Sponsored by:
Senator FRED H. MADDEN, JR.
District 4 (Camden and Gloucester)
Senator LORETTA WEINBERG
District 37 (Bergen)

Co-Sponsored by:
Senators Stack, Sarlo, Cunningham, Van Drew, Beach, A.R.Bucco,
Gordon, Greenstein and Ruiz

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
Introduced Pending Technical Review by Legislative Counsel
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., c. (C.) (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 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% 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.

"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 transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include but shall not be limited to smartphones, electronic books and tablets, mp3 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 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, life sciences, medical device technology, mobile communications 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 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 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 emerging 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, information technology, life sciences, or medical device technology, mobile communications 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 period 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
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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 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 year under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 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.

"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 transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include but shall not be limited to smartphones, electronic books and tablets, mp3 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 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, 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 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, information technology, life sciences, medical device technology, mobile communications 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

The bill designated 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
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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
courage 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.