

# ASSEMBLY, No. 5604

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 17, 2019

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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)

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:  
7

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  
42 allowed pursuant to this section by five percent if the taxpayer makes a  
43 qualified investment in a New Jersey emerging technology business, or  
44 in a New Jersey emerging technology business holding company that  
45 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.

1 technology business, if the New Jersey emerging technology business  
2 is:

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

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

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

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

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

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

41 e. The Executive Director of the New Jersey Economic  
42 Development Authority, in consultation with the director, shall adopt,  
43 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
44 (C.52:14B-1 et seq.), rules and regulations that are necessary to  
45 implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28  
46 through C.54:10A-5.30) and section 4 of P.L.2013, c.14 (C.54A:4-13),  
47 including, but not limited to: examples of and the determination of  
48 qualified investments of which applicants shall provide documentation

1 with their tax credit application; the promulgation of procedures and  
2 forms necessary to apply for a credit; and provisions for credit  
3 applicants to be charged an initial application fee and ongoing service  
4 fees to cover the administrative costs related to the credit.

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

21  
22 3. Section 4 of P.L.2013, c.14 (C.54A:4-13) is amended to read as  
23 follows:

24 4. 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 otherwise due for the taxable year under the "New Jersey Gross  
28 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to [10]  
29 20 percent of the qualified investment made by the taxpayer in a New  
30 Jersey emerging technology business, or in a New Jersey emerging  
31 technology business holding company that makes a verified transfer of  
32 funds to a New Jersey emerging technology business [, up to a  
33 maximum allowed credit of] ; provided, however, a taxpayer may be  
34 allowed a tax credit in an amount equal to 25 percent of the qualified  
35 investment if the taxpayer satisfies one of the requirements set forth in  
36 paragraph (2) of this subsection. The value of tax credits allowed to a  
37 taxpayer pursuant to this section shall not exceed \$500,000 for the  
38 taxable year 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  
42 allowed pursuant to this section by five percent if the taxpayer makes a  
43 qualified investment in a New Jersey emerging technology business, or  
44 in a New Jersey emerging technology business holding company that  
45 makes a verified transfer of funds to a New Jersey emerging  
46 technology business, if the New Jersey emerging technology business  
47 is:

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

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

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

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

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

40       d. The Executive Director of the New Jersey Economic  
41 Development Authority, in consultation with the director, shall adopt,  
42 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
43 (C.52:14B-1 et seq.), rules and regulations that are necessary to  
44 implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28  
45 through C.54:10A-5.30) and this section, including, but not limited to:  
46 examples of and the determination of qualified investments of which  
47 applicants shall provide documentation with their tax credit  
48 application; the promulgation of procedures and forms necessary to

1 apply for a credit; and provisions for credit applicants to be charged an  
2 initial application fee and ongoing service fees to cover the  
3 administrative costs related to the credit.

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

20 e. As used in this section:

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

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

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

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

42 "Control" with respect to a corporation, means ownership, directly  
43 or indirectly, of stock possessing 80 percent or more of the total  
44 combined voting power of all classes of the stock of the corporation  
45 entitled to vote; and "control," with respect to a trust, means  
46 ownership, directly or indirectly, of 80 percent or more of the  
47 beneficial interest in the principal or income of the trust. The  
48 ownership of stock in a corporation, of a capital or profits interest in a

1 partnership or association or of a beneficial interest in a trust shall be  
2 determined in accordance with the rules for constructive ownership of  
3 stock provided in subsection (c) of section 267 of the federal Internal  
4 Revenue Code of 1986 (26 U.S.C. s.267), other than paragraph (3) of  
5 subsection (c) of that section.

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

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

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

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

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

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

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

41 "New Jersey emerging technology business" means a company  
42 with fewer than 225 employees, of whom at least 75 percent are filling  
43 a position in New Jersey, that is doing business, employing or owning  
44 capital or property, or maintaining an office in this State and: has  
45 qualified research expenses paid or incurred for research conducted in  
46 this State; conducts pilot scale manufacturing in this State; or conducts  
47 technology commercialization in this State in the fields of advanced  
48 computing, advanced materials, biotechnology, carbon footprint

1 reduction technology, electronic device technology, information  
2 technology, life sciences, medical device technology, mobile  
3 communications technology, or renewable energy technology.

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

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

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

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

41 "Qualified research expenses" means qualified research expenses,  
42 as defined in section 41 of the federal Internal Revenue Code of 1986  
43 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of  
44 advanced computing, advanced materials, biotechnology, electronic  
45 device technology, information technology, life sciences, medical  
46 device technology, mobile communications technology, or renewable  
47 energy technology.

48 "Related person" means:



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

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

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

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

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

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

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

27

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

31

32

33

#### STATEMENT

34

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