NEW JERSEY ANGEL INVESTOR TAX CREDIT FREQUENTLY ASKED QUESTIONS (FAQ)
Updated 4/23/18

Angel Investor

1) **How is an Angel Investor defined under this program?**
Answer: An Angel Investor is an individual or entity that made the Qualified Investment.

2) **How is a Qualified Investment defined under this program?**
Answer: A Qualified Investment is a non-refundable transfer of cash made directly (or indirectly through a holding company as described in question #32) to a New Jersey Emerging Technology Business by an Investor that is not a related person of the technology business. To be a Qualified Investment, at the time of the transfer of cash, the transfer must be in exchange for either:
    a. stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options, convertible debt that subsequently converted in equity, or any assets like those included herein, including but not limited to options or rights to acquire any of the assets included herein; or
    b. purchase, production, or research agreement

The amount and assets received in exchange for cash must be clearly stated in a contractual agreement, i.e. Stock Purchase Agreement for equity investment.

Please note that some of these terms are defined in the Act and the Program rules.

3) **What is considered the date of investment?**
Answer: The date of investment is the last dated investment event that culminates an eligible investment transaction. Most often, the investment date is derived from the date of the stock certificate. In certain cases, where stock certificates aren't issued, or cash is transferred post stock certificate issuance, the date of cash transfer becomes the date of investment. In case there are multiple tranches of cash, the last tranche completing the investment is considered the date of investment. This assumes all transactions (tranches) are under one stock purchase agreement.

4) **What is considered a non-refundable transfer of cash?**
Answer: For the transfer of cash to be considered non-refundable, the assets received by the investor must be held or not expire for at least 2 calendar years from the date of the exchange, with an exception being made for initial public offerings (IPOs), mergers and acquisitions, damage awards for the business's default of an agreement, or other return of initial cash outlay beyond the investor's control.

5) **Who is considered a related person of the technology business?**
Answer: A related person is an individual or entity who controls the technology business or an entity that is a member of the same controlled group as the Company. Control means owning or controlling at least 80% of all voting stock of the company immediately preceding investment, as verified by the Company's capitalization table. A controlled group is one or more chains of corporations connected through stock ownership with a common parent corporation, if at least 80% of all voting stock of each of the corporations is owned or controlled by one or more of the corporations and the common parent owns or controls at least 80% of all voting stock of at least one of the other corporations.

6) **What is my obligation in filling out the application and providing EDA with needed information**

about the Qualified Investment and the New Jersey Emerging Technology Business in which I invested?
Answer: The Angel Investor is the applicant and, as such, the Investor is responsible for ensuring that the EDA receives all necessary information required to make eligibility determinations to award the tax credit. The application is a two-part document. The Investor initiates and completes the first section of the application, and the technology business completes the second section. While there is a section for the technology business to fill out, it is the responsibility of the Investor to ensure that the business completes its section, and that the EDA receives all requested information. Once the application is submitted to the EDA, the Investor and technology business will both receive email confirmations.

7) **Do I need to be a New Jersey resident or have existing New Jersey tax liability to apply for this Tax Credit?**
Answer: No, to make use of the refundable tax credit received for a Qualified Investment, any entity or individual is required to file a New Jersey corporate business or gross income tax return in the year in which they take advantage of the refundable tax credit; they need not be New Jersey residents and need not have any other reason to file a New Jersey return. Out of state investors should consult with their financial advisors regarding potential NJ tax liabilities.

8) **Are there any recapture conditions?**
Answer: After the NJ Division of Taxation issues the tax credit certificate and it is claimed on a taxpayer's gross income or corporate business tax return, these tax returns are subject to review and audit by the New Jersey Division of Taxation. Should the New Jersey Division of Taxation determine that the tax credits were used improperly, or an improper refund was obtained, the New Jersey Division of Taxation may pursue its usual remedies, which may include repayment of the tax credit, interest and penalties. Please note that the Angel Investor Tax Credit Act specifically prohibits the same expenses from receiving tax credits under this program and a Research and Development Tax Credit (pursuant to section 1 of P.L.1993, c.175 (N.J.S. 54:10A-5.24)).

9) **How does the Tax Credit function if the Qualified Investment is made by a pass-through entity such as a Limited Liability Company (LLC), Limited Partnership (LP), General Partnership (GP) or Limited Liability Partnership (LLP)?**
Answer: In the case where the Investor applicant is a pass-through entity the entity itself cannot be the taxpayer that receives the tax credit. Instead the owners/members of the entity are considered the taxpayers. Accordingly, if the Qualified Investment is approved, each individual or corporate member/owner will be issued a tax credit certificate in the amount of their proportional share, whether distributed or not, of the total distributive income of the pass-through entity.

For example, an LLC with 3 members (2 individuals, and a limited partnership – each receiving equal portions of the LLC's total distributive income), made a $600,000 Qualified Investment in an eligible NJ emerging technology business and a tax credit in the amount of $60,000 was approved. The two individual members of the LLC would each receive certificates in the amount of $20,000. The third member, the limited partnership, has two individual partners, each receiving equal portions of the LLC's total distributive income. Accordingly, their $20,000 portion of the tax credit will be split equally among them and each provided a $10,000 tax certificate.

Please note that the pass-through entity will be required to submit Schedule K-1 detailing its ownership percentages. Additionally, any member that is a pass-through entity will also be required to submit Schedule K-1. The EDA requests this information to verify the individual recipients of the tax credit.

10) **How is a New Jersey S corporation with a single shareholder treated with regard to securing a business registration or tax clearance?**
Answer: A New Jersey S corporation is treated like a C corporation with respect to securing both a New Jersey Business Registration and Tax Clearance. Both items MUST be provided to the NJEDA prior to approval.

11) **How does the Tax Credit function if the Qualified Investment is made by an Investor that is a New Jersey S corporation?**
Answer: According to P.L. 2017, c.40 (N.J.S.A. 54A:4-13), a New Jersey Corporation with a valid S election has the option to have the resulting tax credit issued directly to the S corporation *OR* allocated to each shareholder based on the shareholder's proportionate share of the New Jersey S corporation.

12) **What if one member of a pass-through entity, such as a LLC or partnership, is a related person, can the other members not related to the technology business still receive a tax credit?**
Answer: Yes, as long as the pass-through entity itself is not a related person to the technology business. The proportion of the tax credit that would have been allowed to the member that is a related person to the technology business will not be approved or allowed.

13) **I manage a small venture fund that made an investment in a technology business - can I apply for my limited partners?**
Answer: Yes, the venture fund can apply for the tax credit for all partners. While the investment partners in the fund will be the recipients of any approved tax credit, they need not apply individually.

As noted above, the venture fund and any underlying partnerships/LLCs will be required to submit Schedule K-1 detailing their ownership percentages.

14) **When a fund submits the application on behalf of all partners are there any reduced fees since the technology business will only need to be qualified once for multiple investors?**
Answer: Yes, because only one application needs to be submitted, per subscription agreement, on behalf of all investors, the fund will only be charged a single application fee.

15) **Why does EDA ask for Social Security Numbers from the investors and the owners of investment entities?**
Answer: EDA asks for Social Security Numbers to identify taxpayers with similar names. Taxation uses this information to match the tax credit to the right individual. Under the provisions of the Federal Privacy Act, 5 U.S.C. 552a, no one is legally required to provide a Social Security Number to the Authority, and it will not impede approval of application. However, providing the Social Security Number facilitates and expedites EDA's review of the application.

16) **If I do not have a Social Security Number, what should I do?**
Answer: Investors who do not qualify for a Social Security Number (such as a Foreign Investor) can also apply for the Angel Tax Credit Program. Please note that such applications may require a longer processing time from the NJ Division of Taxation.

17) **Can stock options granted to an employee as part of their compensation package be considered a Qualified Investment?**
Answer: No. While stock options are one of the eligible items provided in the Qualified Investment definition, there is no, non-refundable exchange of cash, and therefore does not meet the definition. However, once the options are exercised with an exchange of cash (excludes cashless exercises), the investor can apply for the tax credit for 10% of the exercise price.

18) **Are “convertible debt” investments eligible for a tax credit?**
Answer: Convertible debt instruments are only eligible for the tax credit once the debt is converted to equity. The amount of the Qualified Investment will be the principal balance at the time of conversion. EDA considers the date of conversion as the date of qualified investment. Please note that loans made prior to the program start date of January 1, 2012 are not eligible for the tax credit.

For example, if John loans $100,000 to Company X with the option to convert to equity, this loan is not eligible for the Angel Investor Tax Credit Program. If at a later date John converts this loan to equity, it would now qualify for the Program, so long as all other requirements are met.

19) **Can capital invested by a CEO be considered a Qualified Investment?**
Answer: Yes, if the capital is in exchange for an eligible item in the Qualified Investment definition, such an investment could be a Qualified Investment, if it meets the other requirements of the program including not owning more than 80% of the company’s stock immediately preceding the investment. Please note that all details of the investment must be clearly defined in an investment agreement, including but not limited to: investment amount and number of shares purchased.

20) **Can the purchase of publically-traded stock be considered a Qualified Investment?**
Answer: No, unless the stock is purchased directly from the technology business and the other requirements of the program are met, including holding the stock for a two-year period. While the purchase of publically traded stock is an exchange of cash, it is not an exchange between the technology business and the stock purchaser, unless the purchaser buys the stock directly from the technology company.

21) **I invested in a New Jersey Technology business using a SAFE (Simple Agreement for Future Equity).** Is that considered an eligible instrument under the regulations of the Angel Tax Credit Program?
Answer: It Depends. A standard SAFE agreement which has the following characteristics, and which distinguishes it from a Convertible Promissory Note may be considered eligible:

1) It is not a debt instrument. There is no accrual of interest.
2) It has no maturity date i.e. it is not **<u>repayable</u>** at any time.
3) Conversions to equity are automatic and there is no minimum threshold the company needs to meet to convert existing SAFE holders to equity holders.
4) SAFE holders are listed on the Company’s Capitalization Table.

EDA staff will review SAFE agreements provided with an Angel Tax Credit application. If the SAFE agreement meets all the criteria outlined above, it will be deemed an eligible instrument.
As with any equity position, the sale of the company may result in a liquidity event for the safe holder. This exit event is still qualified under the program.

22) **My SAFE agreement has a 1X repayment clause in the event of a Liquidity/Dissolution/Change of Control. Does that count as “repayment” under the rules of the Angel Tax Credit program?**
Answer: No. A Liquidity/Dissolution/Change of Control event is deemed outside the control of the investor and is an exception to the two-year holding rule.

23) **What is the obligation to inform EDA or the New Jersey Division of Taxation if changes occur within the Investor entity or with individual Investor after the Qualified Investment is made?**
Answer: There is no obligation under this Program to inform EDA or the New Jersey Division of Taxation of changes within the investor entity. However, there are certain limitations to the carryover of the tax credits if the taxpayer was acquired or was a party to a merger or consolidation.

See Question 20.

24) **Must I use the tax credit in a certain tax filing period?**
Answer: For gross income taxpayers, the tax credit certificate must be used in the tax year corresponding to the date of the certificate. It may be treated as an overpayment and a refund may be requested in the excess amount. For corporate business taxpayers, the certificate must be initially used in the tax year or privilege period corresponding to the date of the certificate. Tax credits otherwise allowable that cannot be applied against corporate business tax liability due for the tax year may either be treated as an overpayment that may be refunded (N.J.S.A. 54:49-15.1 not applicable), or may be carried forward for a period of up to 15 years.

25) **How will the Tax Credit Certificates be dated?**
Answer: The certificates will be dated with the date of the EDA approval, except if the $25 million annual cap is reached, in which case the certificates will be dated in the order in which applications were completed in the next succeeding calendar year in which tax credits are available.

26) **What if the Angel Investor entity undergoes a merger or is part of an acquisition either to acquire another entity or is acquired by another entity?**
Answer: Mergers and acquisitions are relevant only for tax credits that are carried forward. There is a prohibition to the carryover of any amount of credit allowed to a tax year during which a corporate acquisition with respect to the taxpayer occurred or during which the taxpayer was party of a merger or a consolidation, except that the acquiring corporation in a merger or consolidation may carry forward the credits if it can demonstrate to the NJ Division of Taxation the identity of the acquiring corporation.

27) **Is this tax credit transferrable or can it be sold?**
Answer: No, this tax credit is not transferable and cannot be sold, however it is refundable.

28) **Is an eligible investment made by Angel Investor who has since deceased/passed away, still eligible for the program?**
Answer: Yes, the investment is still eligible and would be transferred to the executor or executrix of the estate. In this instance, an applicant would need to submit proof of death (i.e. death certificate, etc.) and proof of transfer to an executor/executrix (i.e. Estate Document, Will, etc.). The certificate would be issued in the name of the deceased, but sent to the executor/executrix of the estate.

29) **My stock purchase agreement provides for multiple investment tranches over a 2-year period. Can I apply for Angel Tax Credit after making one tranche during the first year of investment?**
Answer: Yes. It is possible to apply after each tranche. The EDA will still require the standard supporting documentation (evidence of cash, stock purchase agreement, cap chart, stock certificate) along with a letter from the CEO of the technology company, certifying that the partial investment is a part of the executed stock purchase agreement with the applicant. This letter will be required at each partial application culminating with the last eligible transaction under the stock purchase agreement. Please note that this method involves a new application each time with its corresponding fees (application and in some cases approval). The date of investment will be determined either through the date on a stock certificate (if a partial stock certificate was issued) or the date of cash transfer, whichever came later.

Technology Business

30) What is the definition of a New Jersey Emerging Technology Business for the purpose of the Angel Investor Tax Credit Program?

Answer: A New Jersey Emerging Technology Businesses is a company that meets all four of the following requirements:

1. Employs fewer than 225 employees, with at least 75 percent filling a position in New Jersey, and
2. Does business, employs or owns capital or property, or maintains an office in New Jersey, and
3. Has as its primary business one of the following eligible technologies: Advanced Computing, Advanced Materials, Biotechnology, Electronic Devices, Information Technology, Life Sciences, Medical Devices, Mobile Communications, or Renewable Energy Technology, and
4. Conducts at least one of the following activities in New Jersey:
    a. Qualified research expenses paid or incurred for research conducted in its most recent fiscal year prior to the Qualified Investment, or
    b. Conducts pilot scale manufacturing in this State, or
    c. Conducts technology commercialization in this State

31) Does the technology business need to count the employees of other affiliated companies to satisfy the requirements regarding the maximum number of employees?

Answer: The Program does not define "affiliated" companies. However, the NJ technology business must count employees of any company, except the Investor, with control over the technology business or in the same controlled group as the technology business towards the maximum number of employees. For the definitions of "control" and "controlled group," see Question 4.

32) What is considered "filling a position in New Jersey"?

Answer: An employee is considered to be "filling a position in New Jersey" if they meet the definition of a full-time employee and physically work in New Jersey at least 80% of the time or any other period of time determined by EDA to be generally accepted by custom or practice as full-time employment in New Jersey.

33) What is a full-time employee?

Answer: A full-time employee may not be an intern, a temporary employee, an employee in a temporary position, an independent contractor, or a consultant.

A full-time employee must meet one of the following three definitions:

1. A person 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 either subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or exempt from the New Jersey Gross Income Tax Act by virtue of a reciprocity agreement between New Jersey and the state in which the employee resides.

2. A partner of a New Jersey Emerging Technology Business who 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 full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, either 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. or exempt from the New Jersey Gross Income Tax Act by virtue of a reciprocity agreement between New Jersey and the state in which the employee resides.

3.A person 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 in compliance with all other requirements of "full-time employee."

Please note that the company must have at least one employee that meets the definition of "full-time employee" in order to be eligible for the program.

34) **Are foreign employees considered when counting the total number of employees, and validating if at least 75% are "filling a position in New Jersey"?**
Answer: Yes. Foreign employees are included in the count of total employees. They are also considered when validating if 75% of employees are considered to be "filling a position in New Jersey"

For example, Company A may have 100 employees worldwide, of which 80 employees work in New Jersey. Of the employees in New Jersey, 10 spend less than 20% of their time in New Jersey. This means that Company A has 100 employees 70 employees "filling a position in New Jersey". Because 70 is less than the 75% requirement, Company A does not qualify for the program.

35) **Are unpaid full-time employees included in the count of "full-time employees"?**
Answer: In order to be considered a full-time employee, the employee must get paid wages that are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or exempt from the New Jersey Gross Income Tax Act by virtue of a reciprocity agreement between New Jersey and the state in which the employee resides. See Question 25 for the requirement for partners.

36) **Are investments made into a parent or holding company of a NJ emerging technology business eligible for the program?**
Answer: Yes, as of May 1st 2017, an investment into a holding company of a NJ emerging technology business is now eligible for participation in the NJ Angel Tax Credit Program (assuming the emerging technology business meets all other eligibility requirements). This shall be retroactive to include all investments on or after January 1st, 2012. Any holding company investments made from 1/1/2012-5/1/2017 will have until 12/31/2017 to apply. Any holding company investments made on or after 5/2/2017 will have the regular 6-month period post investment to submit an application.

37) **Is the technology business required to be part of the application process?**
Answer: Yes, the EDA must make a determination that the technology business meets the definition of a New Jersey Emerging Technology Business in order to determine that the investment was a Qualified Investment and that the taxpayer(s) is eligible to receive the tax credits.

38) **At what points in the application and approval process does the New Jersey Emerging Technology Business need to meet the eligibility criteria?**
Answer: The New Jersey Emerging Technology Business must meet the eligibility criteria at the time of the Qualified Investment, and must continue to operate as a New Jersey Emerging Technology Business until the earlier of six (6) months after the Qualified Investment or date of submitted application.

For example if John invested in Company X on January 15, 2013, Company X is required to continue operating as an "Emerging Technology Company" (employing fewer than 225 employees, 75% of which work full time in NJ, etc.) until July 15,2013, or the date EDA receives the application – whichever comes first.

39) **Are there any ongoing reporting requirements or obligations to EDA or the NJ Division of Taxation if changes occur within the New Jersey Emerging Technology Business?**
Answer: No reporting requirements or obligations exist once a completed application is filed or after the issuance of the tax credit certificate.

40) **The application indicates a need to include the technology business's Federal W-3 form. Is there anything else that may be sent in lieu of a Federal W-3 Form?**
Answer: Yes, if the technology business's Federal W-2 Form is filed electronically, the Federal W-3 Form would not need to be filed with the Social Security Administration. In this instance, we will accept a Federal W-2 summary or a Federal 941 Annual Summary as long as the alternative Form displays the total number of W-2 Forms issued.

41) **The application indicates a need to include the technology business's New Jersey State W-3 form. Is there anything else that may be sent in lieu of a New Jersey State W-3 Form?**
Answer: The New Jersey State W-3 Form (NJ-W-3M) must be filed by every New Jersey business and should always be submitted with the application. Applicants may also submit the WR-30 quarterly report for the period that includes the investment date.

42) **All of the technology business's "employees" are leased from a Professional Employment Organization (PEO). The PEO files its W-2's in the aggregate for all of its employees including the technology business. Are the W-3 statements required?**
Answer: No. However, the PEO must write a letter on the business's behalf indicating the following:
1. total number of full-time employees it leased as of the date of the Qualified Investment, and
2. the number of leased employees filling a position in New Jersey, and
3. the number of leased full-time employees working at least 80% of the time in New Jersey on the earlier of:
    a. six (6) months after the Qualified Investment, or
    b. the date of the investor's application.

43) **How can a technology business help investors take advantage of this credit?**
Answer: Inform potential investors of this tax credit, suggest they contact EDA for further information and assist the investor by filling out the technology business' section of the application as quickly and thoroughly as possible.

Application Process

44) **Who should I contact with my questions or to apply for the Angel Investor Tax Credit?**
Answer: Please visit our website at www.njeda.com/angeltaxcredit. You may call: (609) 858-6700 or e-mail: CustomerCare@njeda.com.

45) **Where can I find the Angel Investor Tax Credit application?**
Answer: Applications can be accessed at www.njeda.com/angeltaxcredit

46) **Are there any fees associated with applying for the Tax Credit?**
Answer: Yes, there is a non-refundable application fee associated with each application. Some applications will require an approval fee as well. Fees are determined by the dollar amount of the investment.

1. For investments of $50,000 or less, a non-refundable Application Fee of $500 will be required for each application. No approval fee is required.

2. For investments over $50,000 and up to $500,000, a non-refundable fee of $2500 will be required for each application. No approval fee is required.

3. For investments over $500,000, a non-refundable Application Fee of $2500 plus an approval fee of 5% of the approved tax credit amount or $2500 (whichever is greater) are required. The application fee is credited towards the approval fee.
    a. For example, a qualified investment of $600,000 receiving a tax credit in the amount of $60,000 would pay an Application Fee of $2,500 and an Approval Fee of $500. In this instance, the Approval Fee is calculated by starting with $3,000, which is 5% of the tax credit ($60,000), and then subtracting the Application Fee of $2,500 from it to yield $500 due upon approval.

4. A non-refundable fee of $150.00 shall be paid to the Authority for each request for reissuance per tax certificate previously issued pursuant to N.J.A.C. 19:31-19.6.

Applicants that are structured as Corporations, Multi-member LLC's, Partnerships, and Irrevocable Trusts will be required to obtain NJ Business Registration and Tax Clearance.

47) **I am having trouble obtaining a tax clearance through the PBS (Premier Business Services) portal. Who should I contact for assistance?**
Answer: Any entity that encounters issues acquiring Tax Clearance Certificates should contact the Division of Taxation by emailing **BusinessAssistanceTC.Taxation@treas.nj.gov** or by calling the Business Assistance Clearance Unit at **609.292.5503**.

48) **How long will a decision take?**
Answer: The time for review and approval will differ for each application.

49) **Is there an available list that details annual approvals and balance of funds remaining under the $25 million cap?**
Answer: A listing of the approved applications will be available on the Angel Investor Tax Credit website under Activity Report.

50) **Is there an appeal process for EDA's decisions?**
Answer: Yes, an Investor may appeal the EDA's Board action by submitting in writing to the Authority, within 20 days from the date of the Authority's action, an explanation as to how the Investor or the New

Jersey Emerging Technology Business has met the program criteria. The CEO of the Authority will designate an employee of the EDA to serve as a hearing officer for the challenge and to make a recommendation on the merits of the challenge to the Board.

51) How do I claim the Tax Credit?

Answer: The NJ-1040 Tax Return Form does not provide a line to take the Angel Investor Tax Credit. Therefore, in order to obtain this credit you must first file your New Jersey Tax Return. After you have filed your NJ-1040 return, please send the following items to New Jersey Division of Taxation: a cover letter requesting the Angel Investor Tax Credit, a complete copy of your New Jersey Income Tax Return, and the original State of New Jersey Angel Investor Tax Credit Program Certificate.

52) If I receive a NJ tax refund related to my NJ Angel Investor Tax Credit, am I required to report it as income on my federal return?

Answer: Receiving a NJ Angel Investor Tax Credit refund may have federal tax consequences. Please consult with an accounting professional or tax attorney to determine if you are required to include your NJ tax refund on your federal tax return. The NJ Division of Taxation is required to the report to the IRS a taxpayer's State refund amount, which may include any refund resulting from an Angel Investor Tax Credit. A Statement for Recipients of State Income Tax Refunds (Form 1099-G) can be obtained here. Please note that this form is only available online and will not be mailed to you.