

ASSEMBLY, No. 5056

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JANUARY 12, 2023

Sponsored by:

Assemblyman CHRISTOPHER P. DEPHILLIPS

District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Increases tax credits for investments made in emerging technology businesses under “New Jersey Angel Investor Tax Credit Act.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT increasing the amount of the tax credits provided for
2 investments made in emerging technology businesses 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. Section 3 of P.L.1997, c.349 (C.54:10A-5.30) is amended to
9 read as follows:

10 3. a. (1) A taxpayer, upon approval of the taxpayer's
11 application therefor by the New Jersey Economic Development
12 Authority and in consultation with the director, shall be allowed a
13 credit against the tax imposed pursuant to section 5 of P.L.1945,
14 c.162 (C.54:10A-5), in an amount equal to **[20]** 30 percent of the
15 qualified investment made by the taxpayer in a New Jersey
16 emerging technology business, in a New Jersey emerging
17 technology business holding company that makes a verified transfer
18 of funds to a New Jersey emerging technology business, or in a
19 qualified venture fund; provided, however, a taxpayer may be
20 allowed a tax credit in an amount equal to **[25]** 35 percent of the
21 qualified investment if the taxpayer satisfies one of the
22 requirements set forth in paragraph (2) of this subsection. The value
23 of tax credits allowed to a taxpayer pursuant to this section shall not
24 exceed \$500,000 for the privilege period for each qualified
25 investment made by the taxpayer.

26 (2) Subject to the limits established in paragraph (1) of this
27 subsection, the New Jersey Economic Development Authority, in
28 consultation with the director, shall increase the amount of a tax
29 credit allowed pursuant to this section by five percent if the
30 taxpayer makes a qualified investment in a New Jersey emerging
31 technology business, or in a New Jersey emerging technology
32 business holding company that makes a verified transfer of funds to
33 a New Jersey emerging technology business, or in a qualified
34 venture fund, if the New Jersey emerging technology business is
35 either located in a qualified opportunity zone pursuant to 26 U.S.C.
36 § 1400Z-1, or a low-income community as defined in subparagraph
37 (e) of 26 U.S.C. § 45D or certified by the State as a minority
38 business or a women's business pursuant to P.L.1986, c.195
39 (C.52:27H-21.17 et seq.) and, in the case of a qualified venture
40 fund, if the qualified venture fund commits by contract to invest 50
41 percent of its funds in diverse entrepreneurs.

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

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

4 c. Except as provided in subsection d. of this section, the
5 amount of credit otherwise allowable under this section which
6 cannot be applied for the privilege period against tax liability
7 otherwise due for that privilege period may either be carried over, if
8 necessary, to the 15 privilege periods following the privilege period
9 for which the credit was allowed or, at the election of the taxpayer,
10 be claimed as and treated as an overpayment for the purposes of
11 R.S.54:49-15, provided, however, that section 7 of P.L.1992, c.175
12 (C.54:49-15.1) shall not apply.

13 d. A taxpayer may not carry over any amount of credit allowed
14 under subsection a. of this section to a privilege period during
15 which a corporate acquisition with respect to which the taxpayer
16 was a target corporation occurred or during which the taxpayer was
17 a party to a merger or a consolidation, or to any subsequent
18 privilege period, if the credit was allowed for a privilege period
19 prior to the year of acquisition, merger or consolidation, except that
20 if in the case of a corporate merger or corporate consolidation the
21 taxpayer can demonstrate, through the submission of a copy of the
22 plan of merger or consolidation and such other evidence as may be
23 required by the director, the identity of the constituent corporation
24 which was the acquiring person, a credit allowed to the acquiring
25 person may be carried over by the taxpayer. As used in this
26 subsection, "acquiring person" means the constituent corporation
27 the stockholders of which own the largest proportion of the total
28 voting power in the surviving or consolidated corporation after the
29 merger or consolidation.

30 e. The Executive Director of the New Jersey Economic
31 Development Authority, in consultation with the director, shall
32 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
33 c.410 (C.52:14B-1 et seq.), rules and regulations that are necessary
34 to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-
35 5.28 through C.54:10A-5.30) and section 4 of P.L.2013, c.14
36 (C.54A:4-13), including, but not limited to: examples of and the
37 determination of qualified investments of which applicants shall
38 provide documentation with their tax credit application; the
39 promulgation of procedures and forms necessary to apply for a
40 credit; provisions for recapture in the event a taxpayer receives a
41 credit on the basis of its commitment to transfer cash to a qualified
42 venture fund and it does not fund its commitment; and provisions
43 for credit applicants to be charged an initial application fee and
44 ongoing service fees to cover the administrative costs related to the
45 credit.

46 The amount of credits approved by the Executive Director of the
47 New Jersey Economic Development Authority, and in consultation
48 with the director, pursuant to subsection a. of this section and

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1 pursuant to section 4 of P.L.2013, c.14 (C.54A:4-13), shall not
2 exceed a cumulative total of \$35,000,000 in any calendar year to
3 apply against the tax imposed pursuant to section 5 of P.L.1945,
4 c.162 (C.54:10A-5) and the tax imposed pursuant to the "New
5 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the
6 cumulative amount of credits allowed to taxpayers in a calendar
7 year exceeds the amount of credits available in that year, then
8 taxpayers who have first applied for and have not been allowed a
9 credit amount for that reason shall be allowed, in the order in which
10 they have submitted an application, the amount of the tax credit on
11 the first day of the next succeeding calendar year in which tax
12 credits under this section and section 4 of P.L.2013, c.14 (C.54A:4-
13 13) are not in excess of the amount of credits available.
14 (cf: P.L.2020, c.156, s.118).

15

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

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

34 (2) Subject to the limits established in paragraph (1) of this
35 subsection, the New Jersey Economic Development Authority, in
36 consultation with the director, shall increase the amount of a tax
37 credit allowed pursuant to this section by five percent if the
38 taxpayer makes a qualified investment in a New Jersey emerging
39 technology business, in a New Jersey emerging technology business
40 holding company that makes a verified transfer of funds to a New
41 Jersey emerging technology business, or in a qualified venture fund,
42 if the New Jersey emerging technology business is either located in
43 a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1, or a
44 low-income community as defined in subparagraph (e) of 26 U.S.C.
45 § 45D; or certified by the State as a minority business or a women's
46 business pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.) and,
47 in the case of a qualified venture fund, if the qualified venture fund

1 commits by contract to invest 50 percent of its funds in diverse
2 entrepreneurs.

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

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

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

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

1 transfer cash to a qualified venture fund and it does not fund its
2 commitment; and provisions for credit applicants to be charged an
3 initial application fee and ongoing service fees to cover the
4 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 the Director of
7 the Division of Taxation in the Department of the Treasury,
8 pursuant to subsection a. of this section and pursuant to section 3 of
9 P.L.1997, c.349 (C.54:10A-5.30), shall not exceed a cumulative
10 total of \$35,000,000 in any calendar year to apply against the tax
11 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and
12 the tax imposed pursuant to the "New Jersey Gross Income Tax
13 Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits
14 allowed to taxpayers in a calendar year exceeds the amount of
15 credits available in that year, then taxpayers who have first applied
16 for and have not been allowed a credit amount for that reason shall
17 be allowed, in the order in which they have submitted an
18 application, the amount of the tax credit on the first day of the next
19 succeeding calendar year in which tax credits under this section and
20 section 3 of P.L.1997, c.349 (C.54:10A-5.30) are not in excess of
21 the amount of credits available.

22 e. As used in this section:

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

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

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

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

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

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

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

18 "Director" means the Director of the Division of Taxation in the
19 Department of the Treasury.

20 "Diverse entrepreneur" means a New Jersey based business that
21 meets the criteria for a minority business or female business set
22 forth in section 3 of P.L.1983, c.482 (C.52:32-19).

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

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

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

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

42 "Mobile communications technology" means a technology
43 involving the functionality and reliability of the transmission of
44 voice and multimedia data using a communication infrastructure via
45 a computer or a mobile device, that shall include, but not be limited
46 to, smartphones, electronic books and tablets, digital audio players,
47 motor vehicle electronics, home entertainment systems, and other

1 wireless appliances, without having connected to any physical or
2 fixed link.

3 "New Jersey based business" means a company with fewer than
4 225 employees, of whom at least 75 percent are filling a position in
5 New Jersey, that is doing business, employing or owning capital or
6 property, or maintaining an office in this State.

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

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

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

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

41 "Qualified investment" means the non-refundable transfer of
42 cash to a New Jersey emerging technology business or to a New
43 Jersey emerging technology business holding company by a
44 taxpayer that is not a related person of the New Jersey emerging
45 technology business or the New Jersey emerging technology
46 business holding company, the transfer of which is in connection
47 with either: a transaction between or among the taxpayer and the
48 New Jersey emerging technology business or the New Jersey

1 emerging technology holding company or both in exchange for
2 stock, interests in partnerships or joint ventures, licenses (exclusive
3 or non-exclusive), rights to use technology, marketing rights,
4 warrants, options, or any items similar to those included herein,
5 including, but not limited to, options or rights to acquire any of the
6 items included herein; or a purchase, production, or research
7 agreement between or among the taxpayer and the New Jersey
8 emerging technology business or the New Jersey emerging
9 technology holding company or both. "Qualified investment" also
10 means the non-refundable transfer of cash or irrevocable contractual
11 commitment to transfer cash to a qualified venture fund.

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

19 "Qualified venture fund" means a venture fund required by
20 contract to invest a minimum of 50 percent of its funds in New
21 Jersey based businesses that the authority, in its sole discretion,
22 based upon the qualified venture fund's investment history, if any,
23 its private placement memorandum and other relevant information,
24 has determined has the capacity to make the minimum investment.

25 "Related person" means:

26 a corporation, partnership, association or trust controlled by the
27 taxpayer;

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

30 a corporation, partnership, association or trust controlled by an
31 individual, corporation, partnership, association or trust that is in
32 the control of the taxpayer; or

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

34 "Renewable energy technology" means a technology involving
35 the generation of electricity from solar energy; wind energy; wave
36 or tidal action; geothermal energy; the combustion of gas from the
37 anaerobic digestion of food waste and sewage sludge at a biomass
38 generating facility; the combustion of methane gas captured from a
39 landfill; and a fuel cell powered by methanol, ethanol, landfill gas,
40 digester gas, biomass gas, or other renewable fuel but not powered
41 by a fossil fuel.

42 "Venture fund" means a partnership, corporation, trust, or limited
43 liability company that invests cash in a business during the early or
44 expansion stages of a business in exchange for an equity stake in
45 the business in, which the investment is made. Venture firm may
46 include a venture capital fund, a family office fund, or a corporate
47 investor fund, provided that a professional manager administers the
48 venture firm.

1 "Verified transfer of funds" means a non-refundable transfer of
2 funds equal to 100 percent of the taxpayer's qualified investment in
3 the New Jersey emerging technology business holding company to a
4 New Jersey emerging technology business by the New Jersey
5 emerging technology business holding company that is
6 accompanied by documentation, as required by the New Jersey
7 Economic Development Authority, which provides proof of a cash
8 transaction originating with a taxpayer and concluding with a New
9 Jersey emerging technology business, provided that the transactions
10 from origin to destination occur within the same taxable year.

11 The definitions of "advanced computing," "advanced materials,"
12 "biotechnology," "carbon footprint reduction technology,"
13 "electronic device technology," "information technology," "life
14 sciences," "medical device technology," "mobile communications
15 technology," "New Jersey emerging technology business," "pilot
16 scale manufacturing," and "renewable energy technology" may be
17 modified by regulation to conform to definitions in other programs
18 administered by the authority.

19 (cf: P.L.2020, c.156, s.119)

20

21 3. This act shall take effect immediately and shall apply to
22 taxable years and privilege periods beginning on or after January 1
23 next following the date of enactment.

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STATEMENT

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28 This bill increases the amount of the tax credits provided under
29 the "New Jersey Angel Investor Tax Credit Act" for qualified
30 investments made in New Jersey emerging technology businesses.
31 Under current law, taxpayers are allowed credits against the gross
32 income tax and corporation business tax equal to 20 percent of a
33 qualified investment made by the taxpayer in a New Jersey
34 emerging technology business, in a New Jersey emerging
35 technology business holding company that makes a verified transfer
36 of funds to a New Jersey emerging technology business, or in a
37 qualified venture fund. Taxpayers can qualify for an additional five
38 percent credit provided that the qualified investment is made in an
39 emerging technology business that is located in an opportunity zone
40 or a low-income community, is a minority or women's business, or,
41 in the case of a qualified venture fund, if the qualified venture fund
42 commits by contract to invest 50 percent of its funds in diverse
43 entrepreneurs.

44 The bill would increase the amount of the tax credit provided to
45 taxpayers that make qualified investments from 20 to 30 percent
46 while increasing the total amount of the tax credit provided for
47 taxpayers that qualify for the additional five percent credit from 25
48 to 35 percent.