

CHAPTER 40

AN ACT concerning eligible investments under the “New Jersey Angel Investor Tax Credit Act,” and amending P.L.1997, c.349 and P.L.2013, c.14.

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

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

C.54:10A-5.29 Definitions relative to New Jersey emerging technology businesses.

2. As used in sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30):

"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.

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

"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 the transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include, but not be limited to, smartphones, electronic books and tablets, digital audio 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 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 and: has qualified research expenses paid or incurred for research conducted in this State; conducts pilot scale manufacturing in this State; or conducts technology commercialization in this State in the fields of 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.

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

"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 the design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information 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 the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from the 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 or to a New Jersey emerging technology business holding company by a taxpayer that is not a related person of the New Jersey emerging technology business or the New Jersey emerging technology business holding company, the transfer of which is in connection with either: a transaction between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding

company or both 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 a purchase, production, or research agreement between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both.

"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, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"Related person" means:

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

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

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

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; 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.

"Tax year" means the fiscal or calendar accounting period of a taxpayer.

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

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

C.54:10A-5.30 Taxpayer allowed credit.

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 percent of the qualified investment made by the taxpayer 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, up to a maximum allowed credit of \$500,000 for the tax year for each qualified investment made by the taxpayer.

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.

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 may either be carried over, if necessary, to the 15 tax years following 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 allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

e. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations that are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and section 4 of P.L.2013, c.14 (C.54A:4-13), including, but not limited to: examples of and the determination of qualified investments of which applicants shall 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.2013, c.14 (C.54A:4-13), 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.2013, c.14 (C.54A:4-13) are not in excess of the amount of credits available.

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

C.54A:4-13 Credit against tax due.

4. 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, or in a New Jersey emerging technology business holding company that makes a verified transfer of funds to 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. (1) 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.

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

d. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations that are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and this section, including, but not limited to: examples of and the determination of qualified investments of which applicants shall 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.

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

"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 the transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include, but not be limited to, smartphones, electronic books and tablets, digital audio 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 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 and: has qualified research expenses paid or incurred for research conducted in this State; conducts pilot scale manufacturing in this State; or conducts technology commercialization in this State in the fields of 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.

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

"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, carbon footprint reduction technology, 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 the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from the 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 or to a New Jersey emerging technology business holding company by a taxpayer that is not a related person of the New Jersey emerging technology business or the New Jersey emerging technology business holding company, the transfer of which is in connection with either: a transaction between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both 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 a purchase, production, or research agreement between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both.

"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 corporation, partnership, association or trust controlled by the taxpayer;

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

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

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; 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.

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

4. This act shall take effect immediately and shall apply retroactively to qualified investments made for tax years and taxable years beginning on or after January 1, 2012, other than 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.

Approved May 1, 2017.