the term "contract research expenses" means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

1. If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(h) Trade or business requirement may be disregarded for in-house research expenses of certain start-up ventures. In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of (b) above if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business:

1. Of the taxpayer; or
2. Of one or more other persons who with the taxpayer are treated as a single taxpayer under IRC subsection 41(f)(1).

(i) Base amount requirements are as follows:

1. In general, the term "base amount" means the product of:

- i. The fixed-base percentage; and
- ii. The average annual gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (hereinafter referred to as the "credit year").

2. In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

3. Fixed-base percentage requirements are as follows:

i. Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

ii. Start-up companies shall comply with the following:

(1) For taxpayers to which this subparagraph applies, the fixed-base percentage shall be determined under this subparagraph if there are fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

(2) In a case to which this subparagraph applies, the fixed-base percentage is:

(A) Three percent for each of the taxpayer's first five taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses;

(B) In the case of the taxpayer's sixth such taxable year, one-sixth of the percentage which the aggregate qualified research expenses of the taxpayer for the fourth and fifth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(C) In the case of the taxpayer's seventh such taxable year, one-third of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth and sixth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(D) In the case of the taxpayer's eighth such taxable year, one-half of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, and seventh such taxable years is of the aggregate gross receipts of the taxpayer for such years;