

Appendix A

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Angel Investor Tax Credit Program

Proposed Amendments: N.J.A.C. 19:31-19.1 through 4 and 19.6 through 19.8

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2019, c. 145.

Calendar Referenced: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-_____.

Submit written comment by _____, 2021, to:

New Jersey Economic Development Authority
P.O. Box 990
Trenton, NJ 08625-0990
jgenovay@njeda.com

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to the rules implementing the Angel Investor Tax Credit Program pursuant to recent statutory revisions in P.L. 2019, c. 145 and the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156.

Effective January 31, 2013, the New Jersey Angel Investor Tax Credit Act (“Act”) established credits against the corporate business tax or New Jersey gross income tax. The credit is equal to a percentage of a qualified investment made in a New Jersey emerging technology business whose primary business is an eligible technology. Eligible technology means advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology. A qualified investment was subsequently expanded to include a qualified investment in an New Jersey emerging technology business holding company.

At program inception, the tax credit amount was 10 percent of a qualified investment. In 2019, Governor Murphy signed legislation updating the program and notably, increasing the percentage amount from 10 percent to 20 percent with a 5 percent bonus for either investing in New Jersey certified women or minority owned businesses or in a business located in an Opportunity Zone or New Markets Tax Credit census tract.

Most recently, as part of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, the annual cumulative total amount of credits allowed to be approved was increased from \$25 million to \$35 million. Additionally, investors' commitments to venture capital funds were included as a qualified investment and eligible to receive a tax credit as reflected in new definitions for "qualified venture fund" and venture fund."

In practice, a venture capital fund is administered by a professional manager. The venture capital fund is a distinct entity that obtains legal commitments for future capital funding from investors. After investor commitments are received, the manager oversees the distribution of capital to businesses. This period of time where investments in companies are made by the fund is referred to as the investment period. When the venture capital fund looks to make an investment in a business, the fund requests from each investor a percentage of their capital commitments to finance the investment transaction. In response to each request, the investors transfer funds to the venture capital fund. Once the requested capital from the investors is received by the venture capital fund, the fund transfers this capital to the business, typically, in exchange for a percentage of ownership.

The Act adds investors' venture fund commitments to the qualified investment definition allowing for a tax credit. For a venture fund to qualify, it must invest a minimum of 50 percent of its capital in New Jersey businesses. The Authority in its sole discretion will determine the venture fund's capacity to meet the 50 percent investment threshold based upon the fund's and/or its principals' prior history of investing in New Jersey, commitments to potential investors in the private placement memorandum and other relevant information. The tax credit amount is equal to 20 percent of the qualified investment, which is the investors' initial commitment. In addition, a 5 percent bonus is available for a venture capital fund investing a minimum of 50 percent in New Jersey diverse entrepreneurs.

The current program allows investors to receive tax credits through the Angel Investor Tax Credit Program for investments in a New Jersey emerging technology business that:

- Employs at least 1 and fewer than 225 full-time employees, at least 75 percent of whom must work in New Jersey at both the time of the investment and the application submission;
- Conducts business, employs or owns capital or property, or maintains an office in New Jersey;
- Incurs qualified research expenses, conducts pilot scale manufacturing, or commercializes one or more eligible technologies in New Jersey; and
- Has an eligible technology as its primary business.

Investments in a New Jersey emerging technology business holding company can also receive tax credits under the current Program. To qualify for a tax credit, the full amount of cash transferred from the investor to the holding company must also transfer from the holding company to the New Jersey emerging technology business within the same calendar year. The New Jersey emerging technology businesses must meet all program requirements.

P.L. 2020, c. 156 also authorized granting tax credits to investors for their commitments to a qualified venture fund that:

- Is a partnership, corporation, trust, or limited liability company administered by a professional manager that invests cash in a business during the early or expansion stages in exchange for an equity stake in the business; and
- Invests a minimum of 50 percent of its funds in New Jersey based businesses.

Although the tax credit will be issued based upon the investor's commitment to the fund and prior to funding in most instances, in order for the tax credit to be issued, the investor, the qualified venture fund and the Authority will enter into a contractual commitment which will require among other things the investor to fund all capital calls or be subject to a claw back for the prorated unfunded capital calls.

Under the program, an Angel Inventor Tax Credit recipient is not required to be a resident of New Jersey or the United States, however, because these are tax credits, registering with the State of New Jersey and the filing of a New Jersey tax return is required; and, the NJ Division of Taxation is the final approver and issuer of tax credits through this program.

In the first quarter of 2021, with the tax credit amount increased from 10 to 20 percent, 207 Angel Tax Credit applications were approved for a total of \$5,220,753.00 in tax credits. This represented \$32,935,050.00 in private investments into 17 unique companies. Since program inception in 2013 to present, the Authority has approved 1,671 applications totaling more than \$616 million invested in 102 eligible New Jersey businesses.

The following provides a summary of the proposed amendments:

N.J.A.C. 19:31-19.1 is revised to include the terms "a qualified venture fund" in the subsection which provides for the applicability and scope of the subchapter.

N.J.A.C. 19:31-19.2 is revised to include new definitions of "act," "commitment agreement," "diverse entrepreneur," "New Jersey based business," "qualified venture fund," and "venture fund." In addition, the definition of "qualified investment" is revised to also mean "the non-refundable transfer of cash or irrevocable contractual commitment to a qualified venture fund."

N.J.A.C. 19:31-19.3(a) is revised to also include “a qualified venture fund” pertaining to the investments which shall be made to be considered for tax credits under the Angel Investor Tax Credit Program.

N.J.A.C. 19:31-19.3(b) clarifies that an investor seeking approval for an investment in a qualified venture fund must submit to the Authority a completed application within six months of executing an irrevocable contractual commitment to a qualified venture fund.

N.J.A.C. 19:31-19.3(d) is revised to provide that for a qualified investment to a qualified venture fund, the contract containing the irrevocable contractual commitment must be a fully-executed document; and existing language is revised to provide that “for any other qualified investment,” any asset received and any agreement entered into by the investor in connection with a “fully”-executed document in writing.

Proposed new N.J.A.C. 19:31-19.3(f) limits the ability for both an investor and a fund to receive a tax credit for the same funds provided to a New Jersey emerging technology business. If an investor received a tax credit for their investment commitment to a qualified venture fund, then the qualified venture fund shall not apply for tax credits. Further, subsection (f) provides an investor will not be eligible to apply for a qualified investment in a qualified venture fund, if that qualified venture fund has previously been approved tax credits for a qualified investment in a New Jersey emerging technology business or a New Jersey emerging technology holding business.

N.J.A.C. 19:31-19.4(b)1i(2) is revised to clarify that the total amount of the qualified investment, shall be included as part of investor information in the application. The amount of the qualified investment would be equal to the total amount of the irrevocable contractual commitment to the qualified venture fund. The application also includes the current amount of requested tax credit.

Proposed new 19:31-19.4(b)4 establishes the information to be provided by a venture fund as part of the completed application for the program.

N.J.A.C. 19:31-19.6(a) is revised to: 1) increase the amount of the allowed credit against the tax imposed under the Corporation Business Tax or New Jersey Gross Income Tax from 10 percent to 20 percent of the qualified investment made by the investor in an emerging business, or a holding company investing in a business or a qualified venture fund; 2) delete the provision which currently limits the maximum allowed credit of \$500,000 for the tax credit vintage year for each qualified investment made by the investor which is relocated to proposed new subsection (b); and 3) add that, subject to the limits established in the section, the Authority, in consultation with the Director of the Division of Taxation, shall increase the amount of a tax credit allowed by five percent if: the taxpayer makes a qualified investment in a New Jersey emerging technology business or in a New Jersey emerging technology holding company that makes a verified transfer of funds to a New Jersey emerging technology business provided the New Jersey emerging technology business is either located in a qualified opportunity zone, or a low-income community, or is certified by the State as a minority business or a women’s business

pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.) ; or, in the case of a qualified investment involving a qualified venture fund, if the qualified venture fund commits in the commitment agreement to invest 50 percent of its funds in diverse entrepreneurs.

Proposed new N.J.A.C. 19:31-19.6(b) pertains to an investment in a qualified venture fund and provides that a taxpayer shall also be allowed a credit in an amount equal to 20 percent of the qualified investment made in a qualified venture fund, up to a maximum allowed credit of \$500,000 for the tax credit vintage year, in each tax year, for each qualified investment made by the investor, similar to an investment made in a New Jersey emerging technology business or holding company that makes a verified investment of funds to a New Jersey emerging technology business, except that the increase in the amount of a tax credit allowed shall be increased by five percent only if the qualified venture fund commits to invest 50 percent of its funds in diverse entrepreneurs. In addition, the maximum allowed credit will include any application made by a related person of the investor in the same New Jersey emerging technology business, New Jersey emerging technology business holding company, or qualified venture fund during the investor's tax credit vintage year where the investor has control for a qualified investment in the same qualified venture fund.

Proposed new N.J.A.C. 19:31-19.6(i) provides that in the event that any certification or application information required from the investor is found to be willfully false or that the investor submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority, the Authority may, at its sole discretion and in addition to any other remedies available, revoke and/or terminate any award of tax credits in their entirety and may require recapture, including penalties and interest, of some or all tax credits received by the taxpayer.

N.J.A.C. 19:31-19.7(c) is revised to clarify that the regular notification of approval and issuance requirements of the tax credit certificate do not apply to certain investors approved into a qualified venture fund on the basis of an irrevocable contractual commitment under proposed new N.J.A.C. 19:31-19.7(d).

Proposed new N.J.A.C. 19:31-19.7(d) establishes the procedures that apply to an investor that has been approved for a qualified investment into a qualified venture fund on the basis of an irrevocable contractual commitment, including:

1) Following approval by the Authority, but before the issuance of tax credits, the Authority shall notify the investor of the Authority's decision by an approval letter. The letter also informs the investor to review and execute the commitment agreement between the investor, venture capital fund, and Authority;

2) Prior to the issuance of tax credits, the investor shall return a commitment agreement executed by the qualified venture fund and the investor to which the award of tax credits will be subject, and which shall expire if the investor does not return the executed agreement in the period of time required. The terms of the commitment agreement are specified in N.J.A.C. 19:31-19.7(d)2i through x; and

3) Upon receipt of the executed commitment agreement the Authority shall notify the Division of Taxation of the approval, and the Division of Taxation shall then issue the tax credit certificate to the applicant investor.

N.J.A.C. 19:31-19.7(d), recodified as (e), is revised to clarify that the applicant may appeal the Authority's action by submitting, in writing, an explanation to the Authority, within 20 days from the "effective" date of the Authority's action; and proposed new N.J.A.C. 19:31-19.7(d)4, provides that the final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

Finally, N.J.A.C. 19:31-19.8(a) is revised to increase the amount of credits authorized to be approved by the Authority, in consultation with the Director, from a cumulative total of \$25 million to \$35 million in any calendar year.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1-30-3.3(a)5.

Social Impact

The Angel Investor Tax Credit Program authorizes corporation business and gross income tax credits equal to 20 percent of an investor's qualified investment in a New Jersey emerging technology company. This credit is increased to 25 percent for qualified investments in New Jersey emerging technology businesses certified as a minority or woman owned business enterprises. To date, \$539 million in total investment leveraged from 1,212 angel investments to New Jersey based emerging technology businesses has been supported through the program.

The proposed amendments will have a positive social impact by incentivizing additional private investment in New Jersey emerging technology businesses that perform advance research, pilot manufacturing, or commercialization in one of eight eligible technologies in the following ways. The increase in the tax credit amount made the program more appealing to investors encouraging more New Jersey investments and program applications. The increase in the amount of tax credits available annually will allow the approval of more investments in New Jersey companies. The addition of venture fund commitments as qualified investments will boost investment into New Jersey businesses through funds in addition to direct investor support. The tax credit bonus for diverse entrepreneurs also will drive more funds into minority business and female business.

Economic Impact

The Angel Investor Tax Credit Program strengthens the State's innovation economy through support for emerging technology businesses. It is anticipated that the availability of the increased credit may result in expanded angel investments in New Jersey. Angel investments are generally equity placements and other similar non-refundable transfers of cash, into high-risk start-up ventures as opposed to commercial transactions entered into in the regular course of

business. With the reduction nationally in available early stage venture investments, the Angel Investor Tax Credit Program provides an important means for early-stage, start up businesses to access high risk capital. Furthermore, the angel investor's risk capital is generally combined with Board oversight, business support and mentoring to further advance the business.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The EDA anticipates that the proposed amendments will spur an indeterminate amount of increased job creation through growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries. The increase in investment activity incentivized through the proposed amendments will provide emerging New Jersey technology companies with access to growth-capital to continue research and development, or manufacture or commercialize the technology. As a result, these technology companies will be able to create new highly skilled jobs with high-wages that are needed to support such new business growth.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments will impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. should the business look to apply for the increased tax credit. Generally, an investor would be required to comply with the EDA's standard, on-line application process. In addition, the proposed new amendments include a graduated application fee designed to ease the burden on applicants that may be small businesses. Finally, the New Jersey emerging technology business in which an investment is made will be required to provide general information relating to its organization and employees to support the investor application, however, professional services will not be necessary for such purposes.

Housing Affordability Impact Analysis

The proposed amendments will not impact affordable housing in New Jersey or evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State. The proposed amendments increase the amount of the tax credit available under the Angel Investor Tax Credit Program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

Smart Growth Development Impact Analysis

The proposed amendments will not impact smart growth or evoke a change in the number of housing units or result in any increase or decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments increase the amount of the tax credit available under the Angel Investor Tax Credit Program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SECTION 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 to implement the New Jersey Angel Investor Tax Credit Act, P.L. 2013, c. 14 (Act). The Act authorizes credits against corporation business and gross income taxes for qualified investments in New Jersey emerging technology businesses, or in New Jersey emerging technology holding companies, **or in a qualified venture fund**, 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.

“Act” means the New Jersey Angel Investor Tax Credit Act, P.L. 2013, c. 14, as amended.

...

“Commitment agreement” means the contract between the qualified venture fund, the investor, and the Authority pursuant to N.J.A.C. 19:31-19.7(d)2.

...

“Diverse entrepreneur” means a New Jersey based business that meets the criteria for a minority business or female business set forth in section 3 of P.L. 1983, c. 482 (N.J.S.A.

52:32-19), as evidenced by a certification by the State as a minority business or a women’s business pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.).

...

“New Jersey based 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.

...

“Qualified investment” means the non-refundable transfer of cash to a New Jersey emerging technology business or to a New Jersey emerging technology business holding company by an investor that is not a related person of the New Jersey emerging technology business or the New Jersey emerging technology business holding company, 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 between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology business holding company or both.

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 investment” also means the irrevocable contractual commitment to a qualified venture fund.**

...

“Qualified venture fund” means a venture fund required by a commitment agreement with an investor and the Authority to invest a minimum of 50 percent of the venture fund’s committed funds in New Jersey based businesses and that the Authority, in its sole discretion, determines has the capacity to make the minimum investment based upon the qualified venture fund’s investment history, if any, its private placement memorandum and other relevant information.

...

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

...

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, or a New Jersey emerging technology business holding company, **or a qualified venture fund.**

(b) The Program applies to privilege periods and taxable years beginning on or after January 1, 2012, except that the Program applies to qualified investments in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies, that make verified transfers of funds to New Jersey emerging technology businesses that conduct technology commercialization in this State in the field of carbon footprint reduction technology for privilege periods and taxable years beginning on or after May 1, 2017. For qualified investments made on or before July 1, 2013, an investor must submit a completed application by July 1, 2014, except that a completed application for qualified investments in New Jersey emerging technology business holding companies made before May 1, 2017, must be submitted by December 31, 2017. For all other qualified investments in a New Jersey emerging technology business, an investor must submit a completed application within six months of the date of the qualified investment, and for all other qualified investments in a New Jersey emerging technology business holding company, within six months of the date of the verified transfer of funds. **For all qualified investments in a qualified venture fund, an investor must submit a completed application within six months of executing an irrevocable contractual commitment to a qualified venture fund.**

(c) (No change.)

(d) **For a qualified investment to a qualified venture fund, the contract containing the irrevocable contractual commitment must be a fully-executed document in writing. For any other qualified investment, [Any] 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] a fully-executed document in writing.**

(e) (No change.)

(f) **A qualified venture fund shall not be eligible as an investor for a qualified investment in a New Jersey emerging technology business or a New Jersey emerging technology holding business if an investor has previously been approved tax credits for a**

qualified investment in that qualified venture fund. An investor that applies for a qualified investment in a qualified venture fund shall not be eligible if that qualified venture fund has previously been approved tax credits for a qualified investment in a New Jersey emerging technology business or a New Jersey emerging technology holding business.

19:31-19.4 Application submission requirements

(a) (No change.)

(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) (No change.)

(2) The total amount of the qualified investment, **including for qualified investments in a qualified venture fund, the total amount of the irrevocable contractual commitment, and amount of requested tax credit;**

(3)-(7) (No change.)

ii. (No change.)

2.-3. (No change.)

4. Venture fund information, if applicable, which shall include:

i. At the time of the qualified investment:

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

(2) A list of 100 percent of the venture fund commitment amounts;

(3) The executed contract, and any supporting evidence, demonstrating that the irrevocable contractual commitment was made, as required in N.J.A.C. 19:31-19.3(d); and

(4) Certification from the chief executive officer or general partner of the qualified venture fund that the contract contains an irrevocable contractual commitment to the transfer of cash to the qualified venture fund; and

ii. 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

Recodify 4. as 5. (No change in text.)

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] **20** percent of the qualified investment made by the investor in a New Jersey emerging technology business [or], in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business, **or in a qualified venture fund**. [up to a maximum allowed credit of \$500,000 for the tax credit vintage year for each qualified investment made by the investor] **The Authority, in consultation with the Director, shall increase the amount of a tax credit allowed pursuant to the section by five percent if:**

1. The taxpayer makes a qualified investment in a New Jersey emerging technology business or in a New Jersey emerging technology holding company that makes a verified transfer of funds to a New Jersey emerging technology business if the New Jersey emerging technology business is:

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

ii. Certified by the State as a minority business or a women's business pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.); or

2. In the case of a qualified investment involving a qualified venture fund, if the qualified venture fund commits in the commitment agreement to invest 50 percent of its funds in diverse entrepreneurs for the relevant fund which is part of the irrevocable contractual agreement with the Authority.

(b) The maximum allowed credit shall be \$500,000 for the tax credit vintage year for each qualified investment made by the investor. The maximum allowed credit shall include awards to a related person of the investor in the same New Jersey emerging technology business, New Jersey emerging technology business holding company, or qualified venture fund during the investor's tax credit vintage year if the investor has control over the qualified investment.

Recodify (b)-(g) as (c)-(g) (No change in text.)

(i) In the event that any certification or application information required from the investor is found to be willfully false or that the investor submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority, the Authority may, at its sole discretion and in addition to any

other remedies available, revoke and/or terminate any award of tax credits in their entirety and may require recapture of some or all tax credits received by the taxpayer. Such recapture amount may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount. Any funds recaptured pursuant to this subsection, including penalties and interest, shall be deposited into the General Fund of the State.

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

(a)-(b) (No change.)

(c) **Except as provided in (d) below, if** [If] the Authority has approved the application, the Authority shall notify the Division of Taxation of the approval, **and the** [The] Division of Taxation shall then issue the tax credit certificate to the applicant investor.

(d) The following apply to an investor that has been approved for a qualified investment into a qualified venture fund on the basis of an irrevocable contractual commitment:

1. Following approval by the Authority, but before the issuance of tax credits, the Authority shall notify the investor of the Authority's decision.

2. Prior to the issuance of tax credits, the Authority shall provide the investor a commitment agreement and require the investor to return the commitment agreement executed by the qualified venture fund and the investor. The Authority's award of the credits will be subject to the execution of the commitment agreement. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's approval of the tax credits shall expire if the investor does not return the executed commitment agreement within the period of time required by the Authority. The terms of the commitment agreement shall include, but shall not be limited to, the following:

i. A requirement that the qualified venture fund shall invest a minimum of 50 percent of its funds in New Jersey based businesses within the earlier of the qualified venture fund's investment period or ten years. The total size of the qualified venture fund shall be determined at the qualified venture fund's final closing date;

ii. At the qualified venture fund's option, a requirement that the venture fund shall invest a minimum of 50 percent of its funds in diverse entrepreneurs;

iii. A requirement that the venture fund shall make calls of a minimum of 80 percent of the irrevocable contractual commitments within the earlier of the initial term of the

qualified venture fund or ten years. The initial term shall be determined based on the governing agreement between the investor and the fund;

iv. A requirement that the investor shall satisfy 100 percent of the capital call commitment's from the qualified venture fund;

v. A provision permitting the Authority to recapture, absent extenuating circumstances, from either the venture fund or the investor, based upon who fails to perform. The recapture amount shall be equal to a prorated amount of the tax credits if the qualified venture fund or investor does not comply with iii or iv above, an amount equal to the total tax credits if the qualified venture fund does not comply with i above, or an amount equal to the increase in tax credits if the qualified venture fund does not comply with ii. above, if as applicable. Such recapture may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection; and

vi. A requirement for the qualified venture fund to submit to the Authority an annual review report in a format as may be determined by the Authority, which shall contain the following information:

(1) A list of any capital calls of the investor's irrevocable contractual commitment that have been made and the date of the capital call(s);

(2) The qualified venture fund's financial statement for the most recent year prepared by an independent certified public accountant, including all investment schedules;

(3) Documentation demonstrating the transfers of cash from the investor to the qualified venture fund in response to the capital call(s), including, but not limited to, a subscription agreement, capital call letters, and bank records or statements;

(4) Documentation demonstrating to the transfer of funds from the qualified venture fund to businesses, including, but not limited to, stock purchase agreements and detailed bank records or statements;

(5) Certification(s) of minority- or women-owned business from the State of New Jersey to confirm investments in diverse entrepreneurs, applicable if the bonus in N.J.A.C. 19:31-19.6(a)2 was part of the qualified investment approval;

(6) A limited partner roster with final commitment amounts;

(7) A current list of portfolio companies with investment amounts, office location, and full-time employee totals of the portfolio companies; and

(8) A certification from the qualified venture fund’s general partner indicating whether the general partner is aware of any condition, event, or act that would cause the qualified venture fund not to be in compliance with the approval, the Act, the commitment agreement, or this subchapter; and

vi. A provision permitting an audit from time to time, as the Authority deems necessary, of the evidence and documentation of the qualified venture fund supporting the annual review reports;

vii. A provision permitting the Authority to amend the commitment agreement;

viii. A provision establishing the conditions under which the Authority, the qualified venture fund, the investor, or any of them, may terminate the agreement;

ix. Indemnification and insurance from the qualified venture fund and the investor to benefit the Authority; and

x. Default and remedies, including, but not limited, to a default if the qualified venture fund made a material misrepresentation in any annual review report; and

3. Upon the receipt of the executed commitment agreement, the Authority shall notify the Division of Taxation of the approval, and the Division of Taxation shall then issue the tax credit certificate to the applicant investor.

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

1.-3. (No change.)

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

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] **\$35 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) (No change.)