

New Jersey Angel Investor Tax Credit Definitions

“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 optoelectrical 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, or 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.