

CHAPTER 399

AN ACT providing the manufacturing equipment and employment investment tax credit under the corporation business tax for electric energy and thermal energy production, amending P.L.1993, c.171.

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

1. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to read as follows:

C.54:10A-5.17 Definitions.

2. For the purposes of this act:

"Control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; "control," with respect to a trust, means ownership, directly or indirectly, of 50% or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267, other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50% of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least 50% of the voting power of all classes of stock of at least one of the other corporations.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Full-time employee" means an employee working for the taxpayer for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is applicable to the business, on a permanent basis, which does not include employment that is temporary or seasonal.

"Investment credit base" means the cost of qualified equipment. The cost of qualified equipment shall not include the value of equipment given in trade or exchange for the equipment purchased for business relocation or expansion. If equipment is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the cost of replacement equipment shall not include any insurance proceeds received in compensation for the loss. In the case of self-constructed equipment, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law. The cost of equipment acquired by written lease is the minimum amount required by the agreement, agreements, contract or contracts to be paid over the term of the lease, provided however, that the minimum amount shall not include any amount required to be paid, as determined by the director, after the expiration of the useful life of the equipment.

"Number of new employees" means the increase in the average number of full-time employees and full-time employee equivalents residing and domiciled in this State employed at work locations in this State from the employment base year to the employment measurement year. The employment base year is the tax year immediately preceding the tax year for which the credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was not subject to tax and did not have a tax year immediately precede the tax year for which a credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed the employment base year is the tax year in which the credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The measurement year is the tax year immediately following the tax year in which the credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The hours of part-time employees shall be aggregated to determine the number of full-time employee equivalents.

"Part-time employee" means an employee working for the taxpayer for at least 20 hours per week for at least six months during the tax year.

"Purchase" means any acquisition of property, including an acquisition pursuant to a lease, but only if:

- a. the property is not acquired from a person whose relationship to the person acquiring it

would result in the disallowance of deductions under section 267 or subsection (b) of section 707 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

b. the property is not acquired by one member of a controlled group from another member of the same controlled group. The director may waive this requirement if the property was acquired from a related person for its then fair market value; and

c. the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(1) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(2) under subsection (e) of section 1014 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1014.

"Qualified equipment" means machinery, apparatus or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining, as defined pursuant to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13), having a useful life of four or more years, placed in service in this State and machinery, apparatus or equipment acquired by purchase for use or consumption directly and primarily in the generation of electricity as defined pursuant to subsection b. of section 25 of P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the grid, or in the generation of thermal energy, having a useful life of four or more years, placed in service in this State. Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use.

"Related person" means:

a. a corporation, partnership, association or trust controlled by the taxpayer;

b. an individual, corporation, partnership, association or trust that is in control of the taxpayer;

c. a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

d. a member of the same controlled group as the taxpayer.

"Tax year" means the fiscal or calendar accounting year of a taxpayer.

2. This act shall take effect immediately, be retroactive to January 1, 2002 and apply to tax years beginning on and after January 1, 2002

Approved January 8, 2002.