# The New Jersey Economic Recovery Act of 2020: An Overview of the New Jersey Angel Investor Tax Credit Program

Client Alert

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The New Jersey Economic Recovery Act of 2020 (ERA), a seven-year, $14 billion package of incentive programs intended to encourage New Jersey job growth, property development and redevelopment, community partnerships, and numerous other economic development initiatives, was signed into law by Governor Phil Murphy on January 7, 2021.

This Client Alert focuses on the New Jersey Angel Investor Tax Credit Program, established pursuant to the New Jersey Angel Investor Tax Credit Act (initially signed into law in 2013) and amended by the ERA. The program, administered by the New Jersey Economic Development Authority (EDA), provides credits against the corporate business taxes of a corporation or the gross income taxes of an individual for qualified investments in New Jersey emerging technology businesses and New Jersey emerging technology business holding companies for the purposes of stimulating investment in New Jersey's technology sector.

The ERA allocates an additional $10 million per year to the Angel Investor Tax Credit Program, for a cumulative total of $35 million in any calendar year. If the credits allowed to taxpayers exceed the amount of credits available in that year, those taxpayers will receive tax credits in the next calendar year in which tax credits are available.

**New Jersey Emerging Technology Businesses**

A "New Jersey emerging technology business" is defined as a company with fewer than 225 employees, of whom at least 75% are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in New Jersey and: (i) has qualified research expenses paid or incurred for research conducted in New Jersey; or (ii) conducts pilot scale manufacturing in New Jersey; or (iii) conducts technology commercialization in New Jersey 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.

A "New Jersey emerging technology business holding company" is defined as any business organization which directly or indirectly owns, has the right or power 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.

**Qualified Investment**

A "qualified investment" is defined as the non-refundable transfer of cash to a New Jersey emerging technology business or a New Jersey emerging technology business holding company by a taxpayer not related to those entities, where the transfer is in connection with either: (i) an exchange for stock, interests in partnerships or joint ventures, licenses, rights to use technology, marketing rights, warrants, options or any similar items, including options or rights to acquire any of such items; or (ii) a purchase, production or research agreement between or among the taxpayer and the New Jersey emerging technology business or New Jersey emerging technology business holding company, or both.

The term is further defined as the non-refundable transfer of cash or irrevocable contractual commitment to a qualified venture fund, which is defined as a venture fund required by contract to invest at least 50% of its funds in New Jersey-based businesses.

**Tax Credits**

An investor is allowed a tax credit in an amount equal to 20% of a qualified investment in a New Jersey emerging technology business, New Jersey emerging technology business holding company, or qualified venture fund, not to exceed $500,000 per qualified investment in a calendar or fiscal year. However, the tax credit will equal 25% of a qualified investment if the New Jersey emerging technology business is (i) either located in a qualified opportunity zone or a low-income community or (ii) certified by the State of New Jersey as a minority business or a women's business, and in the case of a qualified venture fund, if the fund commits by contract to invest 50% of its funds in diverse entrepreneurs.

An allowed tax credit that cannot be applied against a corporate taxpayer's tax liability for the applicable calendar or fiscal year can be carried over, if necessary, to the 15 years following the year for which the credit was allowed, or at the taxpayer's election, can be claimed as an overpayment and received as a refund. Notwithstanding the foregoing, the taxpayer's right to carry over the tax credit may be restricted in the event of a corporate merger or consolidation. If an allowed tax credit exceeds an individual taxpayer's tax liability for the applicable calendar or fiscal year, the overpayment will be received as a refund.

**Application Process**

Under the existing rules and regulations, a taxpayer seeking approval of tax credits under the program must submit an application to the EDA within six months from the date of the investment. The application must be completed by both the taxpayer and the New Jersey emerging technology business or New Jersey emerging technology business holding company, must be accompanied by an application fee and, where an investment exceeds $500,000, an approval fee equal to the lesser of $2,500 or 5% percent of the investment, as well as a tax clearance certificate for both an applicant which is not an individual and for the New Jersey emerging technology

business or New Jersey emerging technology business holding company.

**Next Steps**

The EDA will be promulgating rules and regulations related to the implementation of changes made to the New Jersey Angel Investor Tax Credit Program. We will keep you updated on this and other developments related to programs enacted or expanded under the New Jersey Economic Recovery Act of 2020. Please contact the author of this Alert, **Maureen E. Montague** mmontague@greenbaumlaw.com | 732.476.2380 with questions or to discuss your specific business circumstances. Ms. Montague is a member of the firm's **Financial Incentives & Economic Development Practice Group**.

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