

§5215. Jobs and investment tax credit

1. Credit allowed. A taxpayer, other than a public utility as defined by Title 35-A, section 102, is allowed a credit to be computed as provided in this section against the tax imposed by this Part, subject to the limitations contained in subsection 3. The amount of the credit equals the qualified federal credit, as defined in subsection 2, for taxable years beginning on or after January 1, 1979, except that a credit may be taken with respect to used property, and may not be allowed with respect to an excluded investment.

[PL 1997, c. 504, §14 (AMD).]

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Qualified federal credit" means, with respect to any taxable year, that portion of the credit allowed by the Internal Revenue Code of 1954, Section 38(b)(1), as of December 31, 1985, that is directly and solely attributable to qualified investment with a location in this State. [PL 1997, c. 504, §15 (AMD).]

A-1. "Excluded investment" means an investment related to a retail facility, unless the taxpayer can demonstrate to the satisfaction of the State Tax Assessor that the commercial result of the project or projects to which the credit relates has not or will not result in a substantial detriment to existing businesses in the State. [PL 1993, c. 672, §1 (NEW); PL 1993, c. 672, §2 (AFF).]

A-2. "Retail facility" does not include a facility primarily engaged in warehousing, order taking, manufacturing, storage or distribution, even when a portion of the facility is used to make retail sales of tangible personal property directly from the facility. [PL 1993, c. 672, §1 (NEW); PL 1993, c. 672, §2 (AFF).]

B. The term "new jobs credit base" means the excess of Bureau of Unemployment Compensation wages for the taxable year of the qualified investment or either of the next 2 calendar years over the Bureau of Unemployment Compensation wages for the highest of the 3 calendar years preceding the year of the qualified investment. In computing its new jobs credit base, a successor-taxpayer shall add to its own Bureau of Unemployment Compensation wages the Bureau of Unemployment Compensation wages of its predecessor. [PL 1995, c. 560, Pt. G, §19 (AMD).]

C. The term "Bureau of Unemployment Compensation wages" means the total amount of wages paid by an employer subject to tax under Title 26, section 1221, less any excesses attributable to statutory increases. [PL 1995, c. 560, Pt. G, §20 (AMD).]

D. "Successor-taxpayer" means a taxpayer that has acquired, within 4 years of its taxable year-end, the organization, trade or business, or 50% or more of the assets of the organization, trade or business, of another taxpayer that, at the time of the acquisition, was an employing unit. [PL 1993, c. 672, §1 (AMD); PL 1993, c. 672, §2 (AFF).]

E. "Used property" means property that is originally placed in service by the taxpayer outside of this State. The cost of property used by the taxpayer outside of this State and then placed into service in this State on or after January 1, 1997 is the original cost of the property to the taxpayer, minus the straight-line depreciation allowable for the tax years or portions of the tax years during which the taxpayer used the property outside of this State. The cost of property used by the taxpayer outside of this State and then placed into service in this State before to January 1, 1997 is the original cost of the property. [PL 1997, c. 504, §16 (NEW).]

[PL 1997, c. 504, §§15,16 (AMD).]

3. Limitations. The tax credit for any taxable year is applicable only to those taxpayers:

A. With property considered to be qualified investment of at least \$5,000,000 for that taxable year with a situs in the State and placed in service by the taxpayer after January 1, 1979; and [PL 2003, c. 391, §7 (AMD).]

B. With payroll records and reports substantiating that at least 100 new jobs attributable to the operation of property considered to be qualified investment were created in the 24-month period following the date the property was placed in service. To assess the continuing nature of the jobs, the taxpayer must demonstrate that the new jobs credit base is at least \$700,000 for the taxable year of the qualified federal credit or for either of the next 2 calendar years. The \$700,000 must be adjusted proportionally for any change in Title 26, section 1043, subsection 2 wages from \$7,000. With respect to new jobs created after August 1, 1998, but before October 1, 2001, the employer must also demonstrate that the qualifying jobs are covered by a retirement program subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 101 to 1461, as amended; that group health insurance is provided for employees in those positions; and that the wages for those positions, calculated on a calendar year basis, are greater than the most recent average annual wage in the labor market area in which the employee is employed. [PL 2003, c. 391, §8 (AMD).]

C. [PL 1999, c. 414, §46 (RP); PL 1999, c. 414, §56 (AFF).]
[PL 2003, c. 391, §§7, 8 (AMD).]

4. Carry-over. The amount of credit that may be used by a taxpayer for any taxable year may not exceed either \$500,000 or the amount of tax otherwise due, whichever is less. Any unused credit may be carried over to the following year or years for a period not to exceed 7 years, including the year the credit was first taken, and may be deducted from the taxpayer's tax for that year or those years, subject to the same limitations provided in this subsection.

[PL 1993, c. 672, §1 (AMD); PL 1993, c. 672, §2 (AFF).]

5. Carry-back. There may be no carry-back to prior years of the amount of credit allowable under this section.

[PL 1993, c. 672, §1 (AMD); PL 1993, c. 672, §2 (AFF).]

6. Recapture. If, during any taxable year, any qualified investment property is disposed of, or otherwise ceases to be property covered by subsection 3, paragraph A with respect to the taxpayer, before the end of the useful life that was taken into account in computing the credit under subsection 1, then the tax under this Part for that taxable year must be increased by an amount equal to the aggregate decrease in the credit allowed under subsection 1 for all prior taxable years that would have resulted solely from substituting for the useful life, in determining qualified investment under the Internal Revenue Code of 1954 as of December 31, 1985, the period beginning with the time the property was placed in service by the taxpayer and ending with the time the property ceased to be property covered by subsection 3.

[PL 2007, c. 627, §89 (AMD).]

6-A. Affiliated groups; tax years prior to January 1, 1995. This subsection applies retroactively to all tax years beginning before the effective date of this subsection as well as prospectively to all tax years beginning on or after the effective date of this subsection but prior to January 1, 1995 and for which the taxpayer's right to file an original or amended return had not or has not expired at the time of the taxpayer's filing of the return. In the case of corporations that are members of an affiliated group engaged in a unitary business, the credit provided for in this section applies as follows.

A. The credit provided for in this section, in an amount equal to the aggregate qualified federal credit for all taxable corporations that are members of an affiliated group engaged in a unitary business, must be allowed against the total tax liability of all the taxable corporations that are members of the affiliated group engaged in a unitary business if the taxable corporations that are members of the affiliated group have, in the aggregate:

- (1) Property considered to be qualified investment of at least \$5,000,000 for that taxable year with a situs in the State and placed in service by the taxable corporations after January 1, 1979;
- (2) Payroll records and reports substantiating that at least 200 new jobs attributable to the operation of property considered to be qualified investment were created in the 12-month period following the date the property was placed in service; and
- (3) A new jobs credit base of at least \$1,400,000 for the taxable year of the qualified federal credit or the next calendar year. The \$1,400,000 must be adjusted proportionally for any change in Title 26, section 1043, subsection 2 wages from \$7,000. [PL 1993, c. 672, §1 (NEW); PL 1993, c. 672, §2 (AFF).]

B. The amount of the credit that may be used in any taxable year may not exceed the lesser of \$300,000 or the total amount of tax liability otherwise due of all taxable corporations that are members of an affiliated group engaged in a unitary business. Any unused credit may be carried over to the following year or years for a period not to exceed 7 years, including the year the credit was first taken, and may be deducted from the tax imposed by this Part for that year or those years, subject to the same limitations provided in this subsection. [PL 1993, c. 672, §1 (NEW); PL 1993, c. 672, §2 (AFF).]

The credit must be apportioned among the taxable corporations in the affiliated group in the same proportion that the tax liability of each taxable corporation in the affiliated group bears to the total tax liability of all the taxable corporations in the affiliated group.
[PL 1993, c. 672, §1 (NEW); PL 1993, c. 672, §2 (AFF).]

6-B. Affiliated groups; tax years beginning on or after January 1, 1995. This subsection applies to tax years beginning on or after January 1, 1995. In the case of corporations that are members of an affiliated group engaged in a unitary business, the credit provided for in this section applies as follows.

A. The credit provided for in this section, in an amount equal to the aggregate qualified federal credit for all taxable corporations that are members of an affiliated group engaged in a unitary business, must be allowed against the total tax liability of all the taxable corporations that are members of the affiliated group engaged in a unitary business if the taxable corporations that are members of the affiliated group have, in the aggregate:

- (1) Property considered to be qualified investment of at least \$5,000,000 for that taxable year with a situs in the State and placed in service by the taxable corporations after January 1, 1979;
- (2) Payroll records and reports substantiating that at least 100 new jobs attributable to the operation of property considered to be qualified investment were created in the 24-month period following the date the property was placed in service; and
- (3) A new jobs credit base of at least \$700,000 for the taxable year of the qualified federal credit or either of the next 2 calendar years. The \$700,000 must be adjusted proportionally for any change in Title 26, section 1043, subsection 2 wages from \$7,000. [PL 1993, c. 672, §1 (NEW); PL 1993, c. 672, §2 (AFF).]

B. The amount of the credit that may be used in any taxable year may not exceed the lesser of \$500,000 or the total amount of tax liability otherwise due of all taxable corporations that are members of an affiliated group engaged in a unitary business. Any unused credit may be carried over to the following year or years for a period not to exceed 7 years, including the year the credit was first taken, and may be deducted from the tax imposed by this Part for that year or those years, subject to the same limitations provided in this subsection. [PL 1993, c. 672, §1 (NEW); PL 1993, c. 672, §2 (AFF).]

The credit must be apportioned among the taxable corporations in the affiliated group in the same proportion that the tax liability of each taxable corporation in the affiliated group bears to the total tax liability of all the taxable corporations in the affiliated group.
[PL 1993, c. 672, §1 (NEW); PL 1993, c. 672, §2 (AFF).]

6-C. Application. Except for the credit allowed with respect to the carry-over of unused credit amounts pursuant to subsection 4, the tax credit allowed under this section does not apply to tax years beginning on or after January 1, 2016.
[PL 2015, c. 267, Pt. DD, §20 (NEW).]

7. Legislative findings. The Legislature finds that encouragement of the growth of major industry in the State is in the public interest and promotes the general welfare of the people of the State; that the use of investment tax credits to encourage industry to make substantial capital investments in the State is necessary to promote the purpose of the Legislature of encouraging the growth of industry; and that the requirements of at least \$5,000,000 in qualified investment in the State and an increase of at least 100 new jobs following the investment are reasonable qualifying criteria for the application of an investment tax credit and will best promote substantial capital investment in the State.
[PL 1993, c. 672, §1 (AMD); PL 1993, c. 672, §2 (AFF).]

8. Report on jobs and investment tax credit.

[PL 2001, c. 652, §10 (RP).]

SECTION HISTORY

PL 1977, c. 722 (NEW). PL 1979, c. 541, §A237 (AMD). PL 1981, c. 364, §69 (AMD). PL 1985, c. 535, §§16-18 (AMD). PL 1987, c. 504, §31 (AMD). PL 1987, c. 772, §39 (AMD). PL 1987, c. 880, §§1-3 (AMD). PL 1993, c. 395, §21 (AMD). PL 1993, c. 672, §1 (AMD). PL 1993, c. 672, §2 (AFF). PL 1995, c. 560, §§G19,20 (AMD). PL 1997, c. 504, §§14-16 (AMD). PL 1997, c. 761, §§3,4 (AMD). PL 1999, c. 414, §§45,46 (AMD). PL 1999, c. 414, §56 (AFF). PL 1999, c. 708, §44 (AMD). PL 2001, c. 652, §10 (AMD). PL 2003, c. 391, §§7,8 (AMD). PL 2007, c. 627, §89 (AMD). PL 2015, c. 267, Pt. DD, §20 (AMD).

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