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RULE ADOPTIONS

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NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

45 N.J.R. 2399(a)

Adopted New Rules: N.J.A.C. 19:31-19

Angel Investor Tax Credit Program

Proposed: August 5, 2013, at *45 N.J.R. 1902(a)*.

Adopted: October 10, 2013, by the New Jersey Economic Development Authority, Michele Brown, Chief Executive Officer.

Filed: October 10, 2013, as R.2013 d.132, **without change**.

Authority: *N.J.S.A. 54A:4-13.d*.

Effective Date: November 4, 2013.

Expiration Date: November 9, 2017.

Summary of Public Comment and Agency Response:

No public comments were received.

Federal Standards Statement

The adopted amendments are not subject to any Federal standards or requirements; therefore, a Federal standards analysis is not required.

Full text of the adopted new rules follows:

SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM

19:31-19.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement the New Jersey Angel Investor Tax Credit Act, P.L. 2013, c. 14 (the Act). The Act authorizes credits against corporation business and gross income taxes for qualified investments in New Jersey emerging technology businesses to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

19:31-19.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"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.

"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.

"Authority" means the New Jersey Economic Development Authority.

"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 that add to that body of fundamental knowledge.

"Board" means the Board of the New Jersey Economic Development Authority.

"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. § 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.

"Eligible technology" means advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"Filling a position in New Jersey" means filling a position with a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

"Full-time employee" means a person who is:

1. Employed by a New Jersey emerging technology business on a permanent or indefinite basis for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq.;
2. A partner of a New Jersey emerging technology business and works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq.;
3. An employee who is a resident of another state, works in New Jersey but whose income or distributive share of income, gain, loss, or deduction, or guaranteed payments, or any combination thereof, is not subject to the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq., by virtue of a reciprocity agreement between New Jersey and the state in which the employee resides; or
4. An employee who is employed under a formal written agreement with an institution of higher education whereby the institution's students are employed by the New Jersey emerging technology business on a permanent basis within a single position and that position requires at least 35 hours a week, or any other standard of service generally accepted by custom or practice, as determined by the Authority. Full-time employee shall not include any person who works as an independent contractor or on a consulting basis for the New Jersey emerging technology business; or any person who works as an intern, as a temporary employee, or in a temporary position.

"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.

"Investor" means the individual or entity that made the qualified investment.

"License" means an agreement that states therein that the emerging technology business is granting a license that authorizes the investor to control aspects of the development of the New Jersey emerging technology business's protected proprietary intellectual property. License shall not include an agreement, such as an exclusive distribution agreement or similar business arrangement that is not registered with the U.S. Federal Government, such as the U.S. Patent and Trademark Office, and which does not grant the investor control of the protected proprietary intellectual property.

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

"Marketing rights" means the exclusive right of an entity to sell a product or products that qualifies the originator of that product(s) as a New Jersey emerging technology business.

"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 to be connected to any physical or fixed link.

"New Jersey emerging technology business" or "emerging technology business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State, whose primary business is an eligible technology, and:

1. Has qualified research expenses paid or incurred for research conducted in its most recent fiscal year prior to the qualified investment in this State;
2. Conducts pilot scale manufacturing in this State; or
3. Conducts technology commercialization in this State.

In calculating the number of employees under this definition, employees of any company, except the investor, with control over the New Jersey emerging technology business or in the same controlled group as the New Jersey emerging technology business, shall be included. The company must continue to operate as a New Jersey emerging technology business until the earlier of six months after the qualified investment or the date of the investor's completed application for the credit pursuant to *N.J.A.C. 19:31-19.4*.

"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 an eligible 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 (*N.J.S.A. 54:10A-6*), from such sales of the product, service, or process do not exceed \$ 1 million.

"Privilege period" means the calendar or fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*) or New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq.

"Production agreement" means, upon completion of pilot scale manufacturing or technology commercialization, the first manufacturing contract of a product that qualifies the producer of that product as a New Jersey emerging technology business that causes the total gross receipts, as calculated in the manner provided in section 6 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-6*), from such sales of the product, service, or process to be no less than \$ 1,000,000.

"Program" means the Angel Investor Tax Credit Program.

"Protected proprietary intellectual property" means intellectual property that is the technology of the entity's primary business as a New Jersey emerging technology business that is also protected via a patent pending, patent awaiting approval, approved patent, or registered copyright.

"Purchase agreement" means, upon completion of pilot scale manufacturing or technology commercialization, the first acquisition of the product that qualifies the producer of that product as a New Jersey emerging technology business that causes the total gross receipts, as calculated in the manner provided in section 6 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-6*), from such sales of the product, service, or process to be no less than \$ 1,000,000.

"Qualified investment" means the non-refundable transfer of cash to a New Jersey emerging technology business by an investor that is not a related person of the New Jersey emerging technology business, at the time of the transfer of cash, the transfer of which is in exchange for:

1. Stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), right to use technology, marketing rights, warrants, options, or any assets similar to those included in this definition, including but not limited to, options or rights to acquire any of the assets; or
2. A purchase, production, or research agreement.

For the transfer of cash to be considered non-refundable, the assets received by the investor in the exchange referred to in paragraph 1 above and the agreements entered into by the investor referred to in paragraph 2 above must be held or not expire for at least two calendar years from the date of the exchange, with the exception of initial public offerings

(IPOs), mergers and acquisitions, damage awards for the New Jersey emerging technology business's default of an agreement, or other return of initial cash outlay beyond the investor's control.

"Qualified research expenses" means qualified research expenses as defined in *section 41 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 41)*, as in effect on June 30, 1992, in an eligible technology.

"Related person" means:

1. A corporation, partnership, association, or trust controlled by the taxpayer or the investor;
2. An officer, corporation, partnership, association or trust that is in the control of the taxpayer or the investor;
3. A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in the control of the taxpayer or the investor; or
4. A member of the same controlled group as the taxpayer or the investor.

"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/or sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel, but not powered by a fossil fuel.

"Research agreement" means a contract to methodically study a component of the field that qualifies the entity conducting the methodical study as a New Jersey emerging technology business.

"Right to use technology" means the exclusive right of an entity to utilize a product or products that qualifies the originator of that product(s) as a New Jersey emerging technology business.

"Tax credit approval year" means the taxpayer's taxable year or privilege period in which the Authority approves the application for tax credits.

"Tax credit vintage year" means the taxpayer's taxable year or privilege period in which the investor made the qualified investment.

"Taxpayer" means the individual filing a tax return pursuant to the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq. or the entity filing a tax return pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*) that is eligible to receive a tax credit under the Program. The taxpayer must be the investor except when the qualified investment is made by a partnership or an entity treated as a partnership for tax purposes, in which case, for purposes of the Program, the partnership or entity shall be considered the investor and each partner or member of the entity shall be considered a taxpayer.

"Technology commercialization" means the design, construction, testing, and production for sale of a product in an eligible technology previously in research or pilot scale manufacturing.

19:31-19.3 Eligibility criteria

(a) In order to be considered for tax credits under the Angel Investor Tax Credit Program, an investor shall make a qualified investment in a New Jersey emerging technology business.

(b) The Program applies to privilege periods and taxable years beginning on or after January 1, 2012. For qualified investments made on or before July 1, 2013, an investor must submit a completed application by July 1, 2014. For all other qualified investments, an investor must submit a completed application within one year of the date of the qualified investment.

(c) A credit shall not be allowed pursuant to section 1 of P.L. 1993, c. 175 (*N.J.S.A. 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 subchapter.

(d) Any asset received and any agreement entered into by the investor in connection with the non-refundable transfer of cash that serves as a qualified investment must be an executed document in writing.

19:31-19.4 Application submission requirements

(a) An investor shall submit an application to the Authority; the Authority shall conduct a review of the applications commencing with the completed application bearing the earliest completion date.

(b) A completed application shall include, but not be limited to, the following:

1. Investor information, which shall include the following:

i. At the time of the qualified investment:

(1) The name, address, and Federal tax identification number or Social Security number, as applicable;

(2) The total amount of the qualified investment and amount of requested tax credit;

(3) A description of the qualified investment;

(4) Evidence of qualified investment, including the executed document demonstrating that the qualified investment was made, as required in *N.J.A.C. 19:31-19.3(d)*;

(5) A list of all officers, directors, owners, and/or trustees;

(6) A list of 100 percent of ownership of the investor by percentage or if a publicly traded company, the 10 percent or greater officers, directors, or owners; and

(7) The Federal tax identification number or Social Security number as applicable, for all owners of the investor; and

ii. At the time of application, submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

2. New Jersey emerging technology business information, which shall include:

i. At the time of the qualified investment:

(1) The name, address, and Federal tax identification number; and

(2) A list of 100 percent of ownership of the business by percentage;

ii. At the time of the qualified investment and at the earliest of six months after the qualified investment or the time of application:

(1) A description of the business, which demonstrates that such business meets the definition of New Jersey emerging technology business;

(2) A list of all employees filling a position in New Jersey, whether any employee is related, as defined in *Section 152(d)(2) of the Internal Revenue Code*, to any other employee, shareholder, or investor, if so known, and either:

(A) Copies of the most recent year's Federal and New Jersey W-3 forms for the business and all entities other than the investor with control over the business or in the same controlled group as the business; or

(B) Documentation from a professional employer organization summarizing W-2 forms issued for full-time employees on behalf of the business, and all entities other than the investor with control over the business or in the same controlled group as the business, for the calendar year prior to the year in which the company files its application and at the time of the application; and

iii. At the time of application, submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (*N.J.S.A. 54:50-39*); and

3. Any other supplemental information required by the Authority to decide on the approval of the application or required by the Division of Taxation to administer the credit.

19:31-19.5 Fees

(a) The following fees shall apply to applications for qualified investments of more than \$ 50,000:

1. A non-refundable application fee of \$ 1,000 shall accompany every application for tax credits; and

2. A fee of five percent of the approved tax credit amount or \$ 2,500, whichever is greater, shall be paid to the Authority upon the approval of the tax credit. The application fee of \$ 1,000, required under (a)1 above, shall be applied toward the approval fee.

(b) A non-refundable application fee of \$ 500.00 shall accompany every application for tax credits for qualified investments of \$ 50,000 or less.

19:31-19.6 Tax credit amount; overpayment and carryforward of tax credits

(a) A taxpayer, upon eligibility review and approval of the investor's application by the Authority in consultation with the Director, and upon issuance of a tax credit certificate by the Division of Taxation, shall be allowed a credit against the tax imposed under the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*) or New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq., in an amount equal to 10 percent of the qualified investment made by the investor in a New Jersey emerging technology business, up to a maximum allowed credit of \$ 500,000 for the tax credit vintage year for each qualified investment made by the investor.

(b) An investor that is a partnership or an entity treated as a partnership for tax purposes, upon eligibility review and approval, shall not be allowed a credit under this section directly, but the amount of credit of each member or partner taxpayer in respect to a distributive share of partnership income under the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq. or under the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), shall be determined by allocating to each taxpayer, that proportion of the credit acquired by the partnership or entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership or entity for its taxable year ending within or with the taxpayer's tax credit vintage year. For the purposes of (c) and (d) below, 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.

(c) The amount of the credit allowed shall be applied against the tax otherwise due under the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq., for the tax credit approval year 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.A. 54A:9-7*, provided, however, that *N.J.S.A. 54A:9-7.f* shall not apply. The 15-year carryforward in (e) below is not applicable to a credit claimed under the New Jersey Gross Income Tax Act.

(d) The order of priority in which the credit allowed by this section against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*) and any other credits allowed by law may be taken, shall be as prescribed by the Director.

(e) Except as provided in (f) below, the amount of tax credit otherwise allowable against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), which cannot be applied for the tax credit approval year against tax liability otherwise due for that tax credit approval year may either be carried over, if necessary, to the 15-tax years following the tax credit approval year or, at the election of the taxpayer, be claimed as and treated as an overpayment for the purposes of *N.J.S.A. 54:49-15*, provided, however, that section 7 of P.L. 1992, c. 175 (*N.J.S.A. 54:49-15.1*) shall not apply.

(f) A taxpayer may not carry over any amount of credit allowed against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*) 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 tax credit approval year was 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.

19:31-19.7 Evaluation process; award of tax credits; appeals

(a) The Authority, in consultation with the Director, shall process and evaluate complete applications.

(b) The Authority shall transmit a copy of its decision to the applicant-investor.

(c) If the Authority has approved the application, the Authority shall notify the Division of Taxation of the approval. The Division of Taxation shall then issue the tax credit certificate to the applicant investor.

(d) An applicant investor may appeal the Authority's action by submitting in writing to the Authority, within 20 days from the date of the Authority's action, an explanation as to how the investor or the New Jersey emerging technology business has met the program criteria. Appeals will be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal; and

3. The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final decision on the appeal.

19:31-19.8 Cap on total credits

(a) The amount of credits approved by the Authority, in consultation with the Director, pursuant to P.L. 2013, c. 14 (*N.J.S.A. 54A:4-13*), shall not exceed a cumulative total of \$ 25 million in any calendar year to apply against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*) and the tax imposed pursuant to the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq.

(b) If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, under (a) above, then any complete applications for which no tax credits have been allowed for that reason may be approved by the Authority and allowed, in the order in which their applications were completed, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits are not in excess of the amount of credits available.