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Tax Law Alert

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The New Jersey Angel Investor Tax Credit Act - The "Angel Act" A Valuable Benefit to Those Investing in New Jersey

Signed into law on January 31 of this year, the Angel Act provides tax credit against the New Jersey Corporation Business Tax ("CBT") and the New Jersey Gross Income Tax ("GIT") for taxpayers making qualified investments in New Jersey businesses incurring qualified research expenses that are involved in emerging technology. The Angel Act applies to privilege periods and taxable years beginning on or after January 1, 2012. For investments made on or before July 1, 2013, a taxpayer must submit their application before July 1, 2014. For all other investments, the due date of the application is within one year of the qualified investment. The application is currently available online at www.njeda.com.

How much credit and who can invest:

The Angel Act credit is equal to ten percent (10%) of the amount invested in the business per year, with total credit available of up to $500,000 per qualified investment over the investment years. The taxpayer making the investment in the business cannot be a "related person" to the subject business. The Angel Act considers a "related person" to mean a corporation, partnership, association or trust "controlled" by the taxpayer, with the Angel Act defining "controlled" as owning eighty percent (80%) or more of the vote or value of the subject business entity (I note that the state's published frequently asked questions "FAQs" does not specifically define control for partnership purposes, but commentary on the Act implies the 80% rule applies to partnership equity as well for purposes of the Angel Act "related person" rules.)

What investment qualifies and in what type of business:

For Angel Act purposes, a qualified investment is a non-refundable transfer of cash made directly to a New Jersey Emerging Technology Business by an investor who is not a "related person" (as defined above) of the business. As such, the investment must be in exchange for something of value such as equity interest in the business, licenses, rights, or options, though this list is not exclusive.

The investment must be in a New Jersey Emerging Technology Business. For these purposes, such a business is defined as 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 the 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 New Jersey, (2) conducts pilot scale manufacturing in the state, or (3) conducts technology commercialization in the state. "Eligible technology" is defined as advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, and renewable energy technology.

How this works:

The New Jersey Economic Development Authority ("EDA") reviews the application and, in conjunction with the New Jersey Division of Taxation ("NJDOT"), issues a tax credit certificate to the applicant. The taxpayer then attaches this certificate to their New Jersey tax return. Note that this credit is available irrespective of whether the taxpayer resides in New Jersey and is refundable to the extent it exceeds an individual taxpayer's tax liability, while a corporate taxpayer may choose to either have a refund of the excess credit or to carry the excess credit over for 15 years.

There is currently a set cap of $25 million annually on credit the EDA may approve in conjunction with the NJDOT, though the division has announced in its FAQs that if a complete application satisfying all criteria cannot be awarded in a given year due to this cap, the approval will be split between two years. This means any balance not paid in the year of an approved application will then be issued in a certificate for the next year when the credit is available.

Other items to consider:

- The credit is not transferable to another taxpayer.
- A taxpayer can appeal the EDA denial of their application.
- After the taxpayer receives the credit certificate, there are no other reporting requirements for the taxpayer or the business.
- Fees for the application vary according to the amount of the investment. For investments of $50,000 and less, the fee is $1,000. Investments over $50,000 also have a fee of $1,000, but are subject to additional approval fees.
- It is uncertain at this point how long the approval process will take, and the EDA has not made any assurances about the length of review time.

This *Tax Law Alert* was written by Melinda Fellner Bramwit, a transactional tax partner. Please feel free to contact Melinda at **mfbramwit@nmmlaw.com** if you have any questions regarding the information in this alert or any other related matters.