ASSEMBLY, No. 5604

STATE OF NEW JERSEY
218th LEGISLATURE

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SYNOPSIS
Increases tax credit provided for qualified investments under “New Jersey
Angel Investor Tax Credit Act.”

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 6/28/2019)
AN ACT increasing the tax credit provided for qualified investments
under the “New Jersey Angel Investor Tax Credit Act,” and

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

1. (New section) The Legislature finds and declares that:
   a. The State’s economic development plan included a goal of
      creating the most diverse innovation ecosystem in the nation and
      doubling venture capital in the State.
   b. Women-owned and minority-owned businesses make up a
disproportionately small percentage of emerging technology
business, with estimates as low as one percent of funded emerging
technology business owned by African Americans and eight percent
of funded emerging technology business owned by women.
   c. New Jersey has lagged behind the rest of the nation in the
      growth of women-owned and minority-owned businesses, ranking
      33rd nationwide in the growth of women-owned firms since 2007
      and 30th in the growth of minority-owned businesses since 2014.

2. Section 3 of P.L.1997, c.349 (C.54:10A-5.30) is amended to
read as follows:
   3. a. (1) A taxpayer, upon approval of the taxpayer’s application
thereof by the New Jersey Economic Development Authority and in
consultation with the director, 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 [10] 20 percent of the qualified investment made by
the taxpayer in a New Jersey emerging technology business, or in a
New Jersey emerging technology business holding company that
makes a verified transfer of funds to a New Jersey emerging
technology business [1. up to a maximum allowed credit of] ;
provided, however, a taxpayer may be allowed a tax credit in an
amount equal to 25 percent of the qualified investment if the taxpayer
satisfies one of the requirements set forth in paragraph (2) of this
subsection. The value of tax credits allowed to a taxpayer pursuant to
this section shall not exceed $500,000 for the [tax year] privilege
period for each qualified investment made by the taxpayer.
   (2) Subject to the limits established in paragraph (1) of this
subsection, the New Jersey Economic Development Authority, in
consultation with the director, shall increase the amount of a tax credit
allowed pursuant to this section by five percent if the taxpayer makes a
qualified investment in a New Jersey emerging technology business, or
in a New Jersey emerging technology business holding company that
makes a verified transfer of funds to a New Jersey emerging

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.
technology business, if the New Jersey emerging technology business is:

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

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

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

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

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] privilege period against tax liability otherwise due for that [tax year] privilege period may either be carried over, if necessary, to the 15 [tax years] privilege periods following the [tax year] privilege period for which the credit was allowed or, at the election of the taxpayer, be claimed as and treated as an overpayment for the purposes of R.S.54:49-15, provided, however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not apply.

d. A taxpayer may not carry over any amount of credit allowed under subsection a. of this section to a [tax year] privilege period during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent [tax year] privilege period, if the credit was allowed for a [tax year] privilege period prior to the year of acquisition, merger or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer.

As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

e. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations that are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and section 4 of P.L.2013, c.14 (C.54A:4-13), including, but not limited to: examples of and the determination of qualified investments of which applicants shall provide documentation.
with their tax credit application; the promulgation of procedures and
forms necessary to apply for a credit; and provisions for credit
applicants to be charged an initial application fee and ongoing service
fees to cover the administrative costs related to the credit.

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

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

4. a. (1) A taxpayer, upon approval of the taxpayer's application
therefor by the New Jersey Economic Development Authority, and in
consultation with the director, shall be allowed a credit against the tax
otherwise due for the taxable year under the "New Jersey Gross
Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the qualified investment made by the taxpayer in a New
Jersey emerging technology business, or in a New Jersey emerging
technology business holding company that makes a verified transfer of
funds to a New Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the
taxable year for each qualified investment made by the taxpayer.

(2) Subject to the limits established in paragraph (1) of this
subsection, the New Jersey Economic Development Authority, in
consultation with the director, shall increase the amount of a tax credit
allowed pursuant to this section by five percent if the taxpayer makes a
qualified investment in a New Jersey emerging technology business, or
in a New Jersey emerging technology business holding company that
makes a verified transfer of funds to a New Jersey emerging
technology business, if the New Jersey emerging technology business
is:
(a) located in a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1, or a low-income community as defined in 26 U.S.C. s.45D; or
(b) certified by the State as a minority business or a women’s business pursuant to P.L. 1986, c.195 (C.52:27H-21.17 et seq.).

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

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

(2) The credit for a corporation that has made a valid election as a New Jersey S corporation pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22) may be applied by the shareholders of the S corporation against the tax liability otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., provided that the amount of credit that may be used by a shareholder of the S corporation shall be determined by allocating to each shareholder of the S corporation that proportion of the tax credit of the S corporation that is equal to the shareholder's proportionate share of the S corporation, whether or not distributed, of the total distributive income or gain of the S corporation for its tax period ending with or within the shareholder's tax period, and the credit may be applied by the shareholders against the tax liability otherwise due pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.
d. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations that are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and this section, including, but not limited to: examples of and the determination of qualified investments of which applicants shall provide documentation with their tax credit application; the promulgation of procedures and forms necessary to
apply for a credit; and provisions for credit applicants to be charged an
initial application fee and ongoing service fees to cover the
administrative costs related to the credit.

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

e. As used in this section:

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

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

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

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

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

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

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

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

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

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

"New Jersey emerging technology business" means a company
with fewer than 225 employees, of whom at least 75 percent are filling
a position in New Jersey, that is doing business, employing or owning
capital or property, or maintaining an office in this State and: has
qualified research expenses paid or incurred for research conducted in
this State; conducts pilot scale manufacturing in this State; or conducts
technology commercialization in this State in the fields of advanced
computing, advanced materials, biotechnology, carbon footprint
reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

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

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

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

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

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

"Related person" means:
a corporation, partnership, association or trust controlled by the
taxpayer;
  an individual, corporation, partnership, association or trust that is
in the control of the taxpayer;
  a corporation, partnership, association or trust controlled by an
individual, corporation, partnership, association or trust that is in the
control of the taxpayer; or
  a member of the same controlled group as the taxpayer.
"Renewable energy technology" means a technology involving the
 generation of electricity from solar energy; wind energy; wave or tidal
 action; geothermal energy; the combustion of gas from the anaerobic
digestion of food waste and sewage sludge at a biomass generating
facility; the combustion of methane gas captured from a landfill; and a
fuel cell powered by methanol, ethanol, landfill gas, digester gas,
biomass gas, or other renewable fuel but not powered by a fossil fuel.
"Verified transfer of funds" means a non-refundable transfer of
funds equal to 100 percent of the taxpayer's qualified investment in the
New Jersey emerging technology business holding company to a New
Jersey emerging technology business by the New Jersey emerging
technology business holding company that is accompanied by
documentation, as required by the New Jersey Economic Development
Authority, which provides proof of a cash transaction originating with
a taxpayer and concluding with a New Jersey emerging technology
business, provided that the transactions from origin to destination
occur within the same taxable year.
(cf: P.L.2017, c.40, s.3)

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

STATEMENT

This bill increases the amount of the corporation business and
gross income tax credits that are available for qualified investments
under the “New Jersey Angel Investor Tax Credit Act,” from 10 to
20 percent of the qualified investment made by a taxpayer in a New
Jersey emerging technology business or in a New Jersey emerging
technology business holding company that makes a verified transfer
of funds to a New Jersey emerging technology business. The bill,
however, also provides that a taxpayer may be allowed a tax credit
in an amount equal to 25 percent of the qualified investment if the
emerging technology business is located in a qualified opportunity
zone or low-income community, as those terms are defined in
federal law, or is certified by the State as a minority or women’s
business.