

## CHAPTER 296

AN ACT providing a credit against the corporation business tax for certain remediation costs, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.)

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

C.54:10A-5.33 Tax credit for remediation of contaminated site.

1. a. A taxpayer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 100% of the eligible costs of the remediation of a contaminated site as certified by the Department of Environmental Protection pursuant to section 2 of P.L.2003, c.296 (C.54:10A-5.34) and the Director of the Division of Taxation in the Department of the Treasury pursuant to section 3 of P.L.2003, c.296 (C.54:10A-5.35) performed during privilege periods beginning on or after January 1, 2004 and before January 1, 2007.

b. The priority for the application of credit allowed pursuant to this section against the tax imposed for a privilege period pursuant to section 5 of P.L.1945, c.162, in relation to the application of any other credit allowed against the tax shall be prescribed by the Director of the Division of Taxation in the Department of the Treasury. Credits allowable pursuant to this section shall be applied in the order of the credits' privilege periods. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

c. Except as provided in subsection d. of this section, the amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of subsection b. of this section may be carried over, if necessary, to the five privilege periods following a credit's privilege period.

d. A taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a privilege period during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred.

e. In no event shall the amount of the tax credit, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive or grant to remediate a site, exceed 100% of the total cost of the remediation.

C.54:10A-5.34 Eligibility for tax credit.

2. To be eligible for a tax credit for the costs of remediation pursuant to section 1 of P.L.2003, c.296 (C.54:10A-5.33), a taxpayer shall submit an application, in writing, to the Department of Environmental Protection for review and certification of the eligible costs of the remediation for the remediation tax credit. The department shall review the request for certification upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. The department shall certify the eligible costs of the remediation if the department finds that:

(1) the taxpayer had entered into a memorandum of agreement with the Commissioner of Environmental Protection for the remediation of a contaminated site and the taxpayer is in compliance with the memorandum of agreement;

(2) the taxpayer is not liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) for the contamination at the site; and

(3) the costs of the remediation were actually and reasonably incurred.

When filing an application for certification of the eligible costs of a remediation pursuant to this section, the taxpayer shall submit to the department a certification of the total remediation costs incurred by the taxpayer for the remediation of the subject property, and such other information as the department deems necessary in order to make the certifications and findings pursuant to this section.

C.54:10A-5.35 Additional requirements for eligibility.

3. In addition to the requirements of section 2 of P.L.2003, c.296 (C.54:10A-5.34), to be

eligible for a tax credit for the costs of remediation pursuant to section 1 of P.L.2003, c.296 (C.54:10A-5.33), the Director of the Division of Taxation in the Department of the Treasury shall certify that the remediation of the contaminated site has also satisfied the following:

a. the remediated site is located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban) as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.);

b. the subsequent business activity at the remediated site represents new corporation business tax, or sales and use tax or gross income tax receipts;

c. there is a high probability that the estimated new tax receipts deriving from the business activity at the remediated site, within a three-year period from the inception of the business activity, will equal or exceed the value of tax credits issued; and

d. if the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit authorized pursuant to section 1 of P.L.2003, c.296 (C.54:10A-5.33), shall be equal to the difference in aggregate value of tax receipts from the corporation business tax pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), the sales and use tax pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) and the gross income tax pursuant to P.L.1976, c.47 (C.54A:1-1 et seq.) generated by the business activity in the privilege period immediately following the business relocation less the aggregate value of tax receipts generated in the privilege period immediately prior to relocation, up to 100% of the eligible costs, pursuant to section 1 of P.L.2003, c.296 (C.54:10A-5.33). If the difference in aggregate value is zero or less, no tax credit shall be awarded.

#### C.54:10A-5.36 Corporation business tax benefit certificate transfer program.

4. a. The Director of the Division of Taxation in the Department of the Treasury shall establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, to surrender those tax benefits for use by other corporation business taxpayers in this State, provided that the taxpayer receiving the surrendered tax benefits is not affiliated with a corporation that is surrendering its tax benefits. For the purposes of this section, the test of affiliation is whether the same entity directly or indirectly owns or controls 5% or more of the voting rights or 5% or more of the value of all classes of stock of both the taxpayer receiving the benefits and a corporation that is surrendering the benefits. The tax benefits may be used on the corporation business tax returns to be filed by those taxpayers.

b. The director shall be authorized to approve the transfer of no more than \$12,000,000 of tax benefits in each of the following State fiscal years: 2005, 2006, and 2007. The maximum value of surrendered tax benefits that a corporation shall be permitted to surrender over the three-year period pursuant to the program is \$4,000,000. Applications must be received on or before February 1, 2005 and each February 1 thereafter.

c. The Director of the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax benefits approved pursuant to subsection b. of this section which shall be issued in the form of corporation business tax benefit transfer certificates. No taxpayer who is liable pursuant to paragraph (1) of subsection c. of P.L.1976, c.141 (C.58:10-23.11) for contamination at any site in the State may acquire a surrendered tax benefit pursuant to this section. The applications shall be submitted and the division shall approve or disapprove the applications.

#### C.54:10A-5.37 Performance evaluation review committee; report.

5. On or before August 1, 2006, the State Treasurer shall form a performance evaluation review committee which shall consist of representatives of the Division of Taxation, the Commerce and Economic Growth Commission, and the New Jersey Economic Development Authority, and five members from the private sector, at least two of whom shall represent the real estate development industry. This performance evaluation review committee shall be charged with thoroughly analyzing and documenting in a report:

a. the fiscal and economic impact to the State of the tax credit for the costs of remediation granted pursuant to section 1 of P.L.2003, c.296 (C.54:10A-5.33);

- b. the total number of properties redeveloped and their local economic and fiscal impact;
- c. any recommendations for legislative or regulatory amendments that would enhance the effectiveness of the program; and
- d. a recommendation whether the program should be continued.

The report required pursuant to this section shall be delivered to the Governor and the chairs of the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee, or the chairs of the successor committees, on or before November 30, 2006.

- 6. This act shall take effect immediately.

Approved January 14, 2004.