

P.L. 2019, CHAPTER 145, *approved June 30, 2019*
Assembly, No. 5604

1 AN ACT increasing the tax credit provided for qualified investments
2 under the “New Jersey Angel Investor Tax Credit Act,” and
3 amending P.L.1997, c.349 and P.L.2013, c.14.
4

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

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8 1. (New section) The Legislature finds and declares that:

9 a. The State’s economic development plan included a goal of
10 creating the most diverse innovation ecosystem in the nation and
11 doubling venture capital in the State.

12 b. Women-owned and minority-owned businesses make up a
13 disproportionately small percentage of emerging technology
14 business, with estimates as low as one percent of funded emerging
15 technology business owned by African Americans and eight percent
16 of funded emerging technology business owned by women.

17 c. New Jersey has lagged behind the rest of the nation in the
18 growth of women-owned and minority-owned businesses, ranking
19 33rd nationwide in the growth of women-owned firms since 2007
20 and 30th in the growth of minority-owned businesses since 2014.
21

22 2. Section 3 of P.L.1997, c.349 (C.54:10A-5.30) is amended to
23 read as follows:

24 3 a. (1) A taxpayer, upon approval of the taxpayer's application
25 therefor by the New Jersey Economic Development Authority and in
26 consultation with the director, shall be allowed a credit against the tax
27 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an
28 amount equal to **[10]** 20 percent of the qualified investment made by
29 the taxpayer in a New Jersey emerging technology business, or in a
30 New Jersey emerging technology business holding company that
31 makes a verified transfer of funds to a New Jersey emerging
32 technology business **[, up to a maximum allowed credit of]** ;
33 provided, however, a taxpayer may be allowed a tax credit in an
34 amount equal to 25 percent of the qualified investment if the taxpayer
35 satisfies one of the requirements set forth in paragraph (2) of this
36 subsection. The value of tax credits allowed to a taxpayer pursuant to
37 this section shall not exceed \$500,000 for the [tax year] privilege
38 period for each qualified investment made by the taxpayer.

39 (2) Subject to the limits established in paragraph (1) of this
40 subsection, the New Jersey Economic Development Authority, in
41 consultation with the director, shall increase the amount of a tax credit

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 allowed pursuant to this section by five percent if the taxpayer makes a
2 qualified investment in a New Jersey emerging technology business, or
3 in a New Jersey emerging technology business holding company that
4 makes a verified transfer of funds to a New Jersey emerging
5 technology business, if the New Jersey emerging technology business
6 is:

7 (a) located in a qualified opportunity zone pursuant to 26 U.S.C.
8 s.1400Z-1, or a low-income community as defined in subparagraph (e)
9 of 26 U.S.C. s.45D; or

10 (b) certified by the State as a minority business or a women's
11 business pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.).

12 b. A credit shall not be allowed pursuant to section 1 of P.L.1993,
13 c.175 (C.54:10A-5.24), for expenses paid from funds for which a
14 credit is allowed, or which are includable in the calculation of a credit
15 allowed, under this section.

16 Notwithstanding any other provision of law, the order of priority in
17 which the credit allowed by this section and any other credits allowed
18 by law may be taken shall be as prescribed by the director.

19 c. Except as provided in subsection d. of this section, the amount
20 of [tax year] credit otherwise allowable under this section which
21 cannot be applied for the [tax year] privilege period against tax
22 liability otherwise due for that [tax year] privilege period may either
23 be carried over, if necessary, to the 15 [tax years] privilege periods
24 following the [tax year] privilege period for which the credit was
25 allowed or, at the election of the taxpayer, be claimed as and treated as
26 an overpayment for the purposes of R.S.54:49-15, provided, however,
27 that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not apply.

28 d. A taxpayer may not carry over any amount of credit allowed
29 under subsection a. of this section to a [tax year] privilege period
30 during which a corporate acquisition with respect to which the
31 taxpayer was a target corporation occurred or during which the
32 taxpayer was a party to a merger or a consolidation, or to any
33 subsequent [tax year] privilege period, if the credit was allowed for a
34 [tax year] privilege period prior to the year of acquisition, merger or
35 consolidation, except that if in the case of a corporate merger or
36 corporate consolidation the taxpayer can demonstrate, through the
37 submission of a copy of the plan of merger or consolidation and such
38 other evidence as may be required by the director, the identity of the
39 constituent corporation which was the acquiring person, a credit
40 allowed to the acquiring person may be carried over by the taxpayer.
41 As used in this subsection, "acquiring person" means the constituent
42 corporation the stockholders of which own the largest proportion of
43 the total voting power in the surviving or consolidated corporation
44 after the merger or consolidation.

45 e. The Executive Director of the New Jersey Economic
46 Development Authority, in consultation with the director, shall adopt,
47 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
48 (C.52:14B-1 et seq.), rules and regulations that are necessary to

1 implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28
2 through C.54:10A-5.30) and section 4 of P.L.2013, c.14 (C.54A:4-13),
3 including, but not limited to: examples of and the determination of
4 qualified investments of which applicants shall provide documentation
5 with their tax credit application; the promulgation of procedures and
6 forms necessary to apply for a credit; and provisions for credit
7 applicants to be charged an initial application fee and ongoing service
8 fees to cover the administrative costs related to the credit.

9 The amount of credits approved by the Executive Director of the
10 New Jersey Economic Development Authority, and in consultation
11 with the director, pursuant to subsection a. of this section and pursuant
12 to section 4 of P.L.2013, c.14 (C.54A:4-13), shall not exceed a
13 cumulative total of \$25,000,000 in any calendar year to apply against
14 the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)
15 and the tax imposed pursuant to the "New Jersey Gross Income Tax
16 Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits
17 allowed to taxpayers in a calendar year exceeds the amount of credits
18 available in that year, then taxpayers who have first applied for and
19 have not been allowed a credit amount for that reason shall be allowed,
20 in the order in which they have submitted an application, the amount
21 of the tax credit on the first day of the next succeeding calendar year in
22 which tax credits under this section and section 4 of P.L.2013, c.14
23 (C.54A:4-13) are not in excess of the amount of credits available.
24 (cf: P.L.2017, c.40, s.2)

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26 3. Section 4 of P.L.2013, c.14 (C.54A:4-13) is amended to read as
27 follows:

28 4. a. (1) A taxpayer, upon approval of the taxpayer's application
29 therefor by the New Jersey Economic Development Authority, and in
30 consultation with the director, shall be allowed a credit against the tax
31 otherwise due for the taxable year under the "New Jersey Gross
32 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to **[10]**
33 **20** percent of the qualified investment made by the taxpayer in a New
34 Jersey emerging technology business, or in a New Jersey emerging
35 technology business holding company that makes a verified transfer of
36 funds to a New Jersey emerging technology business **[**, up to a
37 maximum allowed credit of **]** ; provided, however, a taxpayer may be
38 allowed a tax credit in an amount equal to 25 percent of the qualified
39 investment if the taxpayer satisfies one of the requirements set forth in
40 paragraph (2) of this subsection. The value of tax credits allowed to a
41 taxpayer pursuant to this section shall not exceed \$500,000 for the
42 taxable year for each qualified investment made by the taxpayer.

43 (2) Subject to the limits established in paragraph (1) of this
44 subsection, the New Jersey Economic Development Authority, in
45 consultation with the director, shall increase the amount of a tax credit
46 allowed pursuant to this section by five percent if the taxpayer makes a
47 qualified investment in a New Jersey emerging technology business, or
48 in a New Jersey emerging technology business holding company that

1 makes a verified transfer of funds to a New Jersey emerging
2 technology business, if the New Jersey emerging technology business
3 is:

4 (a) located in a qualified opportunity zone pursuant to 26 U.S.C.
5 s.1400Z-1, or a low-income community as defined in 26 U.S.C. s.45D;

6 or

7 (b) certified by the State as a minority business or a women's
8 business pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.).

9 b. The amount of the credit allowed pursuant to this section shall
10 be applied against the tax otherwise due under the "New Jersey Gross
11 Income Tax Act," N.J.S.54A:1-1 et seq., after all other credits and
12 payments. If the credit exceeds the amount of tax liability otherwise
13 due, that amount of excess shall be an overpayment for the purposes of
14 N.J.S.54A:9-7, provided, however, that subsection (f) of N.J.S.54A:9-
15 7 shall not apply.

16 c. (1) A partnership shall not be allowed a credit under this
17 section directly, but the amount of credit of a taxpayer in respect of a
18 distributive share of partnership income under the "New Jersey Gross
19 Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined by
20 allocating to the taxpayer that proportion of the credit acquired by the
21 partnership that is equal to the taxpayer's share, whether or not
22 distributed, of the total distributive income or gain of the partnership
23 for its taxable year ending within or with the taxpayer's taxable year.
24 For the purposes of subsection b. of this section, the amount of tax
25 liability that would be otherwise due of a taxpayer is that proportion of
26 the total liability of the taxpayer that the taxpayer's share of the
27 partnership income or gain included in gross income bears to the total
28 gross income of the taxpayer.

29 (2) The credit for a corporation that has made a valid election as a
30 New Jersey S corporation pursuant to section 3 of P.L.1993, c.173
31 (C.54:10A-5.22) may be applied by the shareholders of the S
32 corporation against the tax liability otherwise due under the "New
33 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., provided that
34 the amount of credit that may be used by a shareholder of the S
35 corporation shall be determined by allocating to each shareholder of
36 the S corporation that proportion of the tax credit of the S corporation
37 that is equal to the shareholder's proportionate share of the S
38 corporation, whether or not distributed, of the total distributive income
39 or gain of the S corporation for its tax period ending with or within the
40 shareholder's tax period, and the credit may be applied by the
41 shareholders against the tax liability otherwise due pursuant to the
42 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

43 d. The Executive Director of the New Jersey Economic
44 Development Authority, in consultation with the director, shall adopt,
45 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
46 (C.52:14B-1 et seq.), rules and regulations that are necessary to
47 implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28
48 through C.54:10A-5.30) and this section, including, but not limited to:

1 examples of and the determination of qualified investments of which
2 applicants shall provide documentation with their tax credit
3 application; the promulgation of procedures and forms necessary to
4 apply for a credit; and provisions for credit applicants to be charged an
5 initial application fee and ongoing service fees to cover the
6 administrative costs related to the credit.

7 The amount of credits approved by the Executive Director of the
8 New Jersey Economic Development Authority and the Director of the
9 Division of Taxation in the Department of the Treasury, pursuant to
10 subsection a. of this section and pursuant to section 3 of P.L.1997,
11 c.349 (C.54:10A-5.30), shall not exceed a cumulative total of
12 \$25,000,000 in any calendar year to apply against the tax imposed
13 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax
14 imposed pursuant to the "New Jersey Gross Income Tax Act,"
15 N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to
16 taxpayers in a calendar year exceeds the amount of credits available in
17 that year, then taxpayers who have first applied for and have not been
18 allowed a credit amount for that reason shall be allowed, in the order
19 in which they have submitted an application, the amount of the tax
20 credit on the first day of the next succeeding calendar year in which
21 tax credits under this section and section 3 of P.L.1997, c.349
22 (C.54:10A-5.30) are not in excess of the amount of credits available.

23 e. As used in this section:

24 "Advanced computing" means a technology used in the designing
25 and developing of computing hardware and software, including
26 innovations in designing the full spectrum of hardware from hand-held
27 calculators to super computers, and peripheral equipment.

28 "Advanced materials" means materials with engineered properties
29 created through the development of specialized processing and
30 synthesis technology, including ceramics, high value-added metals,
31 electronic materials, composites, polymers, and biomaterials.

32 "Biotechnology" means the continually expanding body of
33 fundamental knowledge about the functioning of biological systems
34 from the macro level to the molecular and sub-atomic levels, as well as
35 novel products, services, technologies, and sub-technologies
36 developed as a result of insights gained from research advances which
37 add to that body of fundamental knowledge.

38 "Carbon footprint reduction technology" means a technology using
39 equipment for the commercial, institutional, and industrial sectors that:
40 increases energy efficiency; develops and delivers renewable or non-
41 carbon-emitting energy technologies; develops innovative carbon
42 emissions abatement with significant carbon emissions reduction
43 potential; or promotes measurable electricity end-use energy
44 efficiency.

45 "Control" with respect to a corporation, means ownership, directly
46 or indirectly, of stock possessing 80 percent or more of the total
47 combined voting power of all classes of the stock of the corporation
48 entitled to vote; and "control," with respect to a trust, means

1 ownership, directly or indirectly, of 80 percent or more of the
2 beneficial interest in the principal or income of the trust. The
3 ownership of stock in a corporation, of a capital or profits interest in a
4 partnership or association or of a beneficial interest in a trust shall be
5 determined in accordance with the rules for constructive ownership of
6 stock provided in subsection (c) of section 267 of the federal Internal
7 Revenue Code of 1986 (26 U.S.C. s.267), other than paragraph (3) of
8 subsection (c) of that section.

9 "Controlled group" means one or more chains of corporations
10 connected through stock ownership with a common parent corporation
11 if stock possessing at least 80 percent of the voting power of all classes
12 of stock of each of the corporations is owned directly or indirectly by
13 one or more of the corporations and the common parent owns directly
14 stock possessing at least 80 percent of the voting power of all classes
15 of stock of at least one of the other corporations.

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

18 "Electronic device technology" means a technology involving
19 microelectronics, semiconductors, electronic equipment and
20 instrumentation, radio frequency, microwave and millimeter
21 electronics, and optical and optic-electrical devices, or data and digital
22 communications and imaging devices.

23 "Information technology" means software publishing, motion
24 picture and video production, television production and post-
25 production services, telecommunications, data processing, hosting and
26 related services, custom computer programming services, computer
27 system design, computer facilities management services, other
28 computer related services, and computer training.

29 "Life sciences" means the production of medical equipment,
30 ophthalmic goods, medical or dental instruments, diagnostic
31 substances, biopharmaceutical products, or physical and biological
32 research.

33 "Medical device technology" means a technology involving any
34 medical equipment or product (other than a pharmaceutical product)
35 that has therapeutic value, diagnostic value, or both, and is regulated
36 by the federal Food and Drug Administration.

37 "Mobile communications technology" means a technology
38 involving the functionality and reliability of the transmission of voice
39 and multimedia data using a communication infrastructure via a
40 computer or a mobile device, that shall include, but not be limited to,
41 smartphones, electronic books and tablets, digital audio players, motor
42 vehicle electronics, home entertainment systems, and other wireless
43 appliances, without having connected to any physical or fixed link.

44 "New Jersey emerging technology business" means a company
45 with fewer than 225 employees, of whom at least 75 percent are filling
46 a position in New Jersey, that is doing business, employing or owning
47 capital or property, or maintaining an office in this State and: has
48 qualified research expenses paid or incurred for research conducted in

1 this State; conducts pilot scale manufacturing in this State; or conducts
2 technology commercialization in this State in the fields of advanced
3 computing, advanced materials, biotechnology, carbon footprint
4 reduction technology, electronic device technology, information
5 technology, life sciences, medical device technology, mobile
6 communications technology, or renewable energy technology.

7 "New Jersey emerging technology business holding company"
8 means any corporation, association, firm, partnership, trust or other
9 form of business organization, but not a natural person, which directly
10 or indirectly, owns, has the power or right to control, or has the power
11 to vote, a controlling share of the outstanding voting securities of a
12 corporation or other form of a New Jersey emerging technology
13 business.

14 "Partnership" means a syndicate, group, pool, joint venture, or
15 other unincorporated organization through or by means of which any
16 business, financial operation, or venture is carried on, and which is not
17 a trust or estate, a corporation, or a sole proprietorship.

18 "Pilot scale manufacturing" means design, construction, and
19 testing of preproduction prototypes and models in the fields of
20 advanced computing, advanced materials, biotechnology, carbon
21 footprint reduction technology electronic device technology,
22 information technology, life sciences, medical device technology,
23 mobile communications technology, or renewable energy technology,
24 other than for commercial sale, excluding sales of prototypes or sales
25 for market testing if the total gross receipts, as calculated in the
26 manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from
27 the sales of the product, service, or process do not exceed \$1,000,000.

28 "Qualified investment" means the non-refundable transfer of cash
29 to a New Jersey emerging technology business or to a New Jersey
30 emerging technology business holding company by a taxpayer that is
31 not a related person of the New Jersey emerging technology business
32 or the New Jersey emerging technology business holding company, the
33 transfer of which is in connection with either: a transaction between or
34 among the taxpayer and the New Jersey emerging technology business
35 or the New Jersey emerging technology holding company or both in
36 exchange for stock, interests in partnerships or joint ventures, licenses
37 (exclusive or non-exclusive), rights to use technology, marketing
38 rights, warrants, options, or any items similar to those included herein,
39 including, but not limited to, options or rights to acquire any of the
40 items included herein; or a purchase, production, or research
41 agreement between or among the taxpayer and the New Jersey
42 emerging technology business or the New Jersey emerging technology
43 holding company or both.

44 "Qualified research expenses" means qualified research expenses,
45 as defined in section 41 of the federal Internal Revenue Code of 1986
46 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of
47 advanced computing, advanced materials, biotechnology, electronic
48 device technology, information technology, life sciences, medical

1 device technology, mobile communications technology, or renewable
2 energy technology.

3 "Related person" means:

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

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

8 a corporation, partnership, association or trust controlled by an
9 individual, corporation, partnership, association or trust that is in the
10 control of the taxpayer; or

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

12 "Renewable energy technology" means a technology involving the
13 generation of electricity from solar energy; wind energy; wave or tidal
14 action; geothermal energy; the combustion of gas from the anaerobic
15 digestion of food waste and sewage sludge at a biomass generating
16 facility; the combustion of methane gas captured from a landfill; and a
17 fuel cell powered by methanol, ethanol, landfill gas, digester gas,
18 biomass gas, or other renewable fuel but not powered by a fossil fuel.

19 "Verified transfer of funds" means a non-refundable transfer of
20 funds equal to 100 percent of the taxpayer's qualified investment in the
21 New Jersey emerging technology business holding company to a New
22 Jersey emerging technology business by the New Jersey emerging
23 technology business holding company that is accompanied by
24 documentation, as required by the New Jersey Economic Development
25 Authority, which provides proof of a cash transaction originating with
26 a taxpayer and concluding with a New Jersey emerging technology
27 business, provided that the transactions from origin to destination
28 occur within the same taxable year.

29 (cf: P.L.2017, c.40, s.3)

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31 4. This act shall take effect immediately and shall apply to
32 qualified investments made during privilege periods and taxable
33 years beginning on and after January 1, 2020.

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STATEMENT

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38 This bill increases the amount of the corporation business and
39 gross income tax credits that are available for qualified investments
40 under the "New Jersey Angel Investor Tax Credit Act," from 10 to
41 20 percent of the qualified investment made by a taxpayer in a New
42 Jersey emerging technology business or in a New jersey emerging
43 technology business holding company that makes a verified transfer
44 of funds to a New Jersey emerging technology business. The bill,
45 however, also provides that a taxpayer may be allowed a tax credit
46 in an amount equal to 25 percent of the qualified investment if the
47 emerging technology business is located in a qualified opportunity
48 zone or low-income community, as those terms are defined in

1 federal law, or is certified by the State as a minority or women's
2 business.

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8 Increases tax credit provided for qualified investments under
"New Jersey Angel Investor Tax Credit Act."