

Opportunity for NJ Technology Businesses

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New Jersey is currently accepting applications for its Technology Business Tax Certificate Transfer Program (also known as the NOL Program) through June 30, 2022. This annual program allows unprofitable technology and biotechnology corporations to sell their unused NJ net operating losses (NOLs) and unused NJ research and development tax credits (R&D credits) to unrelated profitable corporations. Up to \$75 million is available this year, with \$15 million set aside for businesses located in Innovation Zones, Opportunity Zones, or those that are NJ Certified as a minority and/or woman owned business or enterprise.

This program allows an emerging company to turn their unused NOLs and R&D credits into capital, which can then be used for growth and operations. The business must utilize these funds for expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company within New Jersey. These expenses can include construction, acquisition, materials, salaries, and research and development expenditures.

The NOLs and R&D tax credits may be sold for at least 80% of their value, up to a maximum lifetime benefit of \$20 million per business. The market price for the

benefit is generally 88 to 94 cents on the dollar with a minimum price of 80 cents.

Profitable companies can also take advantage of this program. The credits are purchased at a discount and then are applied to reduce the buyer's NJ tax liability at 100 cents on the dollar.

Key Program Details:

- An eligible company must own, have filed for, or have a license to use protected, proprietary intellectual property (defined as a patent or a registered copyright).
- An eligible company cannot have had positive net operating income on either of its last two full-year income statements in accordance with GAAP. In addition, an eligible company cannot have a parent company with positive net operating income or be part of a consolidated group of affiliates for federal income tax purposes with positive net operating income.
- An eligible company must have no more than 224 employees and have at least:
 - One full-time employee working in New Jersey if incorporated or formed less than three years ago,
 - Five full-time employees in New Jersey if incorporated or formed between three and five years ago,
 - Ten full-time employees in New Jersey if incorporated or formed five years ago or more.
- An eligible company must have financial statements for the two most recent full years of operation which are either compiled, reviewed, or audited by an independent CPA firm and prepared in accordance with U.S. GAAP.

This program presents significant benefits to both the purchasing company and selling company. If you have questions about how the NOL program works or would like to see if you qualify, please contact Laura Mirro – Senior Manager, Chris Noble – Partner and Leader of the Technology and Professional Services Groups, Alan Goldenberg – Tax Principal and Leader of the State & Local Tax and Tax Controversy Groups, or your Anchin Relationship Partner.