SENATE, No. 2454

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED NOVEMBER 22, 2010

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SYNOPSIS

“New Jersey Angel Investor Tax Credit Act,” provides credits against
corporation business and gross income taxes for investing in New Jersey
emerging technology businesses.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 1/7/2011)
AN ACT providing credits against certain taxes for investing in New Jersey emerging technology businesses, and amending P.L.1997, c.349, and supplementing chapter 4 of Title 54A of the New Jersey Statutes.

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

1. Section 1 of P.L.1997, c.349 (C.54:10A-5.28) is amended to read as follows:

   1. This act Sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through 54:10A-5.30) and section 4 of P.L.  (pending before the Legislature as this bill) shall be known and may be cited as the "Small New Jersey-based High-Technology Business Investment Jersey Angel Investor Tax Credit Act."

   (cf: P.L.1997, c.349, s.1)

2. Section 2 of P.L.1997, c.349 (C.54:10A-5.29) is amended to read as follows:

   2. As used in this act:

      "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.

      "Control" with respect to a corporation means ownership, directly or indirectly, of stock possessing 80% 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% 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

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.
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
s.267), other than paragraph (3) of subsection (c) of that section[26 U.S.C.
].

"Controlled group" means one or more chains of corporations
connected through stock ownership with a common parent
corporation if stock possessing at least 80% 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% 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[;].

["Environmental technology" means assessment and prevention
of threats or damage to human health or the environment,
environmental cleanup, or the development of alternative energy
sources:].

"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[;].

"New Jersey emerging technology business" means a company
doing business, employing or owning capital or property, or
maintaining an office, in this State that has qualified research
expenses paid or incurred for research conducted in this State or
conducts pilot scale manufacturing in this State, and has fewer than
225 employees, of whom at least 75 percent are filling a position in
New Jersey.

"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, electronic
device technology, [environmental technology, and] life sciences,
medical device technology, and renewable energy technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if total gross receipts, as calculated pursuant to the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from such sales of the product, service or process do not exceed $1,000,000.

"Qualified investment" means the non-refundable investment, at risk in a small New Jersey-based high-technology business, transfer of cash that is transferred to the small New Jersey-based high-technology business by a taxpayer that is not a related person of the small New Jersey-based high-technology business, the transfer of which is in connection with either (1) a transaction 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 (2) a purchase, production or research agreement.

"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, environmental technology, life sciences, or medical device technology, or renewable energy technology.

"Related person" means:

a. a corporation, partnership, association or trust controlled by the taxpayer;
b. an individual, corporation, partnership, association or trust that is in the control of the taxpayer;
c. a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or
d. 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; and the combustion of methane gas captured from a landfill; a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

"Small New Jersey-based high-technology business" means a corporation doing business, employing or owning capital or property, or maintaining an office, in this State that has qualified research expenses paid or incurred for research conducted in this
State or conducts pilot scale manufacturing in this State, and has fewer than 225 employees, of whom 75% are New Jersey-based employees filling a position or job in this State; and]

"Tax year" means the fiscal or calendar accounting year of a taxpayer.
(cf: P.L.1997, c.349, s.2)

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

3. a. 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 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 10% of the qualified investment made by the taxpayer [during each of the three tax years beginning on or after January 1 next following enactment of this act.] in a [small] New [Jersey-based high-technology] Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer. [An unused credit may be carried forward for use in future years, subject to the $500,000 per year limitation.]

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.

[The tax imposed for a tax year pursuant to section 5 of P.L.1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), then by any credit allowed under section 3 of P.L.1993, c.170 (C.54:10A-5.6), then by any credit allowed under section 3 or 4 of P.L.1993, c.171 (C.54:10A-5.18 or C.54:10A-5.19), then by any credit allowed under section 1 of P.L.1993, c.175 (C.54:10A-5.24), and then by any credit allowed under section 1 of P.L.1993, c.150 (C.27:26A-15), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the credits' tax years. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.] 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 against tax liability
otherwise due for that tax year (to the limitations of subsection b.
of this section) may either be carried over, if necessary, to the 15
tax years following [a credit’s] the tax year 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 [or
credits] allowed under subsection a. of this section to a tax year
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, if the credit was allowed for a tax year 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 rules in accordance with the "Administrative Procedure Act,"
P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
sections 1 through 5 of P.L.1997, c.349 (C.54:10A-5.28 through
54:10A-5.30) and section 4 of P.L. , c. (C. ) (pending before
the Legislature as this bill), including but not limited to: examples
of and the determination of qualified investments of which
applicants must 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. , c. (C. ) (pending before the
Legislature as this bill) 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. , c. (C ) (pending before the Legislature as this bill)
are not in excess of the amount of credits available.
(cf: P.L.1997, c.349, s.3)

4. (New section) a. 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
et seq., in an amount equal to 10 percent of the qualified investment
made by the taxpayer in 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.
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. 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.
d. The Executive Director of the New Jersey Economic
Development Authority, in consultation with the director, shall
adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through
54:10A-5.30) and section 4 of P.L. , c. (C ) (pending
before the Legislature as this bill), including but not limited to:
examples of and the determination of qualified investments of which applicants must 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.

"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.

"Life sciences" means the production of medical equipment, 
opthalmic 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.

"New Jersey emerging technology business" means a company 
doing business, employing or owning capital or property, or 
maintaining an office, in this State that has qualified research 
expenses paid or incurred for research conducted in this State or 
conducts pilot scale manufacturing in this State, and has fewer than 
225 employees, of whom at least 75 percent are filling a position in 
New Jersey.

"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, electronic 
device technology, life sciences, medical device technology, and 
renewable energy technology, other than for commercial sale, 
excluding sales of prototypes or sales for market testing if total 
gross receipts, as calculated in the manner provided in section 6 of 
P.L.1945, c.162 (C.54:10A-6), from such 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 by a taxpayer that is not a related person of the New Jersey emerging technology business, the transfer of which is in connection with either (1) a transaction 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 (2) a purchase, production or research agreement.

"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, life sciences, medical device technology, or renewable energy technology.

"Related person" means:

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

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

c. a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or

d. 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; and the combustion of methane gas captured from a landfill; a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

5. This act shall take effect immediately and section 3 shall apply to privilege periods beginning on or after January 1, 2011 and section 4 shall apply to taxable years beginning on or after January 1, 2011.

STATEMENT

This bill, the "New Jersey Angel Investor Tax Credit Act," revives the expired Small New Jersey-based High Technology Business Investment Tax Credit by establishing credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses. Subject to certain limitations, the corporation business and gross income tax credits
equal ten percent of a taxpayer’s qualified investment in an emerging technology company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey. Purchase, production, and research agreements qualify as creditable investments. The permanent program is subject to a $25 million annual cap. In addition, tax credit recipients cannot claim tax credits for that part of an investment in a single company that exceeds $500,000. If the tax credit amount exceeds a gross income taxpayer’s tax liability, the State will issue a refund to the taxpayer in the amount of the excess; while a corporation business taxpayer may choose between having the amount of the excess refunded or carried forward to be applied against tax liabilities in the next 15 years.

The legislation recognizes that angel investors can play a vital part in New Jersey’s economic recovery. Angel investments are equity placements by high net worth individuals into high-risk start-up ventures. Some angel investors do not just invest in, but also mentor, coach, and assist promising start-up enterprises. A 2010 working paper by William R. Kerr, Josh Lerner, and Antoinette Schoar of the Harvard Business School, “The Consequences of Entrepreneurial Finance: A Regression Discontinuity Analysis,” shows that start-up firms receiving angel capital have a significantly higher rate of survival, faster growth, and superior access to fundraising outside the angel group than early-stage firms devoid of angel financing. It is therefore in New Jersey’s best interest to encourage angel investors to examine and invest in New Jersey technology start-up businesses, as successful start-ups create jobs, generate wealth, and enhance the overall well-being in the state.