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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS

N.J.A.C. 19:31 (2016)

Title 19, Chapter 31 -- Chapter Notes

CHAPTER AUTHORITY:

N.J.S.A. 34:1B-1 et seq. and 54A:4-13.d; P.L. 2009, c. 90; and P.L. 2011, c. 149 (N.J.S.A. 34:1B-242 et seq.).

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2010 d.285, effective November 9, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

CHAPTER EXPIRATION DATE:

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 31, Authority Assistance Programs, expires on November 9, 2017.
See: 43 N.J.R. 1203(a).

CHAPTER HISTORICAL NOTE:

Chapter 31, Authority Assistance Programs, was adopted as R.1990 d.410, effective August 20, 1990. See: 22 N.J.R. 1545(a), 22 N.J.R. 2536(a).

Subchapter 7, Local Development Financing Fund, was adopted as R.1992 d.421, effective October 19, 1992. See: 24 N.J.R. 2534(a), 24 N.J.R. 3735(a).

Subchapter 8, Hazardous Discharge Site Remediation Fund, was adopted as R.1994 d.192, effective April 18, 1994. See: 25 N.J.R. 4468(a), 26 N.J.R. 1706(c).

Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund, was adopted as R.1994 d.376, effective July 18, 1994. See: 26 N.J.R. 1613(a), 26 N.J.R. 2919(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Authority Assistance Programs, was readopted as R.1995 d.435, effective July 20, 1995. See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Subchapter 10, Business Employment Incentive Program, was adopted as R.1996 d.470, effective October 7, 1996. See: 28 N.J.R. 3058(a), 28 N.J.R. 4510(b).

Subchapter 11, Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, was adopted as R.1998 d.151, effective March 16, 1998. See: 29 N.J.R. 5236(b), 30 N.J.R. 1054(a).

Subchapter 12, Technology Business Tax Certificate Transfer Program, was adopted as R.1999 d.381, effective November 1, 1999. See: 31 N.J.R. 2522(a), 31 N.J.R. 3525(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Authority Assistance Programs, was readopted as R.2000 d.297, effective June 16, 2000. See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Chapter 31, Authority Assistance Programs, was readopted as R.2005 d.274, effective July 22, 2005. As a part of R.2005 d.274, Subchapter 5, Export Revolving Line of Credit; Subchapter 6, New Jersey Trade Adjustment Assistance Center; Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund and Subchapter 13, Rules for Implementation of an Act Concerning the Restructuring of Certain Solid Waste Facility Bonds, and Providing for the Financing Thereof through the New Jersey Economic Development Authority, P.L.2001, c.401 were repealed, effective August 15, 2005. See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Subchapter 4, Downtown Beautification Program, was repealed by R.2009 d.38, effective January 20, 2009. See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

Subchapter 9, Urban Transit Hub Tax Credit Program, was adopted as new rules by R.2009 d.53, effective February 2, 2009. See: 40 N.J.R. 6426(a), 41 N.J.R. 807(a).

Pursuant to P.L. 2008, c. 27, § 10 (N.J.S.A. 34:1B-219) and by notice of administrative change, Subchapter 3, Energy Sales Tax Exemption Program, of Chapter 121 of Title 12A was recodified as Subchapter 13 of Chapter 31 of Title 19, effective January 29, 2009. See: 41 N.J.R. 1102(a).

Subchapter 5, InvestNJ Business Grant Program, and Subchapter 6, Main Street Business Assistance Program, were adopted as special new rules by R.2009 d.73, effective February 2, 2009. See: 41 N.J.R. 1103(a). Subchapter 5, InvestNJ Business Grant Program, and Subchapter 6, Main Street Business Assistance Program, were adopted as concurrent new rules by R.2009 d.181, effective May 4, 2009. See: 41 N.J.R. 2338(a).

Subchapter 14, Business Retention and Relocation Assistance Grant Program, was recodified from Subchapter 1 of N.J.A.C. 12A:2; Subchapter 15, Tax Credit Certificate Transfer Program, was recodified from Subchapter 1 of N.J.A.C. 12A:2A; Subchapter 16, Sales and Use Tax Exemption Program, was recodified from Subchapter 2 of N.J.A.C. 12A:2A; and Subchapter 17, Energy Sales Tax Exemption Program for Certain Counties, was recodified from Subchapter 4 of N.J.A.C. 12A:2A by R.2010 d.231, effective October 18, 2010. See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Chapter 31, Authority Assistance Programs, was readopted as R.2010 d.285, effective November 9, 2010. As a part of R.2010 d.285, Subchapter 5, InvestNJ Business Grant Program, was repealed, effective December 6, 2010. See: Source and Effective Date. See, also, section annotations.

Subchapter 4, Economic Redevelopment and Growth Program, was adopted as special new rules by R.2011 d.152, effective May 3, 2011. See: 43 N.J.R. 1372(a). Subchapter 4, Economic Redevelopment and Growth Program, was adopted as concurrent new rules by R.2012 d.030, effective January 6, 2012. See: 44 N.J.R. 307(a).

Subchapter 18, Grow New Jersey Assistance Program, was adopted as new rules by R.2012 d.118, effective June 18, 2012. See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Subchapter 19, Angel Investor Tax Credit Program, was adopted as new rules by R.2013 d.132, effective November 4, 2013. See: 45 N.J.R. 1902(a), 45 N.J.R. 2399(a).

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CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 1. BOND FINANCING PROGRAM

N.J.A.C. 19:31-1.1 (2016)

§ 19:31-1.1 Program description

(a) The Authority is empowered to issue tax-exempt and taxable bonds, the proceeds of which can be used to provide low-interest loans to businesses, governmental entities and certain nonprofit organizations to finance projects which provide or maintain employment and/or tax ratables.

(b) Most bond financings are not guaranteed by the Authority or the State, and are payable solely from revenues generated by the project being financed.

(c) The general credit of neither the Authority nor the State is pledged to secure the bonds.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 New Jersey Register 1705(a), 32 New Jersey Register 2602(c).

In (a), inserted a reference to governmental entities.

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N.J.A.C. 19:31-1.2 (2016)

§ 19:31-1.2 Bond purchaser

(a) The applicant shall secure a written commitment from a bond purchaser.

(b) A bond purchaser shall be:

1. A commercial bank or other institutional lender;

2. An underwriter or placement agent;

3. A privately owned entity; or

4. An individual.

(c) A bond purchaser other than a commercial bank or institutional lender must submit an Application to Purchase Bonds, which will be reviewed by the Authority to determine acceptability to purchase a bond. This application includes requests for identification of, or information about:

1. The officers, directors, partners, owners and stockholders of the applicant;

2. Litigation involving the applicant;

3. Applicant's counsel, principal banks of account, and accountant; and

4. Financial statements of applicant.

(d) The bond purchaser establishes the amount, term, interest rate, collateral, etc., for the bond in negotiation with the applicant.

HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 New Jersey Register 1485(b), 29 New Jersey Register 2844(b).

Deleted (c), barring bond purchaser from being substantial owner or user of project; and recodified former (d) and (e) as (c) and (d).

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N.J.A.C. 19:31-1.3 (2016)

§ 19:31-1.3 Bond financing

(a) Typically, the bonds are secured by a loan agreement and a mortgage on project assets.

(b) The funds raised by the bond issue are loaned by the Authority to pay for eligible project costs. The borrower signs an agreement with the Authority pledging to make payments sufficient to cover principal and interest on the bond. This agreement is then assigned to the bond purchaser.

(c) The borrower makes payments directly to the bond purchaser or trustee.

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N.J.A.C. 19:31-1.4 (2016)

§ 19:31-1.4 Eligibility standards

(a) Generally, to be eligible for bond financing:

1. A project must serve a public purpose; that is, maintain or expand employment in New Jersey, assist in the economic development or redevelopment of a municipality, maintain or increase the tax base of the municipality, and maintain or diversify business and industry in the State; and

2. Applicants must represent to the Authority that they would not proceed with their project in the present time, place, or scope without the Authority's assistance.

(b) The Authority generally will not approve financial assistance to a project involving relocation within New Jersey if the relocation will result in a job loss and/or hardship for the existing employees or if the relocation endangers the maintenance of tax ratables in a particular community.

(c) There is no minimum size for borrowings under the program, but loan requests of less than $ 750,000 should be carefully reviewed by the applicant to assure that participation in the program is cost effective.

(d) Tax-exempt bonds are subject to the terms and conditions of the Internal Revenue Codes (IRC); therefore, it is advisable to consult with financial and legal advisors to determine the eligibility of the project.

(e) Taxable bonds issued through the Authority are not subject to the IRC. Loans may be made to borrowers for various projects and purposes including, but not limited to:

1. Office buildings;

2. Healthcare financings;

3. Warehouses and distribution facilities;

4. Manufacturing projects;

5. Commercial and retail projects;

6. Debt refinancing; and

7. Working capital needs.

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 New Jersey Register 1485(b), 29 New Jersey Register 2844(b).

In (d), deleted last sentence, relating to tax exemptions for interest income.

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N.J.A.C. 19:31-1.5 (2016)

§ 19:31-1.5 Application procedures

(a) A prospective applicant should consult with the Authority to determine if the project is eligible.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) The Application includes requests for information about:

1. The applicant's business, including financial statements and projections;

2. The project to be undertaken;

3. The officers, directors, partners, owners and stockholders of the applicant;

4. Litigation involving the applicant;

5. Other users of the project, if applicable;

6. Municipal approvals, if applicable;

7. Contractors, subcontractors, architects, engineers, and planners who will work on the project, if known;

8. Equipment to be purchased as part of the project; and

9. The relocation of any part of the applicant's or user's business, if applicable.

(d) Applications are logged in and assigned a number and project officer for review and processing.

(e) Applications are assigned to a bond counsel firm from the Authority's list of designated bond counsel to review the project for eligibility under Federal and State law (see N.J.A.C. 19:31-1.6). At the time of application, applicants may request assignment of one of the designated bond counsel firms, which request may be approved by the Authority at its discretion.

(f) Applications are processed through several levels of staff review, and may then be recommended for consideration and official action of the Members of the Authority (Members) at a public meeting. The applicant has no right to have its Application presented to the Members.

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N.J.A.C. 19:31-1.6 (2016)

§ 19:31-1.6 Bond counsel review and fees

(a) The Authority is represented in bond transactions by bond counsel, a private law firm with particular experience and expertise in this specialized area of law. The bond counsel firm:

1. Reviews Applications to determine eligibility under Federal and State law;

2. Assists the Authority in drafting the necessary resolutions to be adopted concerning projects;

3. Publishes notice of public hearing;

4. Drafts financing documents to be used in the transaction;

5. Prepares certain Federal forms for filing with the IRS relating to bond financing;

6. Delivers an opinion at the settlement of the transaction indicating, among other things:

i. The project qualifies for Authority assistance;

ii. The Authority has taken all necessary steps to accomplish the transaction; and

iii. The interest income to be earned on the Authority bonds issued for the project is exempt from most Federal and/or State income taxes.

(b) Bond counsel fees are paid by the applicant usually at the closing of the transaction, and may, subject to certain limitations, be included as a project cost to be financed out of the Authority bond issue.

(c) The borrower also is responsible for paying other professional fees associated with financing the project, including, but not limited to:

1. Printing fees;

2. Real estate commissions;

3. Consulting fees; and

4. Bond purchaser counsel fees.

(d) Applicants may be charged a fee by bond counsel even though the project does not close with Authority bonds.

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N.J.A.C. 19:31-1.7 (2016)

§ 19:31-1.7 Approval process

(a) Only the Members acting at a duly constituted public meeting can authorize or approve assistance to a project. These public meetings will satisfy the requirements for public hearings in accordance with the IRC. The Authority staff is not empowered to authorize or approve such assistance.

(b) The following approvals are required:

1. A preliminary resolution prepared by bond counsel making certain affirmative findings and determinations concerning the eligibility for assistance.

i. Such official action permits an applicant to begin making expenditures on the project without jeopardizing the tax-free eligibility.

ii. If an applicant makes substantial expenditures on a project prior to such official action, the expenditures may not be eligible for tax-free financing. The applicant should consult with bond counsel for advice as to how the IRC applies to expenditures.

iii. A preliminary approval is not by itself sufficient authorization to permit the issuance of bonds;

2. A final bond resolution prepared by bond counsel authorizing bonds to be issued, subject to the following:

i. Receipt of a written commitment acceptable to the Authority from a bond purchaser;

ii. Substantial agreement among the interested parties as to the form and substance of the financing documents; and

iii. Availability under the State volume cap or carryforward bond allocation for bond financing in accordance with the IRC; and

3. Approval of the Governor.

(c) Bond counsel may prepare a combination resolution granting both preliminary and final bond approval at a single meeting, if the requirements set forth in (b)1 and 2 above have been met.

(d) The bond closing must occur within a specified period of time, usually not exceeding 90 days from the date of final bond approval.

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

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N.J.A.C. 19:31-1.8 (2016)

§ 19:31-1.8 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

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N.J.A.C. 19:31-1.9 (2016)

§ 19:31-1.9 Post-closing review

The loan agreement executed with the Authority includes certain public purpose covenants and obligations that must be observed by the applicant during the term of the financing. Failure to comply with these covenants and obligations may result in cancellation of the bond by the Authority.

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

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SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS

N.J.A.C. 19:31-2.1 (2016)

§ 19:31-2.1 Program description

(a) The Authority is empowered to guarantee a portion of the principal amount of a financing which would increase or maintain employment and/or tax ratables in New Jersey, and which would not be made without the guarantee.

(b) The Authority is empowered to own and lease equipment and/or real estate to eligible applicants.

(c) There are four types of guarantees available: Fixed Asset Guarantees, Working Capital Guarantees, Special Guarantees, and Smart Growth Pre-Development Guarantees.

1. Under the Fixed Assets Guarantee program:

i. The Authority may guarantee the lesser of $ 2.0 million or 90 percent of the principal amount of the financing.

ii. The financing can either be:

(1) A taxable or tax-exempt Authority-issued bond financing (see N.J.A.C. 19:31-1); or

(2) Any other form of financing other than as stated in (b)1ii(1) above, including, but not limited to, bank loans, lease financing, seller take-back financing, Federal take-back financing and financings described in (b)3ii(1) and (2) below ("conventional financing");

iii. Proceeds of guaranteed conventional financing can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings; and

iv. Use of the proceeds of tax-exempt bond financing is governed by the Internal Revenue Code.

2. Under the Working Capital Guarantee program:

i. The Authority may guarantee the lesser of $ 1.5 million or 90 percent of the principal amount of the financing;

ii. The financing can be either a conventional financing or an Authority-issued tax-exempt or taxable bond (see N.J.A.C. 19:31-1), subject to the terms and conditions of the Internal Revenue Code; and

iii. The financing proceeds can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

3. Under the Special Guarantee program:

i. The Authority may guarantee any amount;

ii. The Authority guarantee shall be of:

(1) A loan or guarantee from a governmental entity which may be the Federal or State government, a department of the Federal or State government, an agency of the Federal or State government or a political subdivision of the State of New Jersey;

(2) A loan made under the Community Lending Program of the Federal Home Loan Bank of New York;

(3) Bonds issued by the Authority as a part of a bond issue for the benefit of multiple borrowers (whether or not such bond issue consists of multiple series of bonds issued for the benefit of individual borrowers);

(4) Conventional financing. An applicant for a conventional financing guarantee shall:

(A) Be in an industry and municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5;

(B) Demonstrate to the Authority that it has viable options to vacate the State or locate to another state, has been offered economic incentives by the competing state and that, without the special guarantee the applicant will not undertake the relocation or expansion in the State; and

(C) Create or maintain a minimum of 200 permanent full-time jobs in the State. The Authority's assistance shall not exceed $ 65,000 per full-time job created and/or maintained; or

(5) Structured finance assistance. For purposes of this sub-subparagraph and the transaction documents, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Base years" means the first two complete calendar years following the approval by the members provided, however, that, at its discretion, an approved applicant may notify the Authority that the base years have terminated prior to such date, and further provided that in those instances where significant construction/renovation of the project requires a certificate of occupancy to be awarded prior to occupancy of the project site, the base years will commence upon the issuance of a certificate of occupancy by the municipality.

"Designated industries" means a business engaged in the field of biotechnology, pharmaceuticals, financial services, transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology as these terms are more particularly defined in N.J.A.C. 19:31-10.2.

"Disaster recovery center" means a redundant facility used to house back-up systems to be used in the event of a business interruption at the primary facility of the business.

"Employment compliance period" means with respect to net new full-time permanent jobs to be created, the five consecutive years immediately following the base years. Compliance with other covenants required by the transaction documents may be longer than the employment compliance period.

"Full-time permanent job" means a job filled by a full-time employee as that term is defined at N.J.A.C. 19:31-10.2.

"Manufacturing business" means a business in which more than 50 percent of the business conducted is the transformation of raw materials into finished goods for sale.

"Net new full-time permanent job" means the full-time permanent jobs created. "Net new full-time permanent job" shall not include any person who was previously employed in New Jersey by the business or by a related person as defined in N.J.S.A. 54:10A-5.5 if the employee is transferred to the business which is the subject of the application unless the employee's position at his or her previous employer is filled by a new employee.

"Structured finance assistance" means the program set forth in this sub-subparagraph, whereby the Authority purchases machinery, equipment, furniture, leasehold improvements or construction materials using the sales tax exemption granted to the Authority pursuant to N.J.S.A. 54:32B-9 and leases such items to an approved applicant.

(A) Eligibility. In order to be eligible for structured finance assistance, an applicant shall:

I. Demonstrate that the project is a designated industry as that term is defined in N.J.A.C. 19:31-10.2; and is located either in a Metropolitan Planning Area (PA 1), Suburban Planning Area (PA 2), designated center or an area designated for growth in a plan that has been endorsed by the New Jersey State Planning Commission at N.J.S.A. 52:18A-196 et seq.;

II. Demonstrate to the Authority that it has viable options to locate the project out of the State, has been offered economic incentives by a competing state and that, without the structured finance assistance, the applicant will not relocate or expand the project in the State;

III. Create a minimum 10 net new full-time permanent jobs for manufacturing businesses and designated industries. For disaster recovery centers which will increase the tax base of the State or any political subdivision of the State, the Authority may waive the requirement for the creation of net new full-time permanent jobs.

IV. For manufacturing businesses and designated industries, demonstrate that the business is making a minimum capital investment in the facility of $ 10,000,000. For disaster recovery centers, demonstrate that the business is making a minimum capital investment in the facility of $ 15,000,000.

V. The business is not eligible for assistance under structured finance if the business is eligible for assistance under the Sales Tax Exemption component of the Business Retention and Relocation Assistance Act, P.L. 2004, c. 65, as amended. The business is not eligible for assistance under structured finance if the business has entered into an agreement for a Business Employment Incentive Program Grant at the project site (P.L. 1996, c. 26 as amended).

(B) Program requirements. Eligible applicants for structured finance assistance must comply with the following requirements:

I. The Authority's exposure (if any) shall not exceed $ 65,000 per full-time permanent job;

II. The maximum time allowed for acquisition of machinery, equipment, furniture and fixtures, leasehold improvements or construction materials shall be five years from the approval by the members of the project although the actual lease term may be for a longer period; and

III. Structured finance assistance shall have a rolling cap of $ 40 million of sales tax benefit per two-year period based on the State's fiscal year. In the event that the rolling cap is met, the EDA may seek the approval of the State Treasurer to exceed the cap and shall only proceed with the administration of the sales tax benefit with the State Treasurer's written approval. By example, if the sales tax benefit approved in fiscal year 1 was $ 18 million, the amount available for approval in fiscal year 2 would be $ 22 million.

(C) If a firm does not meet their projections for net new full-time permanent jobs, it shall return to the State a proportionate percentage of the sales tax benefit.

(D) Fees are as follows:

I. A non-refundable application fee of $ 1,000 shall accompany every application for assistance.

II. A closing fee of $ 25,000 shall be paid to the Authority by the business at the time of closing.

III. A lease origination fee equal to 10 percent of the sales tax benefit shall be paid to the Authority by the business at the lease tranche closing(s), as they occur.

IV. A sales and use tax exemption letter fee of $ 500.00 per year for each year a letter is issued by the Authority shall be paid to the Authority by the business.

V. An asset re-acquisition fee equal to 10 percent of the residual value of the machinery, equipment, furniture and fixtures shall be paid to the Authority by the business. The residual value will have a floor of one percent of the original purchase price and sales tax allocable to the residual value.

4. Under the Smart Growth Pre-development Guarantee Program:

i. The amount of the Authority guarantee shall not exceed $ 1.0 million;

ii. The financing can be either a conventional financing or an Authority-issued tax-exempt or taxable bond (see N.J.A.C. 19:31-1), subject to the terms and conditions of the Internal Revenue Code;

iii. The financing proceeds shall be used for the purposes of pre-development site preparation costs to be determined by the Authority. Such costs may include, but are not limited to, land assemblage, demolition, removal of materials and debris and engineering costs; and

iv. Applicants for Smart Growth Pre-development Guarantee shall have projects which must be located either in Planning Areas 1 or 2, designated centers or in municipalities with endorsed plans as defined by the State Redevelopment Plan, must evidence municipal support and be part of a local redevelopment plan.

(d) Both the Fixed Asset guarantee and the Working Capital guarantee have a maximum term of 10 years for the guarantee, although the financing can be for a longer term. Smart Growth Pre-development guarantees have a maximum

term of three years. A Special Guarantee term shall not exceed the term of the financing. Film Production Assistance Program guarantee terms will be determined on a project-by-project basis. Factors to be considered in determining the terms of the guarantee are as set forth in N.J.A.C. 19:31-2.4.

HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (b), substituted "three types" for "two types" and added "and Special Guarantees"; in (b)1ii(1), inserted "Authority issued"; added (b)1ii(2); substantially amended (b)2ii; in (b)iii, substituted "financing proceeds" for "loan proceeds"; inserted (b)3; and in (c), added last sentence.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Inserted a new (b); recodified former (b) and (c) as (c) and (d); and in the new (c)3, inserted "or locate to another state" following "State" in ii(4)(B), and substituted a reference to companies for a reference to existing New Jersey companies in iii.

Amended by R.2000 d.482, effective December 4, 2000.

See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

Inserted (c)3ii(5).

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), deleted the second sentence; rewrote (c).

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

In (c), rewrote the introductory paragraph and added 4; in (d), added the last sentence.

Amended by R.2004 d.346 and d.347, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a), 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Rewrote (c); in (d), added the second sentence.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Rewrote (c).

Amended by R.2005 d.319, effective September 19, 2005.

See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).

In (c), added definitions "Designated industries", "Disaster recovery center", and "Manufacturing business", rewrote definitions "Employment compliance period" and "Net new full-time permanent job", rewrote (A), deleted former (C), recodified and rewrote former (D) as (C), added (D).

Amended by R.2008 d.89, effective April 7, 2008.

See: 39 N.J.R. 5071(a), 40 N.J.R. 1927(b).

In (c)2i, substituted "$ 1.5 million" for "$ 1 million".

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

Deleted (c)6.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In the introductory paragraph of (c), substituted "four" for "five", and deleted "Film Production Program Assistance Guarantees" following "Special Guarantees,"; deleted (c)4; and recodified (c)5 as (c)4.

Amended by R.2014 d.187, effective December 15, 2014.

See: 46 N.J.R. 1682(a), 46 N.J.R. 2420(a).

In the introductory paragraph of (c), substituted "Pre-Development" for "Pre-development", in (c)3ii(4)(C) and (c)3ii(5)(B)I, substituted "$ 65,000" for "$ 50,000"; and in (c)3ii(4)(C), inserted "full-time".

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TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS

N.J.A.C. 19:31-2.2 (2016)

§ 19:31-2.2 Eligibility standards

(a) Generally, preference for guarantees is given to projects which:

1. Are job intensive;

2. Will create or maintain tax ratables;

3. Are located in an economically distressed area; and/or

4. Represent an important economic sector of the State.

(b) For fixed asset financing guarantees, the applicant will be required to invest at least 10 percent equity into the project.

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N.J.A.C. 19:31-2.3 (2016)

§ 19:31-2.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

9. A formal commitment letter from the lender providing the loan, including all terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

HISTORY:

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

Added a new (e) and recodified former (e) as (f).

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Deleted (e); and recodified (f) as (e).

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N.J.A.C. 19:31-2.4 (2016)

§ 19:31-2.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

HISTORY:

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

Added (a)9.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a)7, inserted "and" at the end; in (a)8, substituted a period for "; and" at the end; and deleted (a)9.

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N.J.A.C. 19:31-2.5 (2016)

§ 19:31-2.5 Approval process

(a) Only the Members can approve a guarantee, either directly or through delegation.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.

2. Except for the Structured Finance Program, usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as collateral assignee.

3. Except for the Structured Finance Program, personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the guarantee is delivered to the lender.

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Rewrote (a) and (d).

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

In (d)2 and (d)3, deleted "Angel Investor Program guarantee and the" preceding "Structured".

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N.J.A.C. 19:31-2.6 (2016)

§ 19:31-2.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General's Office.

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

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CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 3. DIRECT LOAN PROGRAM

N.J.A.C. 19:31-3.1 (2016)

§ 19:31-3.1 Program description

(a) The Authority is empowered to make direct loans to applicants which are unable to obtain funding from conventional sources even with the help of an Authority guarantee.

(b) Except as otherwise provided in this subsection, direct loans are available in a maximum amount of $ 2,000,000 for fixed asset financing and $ 750,000 for working capital.

1. For the Smart Growth Pre-development Loan Program, the maximum loan amount will be $ 1 million.

2. For the Brownfields Redevelopment Loan Program, the maximum loan amount will be $ 750,000.

3. The maximum amount of combined total financing under the Smart Growth Pre-development and Brownfield Redevelopment loan program(s) is $ 1.0 million.

4. The maximum amount of total financing for the New Jersey Growth Fund Program shall be $ 1 million per transaction.

5. For the urban loan product, the maximum loan amount will be $ 3 million, not to exceed 50 percent of the total project costs, for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of under $ 70 million; and $ 5 million for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of over $ 70 million.

6. For the Edison Innovation Angel Growth Fund, the Authority may award up to $ 250,000 in convertible debt financing to leverage private angel investments, on a two to one angel matching fund requirement, to a business that has generated a minimum of $ 500,000 in prior 12-month commercial revenues; for the Edison Innovation VC Growth Fund, the Authority may award up to $ 1 million in convertible debt financing to leverage institutional venture backed investments or strategic investments that may be made by a variety of sources, including, but not limited to, commercial or institutional entities, nonprofit organizations with a similar focus, or universities, all of whom are interested in providing funding to advance the business in which they invest, on a one to one matching fund requirement, to a business that has generated a minimum of $ 500,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, the Authority may award up to $ 500,000 in convertible debt financing, on a one to one matching fund requirement, to a business that has generated a minimum of $ 2 million in prior 12-month commercial revenues. Except as otherwise provided, the total amount of assistance that a business may receive under the various programs funded by the Edison Innovation Fund, or any similar assistance provided by any other State agency, shall not exceed $ 1 million dollars. Notwithstanding the foregoing, any amount received by a business under the Edison Innovation Growth Stars Fund, Edison Innovation Clean Energy Manufacturing Fund, and Edison Innovation Green Growth Fund, shall not be considered in the $ 1 million dollar limit.

7. For the Loans to Lenders component of the Fund for Community Economic Development, the maximum loan amount will not exceed $ 750,000, except that Loans to Lenders may be used to develop grocery stores and supermarkets with a maximum loan amount of $ 3 million, provided that no more than $ 4 million will be used for this purpose.

For the pre-development assistance component of the Fund for Community Economic Development, the maximum loan amount will not exceed $ 50,000 per project.

8. For the Real Estate Impact Fund, the maximum loan amount will be $ 3 million, not to exceed 25 percent of the total project costs; and the total amount of public assistance that a developer or business may receive shall not exceed 50 percent of the total project costs.

(c) Proceeds of fixed asset loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings.

(d) Proceeds of working capital loans can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

(e) Proceeds of Smart Growth Pre-development loans shall be used for the purposes of pre-development site preparation costs to be determined by the Authority. Such costs may include, but are not limited to, land assemblage, demolition, removal of materials and debris and engineering costs.

(f) Proceeds of Brownfield Redevelopment loans shall be used for financing those remediation costs deemed eligible by the New Jersey Department of Environmental Protection pursuant to the Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Department(s) of Environmental Protection and Treasury, and the New Jersey Commerce and Economic Growth Commission.

(g) Proceeds of urban loans shall be used for fixed asset financing as set forth in (c) above, not to exceed 50 percent of total project costs, in the nine urban centers designated in the New Jersey State Development and Redevelopment Plan (Atlantic City, Camden, East Orange, Elizabeth, Jersey City, New Brunswick, Newark, Paterson and Trenton).

(h) Proceeds of Real Estate Impact Fund loans may be used for eligible project development costs within municipalities qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) or within Fort Monmouth or as part of New Jersey university/college sponsored projects that include public-private partnerships that promote emerging technologies or industries.

(i) The Authority shall determine the term, and fixed and/or variable rates of interest, including interest rate floors, to be charged for each loan product through consideration and official action of the Members at a public hearing. The applicant shall elect in writing, at or prior to the time of closing, a fixed interest rate or at a variable interest rate.

1. Fixed Rate Interest: Interest on fixed asset or working capital loans will be fixed at the time of closing, with a floor that shall be indexed to a nationally recognized financial index, such as the five-year United States Treasury Bond of like term, plus or minus any additional basis points to be determined by the Authority. During the term of any loan, a scheduled rate reset shall not result in an increase of more than five percentage points greater than the original calculated interest rate.

2. Variable Rate Interest: Interest on fixed asset and working capital loans will be set with a floor that shall be indexed to a nationally recognized rate, such as the Prime Rate as published in the Wall Street Journal at the time of closing, plus or minus any basis points to be determined by the Authority. The interest rate will be variable, adjusted on the first business day of each calendar quarter in accordance with the relationship of the original calculated interest rate. The maximum increase in the variable interest rate during the term of the loan will be no more than five percentage points greater than the original calculated interest rate.

3. For fixed and variable rate loans, factors to be considered in establishing additional interest rate basis points above the floor previously established by the Board may include, among others:

i. An applicant's creditworthiness;

ii. Amortization schedules;

iii. The quality of collateral; and

iv. The number of full-time jobs created or maintained in New Jersey provided the Authority's exposure may not exceed $ 65,000 per job created or maintained.

4. For loans offered under the Edison Innovation Fund, the criteria for determining the rate of interest and additional basis points above the floor previously established by the Board may include the eligibility standards contained in N.J.A.C. 19:31-3.2(f).

5. In addition to any interest charged on an Edison Innovation Angel Growth Fund loan, an Edison Innovation VC Growth Fund loan, and an Edison Innovation Growth Stars Fund loan, the Authority may also require the payment of additional fees and charges, including, but not limited to, warrants, stock, stock options, a percentage of royalties, and a percentage of sales proceeds.

6. The rate of interest for Real Estate Impact Fund loans shall be determined by the economic feasibility and economics pertaining to the return on investment and the ability to attract the required investment; and full repayment shall be due and payable to the Authority at the earlier of the end of the loan term or a liquidity event, on terms and conditions mutually agreed upon based on the structure and merits of the project.

7. The Authority shall provide public notice of the loan terms and interest rates, including interest rate floors, to be charged for all loan products as authorized by the Members through, among other methods, listing on the agency's website at www.njeda.com.

(j) For New Markets Loans:

1. The maximum amount of total financing for a New Markets loan is $ 10 million, except for projects that provide extraordinary economic development benefits when the maximum amount of total financing for a New Markets loan is $ 25 million.

2. For New Market Loans, the projects must be located within areas designated for smart growth land use development and designated by the New Jersey Development and Redevelopment Plan as in Planning Areas One or Two or in a designated center or endorsed plan. Additionally, projects must be located in communities and census tracts as approved by the Community Development Financial Institutions Fund (CDFI) as described in (j)2i through iii below and must have at least one of the characteristics described in (j)3 below.

i. A poverty rate of at least 20 percent;

ii. In the case of a tract not located within a Metropolitan area as defined by the United States Census, where the median income family income for such tract does not exceed 80 percent of the Statewide median family income; or

iii. In the case of a tract located within a Metropolitan area, where the median family income for such tract does not exceed 80 percent of the greater of Statewide median income or the Metropolitan area median family income.

3. Additionally, New Markets loans must be located in at least one of the following types of designated areas:

i. CDFI Hot Zone, Empowerment Zone, Renewal Community, HOPE VI Redevelopment area or Small Business Administration HUB Zone;

ii. A brownfield redevelopment area, locally designated redevelopment area, or New Jersey Urban Enterprise Zone;

iii. A census tract with an unemployment rate of 1.5 times the national average; or

iv. A census area with a poverty rate greater than 30 percent or with median incomes of less than 60 percent of the area median income.

4. In addition to any interest charges on a New Markets loan, the Authority shall also require the payment of additional fees, including a one-time monitoring fee of $ 1,000 and a management fee of five percent of the loan amount, with the exception of non-profit borrowers that will be charged a 3.5 percent management fee.

(k) For Small Businesses, Minorities' and Women's Enterprises loans:

1. Of the financial assistance allocated by the Authority from the funds made available pursuant to the provisions of N.J.S.A. 5:12-181, 50 percent shall be made available to women, and 50 percent shall be made available to minorities and all such funds shall be invested in accordance with the geographic restrictions established by N.J.S.A. 5:12-181;

2. Of the financial assistance allocated by the Authority from sources other than those funds made available pursuant to the provisions of N.J.S.A. 5:12-181, 50 percent shall be made available to small businesses, 25 percent shall be made available to minorities, and 25 percent shall be made available to women;

3. For the purposes of financial assistance provided by the Authority pursuant to this subsection:

i. A small business is a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and at least 51 percent of the beneficial ownership of the business is

held by persons other than minorities or women and the majority of the management of which is other than minorities or women;

ii. A minority business is a business in which at least 51 percent of the beneficial ownership of the business is held by minorities and the majority of the management are minorities; and

iii. A women's business is a business in which at least 51 percent of the beneficial ownership of the business is held by women, and the majority of the management are women; and

4. Each application for a loan shall be accompanied by any proof of certification by a public entity which certifies that the business is beneficially owned by, and that the majority of the management are, minorities or women.

HISTORY:

Amended by R.1992 d.126, effective March 16, 1992.

See: 24 N.J.R. 177(b), 24 N.J.R. 970(b).

Revised (e).

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Added (g) through (i).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (g)1, substituted "or" for "and" following "industry".

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), substituted "$ 750,000" for "$ 500,000" and "$ 500,000" for "$ 250,000"; in (g) and (h), substituted "$ 750,000" for "$ 500,000".

Amended by R.2002 d.223, effective July 15, 2002.

See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).

Rewrote (e).

Amended by R.2002 d.333, effective October 7, 2002.

See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

Rewrote (e).

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (e).

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

Rewrote the section.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (b), added 4; rewrote (g) and (h).

Amended by R.2005 d.319, effective September 19, 2005.

See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).

In (b), added 4; in (g)1 added iv.

Amended by R.2006 d.242, effective July 3, 2006.

See: 38 N.J.R. 1563(a), 38 N.J.R. 2887(c).

Inserted "at least the first seven years of" in (g)1iv.

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Deleted (b)5 and (g)1iv; deleted the last sentence of (h); and added (*l*).

Amended by R.2008 d.89, effective April 7, 2008.

See: 39 N.J.R. 5071(a), 40 N.J.R. 1927(b).

In the introductory paragraph of (b), substituted "$ 1,250,000" for "$ 750,000" and "$ 750,000" for "$ 500,000"; in the introductory paragraph of (i), substituted "$ 1,250,000" for "$ 750,000" twice; and in (j), substituted "$ 1,250,000" for "$ 750,000".

Amended by R.2008 d.90, effective April 7, 2008.

See: 40 N.J.R. 110(a), 40 N.J.R. 1928(a).

Added (b)5 and (b)6; added new (g); recodified former (g) through (*l*) as (h) through (m); in the introductory paragraph of (h), substituted "(h)1" for "(g)1" and "(h)2" for "(g)2"; added (h)1iv and (h)1v; in (h)2, substituted "(h)1" for "(g)1"; in (h)3, inserted "or Edison Innovation R&D Fund" and "and incentives"; in (i), substituted "amortization may be" for "repayment schedule is usually" and "longer" for "shorter", and inserted "the use of proceeds and"; in (k), substituted "(j)" for "(i)" and "(j)2" for "(i)2"; in (*l*), substituted "(j) and (k)" for "(i) and (j)"; and in the introductory paragraph of (m)4, substituted "(m)4i" for "(*l*)4i" and "(m)5" for "(*l*)5".

Amended by R.2008 d.271, effective September 15, 2008.

See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).

Rewrote (h); deleted former (i); recodified former (j) through (m) as (i) through (*l*); in (j), substituted "(i)" for "(j)" and "(i)2" for "(j)2"; in (k), substituted "(i) and (j)" for "(j) and (k)"; deleted (*l*)2 and (*l*)3 and recodified former (*l*)4 through (*l*)6 as (*l*)2 through (*l*)4; in the introductory paragraph of (*l*)2, substituted "Loans" for "loans", "in" for "is" following "Two or", "tracts" for "tracks", "(*l*)2i" for "(m)4i" and "(*l*)3" for "(m)5".

Amended by R.2008 d.294, effective October 6, 2008.

See: 40 N.J.R. 3980(a), 40 N.J.R. 5845(c).

Rewrote (b)5.

Amended by R.2009 d.139, effective April 20, 2009.

See: 41 N.J.R. 394(a), 41 N.J.R. 1891(a).

Added (b)7.

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Added new (h)3ii; and recodified former (h)3ii through (h)3ix as (h)3iii through (h)3x.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Added (m).

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

Rewrote (b)6 and (h)1; and in (h)5, substituted "Edison Innovation Angel Growth Fund loan, an Edison Innovation VC Growth Fund loan, and an Edison Innovation Growth Stars Fund loan" for "Edison Innovation R&D Fund loan,".

Amended by R.2012 d.101, effective May 21, 2012.

See: 44 N.J.R. 433(a), 44 N.J.R. 1644(a).

In (b)7, substituted "$ 750,000" for "$ 500,000".

Amended by R.2013 d.036, effective February 19, 2013.

See: 44 N.J.R. 2944(a), 45 N.J.R. 359(b).

In (b)6, substituted "$ 1 million" for the second occurrence of "$ 500,000" and inserted the last two sentences.

Amended by R.2013 d.082, effective June 3, 2013.

See: 45 N.J.R. 457(a), 45 N.J.R. 1413(b).

In (b)6, inserted "or strategic investments that may be made by a variety of sources, including, but not limited to, commercial or institutional entities, nonprofit organizations with a similar focus, or universities, all of whom are interested in providing funding to advance the business in which they invest".

Amended by R.2014 d.187, effective December 15, 2014.

See: 46 N.J.R. 1682(a), 46 N.J.R. 2420(a).

In the introductory paragraph of (b), substituted "$ 2,000,000" for "$ 1,250,000"; rewrote (h)3; deleted former (i) through (k); recodified (*l*) as new (i); in the introductory paragraph of (i)2, substituted "(i)2i" for "(*l*)2i" and "(i)3" for (*l*)3"; and recodified (m) as new (j).

Amended by R.2015 d.018, effective January 20, 2015.

See: 46 N.J.R. 2107(a), 47 N.J.R. 298(a).

Rewrote the section.

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CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 3. DIRECT LOAN PROGRAM

N.J.A.C. 19:31-3.2 (2016)

§ 19:31-3.2 Eligibility standards

(a) Generally, preference for direct loans is given to projects which:

1. Are job intensive;

2. Will create or maintain tax ratables;

3. Are located in an economically-distressed area; and/or

4. Represent an important economic sector of the State.

(b) For Smart Growth Pre-development loans, projects must be located in Planning Areas 1 and 2, designated centers or in municipalities with endorsed plans as defined by the State Redevelopment Plan, must evidence municipal support and be part of a local redevelopment plan.

(c) For Brownfield Redevelopment Loans, project sites must be the subject of a Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Departments of Environmental Protection and the Treasury.

(d) For Edison Innovation Fund loans, projects will be considered eligible if they have the following characteristics:

1. A commercially available product which meets the Authority's programmatic requirements in revenue thresholds, that is, for the Edison Innovation Angel Growth Fund and the Edison Innovation VC Growth Fund, a minimum $ 500,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, a minimum of $ 2 million in prior 12-month commercial revenues;

2. A meaningful and defined market and customer base for the technology;

3. A management team possessing appropriate skill sets, capacity and financial resources and willingness to strengthen management through other means such as advisory or consultant services;

4. A meaningful customer base, partners, strategic alliances and professional relationships;

5. An ability to leverage the Authority's resources by evidence of other fund raising and need for future capital requirements;

6. A clear record of specific operational and research milestones achieved to date and proposed schedule and means to achieve future milestones; and

7. A current and complete business plan including a detailed financial model.

(e) For Edison Innovation Fund loans, a business shall not be eligible as follows:

1. A business that has received assistance under the Edison Innovation Fund from the Authority or similar assistance provided by any other State agency, shall not be eligible for the Edison Innovation Angel Growth Fund.

2. A business shall not be eligible for assistance under the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, or the Edison Innovation Growth Stars Fund, if the business has received assistance under the New Jersey Board of Public Utilities' Edison Clean Energy Manufacturing Fund and/or the Edison Innovation Green Growth Fund.

HISTORY:

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

Added (d) and (e).

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (e) substituted "," for "and" following "Commerce", added "and Tourism" following "Growth"; added (f).

Amended by R.2005 d.319, effective September 19, 2005.

See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).

Added (g) and (h).

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Deleted (g) and (h).

Amended by R.2008 d.271, effective September 15, 2008.

See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).

In the introductory paragraph of (f), substituted "Edison Innovation" for "New Jersey Growth".

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

Rewrote (f)1; in (f)6, inserted "and" at the end; in (f)7, substituted a period for "; and" at the end; deleted (f)8 and (f)9; and added (g).

Amended by R.2013 d.036, effective February 19, 2013.

See: 44 N.J.R. 2944(a), 45 N.J.R. 359(b).

Rewrote (g)2.

Amended by R.2014 d.187, effective December 15, 2014.

See: 46 N.J.R. 1682(a), 46 N.J.R. 2420(a).

Deleted former (b) and (c); recodified former (d) through (g) as new (b) through (e); and in (c), substituted "and the" for a comma following "Protection", and deleted "and the New Jersey Commerce, Economic Growth and Tourism Commission" following "Treasury".

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N.J.A.C. 19:31-3.3 (2016)

§ 19:31-3.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

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N.J.A.C. 19:31-3.4 (2016)

§ 19:31-3.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

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N.J.A.C. 19:31-3.5 (2016)

§ 19:31-3.5 Approval process

(a) Only the Members can approve a direct loan, either directly or through delegation.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.

2. With the exception of the New Jersey Growth Fund, the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund, usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as a collateral assignee.

3. With the exception of the New Jersey Growth Fund, the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund, personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Rewrote (a) and (d)2 and 3.

Amended by R.2008 d.90, effective April 7, 2008.

See: 40 N.J.R. 110(a), 40 N.J.R. 1928(a).

In (d)2 and (d)3, inserted "and the Edison Innovation R&D Fund".

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

In (d)2 and (d)3, substituted ", the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund" for "and the Edison Innovation R&D Fund".

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N.J.A.C. 19:31-3.6 (2016)

§ 19:31-3.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General's Office.

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

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SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

N.J.A.C. 19:31-4.1 (2016)

§ 19:31-4.1 Applicability and scope

(a) The EDA and the State Treasurer may enter into a redevelopment incentive grant agreement with a developer, or non-profit organization on behalf of a qualified developer, for any qualifying redevelopment project located in an economic redevelopment and growth grant incentive area, except an area that qualifies solely by virtue of being a transit village. Up to an average of 75 percent of the incremental increase in approved State revenues or 85 percent of the project annual incremental revenues in a Garden State Growth Zone that are directly realized from businesses operating on the redevelopment project premises may be paid to the developer in the form of a grant derived from the realized revenues. For certain qualified residential projects where the estimated amount of incremental revenues is inadequate to fully fund the amount of the State portion of the incentive grant, tax credits equal to the full amount of the incentive grant may be awarded. The term of each approved State redevelopment incentive grant agreement may extend for up to 20 years; however, except for a redevelopment incentive grant agreement with a municipal redeveloper, the base amount of the combined reimbursements from State and local grants cannot exceed 20 percent of the eligible cost of the project, except in a Garden State Growth Zone, which cannot exceed 30 percent; and a developer seeking an incentive grant is required to make an equity participation for at least 20 percent of the project's eligible cost.

(b) The Authority will conduct a fiscal analysis to determine redevelopment project costs, evaluate and validate the project financing gap estimated by the developer and conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the project will result in net positive economic benefit to the State where each proposed project is located. The State Treasurer will approve or disapprove such analysis.

(c) In order to ensure compliance with the "Appropriations clause" of the New Jersey State Constitution (N.J. Const. Art. VIII, Sect. II, para.2), this subchapter provides that payments under State incentive grant agreements are subject to annual appropriations and availability of funds.

(d) Upon notice to and consent by the EDA and the State Treasurer, a developer's right, title, and interest in, a redevelopment incentive grant agreement may be pledged, assigned, or sold by a developer.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (a) and (d).

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SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

N.J.A.C. 19:31-4.2 (2016)

§ 19:31-4.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Ancillary infrastructure project" means structures or improvements that are located within the incentive area, but outside the project area of a redevelopment project, including, but not limited to, docks, bulkheads, parking garages, freight rail spurs, roadway overpasses, and train station platforms, provided a developer or municipal redeveloper has demonstrated that the redevelopment project would not be economically viable or promote the use of public transportation without such improvements, as approved by the State Treasurer.

"Applicant" means a developer proposing to enter into a redevelopment incentive grant agreement and may include a non-profit organization to which a developer has assigned its ability to apply for a redevelopment incentive grant.

"Authority" means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Aviation district" means the area within a one-mile radius of the outermost boundary of the "Atlantic City International Airport," established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24).

"Deep poverty pocket" means a population census tract having a poverty level of 20 percent or more, according to the 2010 U.S. Census, and which is located within the incentive area.

"Developer" means any person who enters or proposes to enter into a redevelopment incentive grant agreement or an approval letter pursuant to the provisions of the Economic Redevelopment and Growth (ERG) Program, or its successors or assigns, including, but not limited to, a lender that has been approved by the Authority and the State Treasurer and that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

"Developer contributed capital" means equity contributed by the developer.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Disaster recovery project" means a redevelopment project located on property that has been wholly or substantially damaged or destroyed as a result of a Federally declared disaster, and which is located within the incentive area.

"Distressed municipality" means a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act, P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

"Eligibility period" means 10 years for qualified residential projects that receive tax credits or, for all other redevelopment projects, the period of time specified in a redevelopment incentive grant agreement for the payment of reim-

bursements to a developer, which period shall not exceed 20 years, with the term to be determined solely at the discretion of the applicant, at the time of approval.

"Eligible revenue" means any of the incremental revenues set forth in section 6 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489f), except in the case of a Garden State Growth Zone, in which such property tax increment and any other incremental revenues are calculated as those incremental revenues that would have existed notwithstanding the provisions of the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161.

"Equity" means cash, development fees, costs for project feasibility incurred within the 12 months prior to application, Federal or local grants, Federal tax credits, property value less any mortgages, and any other investment by the developer in the project deemed acceptable by the Authority in its sole discretion. Property value shall be valued at the lesser of either the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application, or the value as determined by a current appraisal acceptable to the Authority. For a qualified residential project utilizing State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity means the portion of the developer's fee that is delayed for a minimum of five years.

"Fiscal impact analysis" means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State. For the purposes of determining if the applicant fulfills the net positive economic benefit requirement, the analysis needs to demonstrate that the project's net positive economic benefit equals at least 110 percent of the amount of grant assistance, for the period equal to 75 percent of the useful life of the project not to exceed 20 years. The analysis will be an econometric model that uses project data provided by the developer, including, but not limited to: full-time employees at the qualified business facility in new and retained jobs, amount of capital investment, type of project, occupancy characteristics, and location; and by using this information, shall generate an estimate of direct and indirect economic benefits, including without limitation, non-financial community revitalization objectives including, but not limited to, objectives memorialized in a municipal master plan or plan for an area in need of redevelopment or rehabilitation, or the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project, as deemed reasonable by the Authority, and projected eligible revenues. This information may be supplemented by the use of industry accepted estimates, that is, U.S. Department of Commerce Regional Input-Output Modeling System data, when specific data is not available.

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

"Garden State Growth Zone" or "growth zone" means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); or a municipality which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.

"Highlands development credit receiving area or redevelopment area" means an area located within an incentive area and designated by the Highlands Council for the receipt of Highlands Development Credits under the Highlands Transfer Development Rights Program authorized under section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13).

"Incentive grant" means reimbursement of all or a portion of the project financing gap of a redevelopment project.

"Infrastructure improvements in the public right-of-way" mean public structures or improvements located in the public right-of-way that are located within a project area or that constitute an ancillary infrastructure project and may include, but not be limited to, signalization and new interchanges, public parking structures, and pedestrian, bicycle-oriented, and mass transit improvements; and public utilities such as water, sewer, electric, and gas, either of which are dedicated to or owned by a governmental body or agency upon completion, or any required payment in lieu of such structures, improvements, or projects or any costs of remediation associated with such structures, improvements, or projects, and that are determined by the Authority, in consultation with applicable State agencies, to be consistent with and in furtherance of State public infrastructure objectives and initiatives.

"Internal rate of return" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment.

"Local incentive grant" means a grant made pursuant to a redevelopment incentive grant agreement between a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, and which is subject to review by the Local Finance Board, in the Division of Local Government Services, in the Department of Community Affairs.

"Low-income housing" means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Major rail station" means a railroad station located within a qualified incentive area, which provides access to the public to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Minimum environmental and sustainability standards" means the standards set forth in the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

"Moderate-income housing" means housing affordable, according to United States Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent, but less than 80 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal redeveloper" means a municipal government or a redevelopment agency acting on behalf of a municipal government as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3) that is an applicant for a redevelopment incentive grant agreement.

"Municipal Revitalization Index" means the 2007 index by the Office for Planning Advocacy, within the Department of State, measuring or ranking municipal distress.

"Project area" or "redevelopment project area" means land or lands located within the incentive area under common ownership or control, which shall be located in a qualifying economic redevelopment and growth grant incentive area, including, but not limited to, control through a redevelopment agreement with a municipality pursuant to N.J.S.A. 40A:12A-1 et seq., or as otherwise established by a municipality or a redevelopment agreement executed by a State entity to implement a redevelopment project.

"Project cost" means the costs incurred in connection with the redevelopment project by the developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, for a specific investment or improvement, including the costs relating to receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13), lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed, or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus costs not directly related to construction, of an amount not to exceed 20 percent of the total costs, capitalized interest paid to third parties, and the cost of infrastructure improvements, including ancillary infrastructure projects, and, for projects located in a Garden State Growth Zone only, the cost of infrastructure improvements including any ancillary infrastructure project and the amount by which total project cost exceeds the cost of an alternative location for the redevelopment project, but excluding any particular costs for which the project has received Federal, State, or local funding. For purposes of this definition, as determined by the Authority, certain Federal tax credit programs that involve significant private investment, including, but not limited to, the Low Income Housing Tax Credit administered by the New Jersey Housing and Mortgage Financing Agency, will not be considered Federal funding.

"Project financing gap" means the part of the project costs that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital or equity or other contributed capital or equity, which shall not be less than 20 percent of the eligible project cost, which may include the value of any existing land and improvements in the project area owned or controlled by the developer, and the cost of infrastructure improvements in the public right-of-way, subject to review by the State Treasurer, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that addition-

al capital cannot be raised from other sources on a non-recourse basis, and except for final point of sale retail businesses, including, but not limited to, retail, educational, hospital, and hotel projects, the amount by which total project costs exceed the cost of a viable alternative location for the out-of-State redevelopment project in the event the business's chief executive officer, or equivalent officer for North American operations, submits a certification indicating that the project is at risk of leaving the State and that the project would not occur, but for the provision of the incentive grant under the program. When calculating the project financing gap, the factors set forth at N.J.A.C. 19:31-4.6(a)4, including, but not limited to, internal rate of return on developer's contributed capital, and net profit margin, will be considered. The project financing gap may be increased by the cost of capital necessary to raise an amount of current capital sufficient to complete the project when combined with all other sources of capital in recognition that the incremental eligible revenues will be reimbursed over an estimated period of years. A qualified residential project utilizing State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency (NJHMFA) will be determined to have a project financing gap if the developer cannot achieve the fee authorized by NJHMFA within five years after the project is placed in operation, provided that in no event shall the sum of the tax credits awarded under this subchapter and the State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency exceed ninety percent of the total development cost.

"Qualified incubator facility" means a commercial building located within an incentive area: which contains 100,000 or more square feet of office, laboratory, or industrial space; which is located near, and presents opportunities for collaboration as demonstrated by a written agreement with, a research institution, teaching hospital, college, or university; and within which, at least 75 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

"Qualified residential project" means a redevelopment project for which a developer must submit a temporary certificate of occupancy by July 28, 2018, that is predominantly residential and includes multi-family residential units for purchase or lease, or dormitory units for purchase or lease, having a total project cost of at least $ 17,500,000, if the project is located in any municipality with a population greater than 200,000 according to the latest Federal decennial census, or having a total project cost of at least $ 10,000,000 if the project is located in any municipality with a population less than 200,000 according to the latest Federal decennial census, or is a disaster recovery project, or having a total project cost of $ 5,000,000 if the project is in a Garden State Growth Zone. A qualified residential project shall not include transitional or homeless units.

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" means an aviation district, a port district, a distressed municipality, or an area:

1. Designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or Planning Area 3 (Fringe Planning Area), pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.); or

2. Located within:

i. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i)of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);

ii. Any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4);

iii. A regional growth area, a town, a village, or a military and Federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

iv. The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or in a highlands development credit receiving area or redevelopment area;

v. A Garden State Growth Zone;

vi. Land approved for closure under any Federal Base Closure and Realignment Commission action; or

vii. Only the following portions of the areas designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally

Sensitive), or Planning Area 5 (Environmentally Sensitive). This subparagraph shall only apply if Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) is located within:

(1) A designated center under the State Development and Redevelopment Plan;

(2) A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts rules to revise this definition as it pertains to Statewide planning areas;

(3) Any area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 40A:12A-6) or in need of rehabilitation pursuant to section 14 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-14);

(4) Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided such expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals;

(5) The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or a highlands development credit receiving area or redevelopment area; or

(6) Any area on which an existing tourism destination project is located.

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in the Highlands Water Protection and Planning Act, P.L. 2004, c. 120 (N.J.S.A. 13:20-1 et seq.).

"Redevelopment incentive grant agreement" means an agreement between the State Treasurer, the Authority, and a developer, or a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, under which, in exchange for the proceeds of an incentive grant, the developer agrees to perform any work or undertaking necessary for a redevelopment project, including the clearance, development, or redevelopment, construction, or rehabilitation of any structure or improvement of commercial, industrial, residential, or public structures or improvements within a qualifying economic redevelopment and growth grant incentive area or a transit village.

"Redevelopment project" or "project" means a specific construction project or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, leased, developed, or redeveloped, constructed, reconstructed, rehabilitated, or improved, undertaken by a developer, owner, or tenant, or both within a project area and any ancillary infrastructure project including infrastructure improvements in the public right-of-way, as set forth in an application to be made to the Authority. The use of the term "redevelopment project" in sections 3 through 18 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489c et seq.) shall not be limited to only redevelopment projects located in areas determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 6) but shall also include any work or undertaking in accordance with the Redevelopment Area Bond Financing Law, sections 1 through 10 of P.L. 2001, c. 310 (N.J.S.A. 40A:12A-64 et seq.) or other applicable law, pursuant to a redevelopment plan adopted by a State entity, or as described in the resolution adopted by a public entity created by State law with the power to adopt a redevelopment plan or otherwise determine the location, type, and character of a redevelopment project or part of a redevelopment project on land owned or controlled by it or within its jurisdiction, including, but not limited to, the New Jersey Meadowlands Commission established pursuant to P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), the New Jersey Sports and Exposition Authority established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), and the Fort Monmouth Economic Revitalization Authority created pursuant to P.L. 2010, c. 51 (N.J.S.A. 52:27I-18 et seq.).

"Retained job" means a position that currently exists in New Jersey and is filled by a current employee but which, as certified by the business's chief executive officer, is at risk of being lost to another state or country.

"Revenue increment base" means the amounts of all eligible revenues from sources within the redevelopment project area in the calendar year preceding the year in which the redevelopment incentive grant agreement is executed, as certified by the State Treasurer for State revenues.

"SDA district" means an "SDA district" as defined in section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

"SDA municipality" means a municipality in which an SDA district is situate.

"Square feet" means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

"Square feet of gross leasable area" or "gross leasable area" means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"Technology startup company" means a for-profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service that the business intends to move to commercialization.

"Tourism destination project" means a redevelopment project that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance.

"Transit project" means a redevelopment project located within a one-half-mile radius, or one-mile radius for projects located in a Garden State Growth Zone, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations. For the purposes of determining the transit project bonus pursuant to N.J.A.C. 19:31-4.7(e)4, a bus station platform is a terminal as listed on the EDA's website at www.njeda.com.

"Transit village" means a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its economic development and revitalization goals and designated by the New Jersey Department of Transportation as a transit village.

"Urban transit hub" means an urban transit hub, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), or all light rail stations and property located within a one-mile radius of the mid-point of the platform area of such a rail, bus, or ferry station if the property is in a qualified municipality under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

"Vacant commercial building" means any commercial building or complex of commercial buildings having over 400,000 square feet of office, laboratory, or industrial space that is more than 70 percent unleased and unoccupied at the time of application to the Authority or is negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), or any unleased and unoccupied commercial building in a Garden State Growth Zone having over 35,000 square feet of office, laboratory, or industrial space, or over 200,000 square feet of office, laboratory, or industrial space in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties available for occupancy for a period of over one year.

"Vacant health facility project" means a redevelopment project where a health facility, as defined by section 2 of P.L. 1971, c. 136 (N.J.S.A. 26:2H-2), currently exists and is considered vacant. A health facility shall be considered vacant if at least 70 percent of that facility has not been open to the public or utilized to serve any patients at the time of application to the Authority.

HISTORY:

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote definition "Qualifying economic redevelopment and growth grant incentive area".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In definition "Fiscal impact analysis", inserted ", for the period equal to 75 percent of the useful life of the project not to exceed 20 years"; and added definition "Full-time employee at the qualified business facility".

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote definitions "Ancillary infrastructure project", "Developer", "Eligible revenue", "Fiscal impact analysis", "Infrastructure improvements in the public right-of-way", " 'Project area' or 'redevelopment project area' ", "Project financing gap", and " 'Redevelopment project' or 'project' "; added definitions "Aviation district", "Deep poverty pocket", "Developer contributed capital", "Disaster recovery project", "Distressed municipality", "Eligibility period", " 'Garden State Growth Zone' or 'growth zone' ", "Highlands development credit receiving area or redevelopment area", "Low-income housing", "Major rail station", "Minimum environmental and sustainability standards", "Moderate-income housing", "Municipal Revitalization Index", "Project cost", "Qualified incubator facility", "Qualified residential project", " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", "SDA district", "SDA municipality", "Square feet", " 'Square feet of gross leasable area' or 'gross leasable area' ", "Technology startup company", "Tourism destination project", "Transit project", "Urban transit hub", "Vacant commercial building", and "Vacant health facility project"; in definition "Applicant", inserted "and may include a non-profit organization to which a developer has assigned its ability to apply for a redevelopment incentive grant"; in definition "Redevelopment incentive grant agreement", inserted a comma following "Authority" and "development", and inserted "or a transit village"; and deleted definitions "Eligible project costs", "Net profit margin", " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", and "Soft costs".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Deleted definition "Cash on cash yield"; rewrote definitions "Equity", " 'Garden State Growth Zone' or 'growth zone' ", and "Project financing gap"; and in definition "Qualified residential project", substituted "2018" for "2015", and inserted the last sentence.

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*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

N.J.A.C. 19:31-4.3 (2016)

§ 19:31-4.3 Eligibility criteria

(a) In order to be eligible for a State or local incentive grant the following must apply:

1. The redevelopment project must be located in a qualifying economic redevelopment and growth grant incentive area, provided, however, that a State incentive grant shall not be given for a project in an incentive area that qualifies as such solely by virtue of being a transit village;

2. The developer must not have commenced any construction at the site of a proposed redevelopment project prior to submitting an application, except as set forth in (a)2i or ii below. For purposes of this paragraph, construction shall have commenced if the project has received site plan approval and started site preparation or utility installation.

i. In the event construction has commenced on a proposed redevelopment project, the project may be eligible if the Authority, at its sole discretion, determines that the project would not be completed otherwise; or

ii. In the event the project is to be undertaken in phases, a developer may apply for phases for which construction has not yet commenced, subject to N.J.A.C. 19:31-4.6(a)2;

3. For any State incentive grant project consisting of newly-constructed residential units, the developer shall be required, pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-304), with affordability controls as required under the rules of the Council on Affordable Housing, unless the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan;

4. A project financing gap exists; and

5. For a State incentive grant, except for a qualified residential project, pursuant to a fiscal impact analysis, the overall public assistance provided to the project will result in net benefits to the State.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the introductory paragraph of (a); in (a)2ii, updated the N.J.A.C. reference; and rewrote (a)5.

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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N.J.A.C. 19:31-4.4 (2016)

§ 19:31-4.4 Application submission requirements for State incentive grants

(a) A developer that submits an application to the Authority for a State incentive grant shall indicate on the application whether it is also applying for a local incentive grant. In each instance where an applicant indicates that it is also applying for a local incentive grant, the EDA shall forward a copy of the application to the municipality wherein the redevelopment project is to be located so that the local incentive grant may be reviewed and approved by municipal ordinance. A developer or municipal redeveloper that submits an application for a local incentive grant shall indicate on the application whether it is also applying for a State incentive grant.

(b) A developer seeking a State incentive grant shall submit to the Authority the following information in its application:

1. The name of the business;

2. The contact information of the business;

3. Prospective future address of the business (if different);

4. The type of the business;

5. Principal products and services and three-digit North American Industry Classification System number;

6. The New Jersey tax identification number;

7. The Federal tax identification number;

8. An anticipated construction schedule;

9. Estimated project costs, including any State or local grant funding to the project, and proposed terms of financing, including projected internal rate of return on developer's contributed capital, net margin, return on investment, and cash on cash yield;

10. Estimates of the revenue increment base and projection of the eligible revenues for the project, and the assumptions upon which those estimates are made;

11. For qualified residential projects, a certification that it meets the requirements of N.J.A.C. 19:31-4.3(a)3;

12. Estimated costs to the municipality resulting from the project;

13. A written certification by the chief executive officer, or equivalent officer for North American operations, stating:

i. That the business applying for the program is not in default with any other program administered by the State of New Jersey; and

ii. That he or she has reviewed the application information submitted and that the representations contained therein are accurate;

14. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

15. Submission of an application and fee for a tax clearance certificate pursuant to P.L. 2007, c. 101;

16. A list of all development subsidies, as defined by The Development Subsidy Job Goals Accountability Act, P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.), that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidies are tax benefits from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;

17. The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated upon the local tax map;

18. A list and status of all required State and Federal government permits that have been issued for the redevelopment project, or will be required to be issued pending resolution of financing issues, as well as of all local planning and zoning board approvals, that are required for the redevelopment project;

19. A description of how the project addresses the factors contained in N.J.A.C. 19:31-4.7(b);

20. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction, as listed on the EDA website at www.njeda.com;

21. A copy of a letter of support from the governing body of the municipality in which the proposed redevelopment project or ancillary infrastructure project or infrastructure improvement in the right-of-way is located; and

22. Any other necessary and relevant information as determined by the applicant or the Authority for a specific application.

(c) Any developer shall be allowed to assign their ability to apply for a State incentive grant to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone. The non-profit organization may make an application on behalf of a developer that meets the requirements for the incentive grant, or a group of non-qualifying developers, such that these will be considered a unified project for the purposes of the incentives provided under this subchapter. In addition to the information required pursuant to (b) above, the non-profit organization shall be required to submit:

1. Evidence of the assignment to apply for the tax credit from the developer or the group of non-qualifying developers;

2. The name of the non-profit organization;

3. The contact information of the non-profit organization;

4. The New Jersey employer identification number;

5. The Federal employer identification number; and

6. The mission statement of the non-profit organization.

(d) A developer who has already applied for an incentive grant award prior to September 18, 2013, the effective date of P.L. 2013, c. 161, but who has not yet been approved for such grant, or has not executed an agreement with the Authority, may proceed under that application or seek to amend such application or reapply for an incentive grant award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions established pursuant to P.L. 2013, c. 161, except that projects with costs exceeding $ 200,000,000 shall not be eligible for revised percentage caps under subsection d. of section 19 of P.L. 2013, c. 161.

HISTORY:

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (b)13.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (b)9, (b)11, (b)20, and (b)21; in (b)19, updated the N.J.A.C. reference; and added (c) and (d).

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

N.J.A.C. 19:31-4.5 (2016)

§ 19:31-4.5 Fees

(a) A developer applying for benefits under this program shall submit a one-time non-refundable application fee of $ 5,000, with payment in the form of a check, payable to the "New Jersey Economic Development Authority."

(b) In addition to the application fee in (a) above, a developer shall pay to the Authority the full amount of direct costs of an analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) For a qualified residential project that receives tax credits, a non-refundable fee of .5 percent of the approved incentive grant or tax credit, not to exceed $ 300,000, shall be charged by the Authority prior to the approval of the tax credit. For all other incentive grants, a non-refundable fee of .5 percent of the approved incentive grant, not to exceed $ 500,000, shall be charged by the Authority prior to the approval of the incentive grant. The fee shall be refunded if the Authority does not approve the incentive grant or tax credit.

(d) For a qualified residential project that receives tax credits, a non-refundable fee of .5 percent of the tax credit, not to exceed $ 300,000, shall be charged upon the receipt of the tax credit certificate. For all other incentive grants, a non-refundable fee of .5 percent of the incentive grant, not to exceed $ 500,000, shall be charged upon execution of the incentive grant agreement.

(e) For a qualified residential project that receives tax credits, a developer shall pay to the Authority an annual review fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital qualifications, and for the duration of the eligibility period. The annual review fee shall be paid to the Authority by the business at the time the business submits its annual report. The annual review fee shall be $ 2,500 per year.

(f) For a qualified residential project that receives tax credits, upon application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-4.10 or permission to pledge a tax credit transfer certificate purchase agreement as collateral, a developer shall pay to the Authority a fee of $ 2,500.

(g) Upon application to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive agreement and in the incentive grants payable thereunder, a developer shall pay to the Authority a fee of $ 2,500.

(h) A non-refundable fee of $ 5,000 shall be paid for each request for any administrative changes, additions, or modifications; and a non-refundable fee of $ 25,000 shall be paid for any major changes, additions, or modifications, such as those requiring extensive staff time and Board approval.

(i) A non-refundable fee of $ 1,000 shall be paid for the first six-month extension to the date by which evidence must be submitted to demonstrate compliance with the conditions set forth in commitment letter pursuant to N.J.A.C. 19:31-4.8(a); and a non-refundable fee of $ 2,500 shall be paid for the second extension to that date.

(j) A business seeking to terminate an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, shall pay to the Authority an additional fee of $ 5,000 for terminations that do

not require extensive staff time and Board approval; and a non-refundable fee of $ 25,000 for terminations that require extensive staff time or Board approval.

HISTORY:

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Former N.J.A.C. 19:31-4.5, Financing gap and fiscal impact analysis, recodified to N.J.A.C. 19:31-4.6.

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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N.J.A.C. 19:31-4.6 (2016)

§ 19:31-4.6 Financing gap and fiscal impact analysis

(a) The Authority, in consultation with the State Treasurer, shall review the proposed project costs and evaluate and validate the project financing gap estimated by each developer applying for a State incentive grant, as follows:

1. The Authority will evaluate proposed project costs against reasonable costs as noticed on the EDA website at www.njeda.com for the standard of review, which shall include, but not be limited to, construction, tenant fit out, consultants, rental rates, rates of return and vacancy allowances;

2. For a redevelopment project involving rehabilitation or improvement of an existing building(s), the costs of land acquisition and rehabilitation shall not exceed 100 percent of the replacement cost for new construction, exclusive of any environmental remediation costs. When evaluating a redevelopment project involving rehabilitation or improvement of existing building(s), if a developer spends more than 100 percent of the total cost of acquisition of the building(s) on such rehabilitation or improvement, then the cost of acquisition shall be included in the eligible project costs. With respect to the Authority's evaluation of a redevelopment project pursuant to the requirements of N.J.A.C. 19:31-4.3(a)2i, a developer's future expenditures will have to be at least 100 percent of the project costs previously expended as of its application date in order for the Authority to include the costs expended prior to the application date to be included in the project costs;

3. For large, multi-phased projects that are built sequentially over time, the EDA shall only evaluate and validate the project financing gap on phases of the project with funding commitments;

4. The project financing gap analysis shall include, but not be limited to, an evaluation of the project costs, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, internal rate of return on developer's contributed capital, and return on investment, or, in the Authority's sole discretion, in comparison to alternative financing structures for a comparable project available to the developer or its tenants; and

5. Except for final point of sale retail businesses, including, but not limited to, retail, educational, hospital, or hotel projects, the project financing gap will include the amount by which the total project cost exceeds the cost of a viable alternative location for the out-of-State redevelopment project in the event the business's chief executive officer, or equivalent officer for North American operations, submits a certification indicating that the project is at risk of leaving the State or not being located in the State and that the project would not occur but for the provision of the incentive grant under the program. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the Authority may revoke any award of an incentive grant in its entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to.

(b) The Authority, in consultation with the State Treasurer, shall undertake the fiscal impact analysis by determining whether the overall public assistance provided to the proposed project, except with regard to a qualified residential project, will result in net positive economic benefits equaling no less than 110 percent of the amount of grant assistance, to the State for a period not to exceed 20 years.

(c) In determining whether the project meets the net positive economic benefits analysis, the Authority's consideration shall include, but not be limited to, the State taxes paid directly by and generated indirectly by the developer, taxes paid directly or generated indirectly by new or retained jobs, and peripheral economic growth caused by the project including, without limitation, both direct and indirect economic benefits and non-financial community revitalization objectives, to be determined by the Authority in its sole discretion, including, but not limited to, objectives memorialized in a municipal master plan or plan for an area in need of redevelopment or rehabilitation, or the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) For the calculation of new revenues in predominantly retail projects in the net positive economic benefits analysis, the following weighting criteria shall be used:

1. When a project is proximate to a neighboring state jurisdiction (that is, Pennsylvania, Delaware, New York) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;

2. When a project is a destination entertainment and retail facility (that is, a project which contains unique retail establishments, entertainment and/or sports venues) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;

3. For projects which are significantly retail in nature, but do not meet either (d)1 or 2 above:

i. Ongoing State sales tax revenue will be calculated at 0 percent value;

ii. One-time construction related taxes will be calculated at 100 percent value; and

iii. Ongoing other tax revenues, for example, corporation business taxes and gross income taxes, will be calculated at 66 percent value.

(e) The State Treasurer will approve or disapprove the redevelopment project costs, the financing gap, and the net positive economic benefits.

HISTORY:

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (b), inserted "equaling 110 percent of the amount of grant assistance,".

Recodified from N.J.A.C. 19:31-4.5 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In the introductory paragraph of (a) and in (b), deleted "redevelopment" following "proposed"; in (a)2, deleted "eligible" preceding the fourth occurrence of "project"; in (a)3, deleted "and" at the end; rewrote (a)4 and (c); added (a)5; and in (b), inserted ", except with regard to a qualified residential project,". Former N.J.A.C. 19:31-4.6, Approval of application for State incentive grant, recodified to N.J.A.C. 19:31-4.7.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (a)2, substituted the second and third occurrences of "100" for "50"; rewrote (a)4; and in (b), inserted "no less than", and deleted "equal to 75 percent of the useful life of the project" following "period".

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TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

N.J.A.C. 19:31-4.7 (2016)

§ 19:31-4.7 Approval of application for State incentive grant

(a) The Authority and the State Treasurer may, except in the case of a qualified residential project, approve an application only if they make a finding that the State revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for the portion of the project financing gap allocable to the State incentive grant. This finding may be made by an estimation based upon the professional judgment of the Chief Executive Officer of the Authority and the State Treasurer.

(b) In deciding whether or not to recommend entering into a redevelopment incentive agreement, the Chief Executive Officer shall consider the following factors prior to approval:

1. The economic feasibility of the redevelopment project;

2. The extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project or the level of site specific distress to include dilapidated conditions, brownfields designation, environmental contamination, pattern of vacancy, abandonment, or under utilization of the property, rate of foreclosures, or other site conditions as determined by the Authority;

3. The degree to which the redevelopment project will advance State, regional and local development and planning strategies;

4. The likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for project costs incurred as provided in the redevelopment incentive grant agreement, provided, however, that any tax revenue generated by a redevelopment project that is a disaster recovery project shall be considered new tax revenue, even if the same or more tax revenue was generated at or on the site prior to the disaster;

5. The relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

6. The need of the redevelopment incentive grant agreement to the viability of the redevelopment project or the promotion of the use of public transportation; and

7. The degree to which the redevelopment project enhances and promotes job creation and economic development or the promotion of the use of public transportation.

(c) The decision whether or not to approve an application and enter into a redevelopment incentive grant is solely within the discretion of the Authority and the State Treasurer, provided they both agree to enter into an agreement.

(d) Except for a local redevelopment incentive grant agreement with a municipal redeveloper or with the developer of a redevelopment project solely with respect to the cost of infrastructure improvements in the public right-of-way, including any ancillary infrastructure project in the public right-of-way, in no event shall the base amount of the combined reimbursements under the redevelopment incentive grant agreements with the State and municipality exceed 20

percent of the total project cost, except in a Garden State Growth Zone, which shall not exceed 30 percent. The maximum amount of any redevelopment incentive grant, including any increase in the amount of reimbursement under (e) below, shall be equal to up to 30 percent of the total project cost, except for projects located in a Garden State Growth Zone, in which case the maximum amount of any redevelopment incentive grant, including any increase in the amount of reimbursement under (e) below, shall be equal to up to 40 percent of the total project cost.

(e) The Authority, pursuant to section 19 of P.L. 2013, c. 161 may increase the amount of the reimbursement under the redevelopment incentive grant agreement with the State by up to 10 percent of the total project cost if the project is:

1. Located in a distressed municipality that lacks adequate access to nutritious food in the judgment of the Chief Executive Officer of the Authority and will include either a supermarket or grocery store with a minimum of 15,000 square feet of selling space devoted to the sale of consumable products or a prepared food establishment selling only nutritious ready-to-serve meals;

2. Located in a distressed municipality that lacks adequate access to health care and health services in the judgment of the Chief Executive Officer of the Authority and will include a health care and health services center with a minimum of 10,000 square feet of space devoted to the provision of health care and health services;

3. Located in a distressed municipality that has a business located therein that is required to respond to a request for proposal to fulfill a contract with the Federal government as set forth in subsection d. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244);

4. A transit project;

5. A qualified residential project in which at least 10 percent of the residential units are constructed as, and reserved for, moderate income housing;

6. Located in a highlands development credit receiving area or redevelopment area;

7. Located in a Garden State Growth Zone;

8. A disaster recovery project;

9. An aviation project;

10. A tourism destination project; or

11. A project involving the substantial rehabilitation or renovation of more than 51 percent of an existing structure or structures.

HISTORY:

Recodified from N.J.A.C. 19:31-4.6 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section. Former N.J.A.C. 19:31-4.7, State incentive grant agreement, recodified to N.J.A.C. 19:31-4.8.

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SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

N.J.A.C. 19:31-4.8 (2016)

§ 19:31-4.8 State incentive grant agreement

(a) Except for qualified residential projects that receive tax credits, upon approval of the application by the Authority and the State Treasurer, the Authority and the developer will execute a commitment letter providing information specific to the grant amount and containing conditions that must be met prior to receiving the grant. Within one year following the date of approval, the developer shall submit progress information indicating that the developer has financing, copies of all required State and Federal government approvals and all local planning and zoning board approvals, and site control of and site plan approval for the redevelopment project. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval. Upon a receipt of evidence from the developer that it has control of the redevelopment project site and offers of financing, which may be conditioned upon execution of the grant agreement, and that it has met any other conditions set forth in the commitment letter, the Authority and the State Treasurer may enter into a State redevelopment incentive grant agreement with a developer for the reimbursement of incremental State revenues directly realized from businesses operating on the redevelopment project premises.

(b) Except for qualified residential projects that receive tax credits, the Chief Executive Officer of the Authority, in consultation with the State Treasurer, shall negotiate the terms and conditions of any State redevelopment incentive grant agreement. The State redevelopment incentive grant agreement shall include, but not be limited to, the following terms and conditions as determined by the Authority:

1. The eligibility period, the maximum amount of project cost, the maximum percentage reimbursement amount, the maximum aggregate dollar amount of the incentive grant to be awarded the developer, the maximum annual percentage of reimbursement, the particular tax or taxes to be utilized from those listed in N.J.A.C. 19:31-4.10(a), the order in which multiple taxes will be applied to determine the incentive grant amount, and, for a project receiving an incentive grant in excess of $ 50 million, the amount of the negotiated repayment to the State, which may include, but not be limited, to cash, equity, and warrants and shall be up to the amount of the maximum aggregate dollar amount of the reimbursement. If the actual project costs are less than the project costs set forth in the application, the percentage reimbursement amount will be based on the actual project costs. For the purposes of determining the amount and timing of any repayment due for projects receiving an incentive grant in excess of $ 50 million, the Authority shall consider such factors as the financial structure of the project, risk of the project, developer returns, magnitude of State support, as well as the returns of various types of revenue generating projects, that is, retail, commercial, and/or hotel. If the project does not produce the anticipated amount of incremental taxes in a given year, the developer shall only receive the approved percentage of actual tax revenue created. No portion of revenues pledged pursuant to P.L. 2013, c. 161 shall be subject to withholding or retainage for adjustment, in the event the developer or taxpayer waives its rights to claim a refund thereof in the grant agreement;

2. All payments shall be made annually and subject to annual appropriation and availability of funds;

3. In the absence of extenuating circumstances, the reimbursement schedule, which will indicate the annual percentage amount of reimbursement provided that it not exceed:

i. Seventy-five percent of the annual incremental State revenues; or

ii. Eighty-five percent of the projected annual incremental revenues in a Garden State Growth Zone.

4. Representations that the developer is in good standing, that the project complies with all applicable law, and specifically, that the project will comply with the Authority's prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), and the project does not and will not violate any environmental law;

5. The frequency of payments and eligibility period, which shall not exceed 20 years, during which that tax credit shall be granted;

6. Description of the occupancy permit or other event evidencing project completion that begins the eligibility period and whether the project will be undertaken in phases;

7. The requirement that the developer submit, prior to the first disbursement of funds under the agreement, satisfactory evidence of actual project costs, as certified by a certified public accountant, evidence of a temporary certificate of occupancy, or other event evidencing project completion that begins the eligibility period indicated in the incentive agreement, and, if applicable, evidence that the municipality is in substantial compliance with the requirements under N.J.A.C. 19:31-4.3(a)3. In the event the project cost or square footage of the project are reduced below the amount of project cost or square footage of the project in the approval of the incentive grant, the Authority may reevaluate the fiscal impact analysis and financing gap analysis and reduce the size of the grant accordingly;

8. Annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance against established milestones for calculating any necessary repayments pursuant to (b)1 above;

9. Representations that the developer will comply with the green building standards pursuant to N.J.A.C. 19:31-4.4(b)20;

10. To the extent the taxes of such businesses are to be reimbursed, covenant that the developer will notify all businesses operating on the redevelopment project premises that certain incremental taxes are to be reimbursed under the agreement. The developer shall also covenant that the developer shall obtain information about such businesses as is necessary for the State to ascertain the incremental tax revenue. Such information may include, but not be limited to, name, address, taxpayer identification number, change in business ownership and any other information that may be required by the State. The developer shall also acknowledge that the State will not provide to the developer information about individual taxes paid by businesses located at the redevelopment project;

11. Acknowledgement that if the developer has entered into a Brownfield Reimbursement Agreement for the redevelopment project premises, to the extent that the same eligible revenues are identified in both the Brownfields Reimbursement Agreement and the incentive grant, then the incentive grant will not commence until the reimbursement has terminated or otherwise as subject to review of the Division of Taxation;

12. Indemnification and insurance requirements;

13. Events, if any, that would trigger forfeiture of the grant;

14. Default and remedies;

15. Reporting requirements, as required pursuant to N.J.S.A. 52:27D-489f, and other reporting requirements that may be required by law or agreement, such as an annual report and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.);

16. Requirement to demonstrate that the project continues to be eligible for any increase of reimbursement pursuant to N.J.A.C. 19:31-4.7(e); and

17. To the extent the project consists of newly-constructed residential units, the approval letter will require that the project will be monitored for purposes of N.J.A.C. 19:31-4.3 in order to maintain the affordable units for the term of the grant by an administrative agent as defined in N.J.A.C. 5:80-26.2.

(c) Agreement that a fee of $ 5,000 annually will be paid to the Division of Taxation and all other administrative costs associated with the incentive grant shall be assessed to the developer and retained by the State Treasurer from the annual incentive grant payments.

HISTORY:

Recodified from N.J.A.C. 19:31-4.7 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section. Former N.J.A.C. 19:31-4.8, Incremental revenue sources, recodified to N.J.A.C. 19:31-4.10.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (a); in the introductory paragraph of (b), inserted the first occurrence of "grant"; in (b)15, deleted "and" from the end; in (b)16, substituted "; and" for a period; and added (b)17.

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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N.J.A.C. 19:31-4.9 (2016)

§ 19:31-4.9 Tax credits for qualified residential projects

(a) In the case of a qualified residential project, if the Authority determines that the estimated amount of incremental revenues pledged towards the State portion of an incentive grant is inadequate to fully fund the amount of the State portion of the incentive grant, then in lieu of an incentive grant based on such incremental revenue, the developer shall be awarded tax credits equal to the full amount of the incentive grant, which shall be taken over a 10-year period, at the rate of one-10th of the total amount for each tax accounting or privilege period of the developer. For (a)1 through 4 below, not more than $ 40,000,000 of credits shall be awarded to any qualified residential project in a deep poverty pocket or distressed municipality and not more than $ 20,000,000 of credits shall be awarded to any other qualified residential project. The value of all credits approved by the Authority pursuant to this subsection shall not exceed $ 600,000,000, of which:

1. $ 250,000,000 shall be restricted to qualified residential projects within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties, of which, $ 175,000,000 of credits shall be restricted to qualified residential projects in a Garden State Growth Zone located within the aforementioned counties, and $ 75,000,000 of credits shall be restricted to qualified residential projects in municipalities with a 2007 Municipal Revitalization Index of 400 or higher as of the date of enactment of the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161;

2. $ 250,000,000 shall be restricted to qualified residential projects located in:

i. Urban transit hubs that are commuter rail in nature that otherwise do not qualify under (a)1 above;

ii. A Garden State Growth Zone not located in a county mentioned in (a)1 above;

iii. Disaster recovery projects that otherwise do not qualify under (a)1 above; or

iv. SDA municipalities located in Hudson County that were awarded State Aid in State Fiscal Year 2013 through the Transitional Aid to Localities program and otherwise do not qualify under (a)1 above;

3. $ 75,000,000 shall be restricted to qualified residential projects in distressed municipalities, deep poverty pockets, highlands development credit receiving areas or redevelopment areas, otherwise not qualifying pursuant to (a)1 or 2 above; and

4. $ 25,000,000 shall be restricted to qualified residential projects that are located within a qualifying economic redevelopment and growth grant incentive area otherwise not qualifying under (a)1, 2, or 3 above.

(b) In developing a recommendation for allocating tax credits to qualified residential projects, the Chief Executive Officer of the Authority shall take into account, together with the factors set forth at N.J.A.C. 19:31-4.7(b):

1. An evaluation of the residential developer's pro forma analysis;

2. Input from the municipality in which the project is located;

3. Whether the project furthers specific State or municipal planning and development objectives, or both;

4. Whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property or both; and

5. Whether the project contributes to the recovery of areas affected by Superstorm Sandy.

(c) Upon receipt of a recommendation from the Authority staff on the qualified residential facility application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, and promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits, including the same financial and related analysis, the same term of the grant, and same mechanism for administering the credits as if such credits had been awarded to the developer pursuant to section 35 of P.L. 2009, c. 90 (N.J.S.A. 34:1B-209.3). An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and the requirement that the minimum environmental and sustainability standards, are incorporated into the proposed project including the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment required for the tax credits. The approval letter will require that the project will be monitored for purposes of N.J.A.C. 19:31-4.3 in order to maintain the affordable units for the term of the grant by an administrative agent as defined in N.J.A.C. 5:80-26.2.

2. In the approval letter to the developer, the Authority shall set a date by which its approval will expire.

(d) Within one year following the date of Board approval by the Authority, each approved developer of a qualified residential facility that has been approved for tax credits shall submit progress information indicating that the developer has site plan approval, financing for, and site control of the qualified business facility or qualified residential project. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval.

(e) No later than July 28, 2018, each approved developer of a qualified residential facility that has been approved for tax credits after September 18, 2013, the effective date of P.L. 2013, c. 161 shall submit evidence of a temporary certificate of occupancy.

(f) Upon completion of the capital investment and receipt of the occupancy permit or other event evidencing project completion indicated in the approval letter, the developer shall submit a certification of an independent certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the developer has satisfied the conditions relating to the capital investment requirements.

1. Once accepted by the Authority, the certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified residential facility, and in no event will the amount of tax credits exceed the maximum percentage amount of allowed tax credits approved by the Board for the developer's capital investment in a qualified residential project.

2. The certification under this subsection shall be submitted to the Authority no later than 12 months after the submission to the Authority of a temporary certificate of occupancy.

(g) Once the Authority accepts the certification of the developer that it has satisfied the capital investment requirements of the program, and the Authority determines that other necessary conditions have been met, the Authority shall notify the developer and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.

(h) After notification, either the developer, the owner of the project, or a tax credit transferee shall furnish to the Authority an annual report in a format as may be determined by the Authority, which shall contain the following information:

1. A certification indicating whether or not the party submitting the report is aware of any condition, event, or act that would cause the business not to be in compliance with the approval, the Act, or this subchapter;

2. Documentary evidence that a deed restriction has been recorded against each residential component of the qualified residential project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired;

3. Evidence that the residential units of the qualified residential project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or a certification by an MAI appraiser or governmental official; and

4. Additional reporting requirements as may be contained in the tax credit certificate.

(i) Failure to submit a copy of the annual report, or submission of the annual report without the information required in (g) above, will result in forfeiture of any annual tax credits to be received by the developer or tax credit holder unless the Authority determines that there are extenuating circumstances excusing the developer or tax credit transferee from the timely filing required. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

(j) Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance will indicate whether the developer or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.

(k) The tax credit certificate shall set forth the following terms:

1. The starting date of the tax period and the commitment duration;

2. The amount of the tax credits;

3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;

4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to the date of filing relating to each tax accounting or privilege period of the proposed allocation of tax credits by the business;

5. Events that would trigger reduction and forfeiture of tax credit amounts; and

6. Reporting requirements and the requirement for an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

HISTORY:

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Former N.J.A.C. 19:31-4.9, Pledge and assignment of grant amount, recodified to N.J.A.C. 19:31-4.11.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the introductory paragraph of (c), (c)1, and (e).

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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N.J.A.C. 19:31-4.10 (2016)

§ 19:31-4.10 Incremental revenue sources

(a) Except for projects receiving an increase in the amount of reimbursement under N.J.A.C. 19:31-4.7(b)4, in accordance with a State redevelopment incentive grant agreement beginning upon the receipt of occupancy permits for any portion of the redevelopment project or upon such other event evidencing project completion as set forth in the incentive grant agreement, the State Treasurer will pay to the developer up to an average of 75 percent of the projected annual incremental revenues, or an average of 85 percent of the projected annual incremental revenues in a Garden State Growth Zone, directly realized from businesses operating on or at the site of the redevelopment project from the following taxes:

1. The Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.);

2. The tax imposed on marine insurance companies pursuant to N.J.S.A. 54:16-1 et seq.;

3. The tax imposed on insurers generally, pursuant to P.L. 1945, c. 132 (N.J.S.A. 54:18A-1 et seq.);

4. The public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed on sewerage and water corporations pursuant to P.L. 1940, c. 5 (N.J.S.A. 54:30A-49 et seq.);

5. The tariffs and charges imposed by electric, natural gas, telecommunications, water and sewage utilities, and cable television companies under the jurisdiction of the New Jersey Board of Public Utilities, or comparable entity, except for those tariffs, fees, or taxes related to societal benefits charges assessed pursuant to section 12 of P.L. 1999, c. 23 (N.J.S.A. 48:3-60), any charges paid for compliance with the Global Warming Response Act, P.L. 2007, c. 112 (N.J.S.A. 26:2C-37 et seq.), transitional energy facility assessment unit taxes paid pursuant to section 67 of P.L. 1997, c. 162 (N.J.S.A. 48:2-21.34), and the sales and use taxes on public utility and cable television services and commodities;

6. The tax derived from net profits from business, a distributive share of partnership income, or a pro rata share of S corporation income under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.;

7. The tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.);

8. The tax imposed pursuant to P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) from the purchase of furniture, fixtures, and equipment, or materials for the remediation of, or the construction of new structures at the site of a redevelopment project. For the purpose of computing the sales and use tax on the purchase of materials used for remediation, construction of new structures, or the construction of new residences at the site of the project, it shall be presumed by the Director of the Division of Taxation, in lieu of an exact accounting from the developer, suppliers, contractors, subcontractors, and other parties connected with the project, that the tax equals one percent of the developer's contract price for such remediation or construction or such other percentage, not to exceed three percent, that may be agreed to by the director upon the presentation of clear and convincing evidence that the tax on materials is greater than one percent of the contract price for the remediation or construction;

9. The hotel and motel occupancy fee imposed pursuant to section 1 of P.L. 2003, c. 114 (N.J.S.A. 54:32D-1); or

10. The portion of the fee imposed pursuant to section 3 of P.L. 1968, c. 49 (N.J.S.A. 46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State Treasurer for use by the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Nonlapsing Revolving Fund" ("New Jersey Affordable Housing Trust Fund") pursuant to section 4 of P.L. 1968, c. 49 (N.J.S.A. 46:15-8).

(b) The Director of the Division of Taxation may retain up to 20 percent of certain State incremental tax revenues, such as the corporate business tax and sales and use tax, for adjustment as necessary, which shall be returned to the developer after such time as the statute of limitations has expired for the specific tax withheld. No portion of revenues pledged pursuant to P.L. 2013, c. 161 shall be subject to withholding or retainage for adjustment, in the event the developer or taxpayer waives its rights to claim a refund thereof in the grant agreement.

(c) Incremental revenue shall be calculated as the difference between the amount collected in any fiscal year from any eligible revenue source included in the State incentive grant agreement, less the revenue increment base for that eligible revenue.

HISTORY:

Recodified from N.J.A.C. 19:31-4.8 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section. Former N.J.A.C. 19:31-4.10, Affirmative action and prevailing wage, recodified to N.J.A.C. 19:31-4.12.

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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N.J.A.C. 19:31-4.11 (2016)

§ 19:31-4.11 Pledge, assignment, transfer, or sale of grant amount

(a) A developer may, upon notice to and consent of the Authority and the State Treasurer, which consent shall not be unreasonably withheld, pledge, assign, transfer, or sell any or all of its right, title, and interest in and to such agreements and in the incentive grants payable thereunder, and the right to receive same, along with the rights and remedies provided to the developer under such agreement. Any such assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Any pledge of incentive grants made by the developer shall be valid and binding from the time when the pledge is made and filed in the records of the Authority. The incentive grants so pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. Neither the redevelopment incentive grant agreement nor any other instrument by which a pledge under this section is created need be filed or recorded except with the Authority.

(b) A developer may apply to the Director of the Division of Taxation and the Chief Executive Officer of the Authority for a tax credit transfer certificate, if the developer is awarded a tax credit pursuant to N.J.A.C. 19:31-4.8 or 4.9, covering one or more years, in lieu of the developer being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than $ 25,000 of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The certificate provided to the developer shall include a statement waiving the developer's right to claim that amount of the credit against the taxes that the developer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this subsection shall not be exchanged for consideration received by the developer of less than 75 percent of the transferred credit amount before considering any further discounting to present value which may be permitted. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the developer who originally applied for and was allowed the credit.

HISTORY:

Recodified from N.J.A.C. 19:31-4.9 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Section was "Pledge and assignment of grant amount". Inserted designation (a); in (a), substituted ", assign, transfer, or sell any or all of its right, title," for "and assign as security for any loan or bond any or all of its right, title"; and added (b). Former N.J.A.C. 19:31-4.11, Severability, recodified to N.J.A.C. 19:31-4.14.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (b), substituted "or 4.9" for "(d)", "$ 25,000" for "100,000", and "before considering any further discounting to present value which may be permitted" for ", as determined at present value", and deleted ", provided that one transfer consisting of any remainder that is less than $ 100,000 may be made in each tax period in an amount less than $ 100,000," following "credits".

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N.J.A.C. 19:31-4.12 (2016)

§ 19:31-4.12 Affirmative action and prevailing wage

The Authority's affirmative action requirements P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to State incentive grant projects undertaken in connection with financial assistance received under the Economic Redevelopment and Growth Program; and, for a State incentive grant solely for infrastructure improvements in the public right-of-way or any ancillary infrastructure project, regardless of whether the work or improvements are part of a larger redevelopment project, only to the work relating to the infrastructure improvements in the public right-of-way or the ancillary infrastructure project for which the incentive grant is issued.

HISTORY:

Recodified from N.J.A.C. 19:31-4.10 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

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N.J.A.C. 19:31-4.13 (2016)

§ 19:31-4.13 Appeals

(a) The Board's action on applications shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

HISTORY:

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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N.J.A.C. 19:31-4.14 (2016)

§ 19:31-4.14 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

HISTORY:

Recodified from N.J.A.C. 19:31-4.11 by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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N.J.A.C. 19:31-6.1 (2016)

§ 19:31-6.1 Applicability and scope

The New Jersey Economic Development Authority is promulgating these rules to implement the Main Street Business Assistance Program Act, P.L. 2008, c. 117 (the "Act"). The Act established the Main Street Business Assistance Program to provide guarantees and loans to small and mid-size businesses and not-for-profit organizations on an expedited basis to stimulate the economy.

HISTORY:

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Deleted "for a period not to exceed two years from the date of enactment" following "basis".

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N.J.A.C. 19:31-6.2 (2016)

§ 19:31-6.2 Terms of financial assistance

(a) Under the Main Street Business Assistance Program, the Authority may provide direct loan, loan participation and/or guarantee products and line of credit guarantee products.

1. For the direct loan and loan participation product, the maximum amount will be $ 1 million per total transaction for fixed assets and $ 750,000 per transaction for working capital, not to exceed 25 percent of total transaction;

2. For the loan guarantee product, the maximum guarantee will be $ 2 million per transaction for fixed assets and $ 1.5 million per transaction for working capital, not to exceed 50 percent of total transaction; and

3. For the line of credit product, the maximum amount will be $ 500,000, not to exceed 50 percent of the total transaction.

(b) The combination of direct loan, loan participation, loan guarantee and line of credit guarantee shall not exceed the lesser of $ 2 million or 50 percent of total bank commitment.

(c) The Authority shall provide public notice of the rate of interest to be charged for the Main Street Business Assistance Program as authorized by the Members through, among other methods, listing on the agency's website at www.njeda.com.

(d) For purposes of (a)1 and 2 above, the term shall not exceed five years; and for (a)3 above, the term shall be up to two years based on the term of bank line of credit.

HISTORY:

Amended by R.2012 d.101, effective May 21, 2012.

See: 44 N.J.R. 433(a), 44 N.J.R. 1644(a).

In (a)3, substituted "$ 500,000" for "$ 250,000".

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N.J.A.C. 19:31-6.3 (2016)

§ 19:31-6.3 Eligibility criteria

(a) Under the Main Street Business Assistance Program, preference for assistance will be given to:

1. A business which has operated continuously for at least the two years preceding the filing of an application; and

2. A project which may:

i. Maintain employment;

ii. Create or maintain tax ratables;

iii. Be located in an economically distressed area; or

iv. Represent an important economic sector of the State.

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N.J.A.C. 19:31-6.4 (2016)

§ 19:31-6.4 Application requirements

(a) A business seeking to participate in the direct loan, loan participation and guarantee and line of credit products shall comply with the Authority's application procedures as set forth in N.J.A.C. 19:31-2.3.

(b) Authority staff will undertake the evaluation process set forth at N.J.A.C. 19:31-2.4. The Chief Executive Officer shall review and may approve applications, which will be processed in the order in which completed applications are received.

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N.J.A.C. 19:31-6.5 (2016)

§ 19:31-6.5 Affirmative action and prevailing wage

The Authority's affirmative action requirements P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to projects undertaken in connection with financial assistance received under the Main Street Business Assistance Program.

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N.J.A.C. 19:31-7.1 (2016)

§ 19:31-7.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement "The New Jersey Local Development Financing Fund Act" (P.L. 1983, c. 190). This Act established the Local Development Financing Fund, a special depository fund for the purpose of providing financial assistance to certain commercial and industrial projects in certain municipalities who sponsor these projects.

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N.J.A.C. 19:31-7.2 (2016)

§ 19:31-7.2. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the New Jersey Local Development Financing Fund Act (P.L. 1983, c.190) as amended and supplemented.

"Eligible project" means a project which has been approved by the Authority to receive financial assistance from the Local Development Financing Fund.

"Eligible project costs" means the costs of planning, developing, executing and making operative, an industrial or commercial redevelopment project. Eligible project costs include:

1. The cost of purchasing, leasing, condemning, or otherwise acquiring land or other property, or an interest therein, in the designated project area or as necessary for a right-of-way or other easement to or from the project area;

2. The cost incurred for, or in connection with, or incidental to, acquiring and managing the land, property or interest;

3. The cost incurred for, or in connection with, the relocating and moving of persons displaced by acquisition;

4. The cost of development or redevelopment, including:

i. The comprehensive renovation or rehabilitation of the land, property or interest;

ii. The cost of equipment and fixtures which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project;

iii. The cost of energy conservation improvements designed to encourage the efficient use of energy resources, including renewable and alternative energy resources and cogenerating facilities; and

iv. The disposition of land or other property for these purposes.

5. The cost of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;

6. The cost of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project; and

7. The cost incurred or incidental cost including, but not limited to:

i. Administrative, appraisal and economic analysis;

ii. Engineering service;

iii. Planning service;

iv. Design service;

v. Architectural service;

vi. Surveying service; and

vii. Other professional service.

"Financial assistance" means, but is not limited to, loans, loan guarantees, grants, secondary mortgages, and equity participation provided by the fund.

"Fund" means the Local Development Financing Fund.

"Municipality" means a New Jersey municipality qualifying for aid pursuant to the State formula for State aid to municipalities (see N.J.S.A. 52:27D-178) for services and to offset property taxes.

"Project" means an industrial or commercial enterprise within a municipality that would not be undertaken in its intended scope but for the assistance provided for under the Act and these rules.

"Sponsor" means the governing body of a municipality or, with the approval of the government of the municipality, a local development corporation, community development corporation, municipal port authority (established pursuant to N.J.S.A. 40:68A-29), or governing body of a county, or, with the approval of the government of a county, a county development corporation or other public entity designated by the Authority as a sponsor.

HISTORY:

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 New Jersey Register 1714(a), 37 New Jersey Register 3058(a).

In "Sponsor" definition, added "(established pursuant to N.J.S.A. 40:68A-29)" and deleted "(see N.J.S.A. 40:68A-29)".

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N.J.A.C. 19:31-7.3 (2016)

§ 19:31-7.3 Application for financial assistance

(a) Each application for financial assistance from the Fund shall be accompanied by a non-refundable application fee of $ 1,000. A non-refundable commitment fee of .875 percent of the loan amount is charged with the acceptance by an applicant of a direct loan commitment under the Local Development Financing Fund. The fee to be paid at closing is .875 percent of the loan amount. If financial assistance is provided from the Fund to purchase a participation in a bank loan, a non-refundable fee of $ 750.00 is charged with the acceptance of a commitment under the Fund. A closing fee is not charged for a bank participation from the Fund.

(b) Each application for financial assistance from the Fund shall be accompanied by evidence of the support of the municipality in which the project is located. For purposes of these rules, evidence of municipal support shall mean an approved resolution of the governing body of the municipality.

(c) Each application for financial assistance from the Fund shall be accompanied by a benefit statement prepared by the applicant. The benefit statement shall address:

1. The number of permanent jobs to be created in the municipality in which the project is located, excluding the period of construction or development;

2. The number of jobs preserved by the completion of the project in the case of an existing enterprise;

3. The increase in the valuation of real property in the municipality as a result of the completion of the project;

4. Whether the project will result in the maintenance or provision of at least the same number of housing units at comparable rates as exists prior to the undertaking of the project;

5. Whether the project will be located in an area targeted for economic development and receiving Federal, State and/or local development assistance under other programs;

6. The extent to which the project will contribute to an economic revitalization of the municipality and/or the region;

7. The extent to which the project will advance State and/or regional planning and development strategies; and

8. The extent to which the location of the project is accessible to and promotes the use of public transportation.

(d) Each application for financial assistance from the Fund shall be accompanied by evidence of private source or other public source financing commitments.

(e) Each application for financial assistance from the Fund shall be accompanied by evidence of all requisite Federal and/or State environmental permits necessary for the project.

(f) Each application for financial assistance from the Fund shall be accompanied by a plan for the utilization of minority and women contractors and equal opportunity for employment in connection with the project (see N.J.A.C. 19:31-7.6).

HISTORY:

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

In (a), substituted "$ 1,000" for "$ 500.00", and inserted the last two sentences.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), added the last two sentences.

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N.J.A.C. 19:31-7.4 (2016)

§ 19:31-7.4 Financial assistance

(a) No more than 20 percent of the total financial assistance provided from the Fund shall be in the form of grants or other non-lending assistance.

(b) The total amount of financial assistance provided to project applicants in any county during any year shall not exceed 20 percent of the appropriation made during that year to the Fund.

(c) No financial assistance from the Fund shall be granted to an individual applicant project unless at least 50 percent of the total eligible project cost consists of private resources. For purposes of these rules, private resources shall include, but are not limited to:

1. Conventional private sector mortgages;

2. Purchase money mortgages;

3. Industrial Revenue Bonds;

4. Leases;

5. Loans guaranteed by the Federal Small Business Administration, or similar loan guarantees of other governmental and/or quasi-governmental entities; and

6. Equity investments in the project.

(d) The Fund shall provide loans in the form of permanent subordinate mortgage financing for eligible project cost at or below market rates of interest, as determined by the Authority (see N.J.A.C. 19:31-7.5(c)).

(e) The applicant shall secure interim financing on all projects involving construction, unless the Authority agrees otherwise in writing. The interim lender shall assume full responsibility for monitoring the construction of a project and for its timely completion. The interim lender may be the first mortgage lender or another experienced, qualified construction lender and shall be approved by the Authority.

(f) The applicant shall have such equity in the project as the Authority may deem appropriate to insure the applicant's ability to repay the loan from the Fund.

(g) The applicant shall certify in writing that it is unable to provide additional funds in the project beyond its stated commitment and that without assistance from the Fund the project would be economically unviable and unable to proceed.

(h) Assistance other than loans from the Fund may be approved where the Authority deems such assistance necessary to the success of the project. Such assistance shall not be provided for projects that can be funded by loans.

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N.J.A.C. 19:31-7.5 (2016)

§ 19:31-7.5 Terms of financial assistance

(a) The minimum loan amount from the Fund shall be $ 50,000 and the maximum loan amount from the Fund shall be $ 2,000,000.

(b) The Authority shall determine the term and the interest rate to be charged on a loan from the fund through consideration and official action of the Members at a public hearing.

(c) Factors to be considered in establishing additional interest rate basis points above the floor previously established by the Board may include, among others:

1. The applicant's creditworthiness;

2. The quality of collateral;

3. The number of jobs maintained or expanded in New Jersey;

4. The location/municipality of project;

5. The industry type;

6. The increase in tax ratable values;

7. Leveraging of total project costs to public dollars;

8. Whether the business is new to the State or expanding operation in the State; and

9. Whether the applicant is locating to a former brownfield site.

(d) The Authority shall provide public notice of the loan term and interest rate, including the interest rate floor, to be charged for the Local Development Financing Fund as authorized by the Members through, among other methods, listing on the agency's website at www.njeda.com.

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2002 d.223, effective July 15, 2002.

See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).

In (c), substituted "three for "five".

Amended by R.2002 d.333, effective October 7, 2002.

See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

In (c), substituted "approval," for "closing" following "time of loan".

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

In (c), substituted "closing" for "approval".

Amended by R.2008 d.271, effective September 15, 2008.

See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).

Rewrote (b) and (c); and added (d).

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N.J.A.C. 19:31-7.6 (2016)

§ 19:31-7.6 Evaluation of applications

(a) The Authority shall evaluate and rank each application for financial assistance considering the following factors:

1. The number of unemployed persons in the municipality in which the project is located;

2. The number of permanent full-time jobs to be created and/or maintained directly by the project, excluding the period of construction or development;

3. The number of jobs preserved by the completion of the project for an existing enterprise that otherwise would leave the State;

4. The increase in the valuation of real property in the municipality as a result of the completion of the project;

5. The percentage of the total eligible project costs to be financed from private and/or other public sources;

6. Whether the project results in the maintenance or provision of at least the same number of housing units at comparable rates that exist prior to the undertaking of the project within the municipality or surrounding area;

7. Whether the project will be located in an area targeted for economic development and/or will be receiving Federal, State and/or local development incentives under other programs;

8. The extent to which the project will contribute to an economic revitalization of a municipality or region, and will promote or add to the rehabilitation of the physical environment of the immediate area or municipality in which it is to be located;

9. The degree to which the project will facilitate the advancement of State or regional planning development strategies;

10. The extent to which the locations of the project are accessible to and/or promote the use of public transportation;

11. The degree of support for, participation in, and/or consultation about the project, within the community in which the project will be located;

12. The likelihood that the project will create and/or preserve private sector jobs, which will last for a period of at least two years; and

13. The likelihood that the project will result in providing a significant increase in the real property tax base of the municipality in which the project is located.

(b) After the evaluation and ranking is completed, the projects will be presented to the members of the Authority for their review and approval.

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N.J.A.C. 19:31-7.7 (2016)

§ 19:31-7.7 Minority and women business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Fund shall set a target level of the aggregate project construction costs for the purpose of providing contracting opportunities for minority businesses and women businesses.

(b) The developer and/or general contractor of the project shall identify the minority and/or women businesses that will participate in the project by construction trade, together with the contract sum to be paid to each minority business.

(c) In determining the target level and compliance therewith, a developer and/or general contractor must proceed in accordance with N.J.A.C. 12A:10-2.

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SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND

N.J.A.C. 19:31-7.8 (2016)

§ 19:31-7.8 Rescission of financial assistance from the Fund

(a) The Authority may at its discretion rescind part or all of the financial assistance from the Fund when it has become evident after the granting of financial assistance that:

1. The commitment of other financial resources from private sources has been withdrawn;

2. The project is judged no longer capable of repaying the Fund for the financial assistance it has received;

3. The project is judged incapable of achieving its target requirement, pursuant to N.J.A.C. 19:31-7.7, or that the project is not employing good faith efforts to achieve the requirements under N.J.A.C. 19:31-7.7; or

4. The participants in the project are found not to be of a good moral character. Such a finding may be based on convictions of felony offenses or any other conduct of the applicant which may be viewed in a nonfavorable light by a reasonable person.

(b) Upon determination of the Authority that financial assistance from the Fund shall be rescinded, the Authority shall send a certified letter to the applicant and the sponsor informing them of the rescission.

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N.J.A.C. 19:31-8.1 (2016)

§ 19:31-8.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1993, c.139 which pertain to the Hazardous Discharge Site Remediation Fund. This Act established the Hazardous Discharge Site Remediation Fund, a special, revolving fund for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous waste.

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N.J.A.C. 19:31-8.2 (2016)

§ 19:31-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means P.L. 1993, c. 139, as amended and supplemented.

"Applicant" means a municipality, county, redevelopment entity, company, firm, non-profit organization, an individual, corporation, partnership, or other private business entity which has been determined by the Department to be eligible for financial assistance or a grant under the Fund.

"Authority" means the New Jersey Economic Development Authority.

"Brownfield development area" means an area that has been so designated by the Department, in writing, pursuant to Section 7 of P.L. 1993, c. 139 as amended.

"Brownfield site" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

"Department" means the Department of Environmental Protection.

"Discharge" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Eligible project" means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

"Financial assistance" means loans and loan guarantees.

"Fund" means the Hazardous Discharge Site Remediation Fund.

"Innocent party" means a person who:

1. Acquired the real property prior to December 31, 1983 and continues to own the real property at least until the Authority renders final approval to the grant;

2. Demonstrates that the hazardous substance or hazardous waste that was discharged at the real property was not used by that person, or by any person that had permission to use the site from the applicant; and

3. Certifies that the applicant or any person that had permission to use the site from the applicant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.

"Members" means the members of the Authority.

"Non-profit organizations" mean 501(c)3 corporations pursuant to Section 501(c)3 of the Federal Internal Revenue Code, 26 U.S.C. § 501(c)3, that are exempt from taxation pursuant to section 501(a) of the Federal Internal Revenue Code, 26 U.S.C. § 501(a).

"Person" means any individual, corporation, company, partnership, firm, or other private business entity and shall not include non-profit organizations.

"Preliminary assessment" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Public entities" means municipalities, counties and, as defined in this section, redevelopment entities.

"Qualifying person" means any person who has a net worth of not more than $ 2 million.

"Recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation or natural resources, or both.

"Redevelopment entity" means any redevelopment entity authorized to exercise government powers pursuant to section 4 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-4).

"Remediation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Remediation funding source" means the methods of financing the remediation of a discharge.

"Renewable energy generation" means:

1. Electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, methane gas from landfills, a resource recovery facility, a hydropower facility or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner, and provided further that the Commissioner of the Department of Environmental Protection has determined that the resource recovery facility, hydropower facility or biomass facility, as appropriate, meets the highest environmental standards and minimizes any impacts to the environment and local communities; and

2. Energy produced from solar thermal or geothermal technologies.

"Site investigation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

HISTORY:

Amended by R.1994 d.375, effective July 18, 1994.

See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote "Applicant"; and inserted "Municipal governmental entity", "NJRA" and "Qualifying person".

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In definition "Act", inserted ", as amended and supplemented"; in definition "Applicant", substituted "municipality, county, redevelopment entity, company, firm, non-profit organization" for "municipal governmental entity, the New Jersey Redevelopment Authority"; added definitions "Brownfield development area", "Brownfield site", "Non-profit organizations", "Public entities", "Redevelopment entity" and "Recreation and conservation purposes"; in definition "Department", deleted "and Energy" from the end; rewrote definitions "Innocent Party" and "Person"; and deleted definitions "Municipal governmental entity" and "NJRA".

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Added definition "Renewable energy generation".

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N.J.A.C. 19:31-8.3 (2016)

§ 19:31-8.3 Eligibility

(a) Financial assistance from the Fund may be made for eligible projects to public entities for:

1. Implementation of remedial action on contaminated real property; and

2. Remediation on contaminated sites, or on sites at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and such discharge poses or would pose in imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

(b) Grants from the Fund may be made for eligible projects to public entities for:

1. Preliminary assessment, site investigation, or remedial investigation of a contaminated site;

2. Matching grants of up to 75 percent of the costs of remedial action on contaminated real property to be used for recreation and conservation purposes, provided that such use is included in the comprehensive plan for the development or redevelopment of the real property and a permanent restriction regarding development and preserving such use is recorded and indexed with the deed in the registry of deeds for the county in which the real property is located;

3. Matching grants of up to 50 percent of the costs of remedial action on contaminated real property to be used for affordable housing pursuant to N.J.S.A. 52:27D-301 et seq.;

4. Matching grants of up to 75 percent of the costs of remedial action on contaminated real property for renewable energy generation;

5. Matching grants of up to 25 percent of the project costs, in a total amount not to exceed $ 250,000, to public entities which propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action; and

6. In a brownfield development area, for preliminary assessment, site investigation, remedial investigation and remedial action on contaminated real property. An ownership interest in the real property shall not be required; however, any grant awarded for remedial action on real property not owned by the public entity shall be subject to the lien provisions set forth in N.J.A.C. 19:31-8.4.

(c) Financial assistance from the Fund may be made for eligible projects to persons for:

1. Remediation of real property located in a qualifying municipality, as defined in N.J.S.A. 52:27D-178;

2. Remediation on contaminated sites, or on sites at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and such discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

3. Persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste, pursuant to the N.J.A.C. 7:26C, and who have not been ordered or directed to perform the remediation by the Department or by a court pursuant to Section 27b(3) of the Act; and

4. Persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted.

(d) Grants from the Fund may be made for eligible projects to persons for:

1. Persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person is an innocent party, a grant may be up to 50 percent of the remediation costs, but shall not exceed the total grant amount of $ 1,000,000;

2. An owner or operator of a child care center licensed pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.), or a prospective owner or operator of a child care center who has applied for a license pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.), a grant of $ 1,500 for the costs of a preliminary assessment performed in order to obtain a no further action letter as required pursuant to the provisions of subsection b. of section 2 of P.L. 2007, c. 1 (N.J.S.A. 52:27D-130.5) or performed as part of the child care center licensing requirements established by the Department of Children and Families; and

3. Matching grants of up to 25 percent of the project costs incurred after receipt of the application by the Department, in a total grant amount not to exceed $ 250,000 to qualifying persons who propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action.

(e) Preconditions to eligibility are as follows:

1. For public entities:

i. Except for remediation grants made pursuant to (b)6 above, public entities shall either hold a tax sale certificate on the real property; have acquired the real property through foreclosure or other similar means; or have acquired the real property through voluntary conveyance, or have passed a resolution or ordinance or other appropriate document to acquire it through voluntary conveyance for the purpose of redevelopment or for recreation and conservation purposes. Regarding the third precondition above, the document authorizing the real property acquisition may also provide that, should good faith negotiations fail, the public entity may choose to exercise its right of eminent domain in order to acquire title to the real property. Additionally, there must have been a discharge, or there is currently a suspected discharge, of a hazardous substance or hazardous waste on the real property.

ii. Except for grant awarded pursuant to (b)2, 3 or 6 above, no grant or financial assistance shall be awarded for a remedial action until the public entity actually owns the real property.

iii. No grant shall be awarded unless the public entity has adopted a comprehensive plan for the development or redevelopment of contaminated, or potentially contaminated real property, or can demonstrate to the Authority that a realistic opportunity exists that the real property will be developed or redeveloped within three years from the completion of the remediation.

2. No financial assistance or grant from the Remediation Fund shall be rendered to a person or any public entity that, at the time of application, is in violation of an administrative or judicial order, judgment or consent agreement regarding violation or threatened violation of an environmental law regarding the subject real property, unless the violation, fee, penalty or assessment is currently being contested by the applicant in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform the required remediation activities.

3. Financial assistance from the Fund may only be rendered to persons who cannot establish a remediation funding source for the full amount of the remediation and may be rendered only for that amount of the cost of remediation for which the person cannot establish a remediation funding source. An applicant for financial assistance or a grant shall certify to the Department and to the Authority that it cannot establish a remediation funding source for all or part of the remediation costs. This requirement shall not apply to public entities or to persons who are not required to establish a remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remedial action, persons performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation.

(f) The determination of eligibility will be made by the Department in accordance with Sections 28 through 31 of the Act.

HISTORY:

Amended by R.1994 d.375, effective July 18, 1994.

See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Rewrote the section.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Added new (b)4; recodified former (b)4 and (b)5 as (b)5 and (b)6; in (d)1, deleted "and" from the end; added new (d)2; recodified former (d)2 as (d)3; and in (e)1i and (e)1ii, substituted "6" for "5".

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N.J.A.C. 19:31-8.4 (2016)

§ 19:31-8.4 Lien provision

Any expenditure of grant monies by a public entity for a remedial action in a brownfield development area for real property in which the public entity does not have an ownership interest shall constitute a debt of the real property owner to the fund. The authority shall cause to be filed in the county recording office of the county in which the real property is located a notice of lien listing the name of the real property owner, a description of the real property subject to the remedial action and an identification of the amount of the grant awarded from the fund. The notice of lien shall have priority over all other claims or liens which have been filed against the real property, except as provided in the act. The lien shall be removed upon transfer of ownership of the real property to the public entity that expended grant monies for remedial action on that real property.

HISTORY:

New Rule, R. 2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Former N.J.A.C. 19:31-8.4, Terms of financial assistance, recodified to N.J.A.C. 19:31-8.5.

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N.J.A.C. 19:31-8.5 (2016)

§ 19:31-8.5 Financial assistance: term; interest rate; transfer of title

(a) Loans from the Fund or loans guaranteed by the Fund shall be for a term of not more than 10 years.

(b) Loans to public entities shall bear an interest rate equal to two points below the Federal Discount Rate at the time of approval or at the time of loan closing, whichever is lower, except that the rate shall be no lower than three percent. Loans to persons shall bear an interest rate equal to the Federal Discount Rate at the time of approval or at the time of the loan closing, whichever is lower, with a minimum floor of five percent.

(c) Upon transfer of ownership of any real estate for which a loan was made from the Fund or a loan was guaranteed by the Fund, the unpaid balance of the loan shall become immediately due and payable. Notwithstanding the foregoing, the unpaid balance of the loan that is transferred by devise or succession shall not become immediately payable in full, and loan repayments shall be made by the new title holder of the real property.

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (b).

Recodified from N.J.A.C. 19:31-8.4 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Section was "Terms of financial assistance". Rewrote (b) and (c). Former N.J.A.C. 19:31-8.5, Amount of financial assistance and grants, recodified to N.J.A.C. 19:31-8.6.

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N.J.A.C. 19:31-8.6 (2016)

§ 19:31-8.6 Amount of financial assistance and grants

(a) Financial assistance and grants may be for up to 100 percent of the estimated applicable remediation costs, except that the cumulative maximum amount of financial assistance to a person in any calendar year, for one or more properties, shall be $ 1,000,000.

(b) Financial assistance and grants to any one public entity shall not exceed $ 3,000,000 in any calendar year, except as provided in (c) below.

(c) The Authority may award an additional amount of up to $ 2,000,000 of financial assistance and grants in any calendar year to any one public entity for the remediation of real property in a brownfield development area.

(d) The total cumulative amount of matching grants awarded to public entities for remedial action of real property to be used for recreation and conservation purposes, for renewable energy generation or for affordable housing, shall not exceed $ 5,000,000 in any calendar year.

(e) Grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed $ 1,000,000.

(f) The amount of financial assistance or grant awarded shall be based upon a scope of work for remediation which is in compliance with N.J.A.C. 7:26D, 7:26E, 7:26B and 7:14B as applicable.

(g) The amount of a grant for costs of a remedial action shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances do not allow for residential use.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), deleted "and grants" following "assistance"; and in (b), inserted "or NJRA" following "entity".

Recodified from N.J.A.C. 19:31-8.5 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In (a), substituted "remediation" for "Remediation"; rewrote (b); added new (c), (d) and (g); recodified former (c) and (d) as new (e) and (f); and in (f), inserted "awarded". Former N.J.A.C. 19:31-8.6, Priority system for financial assistance and grants, recodified to N.J.A.C. 19:31-8.7.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (d), inserted ", for renewable energy generation or for affordable housing,".

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N.J.A.C. 19:31-8.7 (2016)

§ 19:31-8.7 Priority system for financial assistance and grants

(a) An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority based on the date of receipt by the Authority of a completed application and the availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority and other criteria as established by this rule in the following order of priority:

1. Sites on which there has been a discharge and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; and

2. Sites in areas designated as Planning Area 1, Planning Area 2, designated centers, or areas receiving plan endorsement as designated pursuant to the "State Planning Act," section 1 through 12 of P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), sites that the Brownfields Redevelopment Task Force, established pursuant to section 5 of P.L. 1997, c. 278 (N.J.S.A. 58:10B-23), determines are of immediate economic development potential, and sites in brownfield development areas.

3. The Chief Executive Officer of the Authority shall, from time to time review the allocation of moneys in the Fund and the requirements of applicants for money from the Fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (b), inserted a reference to the NJRA.Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (a)2, substituted "Chief Executive Officer" for "Executive Director".

Recodified from N.J.A.C. 19:31-8.6 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In the introductory paragraph of (a), substituted "in the following order of priority:" for a period at the end; rewrote (a)1; added new (a)2; recodified former (a)2 as new (a)3; and deleted (b). Former N.J.A.C. 19:31-8.7, Application for financial assistance and grants, recodified to N.J.A.C. 19:31-8.9.

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N.J.A.C. 19:31-8.8 (2016)

§ 19:31-8.8 Non-profit pilot program

In accordance with the Act, an allocation from the Fund in an amount not to exceed $ 5,000,000 shall be set aside for a Non-Profit Pilot Program. Under this Pilot Program, grants may be made for eligible projects to non-profit organizations for the purpose of funding preliminary assessment, site investigation and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the Brownfields and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.1 to 3.1, shall apply to the award of grants to non-profit organizations under this section.

HISTORY:

New Rule, R. 2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Former N.J.A.C. 19:31-8.8, Evaluation process for financial assistance and grants, recodified to N.J.A.C. 19:31-8.10.

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N.J.A.C. 19:31-8.9 (2016)

§ 19:31-8.9 Application for financial assistance and grants

(a) Upon determination of eligibility by the Department, the Department will notify the Authority of the eligibility of the applicant, and the total amount of remediation costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source, if applicable.

(b) The Department shall forward the approved application to the Authority for further processing. The Authority shall have the discretion to request any additional information from the applicant and/or from the Department which it deems necessary in order to complete its evaluation of the application. An application shall be deemed to be complete at such time as the Authority has received all required information in the required form.

(c) The applicant will be given priority for financial assistance and grants based on the date of receipt by the Authority of a completed application, subject to any priority given under N.J.A.C. 19:31-8.7.

(d) If the application is determined by the Authority to be incomplete, the applicant will have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority. Notwithstanding anything in this section to the contrary, in the event the applicant submits the additional information in the required form within the 30 day period, the application shall be deemed complete as of the initial application submission date.

(e) If the applicant fails to file the additional information within the 30-day period, the filing date for the application shall be the date the additional information is received by the Authority, for those applications relating to sites that are not within a priority category enumerated in N.J.A.C. 19:31-8.7.

(f) A completed application shall include, if applicable as determined by the Authority:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan or grant proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of tax returns for the three most recent years.

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number and contact person;

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

9. In the case of a loan guarantee, a formal commitment letter from the lender providing the loan, including the terms, conditions, collateral and a statement of the requirement for the Authority guarantee.

(g) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the application.

(h) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Authority Members at a public meeting. Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the application. The applicant has no right to have its application presented to the Members.

HISTORY:

Administrative Correction.

See: 26 N.J.R. 2462(b).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (b); inserted references to grants in (c) and (f)2; and in (d), added a second sentence.

Recodified from N.J.A.C. 19:31-8.7 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In (a), inserted ", if applicable"; in (c), inserted ", subject to any priority given under N.J.A.C. 19:31-8.7"; and in (e), inserted ", for those applications relating to sites that are not within a priority category enumerated in N.J.A.C. 19:31-8.7". Former N.J.A.C. 19:31-8.9, Approval process for financial assistance and grants, recodified to N.J.A.C. 19:31-8.11.

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N.J.A.C. 19:31-8.10 (2016)

§ 19:31-8.10 Evaluation process for financial assistance and grants

(a) When all of the required information is received, the Authority will perform its own credit evaluation based upon applicable criteria as determined by the Authority, including:

1. Visitation to the applicant's place of business, or real property which is the subject of the application;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability;

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches; and

9. For public entities, all Local Finance Board requirements must be satisfied.

(b) After completing (a) above, a determination shall be made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financial assistance.

(c) If a positive determination is made, the requested financial assistance or grant shall be presented to the Members for approval.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Inserted (a)9.

Recodified from N.J.A.C. 19:31-8.8 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In the introductory paragraph of (a), substituted "applicable criteria as determined by the Authority, including" for "the following"; in (a)1, inserted ", or real property which is the subject of the application"; in (a)9, substituted "public entities" for "municipal government entities"; and in (c), inserted "or grant". Former N.J.A.C. 19:31-8.10, Disbursement of financial assistance and grants, recodified to N.J.A.C. 19:31-8.12.

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N.J.A.C. 19:31-8.11 (2016)

§ 19:31-8.11 Approval process for financial assistance and grants

(a) Only the Members can approve financial assistance or a grant, except that Authority staff may approve a request for grant or financial assistance as delegated to them by the Authority Members.

(b) When the Members approve financial assistance or a grant, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter, award closing package, notice of approval of financial assistance, or grant, is issued to the applicant.

1. The notice of approval will contain all material terms, conditions and collateral required by the Authority and will include personal guarantees of owners of 10 percent or more of the applicant and corporate, partnership or limited liability company guarantees of any companies related to the applicant. There may be a requirement for collateral apart from the applicant's collateral to secure the guarantees.

(e) Within 90 calendar days for a person, or within 180 calendar days for a public entity, of receipt of the notice of approval of financial assistance or grant application, an applicant shall submit to the Authority an executed contract for the remediation activities for which the financial assistance or grant application was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance or a grant.

(f) When the notice of approval has been accepted by the applicant and returned to the Authority within the requisite time frame, a list of closing instructions shall be mailed to the applicant or public entity or its designated representative. The Authority's commitment shall terminate and the Authority shall have no further obligation in connection with an application if the notice of approval is not signed and returned to the Authority, together with the applicable fees, within 120 days of its delivery or month's end, whichever is later for public entities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants. In addition, in the event that the financing is not closed on or before 90 days from the date of acceptance for public entities and 180 days from the acceptance date for other applicants, the Authority's obligation to provide financing shall terminate and the applicant shall be required to submit a new application. Upon receipt of a written request, the Authority, in consultation with the Department, may consider an extension of time.

(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a closing shall be scheduled and the funds made available to the applicant subject to approval by the Authority.

HISTORY:

Administrative Correction.

See: 26 N.J.R. 2462(b).

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (d) and (f); in (e), inserted a reference to grants; and in (g), substituted a reference to closings for a reference to loan closings, and deleted a reference to sponsors.

Amended by R.2000 d.482, effective December 4, 2000.

See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

In (f), added "for municipalities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants" at the end of the second sentence, and inserted "for municipalities and 180 days from the acceptance date for other applicants" following "acceptance" in the third sentence.

Recodified from N.J.A.C. 19:31-8.9 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Rewrote (a) and (d)1; in (e), substituted "person" for "private entity" and "public entity" for "municipal governmental entity or NJRA"; in (f), substituted "applicant or public entity" for "municipality", "its designated representative" for "attorney for the applicant", and "public entities" for "municipalities" twice; and, also in (f), deleted "of Environmental Protection" following "Department". Former N.J.A.C. 19:31-8.11, Attorney General review, recodified to N.J.A.C. 19:31-8.13.

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N.J.A.C. 19:31-8.12 (2016)

§ 19:31-8.12 Disbursement of financial assistance and grants

(a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant to the Department with a certification from the contractor or consultant that the requested moneys will be spent or have been spent in accordance with a Department approved scope of work and a certification from the applicant that it is in full compliance with all of the terms and conditions of the assistance agreement. Disbursements are subject to certain preconditions, including, among other things, approval by the Department of the remediation contracts and all previously performed work.

(b) The recipient of the financial assistance or grant must provide access, to the Authority and the Department, at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.

(c) In the case of a grant or financial assistance, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the insurance carrier, discharger or person in any way responsible for a hazardous substance pursuant to N.J.S.A. 58:10-23.118 who does not have a defense to that liability under N.J.S.A. 58:10-23.11(g). All moneys collected in a cost recovery subrogation action shall be deposited into the Fund. No award of a grant or financial assistance shall be made if the applicant relinquishes, impairs or waives, or has relinquished, impaired or waived, any right to recover the costs of remediation against any insurance carrier, discharger or person in any way responsible for a hazardous substance pursuant to N.J.S.A. 58:10-23.11(g).

(d) Where financial assistance to a person is for a portion of the remediation cost, the applicant will be required to provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance will be disbursed.

(e) Upon request, the recipient of financial assistance or grant shall provide the Authority with evidence that the monies are being spent in accordance with the Department approved scope of work, and that it is adhering to the terms and conditions of its agreement with the Authority.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (a); in (c), substituted a reference to liable parties for a reference to responsible parties, and added a second sentence; and in (d) inserted a reference to the NJRA.

Recodified from N.J.A.C. 19:31-8.10 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In (a), inserted "or have been spent" and substituted "with" for "within" following "accordance"; in (b), substituted "to" for "by" following "access,"; in (d), deleted "other than a municipal governmental entity or the NJRA" following "person"; and added (e). Former N.J.A.C. 19:31-8.12, Fees, recodified to N.J.A.C. 19:31-8.14.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), inserted "to the Department"; and rewrote (c).

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N.J.A.C. 19:31-8.13 (2016)

§ 19:31-8.13 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General's Office.

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Recodified from N.J.A.C. 19:31-8.11 by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Former N.J.A.C. 19:31-8.13, Public record, recodified to N.J.A.C. 19:31-8.15.

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N.J.A.C. 19:31-8.14 (2016)

§ 19:31-8.14 Fees

(a) Application fees shall be charged as follows:

1. A $ 500.00 non-refundable fee shall be due upon submittal of an application for financial assistance or grant;

2. Additional non-refundable application fees for financial assistance are as follows: $ 500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged upon the acceptance of financial assistance under the Fund; and $ 500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged at closing.

(b) No Authority fees shall be paid from the financial assistance or grant award.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Recodified from N.J.A.C. 19:31-8.12 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Rewrote the section.

Repeal and New Rule, R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Section was "Fees".

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N.J.A.C. 19:31-8.15 (2016)

§ 19:31-8.15 Public record

All information submitted to the Department and/or the Authority as part of an application for financial assistance or grant shall be deemed a public record subject to the provisions of P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.).

HISTORY:

Recodified from N.J.A.C. 19:31-8.13 by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

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CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

N.J.A.C. 19:31-9.1 (2016)

§ 19:31-9.1 Applicability and scope

These rules are promulgated by the New Jersey Economic Development Authority (the "Authority") to implement the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346 (the "Act"), as amended by P.L. 2009, c. 90. The Act establishes a tax credit program for capital investment and increased employment in targeted urban rail transit hubs to catalyze economic development in those transit hubs. The Act further provides that the Urban Transit Hub Tax Credit Program (the "Program") is to be administered by the New Jersey Economic Development Authority and that the Authority consults with the Director of the Division of Taxation in the Department of the Treasury when adopting rules for the Program. The Program provides that businesses making at least $ 50,000,000 in new capital investments in a qualified business facility in an "urban transit hub" and employing at least 250 full-time employees at that facility may be eligible for tax credits in order to catalyze economic development in those urban areas. Businesses may apply for the tax credits by January 13, 2013, and satisfy the capital investment and employment conditions for award of the credits by January 13, 2016, subject to the rules in this subchapter. The tax credits are equal to 100 percent of the claimants' qualified capital investments made, and taxpayers may apply 10 percent of the total credit amount per year over a 10-year period against their corporation business tax, insurance premiums tax, or gross income tax liability. Tenants in qualified business facilities may also receive tax credits, if they occupy space in a qualified business facility that proportionally represents at least $ 17,500,000 of the capital investment in the facility and employ at least 250 full-time employees in that facility. Developers may apply for a credit of up to 35 percent of their capital investment in a qualified residential project by December 21, 2012, and shall submit their documentation to support the amount of their capital investment no later than April 26, 2017, subject to the rules in this subchapter; and the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it. Developers that previously applied for the 20 percent credit of their capital investment in a qualified residential project may reapply provided the project meets the statutory criteria that it is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits. Finally, businesses may apply for a credit for their capital investment in a qualified business facility that is part of a mixed use project and developers may apply for a credit for their capital investment in a qualified residential project that includes a mixed use project, but not for both a residential project and mixed use project separately. The tax credits are reduced to 80 percent if 200 new jobs (to the State) are not created, or forfeited if certain facility and Statewide employment levels are not maintained. The program is limited to municipalities that are eligible for urban aid, that had at least 30 percent of their real property value exempt from property taxes during 2006, and that have a specified commuter rail station, excluding any rail station located at an international airport.

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Inserted ", as amended by P.L. 2009, c. 90", the seventh sentence, "to 80 percent if 200 new jobs (to the State) are not created," and "during 2006", substituted "$ 50,000,000" for "$ 75 million", "$ 17,500,000" for "$ 25 million" and "had at" for "have a" preceding "least 30 percent", and deleted "and all light rail stations" following "airport".

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

Inserted a comma following "2013" and following "insurance premiums tax", and substituted "December 21, 2012, and shall submit their documentation to support the amount of their capital investment no later than April 26, 2017" for "July 28, 2014 and satisfy the capital investment conditions for award of credits by July 28, 2017" and "the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it. Developers" for "developers".

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N.J.A.C. 19:31-9.2 (2016)

§ 19:31-9.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Acquisition" means the purchase of a qualified business facility between unrelated parties pursuant to an arm's length transaction. The value of the land shall be appraised as vacant and subtracted from the purchase price to determine the amount of the capital investment. If the acquisition is of a facility that existed prior to the January 13, 2008 effective date of the Act, the buyer shall undertake capital investments of a value not less than 50 percent of the total cost to acquire the facility in order for the acquisition of such facility to be included in this Program.

"Act" means the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business, and may include not-for-profit entities. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to Section 1563 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 1563 or the entity is an organization in a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 414(b), (c). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-209).

"Approval letter" means the letter sent by the Authority that sets forth the conditions subsequent to the approval, the forecasted schedule for completion and occupancy of the project, the date the 10-year eligibility period is scheduled to commence, the estimated amount of tax credits, and other such information which further the purposes of P.L. 2007, c. 346. The approval letter will require the applicant to submit progress information by a certain date in order to preserve the approval of the tax credits.

"Authority" means the New Jersey Economic Development Authority.

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is an entity classified as a partnership, an S corporation, or a limited liability company. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by the affiliate or full-time employees of an affiliate are necessary to evidence compliance with eligibility requirements.

"Capital investment" in a qualified business facility and a qualified residential project means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure,

facility, or improvement to real property, including associated soft costs. Capital investment includes obtaining and installing furnishings and machinery, apparatus or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings or other environmental components required to attain the level of silver rating or above in the LEED(R) building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified business facility or qualified residential project site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. With respect to commercial development, to be included the capital investment must be commenced after January 13, 2008, the effective date of the Act, and the applicant submits its documentation for approval of its credit amount by the eighth anniversary of that date. With respect to residential development, to be included the capital investment must be commenced after July 28, 2009, the effective date of P.L. 2009, c. 90, and developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2017. For purposes of this subchapter, "commenced" shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

"Developer" means, with respect to a qualified business facility, a business that intends to construct and lease a business facility. A developer may seek to receive approval that the facility will constitute a qualified business facility conditioned upon identification of tenants that will have qualifying employment and pro formas indicating that the capital investment requirements will be met.

"Eligibility period" means the 10-year period in which a business may claim an urban transit hub tax credit, beginning with the tax period in which the Authority first certifies that the business has met the capital investment and employment qualifications, if any, of the Program.

"Eligible municipality" means a municipality: which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) or which was continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation, which is taxable and that which is tax exempt. For State fiscal year 2008, the eligible municipalities are: Camden, East Orange, Elizabeth, Jersey City, Newark, New Brunswick, Paterson, Trenton and Hoboken. For subsequent State fiscal years, the Authority, after consultation of the Department of Community Affairs, shall annually publish at www.newjerseybusiness.gov a notice listing the eligible municipalities.

"Full-time employee" means a person employed by the business for consideration 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, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) 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, as determined by the Authority, 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., or an employee who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a 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 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. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority. For the purpose of

calculating the number of new full-time employees, a position shall not be considered a new full-time position unless it is in addition to the number of full-time employees in the business's Statewide workforce in the last tax accounting or privilege period prior to the tax credit amount approval.

"Leasable area" means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"Letter of compliance" means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-9.14 that must accompany the use of the tax credit certificate.

"Light rail station" means a location where passengers board or alight River Line Light Rail, the Hudson-Bergen Light Rail, the Newark Light Rail services, or any other light rail service owned and/or operated by New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation in the State of New Jersey. Light rail is a transit mode with a lighter volume traffic capacity compared to commuter rail service and characterized by lighter vehicles operating in one or two-car trains on fixed rails, powered by electric or diesel, and not regulated by the Federal Railroad Administration unless covered by a waiver for shared-use operation of freight and light rail passenger service.

"Mixed use project" means a project comprising both a qualified business facility and a qualified residential project, provided that the residential project does not need to be the predominant part of the mixed use project if it meets the criteria set forth in N.J.A.C. 19:31-9.3(a)5.

"Net leasable area" means the usable area or actual occupiable area of a building, a floor or an office suite. The amount of usable area can vary over the life of a building as corridors expand and contract and as floors are remodeled, and thus is not fixed for the life of a building as would be the case with leasable area.

"New full-time position" means a position created by the business at the qualified business facility that did not previously exist in this State. New full-time position shall also include new full-time positions that a business creates after receipt of approval pursuant to N.J.A.C. 19:31-97 that are transferred to the qualified business facility upon completion thereof.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

"Program" means the Urban Transit Hub Tax Credit Program created pursuant to P.L. 2007, c. 346 and provided in this subchapter.

"Progress information" means the information that must be submitted pursuant to N.J.A.C. 19:31-9.8.

"Project" or "hub project" means employment by the business of a minimum of 250 full-time employees at a facility that meets the capital investment criteria of the Act in a qualified business facility located within a designated urban transit hub in an eligible municipality.

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment as defined under capital investment, located within a designated urban transit hub in an eligible municipality, used in connection with the operation of a business.

"Qualified residential project" means any building, complex of buildings or structural components of buildings, consisting predominantly of residential units, located in an urban transit hub within an eligible municipality.

"Rail station" means a rail station, including light rail stations, of the New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation, but shall not include any rail station located at an international airport, except that any property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation rail station platform area at an international airport upon which a qualified business facility is constructed or renovated commencing after the effective date of P.L. 2011, c. 149 shall be deemed an urban transit hub, excluding any property owned or controlled by the Port Authority of New York and New Jersey.

"Residential developer" means a business that intends to make or acquire capital investments in a qualified residential project pursuant to sections 34 and 35 of P.L. 2009, c. 90.

"Residential unit" means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

"Site preparation" means the clearing, excavation, or removal of existing buildings, structures, vegetation, or facilities, and the site grading or other earth work, which is necessary for the construction of a qualified business facility.

"Soft costs" means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment.

"Tax accounting period" or "tax privilege period" or "tax period" shall mean tax year for purposes of this chapter.

"Tenant" means a business that is a lessee or owner of a condominium in a qualified business facility and does not include a lessee or owner of a condominium in a qualified residential facility.

"Urban transit hub" means property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations; property located within a one-mile radius of the mid point of the platform area of such a rail station if the property is in a qualified municipality under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the Federal Department of Housing and Urban Development; the site of the campus of an acute care medical facility located within a one-mile radius of the mid point of the platform area of such a rail station; the site of a closed hospital located within a one-mile radius of the mid point of the platform area of such a rail station; property located within a one-half mile radius surrounding the mid point of one of up to two underground light rail stations' platform areas that are most proximate to an interstate rail station; and property adjacent to, or connected by rail spur to, a freight rail line if, as part of its regular course of business, as determined by the Authority, the business utilizes that freight rail line for loading and unloading freight cars on trains delineated by the Authority pursuant to subsection e. of section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-3e). A property, which is partially included within the radius, shall only be considered part of the hub if over 50 percent of its land area falls within the radius. In the case of a rail station with multiple rail lines, a separate midpoint shall be determined for each such rail line. Once the hubs have been delineated, the Authority will post eligible rail stations and corresponding midpoints on the website at www.newjerseybusiness.gov. The posting will be updated if the eligible rail stations change and to reflect changes in station midpoints.

"Urban transit hub tax credit" or "tax credit" means the tax credit permitted under P.L. 2007, c. 346, as amended by P.L. 2009, c. 90 and this subchapter, which may be applied against the tax liability otherwise due for corporation business tax or insurance premiums tax pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5.

"Urban transit hub tax credit transferee" or "tax credit transferee" means if the business transfers its tax credits by first obtaining and then selling or assigning its tax credits as evidenced by a tax credit transfer certificate, then the owner of the tax credits, including any subsequent owners of the tax credits.

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote definitions "Affiliate", "Business", "Capital investment", "Full-time employee", "Light rail station", "Rail station", "Urban transit hub" and "Urban transit hub tax credit"; substituted definition "Approval letter" for definition " 'Agreement' or 'project agreement' "; rewrote definition "Approval letter"; added definitions "Developer", "Full-time employee at the qualified business facility", "Letter of compliance", "Professional employer organization", "Progress information", "Qualified residential project", "Residential developer", "Residential unit", "Soft costs" and "Tenant"; in

definition "Eligibility period", inserted ", if any,"; and in definition "Eligible municipality", substituted the second occurrence of "was" for "is" preceding "exempt from", and inserted "during tax year 2006".

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Added definitions "Mixed use project" and "Urban transit hub tax credit transferee"; in definition "Qualified residential project", substituted "consisting predominantly" for "including a mixed use project, the majority of which, as measured by square footage, consists"; in definition "Urban transit hub", inserted "if the business uses that freight line at any rail spur located adjacent to or within a one-mile radius surrounding the entrance to the property, provided the property is located in the eligible municipality,", and in definition "Urban transit hub tax credit", substituted "or" for a comma preceding and deleted "or gross income tax" following "insurance premiums tax".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In definition "Eligibility period", substituted "first certifies that" for "accepts the certification of" and deleted "that it" following the second occurrence of "business"; in definition "Full-time employee at the qualified business facility", inserted the last sentence; and rewrote definitions "Rail station" and "Urban transit hub".

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In definition "Capital investment", inserted a comma following the second, third, and fourth instances of "facility", substituted "third-party" for "third party", inserted a comma following the second instance of "construction", substituted "January 13, 2008, the" for "the January 13, 2008", inserted a comma following "Act", and substituted "developers shall submit their documentation to support the amount of their capital investment no later than April 26," for "the applicant submits its documentation for approval of its credit amount by the eighth anniversary of that date, that is, by July 28,".

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*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

N.J.A.C. 19:31-9.3 (2016)

§ 19:31-9.3 Eligibility criteria

(a) In order to be eligible to be considered for an urban transit hub tax credit:

1. For a qualified business facility, if the business is other than a tenant, the business shall:

i. Make or acquire capital investments in a qualified business facility totaling not less than $ 50,000,000. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner's minimum capital investment of $ 50,000,000 provided that the owner so indicate in his application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;

ii. Employ not fewer than 250 full-time employees at the qualified business facility; and

iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment, not to exceed 20 years.

2. If the business is a tenant in a qualified business facility:

i. The owner of the qualified business facility shall make or acquire capital investments, or in a mixed-use facility capital and residential capital investments in the facility totaling not less than $ 50,000,000, as calculated in accordance with (a)1i above;

ii. The tenant shall occupy a leased area of the qualified business facility that represents at least $ 17,500,000 of the capital investment in the facility, as calculated pursuant to (b) below;

iii. The tenant business and up to two other tenants shall employ not fewer than 250 full-time employees in the aggregate at the qualified business facility;

iv. The business shall lease the qualified business facility for a term of not less than 10 years; and

v. Except for tenants of a qualified business facility for which the owner has previously demonstrated a net positive benefit and received approval of the project site or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the requested tax credit allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the term of the tenant's lease, not to exceed 20 years. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment, but not from employees other than those referenced in (a)2iii above.

3. For a qualified residential project, the residential developer shall:

i. Make or acquire capital investments totaling not less than $ 50,000,000 in a qualified residential project. This requirement may be met by the residential developer or by one or more of its affiliates;

ii. Demonstrate to the Authority that the qualified residential project is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits; and

iii. Not be required to meet the employment requirements required for a qualified business facility.

4. For a qualified business facility that is part of a mixed use project, the business shall:

i. Make or acquire capital investments in a qualified business facility that is part of a mixed use project provided that the qualified business facility represents at least $ 17,500,000 of the total capital investment in the mixed use project and the total capital investment in the mixed use project of which the qualified business facility is a part is not less than $ 50,000,000;

ii. Employ not fewer than 250 full-time employees at the qualified business facility; and

iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment, not to exceed 20 years.

5. For a qualified residential project that is part of a mixed use project, the developer shall:

i. Make or acquire capital investments in a qualified residential project that is part of a mixed use project provided that the qualified residential project represents at least $ 17,500,000 of the total capital investment in the mixed use project and the total capital investment in the mixed use project of which the qualified residential project is a part is not less than $ 50,000,000;

ii. Demonstrate to the Authority that the qualified residential project is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits; and

iii. Not be required to meet the employment requirements required for a qualified business facility.

(b) In order to determine whether the tenant's leasable area of the qualified business facility satisfies the capital investment eligibility threshold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of $ 50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

(c) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(d) Because a business may include an affiliate or affiliates, the capital investment and employment requirements may be met by the business or by one or more of its affiliates, and the entity satisfying the capital investment requirement does not need to be the same as the entity satisfying the employment requirement.

(e) A business shall be treated as owner of a qualified business facility or a qualified residential project if it holds title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

(f) A business that is investing in a qualified business facility or qualified residential project may apply for tax credits valued at less than the total amount of the capital investments in its project.

(g) In determining whether a proposed capital investment will yield a net positive benefit, the transfer of an existing job from one location in the State to another may be considered as the creation of a new job if:

1. The business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality whether in-State or out-of-State; or

2. The business's chief executive officer, or equivalent officer, submits a certification pursuant to N.J.A.C. 19:31-9.5(a)3iv.

(h) For purposes of mixed use projects or qualified residential projects, an eligible municipality shall have the option, pursuant to section 18 of P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), of deciding the percentage of newly-constructed residential units within the project, up to 20 percent of the total, required to be reserved for occupancy by low or moderate income households, as those terms are defined under the rules of the Department of Community Affairs concerning affordable housing. For a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L. 2011, c. 89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low or moderate income households in accordance with the terms and conditions of such approval.

(i) If a developer of a mixed use project obtains tax credits for its capital investment in a qualified residential project that is part of that mixed use project, it shall not be allowed a credit for the same qualified residential project pursuant to other sections of this subchapter. For a developer that is allowed a credit for its capital investment in a qualified residential project that is part of a mixed use project, it, or an eligible tenant, shall also be allowed a credit for the capital investment in a qualified business facility that is part of the same mixed use project, in the respective amounts set forth in N.J.A.C. 19:31-9.9(a), provided that the criteria in (a)4 and 5 above are satisfied.

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote the section.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

In (a)3ii, inserted "and" at the end; in (a)3iii, substituted a period for "; and" at the end; deleted (a)3iv; and added (a)4, (a)5 and (g) through (i).

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (a)2v, substituted "requested tax credit" for "approved tax" and deleted the last sentence.

Amended by R.2012 d.119, effective June 18, 2012.

See: 44 N.J.R. 665(a), 44 N.J.R. 1794(a).

Rewrote the introductory paragraph of (a)4 and (i); and in the introductory paragraph of (a)5, substituted "is part of" for "includes".

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

N.J.A.C. 19:31-9.4 (2016)

§ 19:31-9.4 Restrictions

(a) A business shall not be allowed urban transit hub tax credits if:

1. The business participates in a Business Employment Incentive Program grant pursuant to P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.) relating to the same capital investment, employees, and site that qualify the business for urban transit hub tax credits; or

2. The business receives assistance from the Business Retention and Relocation Assistance Grant Program pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).

(b) A business that is allowed a tax credit under this section shall not be eligible for incentives authorized by the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

(c) A business shall not qualify for a tax credit based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the InvestNJ Business Grant Program Act, P.L. 2008, c. 112 (N.J.S.A. 34:1B-237 et seq.).

(d) Capital investments in a qualified business facility must be incurred after the effective date of P.L. 2007, c. 346, which is January 13, 2008, and must be submitted within five years of January 13, 2008. An approved business must submit its documentation for approval of its credit amount before the end of the eighth year after the effective date, and thus, before January 13, 2016. The credit amount allowed for a tax period ending after January 16, 2016 during which documentation of a business's credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it. This eight-year limit is expected to afford businesses applying toward the end of the five-year application period at least three years to complete the project. Capital investments in a qualified residential facility must be incurred after the effective date of P.L. 2009, c. 90, which is July 28, 2009, and developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2017. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it. This eight-year limit is expected to afford businesses applying toward the end of the five-year application period at least three years to complete the project.

(e) If a business participating in a Business Employment Incentive Program grant for the same capital investment, employees, and site or receiving assistance from the Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act, seeks to qualify for urban transit hub tax credits, it shall first repay and terminate assistance pursuant to the rules governing the Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act, as applicable.

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In (a)1, inserted "or" at the end; in (a)2, substituted a period for "; or" at the end; deleted (a)3; added new (c); recodified former (c) and (d) as (d) and (e); rewrote (d); and in (e), inserted "InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act," and "InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act,", and substituted a comma for "or" following the second occurrence of "Business Employment Incentive Program".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (d), substituted "submitted" for the first occurrence of "applied for" and "business's" for "business" preceding "credit" throughout.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (d), substituted "eight-year" for "eighth year", and "developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2017. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it." for "be applied for within five years of July 28, 2009. A residential developer must submit its documentation for approval of its credit amount within eight years after July 28, 2009. The credit amount allowed for a tax period ending after July 28, 2017 during which documentation of a business's credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it.".

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

N.J.A.C. 19:31-9.5 (2016)

§ 19:31-9.5 Application submission requirements

(a) Each application to the Authority made by an owner, tenant or residential developer shall include the following information in an application format prescribed by the Authority:

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

i. The name of the business;

ii. The contact information of the business;

iii. Prospective future address of the business (if different);

iv. The type of the business;

v. Principal products and services and three-digit North American Industry Classification System number;

vi. The New Jersey tax identification number;

vii. The Federal tax identification number;

viii. The total number of employees in New Jersey;

ix. The total list of New Jersey operations;

x. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

xi. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 12A:4-12;

xii. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

xiii. A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidizes are tax benefits from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;

xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of Treasury by such time and with such information as the Director may require; and

xv. Any other necessary and relevant information as determined by the Authority for a specific application;

2. Project information shall include the following:

i. An overall description of the proposed project;

ii. A description of the capital investments planned by the business, if other than a tenant at the proposed qualified business facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified business facility; and if the business is a residential developer, a description of the capital investment planned to be made or acquired in a qualified residential project;

iii. The estimated value of the capital investment;

iv. A certification from the owner, with supporting evidence, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit, equaling 110 percent of the requested tax allocation amount, to the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment or the term of the tenant's lease, not to exceed 20 years, taking into account the criteria listed at N.J.A.C. 19:31-9.7(c). The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;

v. If the capital investment is a qualified residential project, a pro forma analysis demonstrating that the project is likely to be realized with the provision of the tax credits at the level requested to be realized but is not likely to be accomplished by private enterprise without the credits;

vi. A description of how the green building standards to be set forth in the green building manual prepared by the Department of Community Affairs, pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6) are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

vii. Identification of the site of the proposed qualified business facility or qualified residential project, including the block and lot of the site as indicated upon the local tax map and evidence that the site is located wholly or partially (over 50 percent) within an urban transit hub in the form of a survey or other documentation acceptable to the Authority;

viii. A project schedule that identifies projected move dates for the proposed qualified business facility or qualified residential project;

ix. If the capital investment is a qualified business facility, a schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

x. The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility; and, if an application involves intra-State job transfers, a full economic analysis of all locations under consideration by the company and copies of all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and, to the extent they exist, for the potential out-of-State location alternatives;

xi. The total number of anticipated new full-time positions that would be created in New Jersey and occupy the qualified business facility and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity; and

xii. Any other necessary and relevant information as determined by the Authority for a specific application; and

3. Employee information shall include the following:

i. A written certification that the employees that are the subject of this application will be full-time employees at the qualified business facility and are subject to withholding as provided in the New Jersey Gross Income Tax Act;

ii. The average annual wage and benefit rates of full-time employees and new full-time positions at the qualified business facility;

iii. To the extent a tenant is meeting the employment requirement together with up to two other tenants in the qualified business facility, a submission from the other tenants relating to (a)3i above;

iv. For the purpose of N.J.A.C. 19:31-9.3(g)2, a written certification by the chief executive officer, or equivalent officer, that the existing jobs are at risk of leaving the State and that the chief executive officer, or equivalent officer, has reviewed the information submitted that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility;

v. Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy such as the tax credits, pursuant to P.L. 2007, c. 200; and

vi. Any other necessary and relevant information as determined by the Authority for a specific application.

(b) A developer may apply to have a building approved as a qualified business facility by submitting the information required pursuant to (a)2i through ix above. Any tenant seeking an approval of tax credits for a qualified business facility so approved will be required to submit the information required pursuant to (a)1, 2v through ix and 3 above.

(c) The business or developer applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-2.7.

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In the introductory paragraph of (a), substituted a comma for "or a" following "owner" and inserted "or residential developer"; in (a)1xiv, substituted "revenue realized from the sale of the tax credits" for "amount of credit" and a semi-colon for the comma following "require", and deleted "which at minimum must conform with N.J.A.C. 19:31-9.8(b)10" following "owners"; rewrote (a)2ii; added new (a)2iv through (a)2vi; recodified former (a)2iv through (a)2ix as (a)2vii through (a)2xii; in (a)2vii and (a)2viii, inserted "or qualified residential project"; in (a)2ix, substituted "If the capital investment is a qualified business facility, a" for "A"; in (a)3i, substituted "will be" for the first occurrence of "are" and "at the qualified business facility" for "as defined in this chapter"; in (a)3ii, substituted "at" for "that would occupy"; added new (a)3iii; and recodified former (a)3iii and (a)3iv as (a)3iv and (a)3v.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote (a)2x; added new (a)3iv; and recodified former (a)3iv and (a)3v as (a)3v and (a)3vi.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (a)1x.

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N.J.A.C. 19:31-9.6 (2016)

§ 19:31-9.6 Application and servicing fees

(a) A business applying for benefits under this program shall submit the following one-time non-refundable application fee, with payment in the form of a check, payable to the "New Jersey Economic Development Authority":

1. If a business is an owner of the proposed qualified business facility, the application fee is $ 5,000;

2. If a business is a tenant of the proposed qualified business facility wherein the owner has not made application for the approval of tax credits, the application fee is $ 5,000; or

3. If a business is a developer of the proposed qualified business facility, the application fee of $ 5,000.

(b) In addition to the application fees in (a)1, 2 and 3 above, for a qualified business facility, a business shall pay to the Authority the full amount of direct costs of an analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee of .5 percent of the approved tax credit, not to exceed $ 300,000, shall be charged by the Authority upon the approval of the tax credit.

(d) A non-refundable fee of .5 percent of the tax credit, not to exceed $ 300,000, shall be paid prior to the receipt of the tax credit certificate.

(e) A business shall pay to the Authority an annual review fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period. The annual review fee shall be paid to the Authority by the business at the time the business submits its annual letter of compliance. The annual review fee shall be $ 2,500 per year.

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-9.10 shall pay to the Authority a fee of $ 2,500.

(g) For each project with approved tax credits of $ 5,000,000 or less, a non-refundable fee of $ 2,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of $ 7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with approved tax credits in excess of $ 5,000,000, a non-refundable fee of $ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of $ 25,000 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval.

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In (a)2, inserted "wherein the owner has not made application for the approval of tax credits" and substituted "$ 5,000" for "$ 2,500"; added new (b); added (c), (d) and (f); recodified former (b) as (e); and rewrote (e).

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

In (c) and (d), substituted "non-refundable" for "non-fundable".

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Added (g).

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N.J.A.C. 19:31-9.7 (2016)

§ 19:31-9.7 Review of application and certification of project completion

(a) A business seeking an approval of tax credits for a qualified business facility may apply for tax credits for a qualified business facility that was commenced after January 13, 2008, within five years after January 13, 2008, the effective date of the Act. A residential developer may apply for tax credits for a qualified residential facility that was commenced after July 28, 2009, by December 21, 2012.

(b) The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be deemed complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project. The review will determine whether the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Adequately provides information for the subject application.

(c) In determining whether the company meets the net economic benefits test, as certified by the owner pursuant to N.J.A.C. 19:31-9.5(a)2iv and 3iv, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by and generated indirectly by the business, property taxes or payment in lieu of taxes paid directly by and generated indirectly by the business, taxes paid directly or generated indirectly by new or retained employees, and peripheral economic growth caused by the business's relocation to the urban transit hub, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) In developing a recommendation for allocating credits to qualified residential projects, the chief executive officer shall take into account, together with other factors deemed relevant by the Executive Director:

1. An evaluation of the residential developer's pro forma analysis submitted pursuant to N.J.A.C. 19:31-9.5(a)2v;

2. Input from the municipality in which the project is located;

3. Whether the project furthers specific State or municipal planning and development objectives, or both; and

4. Whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property or both.

(e) Upon completion of the review of an application pursuant to (b) through (d) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits to be granted and, in the case of a residential developer, the maximum percentage

amount of allowed tax credits for its capital investment in a qualified residential project, and promptly notify the applicant and the Director of the Division of Taxation of the determination. When considering an application involving intra-State transfers pursuant to N.J.A.C. 19:31-9.3(g), the Board shall make a separate determination to verify and confirm that the jobs are at risk of leaving the State, which will consist of reviewing the materials submitted by the applicant, testing the validity of financial information and assumptions through the use of computer models and, to the extent necessary, seeking input from third party consultants, the cost of which will be paid by the applicant. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and requirements regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the urban transit hub tax credits.

2. In the approval notice to the business, the Authority shall set a date by which its approval will expire.

(f) Within one year following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for and site control of the qualified business facility or qualified residential project. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval.

(g) Upon completion of the capital investment and employment requirements of the program, the business shall submit a certification of a certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements.

1. The certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified business facility, provided however that in no event will the amount of tax credits exceed the amount of tax credits previously approved by the Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. In general, this certification shall be submitted to the Authority no later than five years after the Authority's receipt of the progress information.

3. For project applications for a qualified business facility approved in the fifth year that the Act is in effect, the certification shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For developer applications approved in the fifth year that the Act is in effect, any tenant's application and certification relating to a qualified business facility so approved shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). Residential developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2017. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it.

4. The Authority may seek additional information from the business and or information from the Department of Labor and Workforce Development to support the certification.

(h) Once the Authority accepts the certification of the business that it has satisfied the capital investment and employment requirements, if any, of the program, and the Authority determines that other necessary conditions have been met, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote (a) and the introductory paragraph of (b); added new (c) and (d); recodified former (c) as new (e) and former (d) as (g); rewrote (e) and (g); added (f); recodified former (e) as (h); and rewrote (h).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (e)1, substituted "approval letter" for "project agreement".

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

In (c), inserted "and 3iv"; and in the introductory paragraph of (e), inserted the second sentence.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In the introductory paragraph of (b), inserted "completed" and the next to last sentence.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a), inserted a comma following the first occurrence of "2008", and substituted ", by December 21, 2012" for "within five years after July 28, 2009, the effective date of P.L. 2009, c. 90 (that is, by July 28, 2014)"; in (g), inserted a comma following "accountant"; and rewrote (g)3.

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N.J.A.C. 19:31-9.8 (2016)

§ 19:31-9.8 Tax credit certificate

(a) The tax credit certificate shall set forth the following terms:

1. The starting date of the eligibility period;

2. The amount of the tax credits;

3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;

4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and or capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period the proposed allocation of tax credits by the business;

5. Events that would trigger reduction and forfeiture of tax credit amounts;

6. Reporting requirements and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Section was "Project agreement". Rewrote the section.

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N.J.A.C. 19:31-9.9 (2016)

§ 19:31-9.9 Tax credit amount; application and allocation of the tax credit

(a) The amount of tax credit allowed shall be equal to the lesser of the amount which satisfies the net benefit test pursuant to N.J.A.C. 19:31-9.7(c), or either the capital investment made by the business or the capital investment represented by the business's leased area, or area owned by the business as a condominium, subject to any reduction or disqualification provided in the Act and this subchapter and, provided that in no event will the amount of tax credits exceed the amount of tax credits previously approved by Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project as follows:

1. If the owner uses space in a qualified business facility, in order to determine the amount of the owner's capital investment that will be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified business facility not leased to tenants and the denominator of which is the total net leaseable area. For purposes of this calculation, unless the business that owns or operates the residential space qualifies under N.J.A.C. 19:31-9.3, residential space leased or offered for lease or sale shall not be included in the numerator.

2. In order to determine the amount of the tenant's or condominium's capital investment that will be attributed toward the amount of its tax credits, the Authority shall add the amount of capital investment that results from the calculation in N.J.A.C. 19:31-9.3(b) to any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant, provided that the owner has not included such tenant allowance or tenant improvements in its calculation of capital investment and further provided that such tenant allowance or tenant improvements meet the definition of capital investment.

(b) For the 10 consecutive years following the notification pursuant to N.J.A.C. 19:31-9.7(h), a business may apply 10 percent of the total credit amount per each tax accounting or privilege period, beginning with the tax period in which the business is first certified by the Authority as having met the investment capital and employment qualifications, subject to the provisions of the Act and this subchapter.

(c) The business may apply the credit against their corporation business tax or insurance premiums tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and or capital investment requirements of the program shall be applied on the basis of the allocation(s) submitted pursuant to the application, or as subsequently adjusted pursuant to N.J.A.C. 19:31-9.14 provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the business facility or employees at the business facility during the tax period for which the tax credits are issued.

(d) The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy for the tax period.

(e) The tax credits are not refundable and shall not result in a refund in the event that they do not equal or exceed a business's tax liability.

(f) The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the business does not take more than one-tenth of its approved credit amount in any tax period and the value of all credits approved by the Authority against tax liabilities pursuant to P.L. 2007, c. 346 (N.J.S.A. 34:1B-207 et seq.), in any fiscal year, shall not exceed $ 150,000,000.

(g) The amount of credit for any tax period ending eight years after the effective date of P.L. 2007, c. 346 (N.J.S.A. 34:1B-207) (January 13, 2008) during which the documentation of a business' credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year eligibility period shall remain available to it.

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote the introductory paragraph of (a); in (a)2, inserted "or condominium's"; rewrote (b); deleted former (c); recodified former (d) through (h) as (c) through (g); and rewrote (c).

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote (f).

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In the introductory paragraph of (a), inserted "the lesser of the amount which satisfies the net benefit test pursuant to N.J.A.C. 19:31-9.7(c), or either"; in the introductory paragraph of (b), inserted "beginning with the tax period in which the business is first certified by the Authority as having met the investment capital and employment qualifications,"; and rewrote (g).

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N.J.A.C. 19:31-9.10 (2016)

§ 19:31-9.10 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, in an amount not less than $ 25,000 of tax credits, pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business' right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

(b) The initial sale or assignment of any amount of tax credits allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted.

(c) In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-9.5(a).

(d) Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

(e) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

HISTORY:

New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.10, Reduction and forfeiture of tax credits, recodified to N.J.A.C. 19:31-9.12.

Repeal and New Rule, R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Section was "Application for tax credit transfer certificate".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (a), inserted "in an amount not less than $ 25,000 of tax credits,", inserted the sixth occurrence of "the", and deleted the former fourth sentence; and rewrote (b).

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N.J.A.C. 19:31-9.11 (2016)

§ 19:31-9.11 Cap on total credits

The value of all credits approved by the Authority shall not exceed $ 1,500,000,000 of which the Authority may approve up to $ 150,000,000 in credits in the aggregate for residential developers making capital investments in qualified residential projects, provided that for each qualified residential facility, the residential developer shall be allowed tax credits of no more than 35 percent of its capital investment. Based on application and allocation activity and if sufficient credits are available, the Authority may direct that the $ 150,000,000 cap be exceeded for allocation to qualified residential projects, as is deemed reasonable, justified and appropriate.

HISTORY:

New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.11, Reporting requirements, recodified to N.J.A.C. 19:31-9.14.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Substituted "35" for "20".

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N.J.A.C. 19:31-9.12 (2016)

§ 19:31-9.12 Reduction and forfeiture of tax credits

(a) Unless excepted pursuant to (a)2 below, the amount of the annual credit otherwise available shall be reduced by 20 percent for that tax period if:

1. Fewer than 200 full-time employees at the qualified business facility or, if the applicant is a tenant and has qualified under N.J.A.C. 19:31-9.3(a)2iii, fewer than 200 full-time employees in the aggregate are employed in new full-time positions in any tax period.

i. This reduction will remain for each subsequent tax period until the first period for which documentation demonstrating the restoration of the 200 full-time employees employed in new full-time positions at the qualified business facility has been reviewed and approved by the Authority.

ii. Once documentation restoring the 200 full-time employees employed in new full-time positions has been approved, for the current tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

2. For businesses applying before January 1, 2010, there shall be no reduction if a business relocates to an urban transit hub from another location or locations in the same municipality.

(b) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under N.J.A.C. 19:31-9.7(e), then the business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the 250 full-time employees at the qualified business facility.

(c) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility drops below 250 or the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to N.J.A.C. 19:31-9.3(g)1, employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its workforce in the last tax accounting or privilege period prior to the credit amount approval under N.J.A.C. 19:31-9.7(e), then the business shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 250 or an increase above the 20 percent reduction has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

(d) If in any year in which the residential components of the qualified residential project no longer constitutes the preponderance thereof as it existed at the time of certification of the tax credit amount, the residential developer or his

assignee shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating that the qualified residential project consists of the preponderance of residential units as existed at the time of certification of the tax credit amount has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed. Additions of commercial space to the project shall not be considered in this determination.

HISTORY:

Recodified from N.J.A.C. 19:31-9.10 and amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In the introductory paragraph of (a), substituted "available" for "determined pursuant to final calculation of the award of tax credits"; rewrote the introductory paragraph of (a)1, and (b) and (d); and in (a)2, substituted "For businesses applying before January 1, 2010, there" for "There". Former N.J.A.C. 19:31-9.12, Events of default, repealed.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

In (b), substituted "N.J.A.C. 19:31-9.7(e)" for "this section"; and rewrote (c) and (d).

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TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

N.J.A.C. 19:31-9.13 (2016)

§ 19:31-9.13 Effect of sale or lease of qualified facilities

(a) The tax credit amount shall be forfeited in the event of sale of the qualified business facility or sublease of the business's tenancy as follows:

1. If the qualified business facility is sold in whole or in part during the 10-year eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, except that any credits of tenants shall remain unaffected. The new owner may not apply for tax credits based upon the seller's capital investment. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

2. If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period, the sublessee shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods, except that if the sublessor tenant retains sufficient capital investment and employment to remain eligible for the program, the forfeiture shall affect only the credits attributable to the subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the sublessee shall be subtracted.

(b) In the event of sale of the qualified residential facility in whole or in part, the seller may either retain the tax credit amount or assign to the new owner a tax credit amount equal to the amount of the capital investment that is sold, provided that the capital investment sold represents at least $ 17,500,000 of the capital investment in the facility. In order to determine the amount of capital investment sold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the square footage of the portion of the qualified residential facility that is sold and the denominator of which is the total square footage of the qualified residential facility.

(c) Tenants in a qualified residential project are not eligible to apply for tax credits and an owner may not assign tax credits to a tenant.

HISTORY:

Repeal and New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Section was "Remedies".

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N.J.A.C. 19:31-9.14 (2016)

§ 19:31-9.14 Reporting requirements; letter of compliance

(a) After notification pursuant to N.J.A.C. 19:31-9.7(h):

1. In the case of a qualified business facility, the business shall furnish to the Authority an annual report certified by a certified public accountant in a format as may be determined by the Authority which shall contain the following information:

i. The number of full-time employees and new full-time positions employed at the qualified business facility, the number pertaining to the business's Statewide employment, total lease payments and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and, failure to submit the certified report within 120 days will result in forfeiture of the tax credit for that privilege period; and

ii. A certification indicating whether or not the business is aware of any condition, event, or act which would cause the business not to be in compliance with the approval, the Act or this subchapter; and

2. In the case of a qualified residential project, either the owner of the project or a tax credit transferee shall furnish to the Authority a report in a format as may be determined by the Authority which shall contain the following information:

i. Documentary evidence that a deed restriction has been recorded against each residential component of the qualified residential project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired; and

ii. Evidence that the residential units of the qualified residential project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or a certification by a MAI appraiser or governmental official. Failure to submit a copy of the annual report or submission of the annual report, without the information required above, will result in forfeiture of any annual tax credits to be received by the business or tax credit holder unless the Authority determines that there are extenuating circumstances excusing the business or tax credit transferee from the timely filing required. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

(b) The tax credit certificate may provide for additional reporting requirements.

(c) Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance will indicate whether the business or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.

HISTORY:

Recodified from N.J.A.C. 19:31-9.11 and amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Section was "Reporting requirements". Rewrote the introductory paragraph of (a) and (a)2; in (c), substituted "tax credit certificate" for "project agreement"; added new (d); and recodified former (d) as (e). Former N.J.A.C. 19:31-9.14, Appeals, recodified to N.J.A.C. 19:31-9.15.

Repeal and New Rule, R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Section was "Reporting requirements; letter of compliance".

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SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

N.J.A.C. 19:31-9.15 (2016)

§ 19:31-9.15 Approval process

(a) All completed applications for eligibility in the program shall be presented to the Board for approval or denial.

(b) When the members act to approve or deny a request, the minutes of the public meeting at which such determination occurs are submitted to the Governor.

(c) The Board's action shall be effective 10 working days after the Governor's receipt of the minutes, provided no veto has been issued.

(d) An applicant may challenge the Board's action by submitting in writing to the Authority, within 20 calendar days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such challenges are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Challenges that are timely submitted in accordance with (d) above shall be handled by the Authority as follows:

1. The chief executive officer shall designate an employee of the Authority to serve as a hearing officer for the challenge and to make a recommendation on the merits of the challenge to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer shall have sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the challenge. In the case of an application submitted in response to a competitive solicitation, the Authority shall not consider any new evidence or information about the project, but must consider only evidence or information submitted as of the solicitation submission deadline. In the case of an application submitted other than in response to a competitive solicitation, the Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the challenge. The hearing officer's report shall be advisory in nature. The chief executive officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer and shall have the opportunity to file written comments and exceptions to the hearing officer's report within a reasonable amount of time from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the chief executive officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the challenge. Such decision shall become effective 10 working days after the Governor's receipt of the minutes of the public meeting at which such decision occurs, provided no veto has been issued. The applicant shall have the opportunity to attend the public meeting at which the Board considers its challenge.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

HISTORY:

Recodified from N.J.A.C. 19:31-9.14 by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.15, Severability, recodified to N.J.A.C. 19:31-9.16.

Repeal and New Rule, R.2013 d.076, effective May 6, 2013.

See: 45 N.J.R. 110(a), 45 N.J.R. 1139(d).

Section was "Appeals".

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N.J.A.C. 19:31-9.16 (2016)

§ 19:31-9.16 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

HISTORY:

Recodified from N.J.A.C. 19:31-9.15 by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

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CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM

N.J.A.C. 19:31-10.1 (2016)

§ 19:31-10.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.26, as amended by P.L. 2003, c.166. This Act establishes the Business Employment Incentive Program, a special business assistance program to provide grants to businesses located in, or relocating to, New Jersey that create new jobs in New Jersey.

HISTORY:

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Added ", as amended by P.L. 2003, c.166" at the end of the first sentence.

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SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM

N.J.A.C. 19:31-10.2 (2016)

§ 19:31-10.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the New Jersey Economic Development Authority Act, N.J.S.A. 34:1B-1 et seq. as amended and supplemented.

"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 computing company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced computing for the purpose of developing or providing products or processes for specific commercial or public purposes.

"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.

"Advanced materials company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced materials for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Authority" means the New Jersey Economic Development Authority.

"Base employment number" shall mean the number of full-time employees the business has employed in the State of New Jersey at the time of application for the grant, including all full-time employees at entities under the business's direct control, defined as 50 percent or greater ownership, and excluding employees of any related affiliate(s) and parent business and employees at any point-of-final purchase retail facilities.

"Base years" means the first two complete calendar years following the effective date of an agreement, except that in those instances where significant construction/renovation of the project requires a certificate of occupancy to be awarded prior to occupancy of the project site, the base years will commence upon the issuance of a certificate of occupancy by the municipality.

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and subatomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

"Biotechnology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a person, whose headquarters or base of operations is located in New Jersey, engaged in providing services or products necessary for such research, development, production, or provision.

"Bonds" means bonds, notes, or other obligations issued by the Authority pursuant to the Act.

"Business" means a corporation, sole proprietorship; partnership, corporation that has made an election under Subchapter S corporation, or any other business entity through which income flows as a distributive share to its owners; limited liability company; a nonprofit corporation; or any other form of business organization located within or outside this State. A grant received by a partnership, Subchapter S corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed. Business shall also include co-employers pursuant to an employer leasing agreement in accordance with N.J.S.A. 34:8-67 et seq., between an entity that qualifies as a business hereunder and a professional employment organization; provided, however, that for purposes of paying the grant, payment shall be made solely to the entity and not to the professional employment organization.

"Business Employment Incentive Commitment Letter" or "Commitment Letter" means the written commitment issued by the Authority which sets forth the terms and conditions that must be met by the business in order to receive the grant.

"Commitment duration" means 1.5 times the term of the grant.

"Consumer Price Index" means the consumer price index developed by the United States Bureau of Labor Statistics for Urban Wage Earners and Clerical Workers using the Metropolitan Statistical Area (MSA) by county as developed by the United States Census Bureau in its most recent census. The MSA by county for New Jersey divides the State into northern and southern areas. If the project is located in an area designated as a northern county, the northern index shall be used and if the project location is in an area designated as a southern county, the southern index shall be used.

"Department" means the Department of Commerce and Economic Development.

"Designated industry" means a business engaged in the field of biotechnology, pharmaceuticals, financial services, transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology.

"Director" means the Director of the Division of Taxation in the Department of Treasury.

"Division" means the Division of Taxation in the Department of Treasury.

"Effective date" means the date of approval of the grant by the Authority's governing board.

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices.

"Electronic device technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of electronic device technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Eligible partnership" means a partnership or limited liability company that is qualified to receive a grant as established in the Act.

"Eligible position" means a new full-time position created by a business in New Jersey or transferred from another state by the business during the base years or subsequent years of a grant. For grants awarded on or after July 1, 2003, eligible position includes only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes."Eligible position" also includes all current and future partners or members of a partnership or limited liability company created by a business in New Jersey or transferred from another state by the business pursuant to the conditions set forth in the act during the base years or in

subsequent years of a grant. An "eligible position" shall also include a position occupied by a resident of this State whose position is relocated to this State from another state but who does not qualify as a "new employee" because prior to relocation his or her wages or his or her distributive share of income from a gain, from a loss or deduction, or his or her guaranteed payments or any combination thereof, prior to relocation, were not subject to income taxes imposed by the state or municipality in which the position was previously located. An "eligible position" shall also include a position occupied by a resident of another state whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. An "eligible position" shall not include any position located within New Jersey, which, within a period either three months prior to the business' application for a grant under the Act or six months after the date of application, ceases to exist or to be located within New Jersey.

"Employment incentive" means the percentage and term of a grant.

"Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources.

"Environmental technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of environmental technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Estimated tax" means an amount calculated for a partner in an eligible position equal to 6.37 percent of the lesser of:

1. The amount of the partner's net income from the eligible partnership that is sourced to New Jersey as reflected in Column B of the partner's Schedule NJK-1 of the application year less the amount of the partner's net income from the eligible partnership that is sourced to New Jersey as reflected in Column B of the partner's Schedule NJK-1 in the foundation year; or

2. The net of all items of partnership income upon which tax has been paid as reflected on the partner's New Jersey Gross Income Tax return in the application year.

"Foundation year" means the year immediately prior to the creation of the eligible position.

"Full-time employee" means a person who is employed for consideration 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, whose wages is subject to withholding as provided in the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) or who is a partner of an eligible partnership, 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, 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., and who is certified by the applicant to be employed in a permanent position. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

"Grant" means a business employment incentive grant provided by the Authority to eligible businesses based on the withholdings of the New Jersey Gross Income Tax collected by that business annually resulting from eligible positions for new employees.

"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.

"Medical device technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of medical device technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Net income" means the net combination of a partner's distributive share of the eligible partnership's income, gain, loss, deduction, or guaranteed payments.

"Net income from the eligible partnership" means the net combination of a partner's distributive share of the eligible partnership's income, gain, loss, deduction, or guaranteed payments.

"New employee" means a full-time employee first employed in an eligible position by a business at the project which is the subject of an Agreement or who is a partner of an eligible partnership, 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, 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.); except that such a New Jersey resident whose position is relocated to this State shall not be classified as a "new employee" unless his or her wages, or his or her distributive share of income from a gain, from a loss or deduction, or his or her guaranteed payments or any combination thereof, prior to the relocation, were subject to income taxes imposed by the State or municipality in which the position was previously located. "New employee" also may include an employee rehired or called back from a bona fide layoff during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years. "New employee" shall not include: any person who was previously employed in New Jersey by the business or by a related person as defined in N.J.S.A. 54:10A-5.5 if the employee is transferred to the business which is the subject of an Agreement unless the employee's position at his or her previous employer is filled by a new employee. "New employee" shall also not include a child, grandchild, parent, or spouse of an individual associated with the business who has direct or indirect ownership of at least 15 percent of the profits, capital or value of the business, provided, however, that "new employee shall include any person who was previously co-employed in New Jersey by a professional employment organization and a business if the employee is co-employed by the same professional employment organization and a different business. "New employee" shall also include an employee whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. In addition, if a business receiving a grant merges, consolidates, or otherwise combines with another business entity and the resulting company employs former employees in eligible positions on the project, then such employees shall be deemed new employees, except for any employee who was employed by a business entity or entities merging, combining or consolidating with the business receiving a grant who would have not qualified as a new employee if the merging, combining or consolidating business entity had applied for a grant.

"New employment commitment" shall mean the number of new employees projected at the time of application or if this projected number has not been reached by the end of the base years, the number of employees actually hired at the end of the base years but in no case shall it exceed the number of new employees which the business has represented at application that it will employ and maintain during and throughout the commitment duration. New employment commitment shall also have the meanings set forth in N.J.A.C. 19:31-10.5(c) and (d).

"Non-resident New Jersey employee" means a new employee who lives outside New Jersey and who is not subject to any withholding tax under the laws of the State of New Jersey, such that the withholding for such employee must be computed pursuant to N.J.A.C. 18:35-7.8 as the hypothetical amount of withholding that would occur if the employee were to move to New Jersey.

"Partner" means a person who is entitled to either a distributive share of a partnership's income, gain, loss or deduction or guaranteed payments, or any combination thereof, by virtue of holding an interest in the partnership. Partner also includes a person who is a member of a limited liability company which is treated as a partnership, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54:1-1 et seq.

"Point-of-purchase retail facility" means a business wherein the normal and customary method of patronizing the business conducted at the facility requires the retail consumer to travel to the location to purchase the goods or professional or consumer services of that business. "Point-of-purchase retail facilities" shall not include catalog distribution centers for the purposes of this program.

"Professional employment organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to N.J.S.A. 34:8-67 et seq.

"Project" means the relocation and/or expansion of a business in New Jersey that is creating new employment opportunities; the wages of which are subject to the provisions of the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.). Project may constitute multiple locations of a business within New Jersey, but each location must meet the requirements of N.J.A.C. 19:31-10.3.

"Residual withholdings" means for any period of time, the excess of the estimated cumulative withholdings for all executed agreements eligible for payments under the Act over the cumulative anticipated grant amounts.

"Schedule NJK-1" means Schedule NJK-1 as the form existed for taxable year 1997.

"Targeted industry" means a business engaged in the field of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology or medical device technology.

"Withholdings" means the amount withheld by a business from the wages of new employees or estimated taxes paid by, or on behalf of, partners that are new employees, or any combination thereof, pursuant to the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq., and, if the new employee is an employee whose position has moved to New Jersey but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., the amount of withholding that would occur if the employee were to move to New Jersey. Withholdings shall not include amounts withheld by a business from stock options, money or other payments given to a new employee pursuant to the termination of employment of the new employee. Withholdings shall include amounts withheld by a business from stock options, money or other payments given to a new employee pursuant to a bonus for commencing employment or for services rendered by the new employee.

HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Amended "Eligible position".

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote the section.

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).

Rewrote "Business", "New employee", and "Withholdings"; added "Base employment number", "Commitment duration", "New employment commitment", and "Professional employment organization".

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Rewrote "New employee" definition.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Added definitions "Consumer Price Index", "Effective date" and "Non-resident New Jersey employee"; and rewrote definition "New employment commitment".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Added definition "Full-time employee at the qualified business facility".

Amended by R.2013 d.076, effective May 6, 2013.

See: 45 N.J.R. 110(a), 45 N.J.R. 1139(d).

Rewrote definition "Base employment number".

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TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM

N.J.A.C. 19:31-10.3 (2016)

§ 19:31-10.3 Eligibility

(a) A business may apply to the Authority for a grant if the Authority finds that:

1. The project proposed by the business shall result in a net increase in new employment at the project during the term of the agreement, and the business shall:

i. Create at least 25 eligible positions in the base years; or

ii. Create at least 10 eligible positions in the base years if the business is a targeted industry;

2. In the case of a business which is a landlord, the landlord may apply to the Authority in one consolidated application for a Business Employment Incentive Grant for any project which creates at least 25 eligible positions in the base years, and in which the tenants of members of the cooperative association have agreed to assign to the landlord any claim of right that they may have individually to a grant and have agreed to cooperate with the landlord in providing to the Authority all information required for the initial application, the Agreement and annually thereafter any other information which may be required by the Authority.

i. In the event the tenants individually meet the eligibility standards set forth herein, the tenant may elect to submit its own application for a grant rather than through its landlord;

3. The project is economically sound and will benefit the people of New Jersey by increasing opportunities for employment and by strengthening the State's economy;

i. The Authority will evaluate the financial statements and projections of the business and the proposed sources and uses of funds to ensure that the proposed project is economically viable; and

4. The Authority determines that the receipt of the business employment incentive grant will be a material factor in the business's decision to go forward with the project.

(b) Projects which consist solely of point-of-final-purchase retail facilities shall not be eligible for a grant.

1. For projects consisting of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant, and only withholdings from new employees which are employed in the portion of the project which represents non-retail facilities shall be used to determine the grant.

2. If warehouse facilities are part of a point-of-final purchase retail facility and the warehouse facilities supply only the retail facility, the warehouse facility shall not be eligible for a grant.

(c) A business which is receiving a Business Relocation Assistance Grant pursuant to P.L. 1996, c.25 shall not be eligible for a Business Employment Incentive Grant, except upon written approval by the State Treasurer.

(d) A business shall not be eligible to be approved for a grant on or after July 1, 2003 unless the business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes.

HISTORY:

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (a) and added (d).

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N.J.A.C. 19:31-10.4 (2016)

§ 19:31-10.4 Amount/term of grant

(a) The amount of the business employment incentive grant in each case shall be not less than 10 percent and not more than 50 percent of the withholdings of the eligible positions for new employees or not less than 10 percent and not more than 30 percent of the estimated tax of a partner of an eligible partnership whether paid directly by the partner or by the eligible partnership on behalf of such partner's account, or any combination thereof. In no case shall the aggregate amount of the employment incentive grant awarded pursuant to a business employment incentive agreement entered into on or after July 1, 2003 exceed an average of $ 50,000 per new employee for all new employees over the term of the grant. The average for all new employees over the term of the grant shall be determined based on annual reports submitted by the applicant, certifying the number of new employees.

1. The Authority will review the certified reports annually to determine whether the applicant has reached or exceeded the $ 50,000 per new employee limit. To the extent that the applicant has received grant funds in excess of $ 50,000 per new employee, the Authority will reduce the grant proportionally.

EXAMPLE: Company A receives a grant in the aggregate amount of $ 1,500,000 for calendar years 1 through 5. The Company certifies that it has 2,000 full-time new employees as of December 31 of Year 5. In Year 6, Company A reduces its workforce, such that it has only 25 full-time new employees as of December 31 of that year. Subsequently, in Year 7, Company A hires new employees and certifies that, as of December 31 of Year 7, it has 1,000 employees.
Based on these facts, in Year 5 of the grant term, the Authority concludes that Company A's aggregate grant amount does not exceed the $ 50,000 per new employee limitation, because the aggregate annual amount for each new employee equals $ 750.00 ($ 1,500,000/2,000 = $ 750.00). However, in Year 6 of the term, the Authority concludes that the company is not eligible for the grant, because the company's per new employee average exceeds the maximum $ 50,000 in that year ($ 1,500,000/25 = $ 60,000). In Year 7, the Authority concludes that Company A is again eligible for a grant, because the per employee amount does not exceed $ 50,000 ($ 1,500,000/1,000 = $ 1,500).
The failure of Company A to qualify for a grant in Year 6 will not extend the term of the grant.

(b) A business may be eligible to be awarded a grant of up to 80 percent of the withholdings of the business or up to 50 percent of the estimated tax of the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) as determined by and based upon criteria promulgated by the Authority following consultation with the Department of Community Affairs, Office of Smart Growth and set forth in (c) below.

(c) The following criteria shall be considered when determining the grant amount and term that a business will be eligible to receive:

1. The number of eligible positions created for new employees and the expected duration of those positions;

2. The total number of existing employees of the business;

3. The type of contribution the business can make to the long-term growth of the State's economy;

4. The amount of other financial assistance the business will receive from public sources versus private investment;

5. The total dollar investment the business is contributing to the project;

6. The type of industry that the business is involved in;

7. The location of the project;

8. The type of jobs to be created and the associated wages, with priority given to those companies that create full-time positions that average at least 1.5 times the minimum hourly wage;

9. Whether the business is a designated industry;

10. The impact of the business on State tax revenues. For the period of the grant during which the Authority remits payments to the grantee, the amount of the grant allocable to eligible employees that are residents of another state whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., shall not exceed the amount allocable to such employees at the time of the Authority's approval of the grant;

11. Whether the business is located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan;

12. Whether the business is located in a former Urban Coordinating Council or other distressed municipality as defined by the Department of Community Affairs;

13. Whether the business is located in a brownfield site, defined as the first occupants of the site after issuance of a new no-further action letter;

14. Whether the business is located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan;

15. Whether 10 percent of the employees of the business receive a "qualified transportation fringe" in a minimum amount of $ 30.00 pursuant to Title 26 of the United States Internal Revenue Code Section 132(f)(1)(a) for transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment or Section 132(f)(1)(b) for any transit pass, as such commuter highway vehicle and transit pass are defined in Section 132(f) of the Internal Revenue Code;

16. Whether the business is located in an area designated by the locality as an "area in need of redevelopment";

17. Whether the project is linked with housing production or renovation (market or affordable) utilizing at least 25 percent of the total buildable area of the site;

18. Whether the business is working cooperatively with a public or non-profit university on research and development;

19. Whether the business is within a designated industry and is located within a New Jersey Economic Development Authority Innovation Zone;

20. Whether the business is located within Federally-owned or former Federally-owned land recommended for closure by the Base Realignment and Closing Commission and approved by the President on September 8, 2005 and U.S. House of Representatives on October 27, 2005 or within a facility used as a base for military activity that may include Federal offices and private businesses; and

21. Such factors as presented by a specific applicant.

(d) The term of a grant may be for a period up to 10 years as approved by the Authority. Grant payments shall be issued by the Authority, subject to either annual appropriation from the General Fund to the Authority or issuance of a bond, the proceeds of which are intended for grant payments, beginning the next calendar year following achievement of the employment conditions and other conditions set forth in the Agreement and annually thereafter only if the State Treasurer has certified that the amount of withholdings received in the previous year by the Division from the business equals or exceeds the amount of the grant.

(e) Payment of a grant shall be subject to a certified copy of the business's prior year's payroll categorized by employees not subject to the grant and new employees subject to the grant. The certification shall identify the number of employees and partners in each category, the salary of each employee, the estimated tax paid by each partner in the foundation year, the date of hire, and withholding taxes paid for each employee.

1. Upon receipt from the Division Director of a certification of the available withholdings of the new employees and a determination by the Authority that all requirements of the agreement have been met, the Authority shall calculate the annual grant by multiplying the withholdings attributable to eligible positions for new employees by the grant percentage.

2. In the event the business creates in excess of the new employee commitment, the business may be eligible to receive an adjustment in its grant to include the lesser of the dollar amount equal to the amount of withholdings paid for the additional eligible positions above the new employment commitment multiplied by the grant award percentage; or a dollar amount which shall be a 20 percent cap above the dollar amount of the withholdings attributed to the new employment commitment adjusted annually by the Consumer Price Index, with the exception of the following which, in the discretion of the Authority, may receive the full dollar amount of withholdings paid for the additional eligible positions multiplied by the grant award percentage:

i. A business with a total of 100 employees or less at the time of application for the grant;

ii. A business making significant leasehold improvements or renovations to accommodate additional growth at the project; or

iii. A manufacturing business making a significant capital investment such as investment in a new product line or model or providing sufficient evidence that it plans a significant increase in production from existing equipment, such as higher utilization rates.

3. The business shall be awarded a grant percentage at the time of approval based on the criteria set forth in this section. On an annual basis, when determining the amount of the grant to be awarded to the business for each calendar year, the Authority shall review the annual reports submitted by the business pursuant to N.J.A.C. 19:34-10.6. If the business has not met the new employment commitment, but has achieved the minimum eligibility threshold or the business has exceeded the new employment commitment, the amount of the grant shall be based on the actual amount of eligible positions created and Authority shall adjust the awarded grant percentage for the applicable calendar year pursuant to the criteria set forth in this section and subject to N.J.A.C. 19:31-10.4(e)2.

(f) A business that is receiving any other grant by operation of State law is limited to a Business Employment Incentive Grant which annual value when combined with the other grants cannot exceed 80 percent of the business's withholdings or 50 percent of the estimated tax of partners of an eligible partnership, except upon the written approval of the State Treasurer. Amounts received as grants from the Office of Customized Training pursuant to N.J.S.A. 34:15D-1 et seq. shall be excluded from the calculation.

(g) A business that qualifies under N.J.S.A. 34:1B-129b for a grant of up to 80 percent of its withholdings or up to 50 percent of its estimated tax that is receiving any other grant by operation of State law is limited to a Business Employment Incentive Grant which annual value when combined with the other grants cannot exceed 80 percent of the business's withholdings or 50 percent of the estimated tax of partners of an eligible partnership; except upon the written approval of the State Treasurer. Amounts received as grants from the Office of Customized Training pursuant to N.J.S.A. 34:150-1 et seq. shall be excluded from the calculation.

(h) A grant received under the Act by a partnership, Subchapter S-corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S-corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed.

HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Substantially amended (c); in (d), deleted "existing" following "categorized by", and substituted "salary of each employee" for "base salary of each employee and separately any overtime paid during the grant"; in (d)1 and (d)2, subs-

tituted "new employees" for "eligible positions"; and in (d)2 substituted "are filled by new employees" for "qualify as full-time" and deleted "in either event" following "the business may".

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), added "or not less than 10 percent and not more that 50 percent of the estimated tax of a partner in an eligible position" at the end; in (d)2, deleted a former first sentence; and in (e), inserted "or 50 percent of the estimated tax" following "withholdings".

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (a); added new (b); recodified (b) through (f) as (c) through (g); deleted former (g); and amended new (c), (d), (e) and (f).

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).

In (e), rewrote 2, added 3.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Rewrote (a) and (c)15; in (c)18, deleted "and" from the end; added new (c)19; recodified former (c)19 as (c)20; in (e)2, substituted "which shall be a 20 percent cap" for "equal to up to 20 percent"; in (f), inserted "annual"; added new (g); and recodified former (g) as (h).

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (c)18, deleted "is located within five miles of and" following "business".

Amended by R.2012 d.119, effective June 18, 2012.

See: 44 N.J.R. 665(a), 44 N.J.R. 1794(a).

In (c)19, inserted "and" at the end; added new (c)20; and recodified former (c)20 as (c)21.

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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N.J.A.C. 19:31-10.5 (2016)

§ 19:31-10.5 Business expansion or relocation

(a) For businesses that are locating in the State from outside New Jersey, only new employees in eligible positions created in the base years and thereafter may be considered for grant purposes.

1. Upon Authority Board approval, the business's payroll/number of employees shall be registered, including the number of existing employees in New Jersey. Upon occupancy of the project, the business shall have until the end of the base years to achieve the number of employees as represented at application. Only those new employees in eligible positions shall be considered when determining a grant.

2. The business may receive a grant for the new employees in eligible positions represented at application and any additional new employees in eligible positions that are created during the base years and thereafter.

3. Grant payments shall be issued by the Authority subject to annual appropriation from the General Fund to the Authority or upon issuance of a bond, the proceeds of which are intended for grant payments beginning the next calendar year following achievement of the employment conditions and other conditions set forth in the Agreement and annually thereafter only if the State Treasurer has certified that the amount of withholdings received in the previous year by the Division from the business equals or exceeds in the amount of the grant.

(b) For businesses expanding in New Jersey through relocation from an existing site to a new location or expansion at its existing location, only those new employees in eligible positions to be created in the base years and thereafter may be considered when determining a grant. Grant payments shall be issued during the next calendar year upon occupancy of the project and achievement of the employment conditions set forth in the Agreement.

(c) If a business is expanding through a merger or consolidation with one or more companies, only the eligible positions created or transferred from outside New Jersey after board approval and the official date of the merger or consolidation shall be considered when determining a grant. The Authority's approval of the merger or consolidation will be conditioned on the growth of the number of new employees under the grant being subject to N.J.A.C. 19:31-10.4(e)2.

(d) To the extent a business requests to add an additional site to an existing BEIP, the Authority's approval of the new site will be conditioned on the growth of the number of new employees under the grant being subject to N.J.A.C. 19:31-10.4(e)2. The additional site will be required to meet or to have met the material factor test, unless the additional site is directly related to growth at the original project site.

HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (a), substituted "new employees in eligible positions created in the base years and thereafter may be considered" for "the new employees subject to withholding shall be considered as eligible positions"; in (a)1, substituted "Authority

Board approval" for "application to the Authority" and inserted "new" in the third sentence; in (a)2, inserted "new employees in"; substantially amended (a)3; in (b), inserted "new employees"; and in (c), deleted "eligible" following "only the new".

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), inserted ", including the number of existing employees in New Jersey" at the end of the first sentence in 1, and inserted "or estimated taxes of partners" following "withholdings" and inserted ", partnership or cooperative association" following "business" in 3; and rewrote (c).

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

In (a)3, inserted "or upon issuance of a bond, the proceeds of which are intended for grant payments" preceding "beginning the next calendar year".

Administrative correction.

See: 40 N.J.R. 809(a).

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N.J.A.C. 19:31-10.6 (2016)

§ 19:31-10.6 Grant conditions

(a) The business shall maintain the project, the required minimum number of eligible positions in New Jersey and at least 80 percent of the Base Employment Number for the commitment duration. Businesses which are tenants applying individually to the program may be restricted by the term of their lease.

(b) The Authority shall apply any job creation above the new employment commitment at the project against any losses in the base employment number when determining whether a business has fallen below 80 percent of the base employment number.

(c) By March 1st of the year after the grant year in which the business commences the grant term, the business shall submit an annual payroll report containing one section for new employees in eligible positions whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. and one section for all other new employees in eligible positions and indicating the following information for the business and the project for the grant year in which the business commenced the grant term:

1. The total amount of withholdings during the grant year for each new employee in an eligible position;

2. The eligible positions which were created during the preceding grant year;

3. The names of each new employee in an eligible position;

4. The date of hire of each new employee in an eligible position;

5. The actual salary of each new employee in an eligible position, or if the new employee is a partner of an eligible partnership, the amount of estimated taxes paid by the partner;

6. The amount of withholdings of each new employee in an eligible position;

7. The termination date, if applicable, of each new employee in an eligible position;

8. The social security numbers of each new employee in an eligible position;

9. A certification stating that no new employees are related persons of the owners of the business; and

10. A certification identifying the eligible positions that have been filled by persons who are rehired from a bona fide layoff or transferred from another company.

(d) The Authority shall be entitled to audit the payroll records of the business, to require the business to submit detailed payroll reports and to make adjustments as necessary to the amount of any future grant payment at any time during the term of the grant as the Authority deems necessary.

(e) If the business receiving a grant should generate significant new employment beyond the base years that was not originally anticipated at application, the Authority may amend the agreement to increase the annual grant percentage or term amount to reflect said increased employment subject to N.J.A.C. 19:31-10.4(e)2.

(f) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the grant agreement for any two consecutive years, the Authority may terminate the agreement.

(g) If the business does not maintain operations at the project location or another location approved by the Authority for at least 1.5 times the term of the grant, the Authority may recapture all or part of the grant in its discretion.

(h) As a condition for its continuation in the grant program, no later than March 1 of the year following the first grant year, every business which is awarded a grant from the Business Employment Incentive Program shall submit to the Authority a detailed payroll report indicating all employment positions of the business and the employees who filled those positions located in New Jersey that ceased to exist or to be located in New Jersey within six months after the date of the application.

(i) As a condition of its continuation in the grant program no later than March 1 of each year, for the preceding grant year, every business which is awarded a grant from the Business Employment Incentive Program shall submit to the Authority, on a form provided by the Authority:

1. A copy of its applicable New Jersey and Federal tax returns showing business income and withholdings and a copy of the New Jersey partnership return for eligible partnerships including Schedule NJK-1, within 30 days of filing;

2. A certification form containing one section for new employees in eligible positions whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. and one section for all other new employees in eligible positions and indicating:

i. The total amount of withholdings for new employees in eligible positions for the grant year;

ii. The total amount of new employees in eligible positions for the grant year;

iii. The total amount of new employees in eligible positions who were terminated in the grant year;

iv. A statement that no new employees are related persons of the owners of the business;

v. A copy of the NJ-W-3, annual reconciliation of tax withheld for the grant year; and

vi. With respect to all non-resident New Jersey employees, on a form provided by the Authority, a list of all such employees, with a computation of the hypothetical withholding tax in the amount that would be attributable to each such employee, calculated pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. as if the non-resident New Jersey employees are subject to New Jersey gross income tax. The computation of withholding under this subparagraph shall be based on income as reported on each non-resident employee's Federal Form W-2, Wage and Tax Statement and in accordance with the instructions and methods prescribed by the current employer instruction booklet (Form NJ-WT). The approved method for computing withholdings for single employees shall be pursuant to the Taxation Division Director's table, in effect at the time of calculation, for Percentage Method of Withholding, "Rate A," weekly payroll period. The approved method for computing withholdings for married persons or heads of household shall be pursuant to the Taxation Division Director's table, in effect at the time of calculation, for Percentage Method of Withholding, "Rate B," weekly payroll period. Each applicant business must submit copies of the Federal Form W-2 with the list required by this subsection for each non-resident New Jersey employee identified on the list;

3. A certification stating the amount, date received and provider for any grant received under State law, including the Business Relocation Assistance Grant;

4. If the business is awaiting a grant award notification for any grant offered under State law, the business shall submit a certification identifying the grant provider and the anticipated amount and date of award;

5. A copy of the business's W-3 form for the reporting year; and

6. For each new employee in an eligible position whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., a copy of the W-2 form.

(j) Should any business which is awarded a grant under the Act fail to submit to the Authority a copy of its annual certification or submit its annual certification without the information required by the time periods specified in (g) and (g)1 above, any grant payment to be received by any such business shall be forfeited for the applicable reporting year unless the Chief Executive Officer of the Authority determines that there are extenuating circumstances excusing the timely filing required herein. For purposes of this subsection (h), "extenuating circumstances" means the destruction of

the business's payroll records due to a fire, earthquake, flood, acts of terrorism, infestation, or the complete loss of the business's computer records.

HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (g)2i through iii and v, deleted "with social security numbers" following "eligible positions"; in (g)2i, substituted "base years" for "years just ended"; and in (g)2ii, inserted "from the base years.

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote the section.

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).

Rewrote (a) and (b); in (e), added the N.J.A.C. reference.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

In the introductory paragraph of (i), inserted ", on a form provided by the Authority"; in (i)2iii, deleted "and" from the end; and added (i)2v and (i)2vi.

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*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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N.J.A.C. 19:31-10.7 (2016)

§ 19:31-10.7 Application procedures

(a) A business shall apply to the Authority for a grant on a form prescribed by the Authority which requires the following:

1. The name and address of the business;

2. A history and description of the applicant's business;

3. A detailed description of the proposed project, including the location and type of activity which the business will be engaged in at the project site;

4. A detailed breakdown of the total project cost indicating sources and uses of any financial assistance for the project;

5. A complete schedule of all officers, directors and stockholders owning 15 percent or more of the stock;

6. Annual financial statements for the two most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

7. A current interim statement, if the most recent annual financial statement is more than six months old;

8. The estimate of eligible positions to be created during the base years and thereafter;

9. An estimate of total withholdings to be generated from these new positions;

10. A written certification by the chief executive officer, or equivalent officer for North American operations, stating:

i. The amount, date received and provider of any grant received under State law, including the Business Retention and Relocation Assistance Grant Program; and

ii. That the business applying for the program is not in default with any other program administered by the State of New Jersey, and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

11. If the business is awaiting a grant award notification for any grant offered under State law, the business shall submit a certification identifying the grant provider and the anticipated amount and date of award;

12. Whether the business is located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan;

13. Whether the business is located in a brownfield site, defined as the first occupants of the site after issuance of a new no-further action letter;

14. Whether the business is located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan;

15. Whether 10 percent of the employees of the business receive a "qualified transportation fringe" in a minimum amount of $ 30.00 pursuant to Title 26 of the United States Internal Revenue Code Section 132(f)(1)(a) for transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment or Section 132(f)(1)(b) for any transit pass, as such commuter highway vehicle and transit pass are defined in Section 132(f) of the Internal Revenue Code;

16. Whether the business is located in an area designated by the locality as an "area in need of redevelopment";

17. Whether the project is linked with housing production or renovation (market or affordable) utilizing at least 25 percent of the total buildable area of the site;

18. Whether the business is located within five miles of and is working cooperatively with a public or nonprofit university on research and development;

19. Whether the business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes; and

20. For publicly traded businesses, a copy of the businesses' form 10K; and

21. Any additional information deemed necessary to evaluate a specific application including, but not limited to, the certified annual statement required by N.J.A.C. 19:31-10.4(a), and the type and form of records required to be submitted to the Director pursuant to N.J.A.C. 18:35-7.1 through 7.8, as amended from time to time by the Director pursuant to N.J.S.A. 34:1B-137.

(b) A landlord shall file the information set forth in (a) above, in addition to the following:

1. A copy of the assignment by each tenant to forego any claim of right it may have to a grant; and

2. A copy of the agreement between the landlord and tenants which establishes the tenants agreed to cooperation to annually submit to the Authority its:

i. Number of new employees in eligible positions;

ii. Total employees at commencement of the Agreement between the Authority and landlord;

iii. Payroll records; and

iv. Any withholdings during the grant year.

(c) A business shall submit on a form prescribed by the Authority a detailed payroll report indicating all employment positions of the business and the employees who filled those positions located in New Jersey that ceased to exist or to be located in New Jersey within three months of the date of the application.

(d) If the applicant meets all of the program criteria set forth in the rules, the grant shall be recommended for consideration and official actions by the members of the Authority at a public meeting. The applicant has no right to have its application presented to the members of the Authority for consideration.

HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (a)5, deleted ", including resumes and signed, dated personal financial statements" following "more of the stock".

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

In (a), inserted new 12 through 19 and recodified existing 12 as 20; rewrote (b); inserted new (c); recodified and amended existing (c) as (d).

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).

In (a), added a new 20 and recodified existing 20 as 21.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Rewrote (a)15 and (a)21; and in (a)20, substituted "; and" for a period at the end.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (a)10.

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N.J.A.C. 19:31-10.8 (2016)

§ 19:31-10.8 Evaluation process

(a) When all of the required information is received, the Authority staff shall review the materials to determine what percentage and term of grant, if any, the applicant would be eligible to receive based on the eligible positions for new employees. This evaluation shall be based on an evaluation of the application and an analysis of historic and projected financial statements and a comparison to industry peers (primary emphasis will be placed on the record of profitability and financial stability for the past two years and projections of profitability and financial stability over the term of the grant) solely for the purpose of potential disqualification, debarment, and conflict of interest, providing a grant to an applicant shall constitute "financial assistance" under N.J.A.C. 19:30-2.2(a), and the terms and conditions of N.J.A.C. 19:30-2 shall apply to an applicant for a grant.

(b) If a positive determination is made, the requested business employment incentive grant request shall be presented to the members of the Authority for approval.

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N.J.A.C. 19:31-10.9 (2016)

§ 19:31-10.9 Approval process

(a) Only the members of the Authority can approve a business employment incentive grant.

(b) When the members of the Authority approve a request, the minutes of the meeting at which such approval occurs shall be submitted to the Governor.

(c) The members' approval shall become effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of the action has occurred.

(d) If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.

(e) When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.

(f) If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.

(g) If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of the grant upon request by the business.

HISTORY:

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 New Jersey Register 5047(a), 35 New Jersey Register 5369(a), 36 New Jersey Register 1198(b).

Rewrote (d) and (e); inserted new (f) and (g).

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N.J.A.C. 19:31-10.10 (2016)

§ 19:31-10.10 Rescission and withholding of grant payments

(a) Defaults under the grant agreement may include, but not be limited to:

1. Failure to comply with the requirements of this subchapter or other applicable State laws or rules;

2. Failure to comply with any condition or requirement of the Grant Agreement;

3. Failure to maintain the stipulated employment levels;

4. Submission of false or misleading information, or failure to submit relevant information; or

5. Insolvency, bankruptcy or other conditions which affect the financial integrity of the business.

(b) Upon a default under the grant agreement, in addition to any other remedies in the grant agreement and available under this section and under the Act, the Authority may withhold any payment not yet paid at the time of the default under the grant agreement. The Authority shall provide written notice to the business of its intent to withhold, reduce or terminate the grant. The business may request in writing reconsideration of the Authority's decision. The determination to withhold, reduce or terminate a grant is solely within the Authority's discretion.

(c) Upon failure to maintain the minimum eligibility threshold or 80 percent of the base employment number, the Authority may suspend the grant agreement for a period of two years, provided the company can demonstrate during that period a continued effort and commitment to growth in New Jersey. An additional one year of suspension may be granted upon application to the Authority. Any suspension shall not extend the term of the grant.

(d) Upon termination of the grant agreement, in addition to any other remedies in the grant agreement and available under this section and under the Act, the Authority may require repayment of an amount of the grant based on the period of time the business complied with the grant, provided, however, that the Authority may require repayment of the total amount paid to the business over the term of the grant if the default results from the business moving the project out of the State of New Jersey or the business being sold and moved out of the State of New Jersey.

(e) Refunds shall be made payable to the State of New Jersey with notice to the Authority for deposit in the Property Tax Relief Fund and mailed to the:

Business Employment Incentive Program
Division of Taxation
PO Box 248
Trenton, NJ 08625

HISTORY:

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 New Jersey Register 5663(a), 37 New Jersey Register 904(b).

Rewrote the section.

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N.J.A.C. 19:31-10.11 (2016)

§ 19:31-10.11 Prevailing wage and affirmative action

The business shall comply with the Authority's prevailing wage requirements, N.J.A.C. 19:30-4, and affirmative action requirements, N.J.A.C. 19:30-3, in the performance of the construction contract for the project, provided that prevailing wage shall not be required for construction commencing more than two years after an entity has executed with the Authority a commitment letter and the first payment or other provisions of assistance is received.

HISTORY:

Repeal and New Rule, R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Section was "Prevailing wage".

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Rewrote the section.

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N.J.A.C. 19:31-10.12 (2016)

§ 19:31-10.12 Fees

(a) A non-refundable application fee of $ 1,000 shall accompany every application for grant assistance.

(b) A non-refundable commitment fee of $ 1,000 is charged with the acceptance by an applicant for a BEIP grant.

(c) A non-refundable Commitment Letter extension fee of $ 1,000 shall be paid for every extension of a Commitment Letter expiration date beyond the initial expiration date.

(d) A non-refundable fee of $ 1,000 shall be paid at closing.

(e) For each project with total grant disbursements, as projected at the time of approval, of $ 1,000,000 or less, a non-refundable fee of $ 1,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of $ 2,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total grant disbursements, as projected at the time of approval, of $ 1,000,000 to $ 5,000,000, a non-refundable fee of $ 2,500 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of $ 7,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total grant disbursements, as projected at the time of approval, in excess of $ 5,000,000, a non-refundable fee of $ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of $ 25,000 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval.

(f) A non-refundable fee of $ 750.00 shall be paid for any extension to the expiration date of a grant.

(g) An annual servicing fee shall be paid to the Authority by the business and shall be deducted from the annual grant payment to the business. The servicing fee shall be two percent of the annual grant disbursement with an annual cap of $ 75,000.

(h) A non-refundable post-benefit retention equaling 20 percent of the final award shall be deducted at the time of disbursement for costs associated with monitoring annual job creation reports which, if all post award reporting is done pursuant to the grant agreement, shall be refunded at the end of the required reporting period with EDA retaining one percent per year for servicing costs.

HISTORY:

Amended by R.1998 d.150, effective March 16, 1998.

See: 29 N.J.R. 5236(a), 30 N.J.R. 1053(b).

In (b), decreased the floor from $ 1,500 to $ 500.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), inserted "and an annual cap of $ 10,000" following "$ 500.00".

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Added (c) though (e).

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

Substituted "non-refundable" for "nonrefundable" throughout; in (a), substituted "$ 1,000" for "$ 500.00"; rewrote (b); in (c), substituted "$ 1,000" for "$ 750.00"; added new (d); recodified former (d) and (e) as (e) and (f); in (e), inserted "administrative" and "; and a non-refundable fee of $ 1,500 shall be paid for any major changes, additions or modifications to the grant, such as those requiring extensive staff time and Board approval"; and added (g) and (h).

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (e).

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N.J.A.C. 19:31-10.13 (2016)

§ 19:31-10.13 Attorney General review

All documents, including the application, for the program are subject to review by the Attorney General's office.

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N.J.A.C. 19:31-11.1 (2016)

§ 19:31-11.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1997, c.235 (N.J.S.A. 58:10A-37.1 et seq.), as amended, which pertain to the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. The act established the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, a special revolving fund for the purpose of financing remediation due to the discharge of petroleum from a petroleum underground storage tank or for the costs of upgrade and closure of a regulated tank.

HISTORY:

Amended by R.2004 d.347, effective September 20, 2004.

See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Inserted "and P.L. 2003, c.148" preceding ", which pertain" and substituted "The former Act" for "This Act" at the beginning of the second sentence.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Substituted ", as amended," for "and P.L. 2003, c.148," and "act" for "former Act".

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N.J.A.C. 19:31-11.2 (2016)

§ 19:31-11.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means P.L. 1997, c.235 (N.J.S.A. 58:10A-37.1 et seq.).

"Applicant" means a corporation, partnership, limited liability corporation, individual, society, association, consortium, joint venture, commercial entity, county, municipality, or public school district which has been determined by the Department to be eligible for financial assistance or a grant.

"Authority" means the New Jersey Economic Development Authority.

"Department" means the Department of Environmental Protection.

"Discharge" means the intentional or unintentional release by any means of petroleum from a petroleum underground storage tank into the environment.

"Eligible owner or operator" means:

1. Any owner or operator, other than the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building, who owns or operates less than 10 petroleum underground storage tanks in New Jersey, who has a net worth of less than $ 3,000,000 and who demonstrates to the satisfaction of the Authority, the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs ("Category 1");

2. The owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building located in New Jersey ("Category 2");

3. A public entity who owns or operates a petroleum underground storage tank in New Jersey;

4. An independent institution of higher education that owns or operates a petroleum underground storage tank ("Category 4");

5. A nonprofit organization, corporation, or association located in New Jersey with not more than 100 paid employees, that is qualified for exemption from Federal taxation pursuant to section 501(c)(3) of the Federal Internal Revenue Code, 26 U.S.C. § 501(c)(3), who demonstrates to the satisfaction of the Authority the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs ("Category 5"); or

6. A duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad located in New Jersey ("Category 6").

"Eligible project" means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance.

"Eligible project costs" means the reasonable costs for equipment, work or services required to effectuate a remediation, an upgrade or a closure which equipment, work or services are eligible for payment from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

"Facility" means one or more operational or nonoperational petroleum underground storage tanks under single ownership at a common site.

"Financial assistance" means a grant or loan or a combination of both.

"Fund" means the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

"Independent institution of higher education" means those institutions of higher education incorporated and located in the State, which, by virtue of law or character or license, are nonprofit educational institutions empowered to grant academic degrees and which provide a level of education which is equivalent to the education provided by the State's public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which are eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey. "Independent institution of higher education" does not include any educational institution dedicated primarily to the preparation or training of ministers, priests, rabbis, or other professional persons in the field of religion.

"Non-residential building" means any building that is not a residential building.

"Operator" means any person in control of, or having responsibility for, the daily operation of a facility at the time that the application for financial assistance is submitted. The term "operator" also includes a person who, prior to the time that the application for financial assistance is submitted, sold a facility for which the person had daily operational control or responsibility for its daily operation, and who, in order to meet the person's obligation under State or Federal law to remediate contamination caused by the discharge of hazardous substances from the facility, contracts with the buyer to conduct the remediation of the contamination subsequent to the closing of the sale of the facility.

"Owner" means any person who owns a facility.

"Paid employees" means:

1. All persons in an employment position in New Jersey certified by the applicant as permanent, which position provides for employment for compensation for at least 35 hours per week where the wages for such position are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.; or

2. Persons holding such other employment arrangement approved in writing by the Authority. Paid employees shall not include temporary or seasonal employees or those employed by a vendor, independent contractor, consultant, agent or other entity doing business with the applicant unless approved in writing by the Authority.

"Pension" means a sum of money, usually funded fully or in large part by an employer, or in the case of the self-employed, by the pension recipient, set aside for the recipient as a retirement benefit. This includes, but is not limited to, all plans as defined by 26 U.S.C. § 401.

"Petroleum underground storage tank" means a tank of any size, including appurtenant pipes, lines, fixtures, and other related equipment that normally and primarily stored petroleum, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more below the ground.

"Primary residence" means a homestead actually and continually occupied by an applicant as the applicant's permanent residence, as distinguished from a vacation home, property owned and rented or offered for rent by the applicant, and other secondary real property holdings. An applicant can have only one primary residence for purposes of this subchapter.

"Public entity" means any county, municipality, or public school district, but shall not include any authority created by those entities.

"Regulated tank" means a petroleum underground storage tank that is required to be upgraded pursuant N.J.S.A. 58:10A-21 et seq. or 42 U.S.C. §§ 6991 et seq.

"Remediation" means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of petroleum, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, as those terms are defined in N.J.S.A. 58:10B-1.

"Residential building" means a dwelling and not ancillary structures.

"State" means State of New Jersey.

"Unregulated tank" means a petroleum underground storage tank that is not required to be upgraded pursuant to N.J.S.A. 58:10A-21 et seq. or 42 U.S.C. §§ 6991 et seq.

"Upgrade" means the replacement of a regulated tank, the installation of secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, or overfill prevention thereof, or any other necessary improvement to the regulated tank in order to meet the standards for regulated tanks adopted pursuant to section 5 of P.L. 1986, c.102 (N.J.S.A. 58:10A-25) and 42 U.S.C. §§ 6991 et seq.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In "Applicant", inserted a reference to limited liability corporations.

Amended by R.2004 d.347, effective September 20, 2004.

See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Rewrote "Eligible owner or operator" and "Eligible project costs", and added "Independent institution of higher education", "Paid employees", "Pension" and "Primary residence".

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Rewrote definitions "Eligible owner or operator", "Eligible project costs" and "Operator"; in definition "Independent institution of higher education", substituted "the" for "this" following "located in"; in definition "Primary residence", inserted the last sentence; and added definitions "Non-residential building", "Residential building", "State" and "Unregulated tank".

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N.J.A.C. 19:31-11.3 (2016)

§ 19:31-11.3 Eligibility

(a) Financial assistance from the fund may be made for eligible projects to:

1. Eligible owners or operators to finance eligible project costs of an upgrade or closure of a regulated tank pursuant to 42 U.S.C. §§ 6991 et seq. or N.J.S.A. 58:10A-21 et seq., provided that they owned or operated the subject tank as of December 1, 2002 and continually thereafter or inherited the property from a person who owned the property as of that date;

2. Eligible owners or operators to finance eligible project costs of remediation due to the discharge of petroleum from one or more tanks, provided that, in the case of regulated tanks, they owned the tank(s) at the time of closure;

3. Eligible owners or operators of regulated tanks that are not operational to finance the closure and remediation of those tanks for 18 months after the date of discovery of the tank, or June 30, 2010, whichever is later;

4. Eligible owners or operators of regulated tanks to finance eligible project costs of closure and remediation if the application is filed with the Department by June 30, 2010, and the application fee is received by the Authority and the application is deemed complete by December 31, 2010;

5. Eligible owners or operators of regulated tanks who have met the upgrade requirements pursuant to 42. U.S.C. §§ 6991 et seq. or P.L. 1986, c. 102 (N.J.S.A. 58:10A-21 et seq.) may qualify for a loan in order to finance an improvement or replacement of a regulated tank to meet State and Federal standards;

6. Category 5 and 6 eligible owners or operators of petroleum underground storage tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building where no remediation is required may qualify for a grant to finance eligible project costs of closure and replacement, provided that the tank was not previously replaced with a grant from the Fund;

7. Eligible owners or operators in Category 5 and 6 may qualify for a grant to finance eligible project costs of closure or remediation of a petroleum underground storage tank; and

8. Eligible owners or operators of petroleum underground storage tanks used to store heating oil for onsite consumption in a residential building may qualify for a grant to finance eligible project costs of closure or closure and replacement. To the maximum extent possible, the eligible owner or operator shall replace the tank with an aboveground tank.

HISTORY:

Amended by R.2004 d.347, effective September 20, 2004.

See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

In (a), added 3.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Rewrote the section.

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SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE AND CLOSURE FUND

N.J.A.C. 19:31-11.4 (2016)

§ 19:31-11.4 Amount of financial assistance

(a) Financial assistance may be for 100 percent of the eligible project costs, subject to any dollar limitations as may otherwise be set forth in this subchapter. Loans for upgrade, remediation or closure, or any combination, for any one facility, shall not exceed $ 2,000,000, except as provided in (a)1 and 2 below:

1. In the case of an eligible owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et seq.), or the Highlands Region designated pursuant to section 7 of P.L. 2004, c. 120 (N.J.S.A. 13:20-7), the eligible owner or operator may receive a loan in an amount not to exceed $ 3,000,000; and

2. A loan that an applicant may receive from the fund for a remediation of a discharge that poses a threat to a drinking water source may not exceed $ 3,000,000.

(b) Grants for upgrade, remediation, closure, or replacement or any combination, for any one facility, shall not exceed $ 500,000 except as provided in (b)1 and 2 below.

1. In the case of an eligible owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et seq.), or the Highlands Region designated pursuant to section 7 of P.L. 2004, c. 120 (N.J.S.A. 13:20-7), the eligible owner or operator may receive a grant in an amount not to exceed $ 1,000,000 for each facility so located.

2. In the case of a closure, or closure and replacement, of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required, an eligible owner or operator may receive a grant for the eligible project costs consistent with the cost guidelines established by the Department pursuant to section 4 of P.L. 2009, c. 134 (N.J.S.A. 58:10A-37.5b) and in effect at the time the closure is performed.

3. In the case of an emergency remediation of a discharge from a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building, an eligible owner or operator may receive a grant in an amount equal to the actual costs incurred by the Department or its authorized agents (excluding administrative costs), and borne by the eligible owner or operator.

4. In the case of a closure or replacement of a petroleum underground storage tank with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building that is owned or operated by those in either Category 5 or Category 6, where no remediation is required, the eligible owner or operator may receive a grant for the eligible project costs of the closure or replacement in an amount consistent with the cost guidelines developed by the Department pursuant to section 4 of P.L. 2009, c. 134 (N.J.S.A. 58:10A-37.5b) and in effect at the time the closure or replacement is performed, provided that the petroleum underground storage tank was not previously replaced with a grant from the Fund.

5. A Category 4 eligible owner or operator may receive a grant in an amount up to $ 1.5 million per institution to fund the remediation costs.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Amended by R.2004 d.347, effective September 20, 2004.

See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Rewrote the section.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Section was "Amount and terms of financial assistance and conditional hardship grants". Rewrote the section.

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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N.J.A.C. 19:31-11.5 (2016)

§ 19:31-11.5 Eligible project costs

(a) Financial assistance from the Fund may be made for eligible projects, as follows:

1. In the case of an upgrade or closure of a regulated tank, eligible project costs are limited to the cost of the minimal effective system necessary to meet all the regulatory requirements of Federal and State law, except that an eligible owner or operator who has met the upgrade requirements pursuant to 42 U.S.C. §§ 6991 et seq. or P.L. 1986, c. 102 (N.J.S.A. 58:10A-21 et seq.) may be awarded a loan which shall not be limited to the cost of a minimal effective system, in order to finance the costs of the improvement or replacement of tanks to meet State and Federal standards as provided in subsection g. of section 5 of P.L. 1997, c. 235 (N.J.S.A. 58:10A-37.5). The limitation of eligible project costs to the minimal effective system shall not be construed to deem ineligible those project costs expended to replace a regulated tank rather than to improve the regulated tank. An owner or operator may perform an upgrade or a closure beyond the minimal effective system in which case the eligible project costs that may be awarded from the Fund as financial assistance in the form of a grant shall be that amount that would represent the cost of a minimal effective system.

2. In the case of a remediation, replacement, or closure of an unregulated tank, eligible project costs shall include the cost to replace a tank with an aboveground or underground storage tank.

3. In the case of a remediation, eligible project costs shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances adopted pursuant to the "Municipal Land Use Law," P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.) does not allow for residential use.

4. No financial assistance may be awarded from the Fund for remediation if the discharge began after completion of an upgrade intended to meet all applicable upgrade regulations of the Department.

5. Except as set forth below in this subsection, no award of financial assistance shall be made from the Fund for the otherwise eligible project costs of a remediation, closure or an upgrade, or parts thereof, completed prior to an award of financial assistance from the Fund:

i. Eligible project costs may include the cost of a preliminary assessment and site investigation, even if performed prior to the award of financial assistance from the Fund, if the preliminary assessment and site investigation were performed after August 30, 1997;

ii. Eligible project costs may include reimbursement of expenditures incurred by eligible owners or operators, from their own funds, for remediation efforts undertaken after filing an application for financial assistance from the Fund for the eligible project costs of the remediation;

iii. Eligible project costs may include reimbursement of expenditures incurred by independent institutions of higher education that have expended their own funds on a remediation prior to filing an application for financial assistance

from the Fund for expenditures for the eligible project costs of the remediation made on or after December 1, 1996, in an amount not to exceed $ 500,000 for each institution;

iv. Eligible project costs may include reimbursement of expenditures incurred by owners and operators for closure, or closure and replacement, of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required prior to the completion of such work if the applicant submits all of the information required pursuant to N.J.A.C. 19:31-11.8 to the Authority within 45 days of issuance by the Authority of a preliminary approval letter;

v. Eligible project costs may include reimbursement of expenditures incurred by an applicant for remediation of a tank at the applicant's primary residence prior to filing an application;

vi. Eligible project costs may include reimbursement of expenditures incurred by an eligible owner or operator in the case of an emergency remediation of a discharge from a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building paid to the Department or its agent (except for administrative costs); and

vii. Eligible project costs may include reimbursement of expenditures made by Category 5 and 6 applicants for remediation of a discharge caused by a tank with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a non-residential building on or after October 1, 2009, but prior to the filing of an application.

6. Once financial assistance for an upgrade or closure is awarded for a facility, no additional award of financial assistance for upgrade or closure costs may be made for that facility. However, if an applicant discovers while performing upgrade or closure activities that a remediation is necessary at the site of a facility, and if financial assistance was previously awarded for that site only for an upgrade or closure of a regulated tank, the applicant may amend its application and apply for financial assistance for the required remediation subject to the limitations enumerated in section 5 of P.L. 1997, c. 235 (N.J.S.A. 58:10A-37.5).

7. An applicant shall not receive financial assistance from this Fund if assistance was previously made under the Hazardous Discharge Site Remediation Fund at that site.

8. No person shall be eligible for a grant from the Fund to replace a petroleum underground storage tank that stores heating oil for onsite consumption in a residential building if the tank that stores heating oil for that residential building was previously replaced using a grant from the Fund.

HISTORY:

New Rule, R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Former N.J.A.C. 19:31-11.5, Priority system for financial assistance, recodified to N.J.A.C. 19:31-11.7.

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N.J.A.C. 19:31-11.6 (2016)

§ 19:31-11.6 Terms of financial assistance

(a) An entity applying for financial assistance from the Fund may only be awarded financial assistance in the form of an interest free loan, as follows:

1. Loans from the Fund shall be for a term of not more than 10 years. Interest on loans from the Fund, except loans to public entities, shall be equal to an amount fixed between two percent and the prime rate at time of approval, or at the time of closing if the prime rate is lower. The Authority shall determine the interest rate based on the applicant's ability to repay the loan.

2. If the facility for which the loan was made is sold, the unpaid balance of the loan shall become immediately due and payable in full.

3. A loan shall be awarded only upon a finding that the applicant, other than a public entity, is able to repay the loan.

4. Except for eligible owners and operators in Categories 2, 4 and 6, applicants cannot be awarded a loan unless they show the inability to qualify for a conventional loan for all or part of the eligible project costs.

(b) An applicant, other than a public entity, may apply for and receive a conditional hardship grant based on Authority findings under all of the following three criteria:

1. Eligibility:

i. In order to be eligible for a conditional hardship grant for closure or upgrade, in the case of a regulated tank, the applicant shall have owned or operated the subject regulated tank as of December 1, 2002 and continually thereafter or shall have inherited the property from a person who owned the regulated tank as of that date; and not have a taxable income of more than $ 250,000 or a net worth, exclusive of the applicant's primary residence and pension, of over $ 500,000 taxable income derived from the tax return in the year prior to making application.

ii. In order to be eligible for a conditional hardship grant for remediation, in the case of a regulated tank, the applicant shall have owned or operated the subject regulated tank at the time of tank closure; and not have a taxable income of more than $ 250,000 or a net worth, exclusive of the applicant's primary residence and pension, of over $ 500,000 taxable income derived from the tax return in the year prior to making application.

iii. The eligibility requirements for net worth and taxable income are not applicable to applicants qualifying as eligible owners or operators under Categories 4, 5 or 6 and seeking grant monies for closure or remediation costs;

2. Financial hardship:

i. A finding of financial hardship by the Authority shall be based on a review of the applicant's financial condition and a determination that an applicant cannot reasonably be expected to repay all or a portion of the eligible project costs if the financial assistance were to be awarded as a loan.

ii. The amount of an award of a conditional hardship grant shall be the amount of that portion of the eligible project costs the Authority determines the applicant cannot reasonably be expected to repay; however, any applicant with a taxable income of more than $ 200,000 who qualifies for a grant shall be required to pay no more than $ 1,000 of the eligible project costs; and

3. Satisfaction of statutory criteria at N.J.S.A. 58:10A-37.5(c).

(c) Upon the sale of the facility for which a conditional hardship grant was made, the conditional hardship grant shall become immediately payable in full, to the extent required by N.J.S.A. 58:10A-37.16. No repayment of a conditional hardship grant shall be required for a remediation necessitated by a discharge at the applicant's residence, nor shall repayment be required if the sale is pursuant to a condemnation proceeding or the exercise of the power of eminent domain.

(d) Conditional hardship grants shall be subject to the lien provisions set forth in the Act.

(e) An application for financial assistance from the Fund for an upgrade or closure of a regulated tank shall include all regulated tanks at the facility for which the applicant is seeking financial assistance.

(f) An application for financial assistance for an upgrade or closure of a regulated tank shall be conditioned upon the applicant agreeing to perform, at the time of the upgrade or closure, any remediation necessary as a result of a discharge from the regulated tank and commencement of the remediation within the time prescribed and in accordance with all appropriate rules and regulations.

HISTORY:

New Rule, R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Former N.J.A.C. 19:31-11.6, Application for financial assistance, recodified to N.J.A.C. 19:31-11.8.

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N.J.A.C. 19:31-11.7 (2016)

§ 19:31-11.7 Priority system for financial assistance

(a) Upon the Authority's approval of an application for financial assistance, the Authority shall award financial assistance upon availability of sufficient monies in the fund. When monies in the fund are not sufficient at any time to fully fund all applications for financial assistance that have been approved by the Authority, the Authority shall award financial assistance to approved applicants, notwithstanding the date of application in the following priority as determined by the Department.

1. Upgrades of regulated tanks required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation at the site of the regulated tank;

2. Closure of any regulated tank required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation at the site of the regulated tank;

3. Upgrades of regulated tanks requiring upgrade pursuant to N.J.S.A. 58:10A-21 et seq. but not pursuant to 42 U.S.C. §§ 6991 et seq. and necessary remediation at the site of the regulated tank;

4. Any necessary remediation at the sites of petroleum underground storage tanks other than those given priority in (a)1, 2 and 3 above;

5. Closure of any regulated tank required to be upgraded pursuant to N.J.S.A. 58:10A-21 et seq., but not pursuant to 42 U.S.C. §§ 6991 et seq.

(b) Notwithstanding the priority for the award of financial assistance, whenever there has been a discharge, and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area, an approved application shall be given priority over all other applications.

HISTORY:

Recodified from N.J.A.C. 19:31-11.5 by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Former N.J.A.C. 19:31-11.7, Evaluation process for financial assistance, recodified to N.J.A.C. 19:31-11.9.

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N.J.A.C. 19:31-11.8 (2016)

§ 19:31-11.8 Application for financial assistance

(a) Upon determination of eligibility by the Department, the Department shall notify the Authority of the eligibility of the applicant, and the total amount of eligible project costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source.

(b) The applicant will be given priority for financial assistance based on the date of receipt by the Authority of a completed application, subject to the priority system set forth in N.J.A.C. 19:31-11.5.

(c) If the application is determined by the Authority to be incomplete, the applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority.

(d) If the applicant fails to file the additional information within the 30 day period, the filing date for the application shall be the date the additional information is received by the Authority.

(e) A change in the filing date resulting from failure to submit a completed application or from failure to submit the application fee in a timely fashion for applications filed for financial assistance for a regulated tank to meet the upgrade or closure requirements pursuant to 42 U.S.C. §§ 6991 et seq. or P.L. 1986, c.102 (N.J.S.A. 58:10A-21 et seq.) or for the remediation of a discharge from any such regulated tank shall not render the application ineligible for financial assistance as long as the initial date of application is prior to June 30, 2010, or for a regulated tank that is not operational, 18 months from the date of discovery of the tank or June 30, 2010, whichever is later.

(f) A completed application from an applicant shall include, if applicable as determined by the Authority:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the financial assistance proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of Federal income tax returns for the three most recent years;

4. A current personal financial statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheet, operating statement, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements, EDA application, tax clearance certificate and property deed; and

9. Submission of an application and fee for a tax clearance certificate pursuant to P.L. 2007, c. 101.

(g) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable;

4. Submission of documentation or other information on the nature and scope of the work to be performed, cost estimates, and proofs of the actual costs of all work performed;

5. Demonstration of an ability to repay the amount of any loan and to provide adequate collateral to secure the loan; and/or

6. Submission of documentation and a certification as applicable that the applicant was unable to qualify for and obtain a commercial loan for all or part of the eligible project costs.

(h) Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the members of the Authority or deny the application. The applicant has no right to have its application presented to the members of the Authority.

(i) In the case of a closure or a replacement and closure of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required, if an applicant submits a complete application package to the Authority prior to the completion of the project and the Authority determines that the applicant qualifies for the grant, the Authority shall issue written confirmation that the applicant will receive a grant upon completion of the project, subject to the applicant's submission of the following to the Authority within 45 days from the issuance date of the written confirmation: invoices; executed General Non-Leaking Tank Certification; executed Contractor Non-Leaking Tank Certification; executed Financial Assistance Agreement; copy of the deed for the subject property; and a valid Business Tax Clearance Certificate. For purposes of this subsection, a complete application package shall include all of the following: non-refundable application fee; completed Non-Leaking Tank Application; executed Frequently Asked Questions; current Personal Financial Statement; and Federal Income Tax Returns for the last three years.

(j) The written confirmation shall be valid for 45 days from the date of issuance. Any applicant, who has received written confirmation pursuant to this subsection and fails to submit the documentation, certification, or other information required by this subsection before the expiration date of confirmation, shall be required to submit a new application for review.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (e), substituted a reference to applicants for a reference to businesses in the introductory paragraph, and deleted a former 9.

Amended by R.2004 d.347, effective September 20, 2004.

See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Added a new (e) through (g), and recodified former (e) through (g) as (h) through (j).

Recodified from N.J.A.C. 19:31-11.6 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (b), inserted ", subject to the priority system set forth in N.J.A.C. 19:31-11.5"; in (e), substituted "2010" for "2005" and "June 30, 2010" for "February 15, 2005"; deleted former (f) and (g); recodified former (h) as (f); in (f)2, substituted "financial assistance" for "loan"; in (f)3, inserted "Federal income"; in (f)4, substituted "personal financial" for "interim"; in (f)7, deleted "and" from the end; in (f)8, substituted ", EDA application, tax clearance certificate and property deed; and" for a period at the end; added (f)9; recodified former (i) and (j) as (g) and (h); and added new (i) and (j). Former N.J.A.C. 19:31-11.8, Approval process for financial assistance, recodified to N.J.A.C. 19:31-11.10.

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N.J.A.C. 19:31-11.9 (2016)

§ 19:31-11.9 Evaluation process for financial assistance

(a) When all of the required information is received, the Authority shall perform its own credit evaluation based on the following, as applicable:

1. Visitation to the applicant's place of business;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard and Poor's Industry Survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's suppliers to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination shall be made as to the merits of the request and, if a loan, the likelihood of repayment, and the adequacy of the collateral available to secure the loan.

(c) If a positive determination is made, the requested financial assistance shall be presented to the members of the Authority for approval, or considered by authorized Authority staff through delegated authority, if applicable.

HISTORY:

Recodified from N.J.A.C. 19:31-11.7 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In the introductory paragraph of (a), inserted ", as applicable"; in (a)6, substituted "suppliers" for "bank(s)"; in (b), inserted "and, if a loan,", and substituted "loan" for "requested financial assistance" following "secure the"; and in (c),

inserted ", or considered by authorized Authority staff through delegated authority, if applicable". Former N.J.A.C. 19:31-11.9, Disbursement of financial assistance, recodified to N.J.A.C. 19:31-11.11.

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N.J.A.C. 19:31-11.10 (2016)

§ 19:31-11.10 Approval process for financial assistance

(a) Only the members of the Authority can approve financial assistance from the Fund, unless the authority to approve certain types of transactions has been expressly delegated by the members to Authority staff.

(b) When the members approve financial assistance, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, or if Authority staff has rendered its approval under delegated authority, a formal commitment letter, notice of approval of financial assistance shall be issued to the applicant.

1. The notice of approval shall contain all terms, conditions and collateral required by the Authority and in the case of a loan may include, among other things, that:

i. Life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's financial assistance. The life insurance must name the Authority as collateral assignee; and

ii. Personal or corporate guarantees of owners of 10 percent or more of the applicant are required, and there may be a requirement for collateral apart from the applicant's collateral to secure the guarantees, based on the amount to be loaned.

(e) Within 120 calendar days of receipt of the notice of approval of financial assistance, an applicant shall submit to the Authority an executed contract for the remediation upgrade and/or closure activities for which the financial assistance was approved. The contract shall indicate the nature and scope of the work to be performed, cost estimates of the work, and, as available, proofs of the actual costs of all work performed. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance.

(f) When the notice of approval has been accepted by the applicant and returned to the Authority, a list of closing instructions shall be mailed to the applicant or attorney for the applicant.

(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a closing for financial assistance shall be scheduled and the funds made available to the applicant, subject to any preconditions to disbursement imposed thereon by the Authority.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (d)1, substituted "in the case of a loan may" for "will" following "Authority and" in the introductory paragraph, and inserted a references to corporate guarantees in ii; in (e), rewrote the first sentence; and in (f), inserted "applicant or" preceding "attorney".

Recodified from N.J.A.C. 19:31-11.8 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), inserted ", unless the authority to approve certain types of transactions has been expressly delegated by the members to Authority staff"; in the introductory paragraph of (d), inserted "or if Authority staff has rendered its approval under delegated authority,"; and in (g), inserted ", subject to any preconditions to disbursement imposed thereon by the Authority". Former N.J.A.C. 19:31-11.10, Attorney General review, recodified to N.J.A.C. 19:31-11.12.

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N.J.A.C. 19:31-11.11 (2016)

§ 19:31-11.11 Disbursement of financial assistance

(a) All requests for disbursements of the financial assistance shall be submitted by the applicant to the Department with a certification from the contractor or consultant that the requested moneys have been or will be spent in accordance with a Department approved scope of work. The Authority will disburse funds only upon written approval by the Department. Notwithstanding the foregoing, the Authority will disburse funds for closure or closure and replacement of a non-leaking tank upon satisfactory review and approval of a completed application and imposition of a statutory lien, if applicable.

(b) The recipient of financial assistance must provide access to the Authority and the Department, at reasonable times, to the subject property to determine compliance with the terms and conditions of the financial assistance.

(c) In the case of a grant, payment shall be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the discharger or other responsible party.

(d) Where financial assistance to a person other than a public entity, is for a portion of the remediation cost, the applicant shall provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance shall be disbursed.

(e) If a combination loan and grant is awarded, the Authority shall release the loan monies prior to the release of the grant monies, and only release the grant monies upon closure and complete disbursement of the loan.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (b), deleted a reference to grants.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (a), inserted "or will be" preceding "spent in accordance".

Recodified from N.J.A.C. 19:31-11.9 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), inserted "to the Department" and inserted the last two sentences; and added (e). Former N.J.A.C. 19:31-11.11, Fees, recodified to N.J.A.C. 19:31-11.13.

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SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE AND CLOSURE FUND

N.J.A.C. 19:31-11.12 (2016)

§ 19:31-11.12 Attorney General review

All financing documents, including the application, are subject to review by the Attorney General's Office.

HISTORY:

Recodified from N.J.A.C. 19:31-11.10 by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Former N.J.A.C. 19:31-11.12, Public record, recodified to N.J.A.C. 19:31-11.14.

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N.J.A.C. 19:31-11.13 (2016)

§ 19:31-11.13 Fees

(a) An application fee shall be charged as follows:

1. $ 250.00 for tanks in residential buildings;

2. $ 500.00, at application, for tanks in nonresidential buildings; $ 500.00 or one-half of one percent of the financial assistance, whichever is greater, upon the acceptance of financial assistance under the Fund; and $ 500.00 or one-half of one percent of the financial assistance, whichever is greater, at closing; and

3. $ 1,000 for seven or more tanks in nonresidential buildings.

(b) An annual surcharge as set forth in (b)1 through 3 below shall be imposed upon the owner or operator of a facility who does not maintain evidence of financial responsibility in accordance with N.J.S.A. 58:10A-25 or pursuant to 42 U.S.C. §§ 6991 et seq., as determined by the Department.

1. Facilities with one or two petroleum underground storage tanks shall pay $ 1,500.

2. Facilities with three to six petroleum underground storage tanks shall pay $ 3,500.

3. Facilities with more than seven petroleum underground storage tanks shall pay $ 6,000.

(c) Payment shall be due within 30 days of receipt of an invoice.

HISTORY:

Recodified from N.J.A.C. 19:31-11.11 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a)1 and (a)3, inserted "tanks in" and substituted "buildings" for "tanks per facility"; and rewrote (a)2.

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N.J.A.C. 19:31-11.14 (2016)

§ 19:31-11.14 Public record

All information submitted to the Department and/or the Authority as part of an application for financial assistance shall be deemed a public record subject to the provisions of N.J.S.A. 47:1A-1 et seq.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Deleted a reference to grants.

Recodified from N.J.A.C. 19:31-11.12 by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

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N.J.A.C. 19:31-12.1 (2016)

§ 19:31-12.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1997, c. 334, as amended by P.L. 2009, c. 90 and P.L. 2010, c. 10. This Act establishes a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in New Jersey.

HISTORY:

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Substituted "c. 334, as amended by P.L. 2009, c. 90 and P.L. 2010, c. 10" for "c.334".

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N.J.A.C. 19:31-12.2 (2016)

§ 19:31-12.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Allowable expenditures" means costs incurred in connection with the operation of the new or expanding emerging technology or biotechnology business in the State, including, but not limited to, the expenses of fixed assets, such as the construction, acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, and research and development expenditures.

"Authority" means the New Jersey Economic Development Authority.

"Biotechnology" means the continually expanding body of fundamental knowledge about the function 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 which add to the body of fundamental knowledge.

"Biotechnology business" means an emerging corporation that has a headquarters or base of operations located in New Jersey that owns, has filed for, or has a license to use protected, proprietary intellectual property and whose primary business is the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes.

"Buying business" means a business with the financial ability to purchase the unused net operating loss carryover and/or unused research and development tax credits from an unaffiliated selling business. For the purpose of this definition, the test of affiliation is whether the same entity directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of both the selling and buying businesses.

"Camden innovation zone" means the innovation zone in the southern part of the State bounded as follows: in the north by the Ben Franklin Bridge, in the east by Interstate 676, in the south by Kaighns Avenue, and in the west by the Delaware River.

"Certificate" means the certificate issued by the Division of Taxation certifying to the selling business amounts of unused net operating loss carryover and/or unused research and development tax credit carryovers.

"Financial statements" means a statement prepared by an independent Certified Public Accountant (CPA), which shall include an opinion letter indicating the scope of the services performed (compilation, review, or audit) in accordance with Generally Accepted Accounting Principles (GAAP) as determined by the Financial Standards Accounting Board (FASB) and shall include a balance sheet, statement of income and expenses, cash flow statement, other statements as determined by the independent CPA, and footnotes where applicable.

"Full-time employee" means a person employed by a new or expanding emerging technology or biotechnology company 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 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., or who is a partner of a new or expanding emerging technology or biotechnology company 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, 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 who is employed under a formal written agreement with an institution of higher education whereby the institution's students are employed by the technology or biotechnology company on a permanent basis within a single position and in compliance with all other requirements of this definition. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits under a group health plan as defined under section 14 of P.L. 1997, c. 146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology business; or any person who works as an intern, as a temporary employee, or in a temporary position.

"Full-time employee working in this State" means 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.

"Greater New Brunswick innovation zone" means the innovation zone bounded as follows: in the north by Route 287 to Stelton Road to Metlars Lane to Route 18, in the east by Route 1, in the south by Suydam Road/Claremont Road/Finnegan's Lane, and in the west by the Millstone River and Raritan River, which includes parts of North Brunswick, New Brunswick, Piscataway and Franklin Township and Rutgers University's Livingston campus.

"Innovation zone" means any of the three zones located in the northern, central and southern portions of New Jersey designated by the Authority as the Newark innovation zone, North/New Brunswick innovation zone and Camden innovation zone, respectively.

"License" means an agreement that states therein that it is granting an exclusive license that authorizes the applicant to control aspects of the development of the 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, that does not grant the applicant control of the protected proprietary intellectual property.

"Net operating loss" means the excess of the deductions over the gross income used in computing entire net income in a specific year without regard to the net operating loss carryover to that year and the dividend exclusion, as provided in N.J.S.A. 54:10A-4(k)(6)(C).

"New or expanding" means a technology or biotechnology company that:

1. On June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L. 1997, c. 334 (N.J.S.A. 34:1B-7.42a et al.) and on the date of the exchange of the corporation business tax benefit certificate, has fewer than 225 employees in the United States of America;

2. On June 30 of the year in which the company files such an application, has at least one full-time employee working in this State if the company has been incorporated or formed, irrespective of corporate structure or tax status, for less than three years, has at least five full-time employees working in this State if the company has been incorporated or formed, irrespective of corporate structure or tax status, for more than three years but less than five years, and has at least 10 full-time employees working in this State if the company has been incorporated or formed, irrespective of corporate structure or tax status, for more than five years; and

3. On the date of the exchange of the corporation business tax benefit certificate, the company has the requisite number of full-time employees in New Jersey that were required on June 30 as set forth in paragraph 2 above.

In calculating the number of employees under this definition, employees of all affiliates and subsidiaries as shown on its consolidated financial statements, employees of any company that owns or controls at least 50 percent of the applicant, as well as the employees of any consolidated group of affiliated corporations as filed for Federal income tax purposes shall be included.

"Newark innovation zone" means the innovation zone in the northern part of the State bounded as follows: in the north by Interstate 280, in the east by McCarter Highway (Route 21) and the Pennsylvania Railroad, in the south by Market Street to South Orange Avenue, and in the west by Bergen Street.

"Program" means the Technology Business Tax Certificate Transfer Program.

"Protected proprietary intellectual property" means intellectual property that is the technology of the applicant's primary business as a technology or biotechnology business that is also protected via a patent pending, patent awaiting approval, approved patent, or registered copyright.

"Research and development tax credits" means a tax credit against corporation business tax liabilities for taxpayers who have performed qualified research activities in New Jersey, calculated in the manner as the Federal tax credit for increasing research activities. The credit is based on qualified expenditures in New Jersey beginning on or after January 1, 1994. It provides a credit of 10 percent of the excess qualified research expenses over a base amount plus 10 percent of the basic research payments. Taxpayers must complete New Jersey Division of Taxation--Corporate Business Tax Form 306 to claim their credit. The amount of credit claimed for any single tax year cannot exceed 50 percent of that year's tax liability prior to the consideration of this credit and it cannot reduce the tax liability below the statutory minimum, as set forth in N.J.S.A. 54:10A-5.24.

"Selling business" means a new or expanding technology and/or biotechnology business that has unused net operating loss carryover and/or unused research and development tax credits which it wishes to "sell."

"Technology business" means an emerging corporation, that has a headquarters or base of operations located in New Jersey, that owns, has filed for, or has a license to use protected, proprietary intellectual property whose primary business is the provision of a scientific process, product, or service and that employs some combination of the following: highly educated and/or trained managers and workers employed in New Jersey who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service. Examples of activities satisfying this definition include: the designing and developing of computing hardware and software; the research, development, production, or provision of materials with engineered properties created through the company's development of specialized processing and synthesis technology and the research, development, production or provision of technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices.

"Unused net operating loss carryover" means net operating loss for any tax year as defined in N.J.S.A. 54:10A-4(k)(6)(B).

"Unused research and development tax credits" means the amount of tax credit otherwise allowable which cannot be applied because it would reduce the tax liability below 50 percent of the liability prior to consideration of the credit or it reduces the tax below the statutory minimum, as provided in N.J.S.A. 54:10A-5.24(b).

HISTORY:

Amended by R.2003 d.297, effective July 21, 2003.

See: 35 N.J.R. 1655(a), 35 N.J.R. 3393(a).

Added "New applicant", "Re-certification applicant", "Returning applicant".

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Added "Camden innovation zone", "Innovation zone", "Newark innovation zone" and "North/New Brunswick innovation zone" definitions.

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In definition "Biotechnology business", substituted "corporation" for "company" and inserted "that owns, has filed for, or has a license to use protected, proprietary intellectual property"; in definition "New or expanding", added the last sentence; and rewrote definition "Technology business".

Amended by R.2008 d.164, effective June 16, 2008.

See: 40 N.J.R. 1630(a), 40 N.J.R. 3748(a).

Rewrote definition "New or expanding".

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In definition "Allowable expenditures", substituted "business" for "company" and inserted "and" preceding "research"; rewrote definitions "Biotechnology business", "New or expanding" and "Unused net operating loss carryover"; in definition "Camden innovation zone", substituted "Bridge" for "bridge"; added definitions "Financial statements", "Full-time employee", "Greater New Brunswick innovation zone", "License" and "Protected proprietary intellectual property"; and deleted definitions "New applicant", "North/New Brunswick innovation zone", "Re-certification applicant" and "Returning applicant".

Amended by R.2012 d.119, effective June 18, 2012.

See: 44 N.J.R. 665(a), 44 N.J.R. 1794(a).

Added definition "Full-time employee working in this State"; and in paragraph 2 of definition "New or expanding", inserted "or formed, irrespective of corporate structure or tax status," three times.

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

Rewrote definitions "Full-time employee", "License", and "Protected proprietary intellectual property".

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N.J.A.C. 19:31-12.3 (2016)

§ 19:31-12.3 Eligibility

(a) A business shall be eligible to apply to the program if the Authority finds that the business:

1. Meets the definition of a technology or biotechnology business;

2. Has unused amounts of research and development tax credits and/or unused net operating loss carryover; and

3. Meets the definition of new or expanding.

(b) No application shall be approved in which the business:

1. Has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements;

2. Is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements or is part of a consolidated group of affiliated corporations, as filed for Federal income tax purposes, that in aggregate has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its combined financial statements. For purposes of this paragraph, a corporation that directly or indirectly owns or controls at least 50 percent of the applicant and a corporation that is part of a consolidated group of affiliated corporations with the applicant shall be considered to have net operating income only if the corporation must report net operating income in its financial statements; or

3. Filed its application, such that the Authority received the application after June 30 of the program cycle year.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a)3, inserted "or no" following "negative net".

Amended by R.2003 d.443, effective November 3, 2003.

See: 35 N.J.R. 3466(a), 35 N.J.R. 5162(a).

In (a)4, inserted last sentence.

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In (a)2, inserted "and" at the end; rewrote (a)3; deleted (a)4; and added (b) and (c).

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In (a)3, deleted ", provided that returning applicants are not required to meet this condition of eligibility"; in (b)1, inserted "operating" and "or"; deleted former (b)2; recodified former (b)3 as (b)2; in (b)2, inserted "operating" twice; and deleted (c).

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

In (b)1, deleted "or" from the end; in (b)2, substituted "; or" for a period at the end; and added (b)3.

Amended by R.2015 d.135, effective August 17, 2015.

See: 47 N.J.R. 987(a), 47 N.J.R. 2186(a).

Rewrote (b)2.

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N.J.A.C. 19:31-12.4 (2016)

§ 19:31-12.4 Application to the program

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable $ 2,500 application fee. Complete applications must be received by June 30 for each State fiscal year.

(b) In order for the Department of Treasury, Division of Taxation to issue a certificate, each application submitted to the program shall include: a selling business application which includes the information set forth in (c) below; a spending certification form attesting to having spent the proceeds of the prior year's sale of tax benefits in accordance with the definition of allowable expenditures; a Buying Business Information Sheet which identifies the buying business name, address, telephone number, the estimated value of benefits to be transferred in an amount equal to at least 80 percent of the surrendered tax benefit and from whom and a business certification; an agreement between the buying and selling business defining the terms of the sale of the certificate; and the Tax Benefit Identification Form which summarizes the accumulated net operating losses and research and development credits authorized to be sold and the value intended to be sold. For determination of eligibility for the program, the initial application package shall also include a selling business application and a spending certification form.

(c) In addition to the material specified in (b) above, a completed application shall include, but is not limited to:

1. A description of the nature of the business conducted by the company;

2. A company business plan;

3. Financial statements for the two most recent full years of operation;

4. A list of all affiliates and subsidiaries as reflected on the consolidated financial statements of the applicant and the number and location of all employees of such corporation(s);

5. A list of all entities and affiliated groups of corporations that directly or indirectly own or control 50 percent or greater of the selling business, the number and location of all employees of any such entity and affiliated group of corporations, and the two most recent full years of financial statements for each such entity and affiliated group of corporations that must report net operating income in its financial statements;

6. A list of all entities that form a consolidated group of affiliated corporations, as filed for Federal income tax purposes, the number and location of all employees of such corporation(s), and financial statements for the two most recent full years of operation;

7. A representation as to the location of the applicant's primary place of business in an Innovation Zone;

8. A description of the applicant's technology or biotechnology business which shall demonstrate that such business is the primary business of the applicant and that the applicant meets the other criteria of the definition of technology or biotechnology business. Where applicable, documentation of protected proprietary intellectual property must be provided;

9. A list of all full-time employees employed in this State, including Social Security number for each, address on record with the applicant for each employee, whether the employee has submitted a Certificate of Non-residence for an exemption from the New Jersey Gross Income Tax, whether any employee is pursuing a higher education degree, if so known to the applicant, whether any employee is related, as defined in Section 152(d)(2) of the Internal Revenue Code, to any other employee, shareholder, or investor if so know to the applicant, and copies of most recent year's Federal and New Jersey W-3 forms for applicant, parent company, and all related entities, or documentation from a professional employer organization summarizing W-2 forms issued on behalf of the applicant, parent company, and all related entities in New Jersey and in the United States for the calendar year prior to the year in which the company files its application and at the time of the application;

10. The employment offer letter, resume, and job description for every employee hired in the current year;

11. A list of 100 percent of ownership of the applicant by percentage;

12. A copy of the certificate of incorporation/formation for the applicant and its earliest predecessor entity; and

13. Any other supplemental information required by the Authority.

(d) Applications are processed through several layers of staff review and may then be recommended for consideration and official action of the Authority's Board of Directors at its scheduled public meeting.

(e) The Division of Taxation, Department of the Treasury separately reviews applicants and may make recommendations regarding program eligibility.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), rewrote the second sentence.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (a), deleted "July 28, 1999 for consideration in State FY 00 and by" preceding "June 30"; in (c)3, inserted "and/or tax returns for the same periods" at the end of the paragraph.

Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (c), substituted "three" for "two" in 3, rewrote 4 and 5, deleted former 10 and 11, recodified former 12 as 10 and deleted "and projected two years", and recodified former 13 as 11.

Amended by R.2003 d.297, effective July 21, 2003.

See: 35 N.J.R. 1655(a), 35 N.J.R. 3393(a).

Rewrote (a).

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In (a)1 and (a)2, substituted "$ 1,500" for "$ 1,000"; rewrote (a)3; and rewrote (c).

Amended by R.2008 d.164, effective June 16, 2008.

See: 40 N.J.R. 1630(a), 40 N.J.R. 3748(a).

In the introductory paragraph of (a), inserted ", including new, recertification and returning applications," and "$ 2,500", and deleted "as outlined in (a)1 through (a)3 below" following "fee"; and deleted (a)1 through (a)3.

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In (a), deleted ", including new, recertification and returning applications," following "program"; in (b), inserted "in an amount equal to at least 80 percent of the surrendered tax benefit"; rewrote (c)3; deleted former (c)4 and (c)5; recodified former (c)6 through (c)8 as (c)4 through (c)6; in (c)6, inserted "financial statements for" preceding "the two most" and substituted "operation" for "financial statements for each"; deleted former (c)9 through (c)12; recodified former (c)13 as (c)7; in (c)7, deleted "or a state-sponsored incubator site" following "Zone"; added new (c)8 through (c)11; deleted (c)14; and recodified former (c)15 as (c)12.

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

Rewrote (c)4 and (c)9; in (c)5 and (c)6, substituted "entities" for "corporations"; added new (c)10; recodified former (c)10 through (c)12 as (c)11 through (c)13; in (c)11, deleted "percent" following "ownership"; rewrote (c)12; and in (e), inserted "the".

Amended by R.2015 d.135, effective August 17, 2015.

See: 47 N.J.R. 987(a), 47 N.J.R. 2186(a).

Rewrote (c)5.

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N.J.A.C. 19:31-12.5 (2016)

§ 19:31-12.5 Evaluation process

(a) When all of the required information is received, the Authority shall perform its own review based on the standards set forth in N.J.A.C. 19:31-12.3.

(b) After completing its review under (a) above, a preliminary determination shall be made by the Authority as to the merits of the request and its adherence to the statutory requirements of the program. Upon this determination, the applicant will receive notification of preliminary approval that will state the conditions that must be met before the Authority will issue final approval. The notification of preliminary approval will state that the Authority will forward the application to the Division of Taxation only upon receipt of the following:

1. A Buying Business Information Sheet which identifies the buyer, the amount of tax benefits to be sold and the selling price;

2. A Tax Benefit Identification Form on which the applicant lists the amount of tax benefits they wish to sell and the years that the Net Operating Loss's and/or Research and Development tax credits were incurred;

3. A Private Financial Assistance Form specifying how the applicant will expend the private financial assistance for allowable expenditures for the operations of the company;

4. An executed form of the standard selling agreement, with the Private Financial Assistance Form attached as an exhibit; and

5. If the applicant was authorized to sell and did sell tax benefits in the prior year, a spending certification that attests that the applicant spent the proceeds of the prior year's sale of tax benefits in accordance with the prior year's Private Financial Assistance Form.

(c) After approval of the tax benefit by the Division of Taxation as evidenced by the issuance of a tax certificate which will be sent to the Authority, the Authority will issue final approval of the grant only upon the receipt of a certificate from the applicant, dated the date of the closing of the sale of the tax benefit certificate that states, among other matters, the number of employees employed on that date by the applicant in the United States of America and in New Jersey, and that as of the date of the certificate, the company is operating as a new or expanding emerging biotechnology or technology business and has no current intention to cease operating as a new or expanding emerging biotechnology or technology business.

HISTORY:

Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (a), rewrote 4 and 5i.

Amended by R.2002 d.334, effective October 7, 2002.

See: 34 N.J.R. 2414(a), 34 N.J.R. 3531(b).

Rewrote (b) and (c).

Amended by R.2003 d.443, effective November 3, 2003.

See: 35 N.J.R. 3466(a), 35 N.J.R. 5162(a).

Rewrote (c).

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

Rewrote (a)4 through (a)6.

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In (a), substituted "the standards set forth in N.J.A.C. 19:31-12.3." for "the following minimum criteria:"; deleted (a)1 through (a)6; and in (c), inserted "the number of employees employed on that date by the applicant in the United States of America and in New Jersey, and" and deleted the last sentence.

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N.J.A.C. 19:31-12.6 (2016)

§ 19:31-12.6 Approval process

(a) All applications for eligibility in the program shall be presented to the members of the Authority for approval or denial.

(b) When the members approve or deny a request, the minutes at which such determination occurs are submitted to the Governor.

(c) The members' action is effective 10 working days after the Governor's receipt of the minutes, provided no veto has been issued.

(d) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. The Authority cannot consider any new evidence or information about the project other than evidence or information that would demonstrate that the applicant met all of the application criteria by the June 30 deadline. Appeals will be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his/her finding(s) and recommendation(s) on the merits of the appeal; and

3. The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final decision on the appeal.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (d), rewrote the first sentence.

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In the third sentence of (d), inserted "which" and substituted "considered" for "reconsidered".

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Rewrote (a); in (b), inserted "approve or" and substituted "determination" for "denial"; rewrote the introductory paragraph of (d); and added (d)1 through (d)3.

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N.J.A.C. 19:31-12.7 (2016)

§ 19:31-12.7 Allocation of tax benefits

(a) The Program is authorized to provide no more than $ 60,000,000 of tax benefits over each State fiscal year. Of the $ 60,000,000 of transferable tax benefits authorized for each State fiscal year $ 10,000,000 shall be allocated exclusively among the eligible companies that operate within the boundaries of the innovation zones, except as provided in (a)2ii below. In the event the total amount of transferable tax benefits approved exceeds these limitations or any subsequent limitations, the Authority shall allocate the transfer of tax benefits as follows:

1. Each company is limited to a maximum lifetime tax benefit of $ 15,000,000.

2. The Authority shall allocate the $ 10,000,000 designated for eligible companies in innovation zones as follows:

i. For eligible companies in innovation zones, each company is eligible for an allocation of the lesser of $ 250,000 or the value of their eligible benefits. After these allocations are made to these companies from the $ 10,000,000 innovation zone allocation, any remaining balance of the $ 10,000,000 shall be apportioned among eligible companies in innovation zones with unmet eligible benefits on a pro rata basis;

ii. If, in any State fiscal year, there is an unused portion of the $ 10,000,000 allocated exclusively for companies in innovation zones, that portion shall be available for that State fiscal year for the surrender of transferable tax benefits by new and/or expanding emerging technology and biotechnology businesses that do not operate within the boundaries of an innovation zone; and

iii. The eligible companies in innovation zones with remaining unmet eligible benefits shall participate in the allocation of the remaining pool as set forth in (a)3 below.

3. The Authority shall allocate the remaining tax benefits as follows:

i. Businesses with less than $ 250,000 in tax benefits will be authorized to sell all of their benefits in the current year;

ii. Businesses with more than $ 250,000 in tax benefits will be authorized to sell at least $ 250,000 of their benefits in the current year; and

iii. If the total amount of benefits authorized under (a)2 and 3i and ii above exceeds $ 60,000,000, each applicant shall receive a lesser amount on an apportioned basis, otherwise after the dollars are set aside in the amounts provided in (a)2 and 3i and ii above, the remaining funds available to the program, in that fiscal year, shall be allocated among the businesses with more than $ 250,000 of tax benefits. The available tax benefits shall be determined by reducing the amount of tax benefits to be transferred for each business by the minimum amount of tax benefits authorized for that business and then multiplying that amount by the following factor:

Numerator of Fiscal Year Dollar Authorization less Total Minimum Tax Benefits Authorized over denominator of Total Tax Benefits Requested to be Transferred less Total Minimum Tax Benefits Authorized.

The total minimum tax benefits authorized is the amount authorized for businesses with less than $ 250,000 of tax benefits plus the minimum tax benefits authorized for businesses with more than $ 250,000 of tax benefits. The total tax benefits requested to be transferred is the total amount of tax benefits requested to be transferred by all businesses.

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), deleted "$ 50,000,000 of tax benefits over State fiscal year 2000 and" following "provide" in the introductory paragraph.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (a), rewrote the introductory paragraph and added new 4, recodified 4 as 5.

Administrative correction.

See: 37 N.J.R. 3724(a).

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In the introductory paragraph of (a), deleted ", $ 10 million shall be so allocated for eligible companies that operate within the boundaries of the innovation zones in each respective State fiscal year thereafter" from the end of the second sentence; in (a)3, inserted "also" in the second sentence, and added the last sentence; and in (b), substituted "applicants" for "applications".

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Rewrote the section.

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

In (a)1, substituted "$ 15,000,000" for "$ 15 million"; in the introductory paragraph of (a)2, and in (a)2i and (a)2ii, substituted "$ 10,000,000" for "$ 10 million" throughout; and in (a)3iii, substituted "$ 60,000,000" for "$ 60 million".

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N.J.A.C. 19:31-12.8 (2016)

§ 19:31-12.8 Recapture of tax benefits

(a) Unless excepted pursuant to (b) below, if a selling business fails to use the private financial assistance received for the surrender of tax benefits as required by this subchapter or fails to maintain a headquarters or a base of operation in the State during the five years following receipt of the private financial assistance, the seller shall forfeit and remit the face value of the tax credit certificate received for the surrender of tax benefits to the Department of Treasury in accordance with the provisions in subsections (c) and (d) below. The face value of the tax credit certificate is the amount of surrendered tax benefits.

(b) The forfeiture requirement in (a) above pertaining to the failure to maintain a headquarters or a base of operation in this State shall not be applicable if the failure is due to the liquidation of the new or expanding emerging technology or biotechnology business.

(c) In the event a selling business fails to maintain a headquarters or base of operation in the State during the five years following the receipt of the private financial assistance, the Authority will allow the selling business to retain 20 percent of the face value of the tax credit certificate for each full year the business remained in New Jersey providing the business forfeits and remits to the Department of Treasury 20 percent per year on a cumulative basis for each year the business had remaining on the five year requirement to maintain a headquarters or base of operation in New Jersey.

Examples:

Move within one year of disbursement, recapture percentage equal to 100 percent of the face value of the tax credit certificate

Move within two years of disbursement, recapture percentage equal to 80 percent of the face value of the tax credit certificate

Move within three years of disbursement, recapture percentage equal to 60 percent of the face value of the tax credit certificate

Move within four years of the disbursement, recapture percentage equal to 40 percent of the face value of the tax credit certificate

Move within five years of the disbursement, recapture percentage equal to 20 percent of the face value of the tax credit certificate

(d) In the event a selling business fails to use the tax benefits or cash benefits as required by the Act, the Authority shall require the selling business to remit to the Department of Treasury 100 percent of the amount of the unallowable expenditures.

HISTORY:

New Rule, R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Amended by R.2015 d.135, effective August 17, 2015.

See: 47 N.J.R. 987(a), 47 N.J.R. 2186(a).

In (a), inserted "in subsections (c) and (d)" and the last sentence.

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N.J.A.C. 19:31-13.1 (2016)

§ 19:31-13.1 Applicability and scope

The rules in this subchapter were promulgated by the New Jersey Commerce, Economic Growth and Tourism Commission (the "Commission") to implement P.L. 2004, c.65 (the "Act"), and specifically, section 23 of the Act (N.J.S.A. 52:27H-87.1). Section 23 of the Act establishes an energy sales tax exemption program (the "Program") to provide for an exemption of sales and use tax for retail sales of electricity and natural gas and their transport to a qualified business in a New Jersey urban enterprise zone for consumption in the zone, or a vertically integrated combination of qualified businesses manufacturing a single product within a single redevelopment area within an enterprise zone, that employs at least 250 people at least 50 percent of whom are directly employed in a manufacturing process. The program was established under the jurisdiction of the Commission, and was administered by the Commission, in accordance with the procedures for obtaining the exemption as may be provided under the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303, the Sales and Use Tax Act, P.L. 1966, c.30, and this subchapter. Effective July 1, 2008, jurisdiction and administration of the program was transferred to the New Jersey Economic Development Authority, pursuant to P.L. 2008, c.27, §10.

HISTORY:

Amended by R.2006 d.323, effective September 5, 2006.

See: 38 N.J.R. 1524(a), 38 N.J.R. 3619(a).

Substituted "250" for "500" and "whom" for "which".

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N.J.A.C. 19:31-13.2 (2016)

§ 19:31-13.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"Application" means the authorized application form submitted to the Authority from a business for approval of an energy sales tax exemption.

"Authority" means the New Jersey Economic Development Authority.

"Directly employed" means employed as an employee, and not as an independent contractor, and directly involved in the manufacturing process of the business applying for the energy sales tax exemption.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Employ" means for purposes of this subchapter, utilize the productive services of people as full-time employees. "Full-time employee" is defined at N.J.A.C. 12A:2-1.2.

"Energy sales tax exemption" means the energy sales and use tax exemption for retail sales of energy and utility service approved by the Chief Executive Officer pursuant to the Act and this subchapter.

"Enterprise zone" or "urban enterprise zone" or "UEZ" means an urban enterprise zone designated by the New Jersey Urban Enterprise Zone Authority created by the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303.

"Family of products" means a group of products that, when taken together, are primarily (at least 60 percent) used, purchased and sold as a single product, product line, or brand marketing.

"Manufacturing" means the performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition or character different from that in which they were acquired. The change must be substantial and must result in a transformation of property into a different or substantially more useable product.

"New Jersey Urban Enterprise Zone Program" or "UEZ Program" means the program administered by the UEZ Authority pursuant to P.L. 1983, c.303.

"Qualified business" means a qualified business as defined at N.J.S.A. 52:27H-62.

"Qualified group" means a group of businesses that consist of a group of two or more persons:

1. Each of which is a qualified business and all of which are located within a single redevelopment area adopted pursuant to the "Local Redevelopment and Housing Law," P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.);

2. That collectively employ at least 250 people within a single redevelopment area within an enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process;

3. Are each engaged in a vertically integrated business, evidenced by the manufacture and distribution of a product or family of products that, when taken together, are primarily used, packaged and sold as a single product;

4. Each use the energy and utility service for the exclusive use or consumption of each of the persons that comprise a group within an enterprise zone; and

5. Each of which contributes at least 60 percent of its product towards the manufacture of the single, integrated product.

"Redevelopment area" means an area determined to be in need of redevelopment or to be a blighted area as further defined at N.J.S.A. 40A:12A-3.

"UEZ Authority" means the New Jersey Urban Enterprise Zone Authority created pursuant to P.L. 1983, c.303, which is in the Department of Community Affairs.

HISTORY:

Amended by R.2006 d.323, effective September 5, 2006.

See: 38 N.J.R. 1524(a), 38 N.J.R. 3619(a).

Inserted definition "Qualified business"; and in paragraph 2 of definition "Qualified group", substituted "250" for "500".

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N.J.A.C. 19:31-13.3 (2016)

§ 19:31-13.3 Eligibility criteria

(a) To qualify for energy sales tax exemption for the retail sale, transmission, or distribution of electricity and natural gas, an applicant shall be required to be certified by the Authority to receive the benefits of the New Jersey Urban Enterprise Zone Program pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303, and the applicable rules of the Authority; and shall be further required to be either:

1. A qualified business that employs at least 250 people within an enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process, for the exclusive use or consumption of such business within the enterprise zone; or

2. A group of two or more persons:

i. Each of which is a qualified business and all of which are located within a single redevelopment area adopted pursuant to the "Local Redevelopment and Housing Law, P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.);

ii. That collectively employ at least 250 people within a single redevelopment area within an enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process;

iii. That are each engaged in a vertically integrated business, evidenced by the manufacture and distribution of a product or family of products that, when taken together, are primarily used, packaged and sold as a single product, product line or brand marketing; and

iv. That collectively use the energy and utility service (which may be in separate accounts) for the exclusive use or consumption of each of the persons that comprise a group within a single redevelopment area within an enterprise zone.

HISTORY:

Amended by R.2006 d.323, effective September 5, 2006.

See: 38 N.J.R. 1524(a), 38 N.J.R. 3619(a).

In (a)1 and (a)2ii, substituted "250" for "500".

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N.J.A.C. 19:31-13.4 (2016)

§ 19:31-13.4 Requests for applications

(a) The Authority shall process applications for the energy sales tax exemption through its New Jersey Urban Enterprise Zone Program. Initial application requests shall be to the New Jersey Economic Development Authority, PO Box 990, Trenton, New Jersey 08625.

(b) Annual renewal for applicants satisfying the criteria of N.J.A.C. 19:31-13.3(a) will be made during the annual re-certification process in accordance with UEZ Program procedures at N.J.A.C. 5:120-2. For applicants approved within six months prior to their next re-certification date, the requirement for annual renewal shall be deferred to the following re-certification date provided such date is not more than 18 months hence.

(c) Renewal applications by applicants satisfying the criteria for N.J.A.C. 19:31-13.3(b)2 shall be required to be submitted annually within 45 days prior to the expiration date of the energy sales tax exemption.

HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Codified the former first through third sentences as present (a) through (c), respectively; added the second sentence in (b); and in (c) substituted "Renewal" for "Certificate" and "by" for "for".

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N.J.A.C. 19:31-13.5 (2016)

§ 19:31-13.5 Submission requirements

(a) Each application for the energy sales tax exemption submitted to the Authority shall include the following:

1. The name, address and Employer Identification Number (EIN), also known as a Federal tax identification number of the applicant;

2. The address of the facility which is the subject of this application;

3. The number of total employees at the site for which the exemption application is being submitted;

4. The number of full-time employees that are directly employed in the manufacturing process of the applicant;

5. The name and address of the company(ies) that supply, transmit, and distribute electricity and natural gas to the facility;

6. The account identification numbers and billing information including contact name for each account identified in (a)5 above;

7. An estimate of the facility's annual quantity use of electricity and natural gas in units and in dollars;

8. A description of the nature of the business and the facility for which this application is being made;

9. The North American Industrial Classification System identification number(s) applicable to the applicant;

10. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey; and

11. Such additional information as may required by the Chief Executive Officer to provide a complete and accurate description of the business that is applying for this exemption.

(b) Applicants seeking to qualify for the energy sales tax exemption as a qualified group shall first establish that they are engaged in a vertically integrated business activity. Such activity shall be evidenced by a thorough description of the principal business activity that will occur at each location in the single redevelopment area within the enterprise zone and an explanation, satisfactory to the Authority, of how these business activities are integrally connected to each other in a manner that produces a common, manufactured product(s). This description shall include at least one specific, verifiable, measure of how such integration shall be monitored. For example, a business might submit that 90 percent of its manufactured output is physically packaged with the product made by another member of the vertically integrated group.

(c) Once the businesses seeking to qualify for the energy sales tax exemption as a qualified group are determined by the Authority to be a vertically integrated business activity, then the group application will be evaluated in combination with the other members of the group to determine if the group is eligible as a qualified group.

1. Each application submitted to the Authority by a group of vertically integrated qualified businesses shall include the submission requirements of (a) above for each individual business in the group.

2. In addition to (c)1 above, the application shall be required to provide evidence satisfactory to the Authority that all individual businesses in the group are located within a single redevelopment area.

3. The group as a whole, rather than each individual business, shall be considered in meeting eligibility requirements of directly employing at least 250 people within the single redevelopment area within the enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process.

(d) In the case of a qualified group, each time an application from a new business seeking to be added to, or an existing business seeking to be deleted from, the qualified group, the submission requirements of this section shall be required to be satisfied promptly for the group as so changed. If no new businesses are added or existing business are deleted during the year, the annual renewal requirements of N.J.A.C. 19:31-13.4 for qualified groups shall apply.

HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Inserted "including contract name" in (a)6; and in (c) substituted "the businesses" for "a business", "are" for "is" and "the group" for "its", inserted "a" preceding "vertically" and inserted "activity".

Amended by R.2006 d.323, effective September 5, 2006.

See: 38 N.J.R. 1524(a), 38 N.J.R. 3619(a).

In (a)7, inserted "in units and in dollars"; in the introductory paragraph of (c), inserted "a" preceding "vertically"; and in (c)3, substituted "250" for "500".

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N.J.A.C. 19:31-13.6 (2016)

§ 19:31-13.6 Application and review procedures

(a) Applicants shall submit to the Authority a completed Application for Energy Sales Tax Exemption. The application, signed by an authorized representative of the business, shall bear either a legible post-mark date or a date-received stamp from the Authority.

(b) The Authority shall conduct a review of the applications in the order received, commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application or may require the submission of the entire application, if incomplete. The Authority shall review the applications to determine whether:

1. The application complies with the eligibility criteria;

2. The application satisfies the submission requirements; and

3. The application adequately provides information for the subject applicants.

(c) Program staff, after reviewing the application, shall make a recommendation to the Chief Executive Officer, who after consideration of that recommendation, shall approve, approve with modifications, or deny an application in the program.

(d) Upon completion of the review of an application pursuant to (b) above, the Authority shall notify the applicant whether the application has been approved by the Chief Executive Officer.

1. In the event that an application is approved, the Chief Executive Officer will notify the applicant, the President of the Board of Public Utilities and the Director, that a qualified business or a qualified group has met the requirements for the energy sales tax exemption. In accordance with P.L. 1966, c.30 (N.J.S.A. 54:32B-1 et seq.). The Division of Taxation shall then issue an Exemption Certificate (UZ-6) to the qualified business or qualified group.

2. In the event that an application is denied, the applicant shall be notified of the denial and the reasons for such denial.

3. After notification of a denial, should the circumstances change so that the applicant reasonably believes its application will be approved, the applicant may reapply to the program no earlier than 90 days from the date the Chief Executive Officer issued the denial.

(e) Once a qualified group is approved, each member of the group shall be subject to all the same provisions and procedures as any other qualified manufacturing business that is not a member of a qualified group. However, if the Chief Executive Officer subsequently determines that a previously qualified group is no longer eligible for the energy sales tax exemption, then each member of that group shall be required to immediately surrender its exemption certificate to the Chief Executive Officer.

HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Inserted ", signed by an authorized representative of the business," in the second sentence of (a); inserted (c); and recodified former (c) and (d) as (d) and (e).

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CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 13. ENERGY SALES TAX EXEMPTION PROGRAM

N.J.A.C. 19:31-13.7 (2016)

§ 19:31-13.7 Monitoring, inspection, and reporting

(a) The Authority and agents of the State of New Jersey, shall monitor compliance with respect to the eligibility criteria for this energy sales tax exemption. An applicant or any business that is approved to receive this exemption benefit shall permit any agent of the State of New Jersey to enter said business during reasonable business hours to determine compliance with the eligibility criteria of the program. Failure to permit access to determine eligibility will result in the forfeiture of the exemption benefit and may require repayment of sales and use tax previously exempted from payment, as the Authority shall determine.

(b) Each qualified business and qualified group that receives this energy sales tax exemption shall be required to maintain records documenting all of its tax-exempt purchases. This information must be supplied to the Authority upon request. In addition, a report summarizing the totals of all exempt energy purchases must be provided for the prior year as a component of the annual renewal or recertification application.

(c) Each qualified business and qualified group that receives approval of its application for the energy sales tax exemption shall notify the Authority if it ceases to meet the manufacturing and employment requirements for the energy sales tax exemption for more than a total of three weeks in any two consecutive months.

HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Added (c).

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N.J.A.C. 19:31-13.8 (2016)

§ 19:31-13.8 Rescission

(a) The Chief Executive Officer, in addition to any other rights or remedies available pursuant to law, may withhold, reduce, or terminate this sales and use tax exemption or any portion thereof for good cause. The circumstances under which this may occur include, but are not limited to:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or rules;

2. Failure to comply with any condition or requirement of the Urban Enterprise Zone Program;

3. Failure to maintain the employment levels stipulated in the Urban Enterprise Zone Program;

4. Submission of false or misleading information, or failure to submit relevant or complete information to the Authority;

5. Any act of insolvency, the filing of a petition in bankruptcy (voluntary or involuntary) or the existence of other conditions affecting the financial integrity of the applicant; or

6. Failure to comply with any condition, term, or requirement of the Authority relating to this program.

(b) The Chief Executive Officer shall provide written notice to the business of its intent to rescind the applicant's qualification status for the energy sales tax exemption benefit. The determination to rescind the benefit shall be solely within the Chief Executive Officer's discretion.

(c) The Chief Executive Officer shall provide notice of the determination to rescind to the Director, who shall rescind the sales and use tax exemption certificate issued to the business.

(d) Any rescission of the energy sales tax exemption will require repayment by the business or group of all exempted tax payments, and such penalties as may be assessed in accordance with the State Uniform Tax Procedure Law, R.S. 54:48-1 et seq. from the effective date of the rescission as determined by the Authority.

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N.J.A.C. 19:31-13.9 (2016)

§ 19:31-13.9 Appeals

Appeals under this subchapter shall be subject to the appeals procedures governing the subchapter on sales and use tax exemption at N.J.A.C. 12A:2A-2.13.

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SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

N.J.A.C. 19:31-14.1 (2016)

§ 19:31-14.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as substantially amended by P.L. 2004, c.65, §§ 1 through 16 (the "Act") and P.L. 2010, c. 123. The Act provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The Act established a business retention and relocation assistance grant program ("BRRAG Program" or "Program"), a tax credit certificate transfer program, a sales and use tax exemption program, and an energy sales tax exemption program (for businesses located in New Jersey urban enterprise zones). The purpose of the BRRAG Program is to encourage economic development and to preserve jobs that currently exist in New Jersey, but which are in danger of being relocated to premises outside of the State. To implement that purpose, and to the extent that funding for the Program is available, the Program may provide grants of tax credits but in no case shall the amount of an individual grant of tax credits exceed the limitations set forth in this subchapter and further specified in the project agreement of an applicant for a grant of tax credits.

HISTORY:

Recodified from N.J.A.C. 12A:2-1.1 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Economic Development Authority" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')", deleted the fourth sentence, and inserted "BRRAG" preceding "Program is to encourage".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Inserted "(N.J.S.A. 34:1B-112 et seq.)" and "and P.L. 2010, c. 123".

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N.J.A.C. 19:31-14.2 (2016)

§ 19:31-14.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). An entity may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes.

"Agreement" or "project agreement" means an agreement between a business and the Authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c.25, as amended by P.L. 2004 c.65, §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123.).

"Authority" means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is subject to the provisions of N.J.S.A. 43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by an affiliate or based upon retained full-time jobs of an affiliate.

"Business employment incentive program grant" or "BEIP grant" means the grant made to a business by the New Jersey Economic Development Authority pursuant to the provisions of P.L. 1996, c.26 (N.J.S.A. 34:1B-124 et al).

"Business retention or relocation grant of tax credits" or "grant of tax credits" means a grant which consists of the value of corporation business tax credits against the liability imposed pursuant to section 5 of P.L. 1945, c.162 (N.J.S.A. 54:10A-5) or credits against the taxes imposed on insurers pursuant to P.L. 1945, c.132 (N.J.S.A. 54:18A-1 et seq.), section 1 of P.L. 1950, c.231 (N.J.S.A. 17:32-15), and N.J.S.A. 17B:23-5, provided to fund a portion of retention and relocation costs pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, and pursuant to this subchapter.

"Capital investment" means expenses that the business incurs following its submission of an application to the Authority pursuant to section 5 of P.L. 1996, c. 25 (N.J.S.A. 34:1B-116), but prior to the Capital Investment Completion Date, as shall be defined in the project agreement, for: the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property in this State; and obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility in this State. Provided, however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this definition, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 168). For the purposes of this definition, cubicles and cubicles that include office equipment shall constitute capital investment. A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be.

"Certificate of compliance" means a certificate issued by the Authority pursuant to section 9 of P.L. 1996, c. 25 (N.J.S.A. 34:1B-120).

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Commitment duration" means the tax credit term and five years from the end of the tax credit term specified in the project agreement entered into pursuant to section 5 of P.L. 1996, c.25 (N.J.S.A. 34:1B-116), as amended by P.L. 2004, c.65, and pursuant to this subchapter.

"Designated industry" means an industry identified by the Authority as desirable for the State to maintain, which may be designated and amended via promulgation of rules by the Authority to reflect changing market conditions.

"Designated urban center" means an urban center designated in the State Development and Redevelopment Plan adopted by the State Planning Commission, pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A-200).

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Eligible position" means a full-time position retained by a business in this State for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes.

"Fiscal year" means the State fiscal year of July 1 to June 30.

"Full-time employee" means a person employed by the business 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, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) 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, 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. or an employee who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or who is a partner of a 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 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. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

"New business location" means the premises to which a business will relocate that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than the commitment duration or eight years, whichever is greater, from the date of relocation. A "new business location" also means the business's current location or locations if the business makes a capital investment equal to the total value of the business retention or relocation grant of tax credits to the business at that location or locations. In the event the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness, such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

"Point-of-final purchase retail facility" means a business wherein the normal and customary method of patronizing the business conducted at the facility requires the retail customer to travel to the location to purchase the goods or services of that business. "Point-of-final purchase retail facilities" shall not include catalog distribution centers for the purposes of this program.

"Program" means the Business Retention and Relocation Assistance Grant Program created pursuant to P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65, §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123) and P.L. 2010, c. 123, and provided in this subchapter.

"Project" means the relocation or maintaining of retained full-time jobs at the approved site as improved by the new business location. In the event that the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

"Project agreement" means an agreement between a business and the Authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount and tax credit term of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered the eligible positions of the business. A retained full-time job is one that will not be included in the calculation of a BEIP grant subsequent to being moved to the approved project site, under the agreement. The number of retained full-time jobs shall mean the business's number of permanent full-time jobs as referred to in the project description in the application and the agreement, which exist as of the effective date of the agreement. In order to demonstrate that a job meets this definition, a business must provide documentation that demonstrates the at-risk nature of these employees, which shall include a certification of the business's chief executive officer that the jobs are at-risk at being located outside of New Jersey. For the purposes of the certifications required pursuant to the incentive agreement, N.J.S.A. 34:1B-116 or 120, to the extent an eligible position that was the basis of the award no longer exists, a business may include as a retained full-time job a new eligible position that is filled by a full-time employee provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

"Retained State tax revenue" means either State tax revenue received in the most recently completed State tax period or State tax revenue projected to be received from the business by the State.

"Tax credit term" means the period of time commencing with the first issuance of tax credits and continuing during the period in which the recipient of a grant of tax credits is eligible to apply the tax credits pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3).

"Tax period" means the 12-month period selected by the business for the purposes of determining annual taxable income.

"Yearly tax credit amount" means $ 1,500 times the number of retained full-time jobs. "Yearly tax credit amount" does not include the amount of any bonus award authorized pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1).

HISTORY:

Amended by R.2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Substituted ". For" for "for" in definition "Business"; and added the last sentence in definition "Project".

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Deleted definition "Construction contract; and rewrote definition "Project".

Amended by R.2008 d.53, effective March 3, 2008.

See: 39 N.J.R. 4385(a), 40 N.J.R. 1355(a).

In definition "Business", inserted ", such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder".

Recodified from N.J.A.C. 12A:2-1.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In definition "Agreement", substituted "Authority" for "Commission"; added definitions "Authority", "Board" and "Chief Executive Officer"; deleted definitions "Board of Directors", "Commission", and "Secretary"; and rewrote definition "Full-time employee".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Deleted definitions "Advanced computing", "Advanced computing company", "Advanced materials", "Advanced materials company", "Biotechnology", "Biotechnology company", "Electronic device technology", "Electronic device technology company", "Headquarters", "High-technology business", "Manufacturing facility", "Medical device technology", "Medical device technology company", "Research and development facility" and "Total allowable relocation costs"; added definitions "Affiliate", "Capital investment", "Certificate of compliance", "Project agreement", "Tax credit term", "Tax period" and "Yearly tax credit amount"; and rewrote definitions "Business", "Commitment duration", "Designated industry", "Full-time employee", "New business location", "Program", "Project" and "Retained full-time job".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In definition "Capital investment", inserted the last sentence; and added definition "Full-time employee at the qualified business facility".

Amended by R.2012 d.119, effective June 18, 2012.

See: 44 N.J.R. 665(a), 44 N.J.R. 1794(a).

In definition "Capital investment", rewrote the last sentence.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In definition "Retained full-time job", inserted a comma following "employees", and inserted the last sentence.

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N.J.A.C. 19:31-14.3 (2016)

§ 19:31-14.3 Eligibility criteria

(a) To qualify for the program, a business shall:

1. Enter into a project agreement with the Authority to undertake a project to:

i. Relocate or maintain a minimum of 50 retained full-time jobs from one or more locations within this State to a new business location or locations in this State; and

ii. Maintain the retained full-time jobs pursuant to the project agreement for the commitment duration.

(b) A project that consists solely of point-of-final-purchase retail facilities shall not be eligible for a grant of tax credits.

1. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the retained full-time jobs housed in the project consisting of non-retail facilities shall be eligible for a grant of tax credits.

2. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the retained full-time jobs housed in the warehouse facility shall not be eligible for a grant of tax credits.

(c) A business shall demonstrate that the receipt of assistance pursuant to this program will be a material factor in the business' decision not to relocate the retained full-time jobs outside of New Jersey; except a business that relocates 1,500 or more retained full-time jobs covered by a project agreement from outside of a designated urban center to one or more new locations within a designated urban center shall not be required to make such a demonstration if the business applies for a grant of tax credits within six months of signing its lease or purchase agreement. A business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011 shall not be deemed ineligible for the grant due to the material factor requirement.

(d) A business shall demonstrate to the Authority, at the time of application, that the grant of tax credits and resultant retention of full-time jobs and any capital investment will yield a net positive benefit to the State equaling at least 110 percent of the requested tax credit allocation amount during the commitment duration. The net benefit resulting from the retention of full-time jobs and any capital investment by a business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011, shall be calculated from the date of the initial grant pre-application meeting.

(e) A business shall provide evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of an application under this program.

HISTORY:

Recodified from N.J.A.C. 12A:2-1.3 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a)1, substituted "Authority" for "Commission"; and in (a)1i, substituted "50" for "250".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a)1i, inserted "or maintain"; in (c), inserted "the retained full-time jobs" and inserted the last sentence; added new (d); and recodified former (d) as (e).

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (d), inserted "of" preceding "application", and substituted "requested" for the second occurrence of "grant of" and "credit allocation amount" for the second occurrence of "credits".

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N.J.A.C. 19:31-14.4 (2016)

§ 19:31-14.4 Restrictions on eligibility

(a) A business that is receiving a Business Employment Incentive Program grant shall not be eligible to receive a grant of tax credits under this program with respect to a job that is included in the calculation of a BEIP grant pursuant to P.L. 1996, c.26 subsequent to being moved to the approved project site.

(b) A business that is receiving any other grant by operation of State law shall be eligible to receive a grant of tax credits under this program provided:

1. A business that is receiving another State grant shall not be eligible to receive assistance with respect to any job that is currently the subject of any other State grant, except for grants from the Office of Customized Training pursuant to the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.).

2. The State will realize a net positive benefit from the grant of tax credits and resultant retention of full-time jobs and any capital investment when combined with any other State grants equaling at least 110 percent of the grant of tax credits during the commitment duration but not less than eight years, except upon approval of the State Treasurer.

3. Amounts received as grants from the Office of Customized Training pursuant to the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.), shall be excluded from the calculation of the total amount permitted.

(c) A business that is in default with any other program administered by the State of New Jersey shall not be eligible to receive a grant of tax credits under this program.

HISTORY:

Recodified from N.J.A.C. 12A:2-1.4 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In the introductory paragraph of (b), substituted "provided" for "except as follows"; rewrote (b)2; and in (b)3, deleted "under (b)2 above" from the end.

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N.J.A.C. 19:31-14.5 (2016)

§ 19:31-14.5 Requests for applications

All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625 on forms and/or in a manner prescribed by the Authority.

HISTORY:

Recodified from N.J.A.C. 12A:2-1.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote the section.

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

N.J.A.C. 19:31-14.6 (2016)

§ 19:31-14.6 Application submission requirements

(a) Each application to the Authority shall include the following information in an application format prescribed by the Authority:

1. Business information shall include the following:

i. The name of the business;

ii. The address of the business;

iii. The type of business;

iv. Principal products and services;

v. The contact person for this application;

vi. The New Jersey tax identification number;

vii. The Federal tax identification number;

viii. The total number of employees in New Jersey;

ix. The total number of years of operation in New Jersey including evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of the application;

x. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for this program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

xi. Unless excepted under N.J.A.C. 19:31-14.3(c), certification that the availability of financial assistance from the State as provided in this program at the site proposed for approval is a material factor in the business' decision not to relocate outside of New Jersey and that the employees to be covered are at-risk of being relocated outside of the State, and instead, to undertake the project and to relocate the full-time jobs relating to the project in the State;

xii. Indication of whether the business has applied for other State tax benefits, including, but not limited to, the programs authorized under P.L. 2004, c.65; and

xiii. Any other necessary and relevant information as determined by the Authority for a specific application.

2. Project information shall include the following:

i. An overall description of the proposed project;

ii. The current location(s) (address(es)) and number of employees for each site that is subject to this application;

iii. The location(s) employees will be relocated from and identify the location(s) employees will be relocated to as per this application. Include number of employees for all sites;

iv. A description of the quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;

v. A description of any capital investments made by the business at the new business location;

vi. Identification of the site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) or if the site is outside the jurisdiction of the State Plan, evidence of approval under the applicable comprehensive management plan;

vii. A project schedule that identifies projected move dates for each site;

viii. A schedule of short-term and long-term employment projections of the business in the State based upon the relocation;

ix. The terms of any lease agreements, either existing or proposed, or details of the purchase or building of the new business location;

x. An estimate of the projected retained State tax revenues resulting from the relocation. "State tax revenue" includes all taxes which for the business are due and paid to the State, including, but not limited to, the payroll withholding taxes. This term does not include that portion of taxes for which it is simply a registered collection agent;

xi. A description of employment, construction and related economic activity in order to inform the net benefit analysis and calculation of a bonus, if applicable;

xii. A description of the type of contribution the business can make to the long-term growth of the State's economy and a description of the potential impact on the State's economy if the jobs are not retained;

xiii. Unless excepted under N.J.A.C. 19:31-14.3(c), evidence of alternative relocation plans, such as an analysis of the cost effectiveness of remaining in this State versus relocation under the alternative plans; and

xiv. Any other necessary and relevant information as determined by the Authority for a specific application.

3. The employee information shall include the following:

i. A written certification that the employees that are the subject of this application are full-time employees and receive health care benefits;

ii. The number of employees at the project site that will be included in a BEIP grant calculation and the New Jersey Economic Development Authority BEIP project identification number;

iii. Evidence of the applicant's potential relocation to another site within New Jersey, if the applicant is a BEIP grantee; and

iv. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

HISTORY:

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Deleted (b).

Recodified from N.J.A.C. 12A:2-1.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), substituted "Authority" for "Commission" twice; in (a)1xi and (a)2xiii, updated the N.J.A.C. references; in (a)1xiii, (a)2xiv and (a)3v, substituted "Chief Executive Officer" for "Secretary"; in (a)3iii,

deleted "that the New Jersey Economic Development Authority has been notified" following "Evidence"; and deleted (b).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a)1xi, inserted "and that the employees to be covered are at-risk of being relocated outside of the State"; added new (a)1xii; recodified former (a)1xii and (a)1xiii as (a)1xiii and (a)1xiv; in (a)1xiv, substituted "Authority" for "Chief Executive Officer"; in (a)2ix, inserted ", either existing or proposed,"; rewrote (a)2xi; in (a)2xiv, substituted "Authority" for "Chief Executive Officer"; in (a)3iii, inserted "and" at the end; deleted former (a)3iv; and recodified former (a)3v as (a)3iv.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (a)1x; deleted former (a)1xii; and recodified (a)1xiii through (a)1xiv as (a)1xii through (a)1xiii.

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N.J.A.C. 19:31-14.7 (2016)

§ 19:31-14.7 Review of application

(a) Applicants shall submit to the Authority a completed BRRAG Program application at least 45 days prior to moving to the new business location; provided, however, a business relocating 1,500 or more retained full-time jobs to one or more new locations within a designated urban center shall, if relocating to a leased location, submit an application within six months of executing its lease. A company that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of P.L. 2010, c. 123 shall not be deemed ineligible for the grant due to the requirement to apply 45 days before moving to the new business location. The application shall bear either a legible post-mark date or a date-received stamp from the Authority.

(b) The Authority shall conduct a review of the applications commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Authority shall review, and provide a recommendation to the Chief Executive Officer regarding, the applications to determine whether the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Adequately provides information for the subject application.

(c) In determining whether the company meets the net benefit analysis, as detailed in N.J.A.C. 19:31-14.3(d), the Authority's consideration shall include, but not be limited to, the State taxes paid directly by and generated indirectly by the business, and taxes paid directly or generated indirectly by new or retained employees caused by the business's relocation or maintaining of full-time jobs. For a business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011, such determination shall be calculated from the date of the initial grant pre-application meeting.

(d) The Board shall approve, approve with modifications, or deny an application in the program.

(e) When the Board approves or denies a request, the minutes of the meeting at which such action occurs are submitted to the Governor for review and become effective 10 working days of the Governor's receipt of the minutes unless earlier approval or vetoed.

(f) If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.

(g) When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.

(h) If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.

(i) If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of the grant upon request by the business.

(j) If the application has been approved or approved with modification, the Chief Executive Officer shall notify the Director of the terms and conditions of the approval. Any approval or approval with modification shall be subject to completion of the project.

HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Substituted "moving to" for "commencing construction or acquisition of" in the first sentence of (a).

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (f)1, deleted "and relocation of the retained full-time jobs" following "project".

Recodified from N.J.A.C. 12A:2-1.7 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (b), substituted "Chief Executive Officer" for "Secretary" and "Authority" for "Commission" throughout; in (c), deleted "Secretary after receipt and consideration of the recommendation from the" preceding and "of Directors," following "Board"; in (d), substituted "approves or denies a request" for "of Directors recommends to either approve or deny a request"; rewrote (e); added new (f), (g) and (h); recodified former (f) as (i); and in the introductory paragraph of (i), deleted "pursuant to (d) and (e) above" following "modification" and substituted "Chief Executive Officer" for "Secretary" and the first occurrence of "approval" for "project agreement".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a), substituted "Authority" for "Chief Executive Officer", and inserted the next-to-last sentence; in the introductory paragraph of (b), deleted ", including those applications submitted to the Authority prior to May 16, 2005" following "date"; added new (c); recodified former (c) through (i) as (d) through (j); and rewrote (j).

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N.J.A.C. 19:31-14.8 (2016)

§ 19:31-14.8 Determination of grant amount

(a) Subject to the limitation set forth in N.J.A.C. 19:31-14.11(c) and (d), grants of tax credits shall be approved for qualifying businesses according to the following schedule, and shall be issued upon the execution and satisfaction of the requirements of the project agreement between the Authority and the business with an approved project:

1. For a project that covers a business relocating or retaining 50 to 250 full-time employees, a grant of tax credits shall be for the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1), and may be applied against liability in the tax period in which the tax credit is issued;

2. For a project that covers a business relocating or retaining 251 to 400 full-time employees, a grant of tax credits shall be for two times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1), and may be applied against liability in the tax period in which the tax credit is issued and the following tax period, for one-half of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

3. For a project that covers a business relocating or retaining 401 to 600 full-time employees, a grant of tax credits shall be for three times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following two tax periods, for one-third of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

4. For a project that covers a business relocating or retaining 601 to 800 full-time employees, a grant of tax credits shall be for four times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following three tax periods, for one-fourth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

5. For a project that covers a business relocating or retaining 801 to 1,000 full-time employees, a grant of tax credits shall be for five times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following four tax periods, for one-fifth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance; and

6. For a project that covers a business relocating or retaining 1,001 or more full-time employees, a grant of tax credits shall be for six times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following five tax periods, for one-sixth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance.

(b) In considering the award and the amount of any grant of tax credits, the Authority may consider, as part of the Authority's overall review process, the following factors:

1. The number of full-time jobs retained;

2. The quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;

3. Any capital investments made by the business at the new business location;

4. The nature of the business' operations, including, but not limited to whether the business is a designated industry;

5. The potential impact on the State if the business were to relocate to another state;

6. The site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200);

7. Whether positions average at least 1.5 times the minimum hourly wage during the commitment duration;

8. The duration and extent of past operations by the business in New Jersey and any other information indicating the business' level of commitment to the State and the likelihood that the business will continue to operate in this State in the future; and

9. Any other necessary and relevant information as determined by the Authority for a specific application.

HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In the introductory paragraph of (b), substituted ", up to" for "or", inserted "and" following "annual limit,", deleted ", and considers the following factors:" following "12A:2-1.4"; and added last sentence.

Recodified from N.J.A.C. 12A:2-1.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (b), updated the N.J.A.C. references; in the introductory paragraph of (b) and in (b)9 substituted "Chief Executive Officer" for "Secretary"; and in the introductory paragraph of (b), substituted "50" for "250".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote the section.

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N.J.A.C. 19:31-14.9 (2016)

§ 19:31-14.9 Bonus award

(a) In addition to any grant of tax credits determined pursuant to section 7 of P.L. 2004, c.65 (N.J.S.A. 34:1B-115.3), a bonus award equivalent to 50 percent of the amount of the original grant of tax credits shall be made to any business that relocates more than 2,000 full-time employees covered by the project agreement from one or more locations outside of a designated urban center into a designated urban center, provided as follows:

1. All other applicable requirements of the program are satisfied; and

2. No grant of tax credits shall be awarded pursuant to this section for any job that is moved from its current location in an urban enterprise zone designated pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303 (N.J.S.A. 52:27H-60 et seq.) to a location that is not within an urban enterprise zone.

(b) Notwithstanding (a)2 above, if the move from the urban enterprise zone is to a facility already owned or leased by the same business and that business already employs at least the same number of persons as those being relocated from the urban enterprise zone, a grant of tax credits may still be awarded pursuant to this section.

(c) In addition to any grant of tax credits determined pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3), and in addition to any bonus award pursuant to (a) above, a bonus award equivalent to 50 percent of the amount of the grant of tax credits pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3) shall be made to any business that makes a capital investment in an amount that is at least twice that of the total value of the grant of tax credits granted pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3) and the grant of tax credits pursuant to this subchapter. A bonus award made pursuant to this subsection may be limited, so that when added to the tax credits granted pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3), the total amount shall not exceed 50 percent of the amount of the capital investment in this State.

HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (b), substituted "section" for "subchapter".

Recodified from N.J.A.C. 12A:2-1.9 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Added (c).

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N.J.A.C. 19:31-14.10 (2016)

§ 19:31-14.10 Project agreement

(a) All applicants shall execute an approval letter and a project agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to, the execution of a project agreement.

(b) The Authority staff may provide whatever assistance the Authority deems appropriate in the preparation of an application for approval of a project and may issue grants of tax credits pursuant to the project agreement entered between the Authority and the business.

(c) The project agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer:

1. The month and year in which the business will relocate its employees, the month and year in which the business will submit information relating to the relocation of the required number of retained employees required by N.J.A.C. 19:31-14.11(b) and, if applicable, the certification required by (c)2 below, and the State fiscal years for which the tax credits are allocated, which will not be subject to change without written approval of the Authority. Failure to adhere to these dates may lead to forfeiture of all or a part of the tax credits;

2. A requirement that a certification by a certified public accountant relating to the amount of eligible capital investment with supporting evidence satisfactory to the Authority shall be submitted by the business or, in the case of a tenant, the landlord prior to the commencement of the tax credit term. Provided that such certification and supporting evidence are satisfactory to the Authority, the tax credit certificate will be issued within 90 days of submission;

3. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;

4. Certifications by the business, including the following: eligibility for the program and participation in the program as a material factor in the business' decision not to relocate outside of New Jersey and to relocate the project in the State;

5. Requirements for undertaking the project;

6. Requirements on maintaining the existence of the business and not relocating the project;

7. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;

8. Indemnification and insurance requirements;

9. Limitations on the grant of tax credits;

10. Default and remedies; and

11. Reporting requirements.

(d) The project agreement shall further provide that the Authority is not liable in damages for the issuance or use of the tax credits; and that there is no guarantee that legislation will not be enacted that would cause further changes to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.)

HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (c), substituted "The" for "In the case of a business relocating between 250 and 499 full-time employees, the" at the beginning.

Recodified from N.J.A.C. 12A:2-1.10 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Authority" for the first occurrence of "Secretary" and "Chief Executive Officer" for the second through fifth occurrences of "Secretary"; in the introductory paragraph of (b), substituted "Chief Executive Officer" for "Secretary"; and in (b)3, substituted "Certifications" for "Unless excepted under N.J.A.C. 12A:2-1.3(e)1, certifications".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote the section.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (a); deleted former (d); and recodified (e) as (d).

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N.J.A.C. 19:31-14.11 (2016)

§ 19:31-14.11 Tax credit applicable; when effective; when adjusted

(a) A tax credit issued pursuant to this program may be applied solely against liability in the tax period(s) and in the State fiscal year(s) prescribed in the project agreement and in the manner set forth in N.J.A.C. 19:31-14.8(a) and shall expire thereafter.

(b) By the date indicated in the project agreement, the applicant shall submit a certification to the Chief Executive Officer that it has relocated the retained employees. To the extent that the number of employees is less than the number indicated on its application but remains 50 or more, the award of tax credits shall be adjusted accordingly and the project agreement shall be amended to so reflect the reduction pursuant to N.J.A.C. 19:31-14.13(b).

(c) The total value of the grants of tax credits approved by the Authority pursuant to this program that may be applied against tax liability for any tax period shall not exceed an aggregate annual limit of $ 20,000,000. If the approval of a grant of tax credits pursuant to N.J.A.C. 19:31-14.8(a) would exceed the $ 20,000,000 aggregate annual limit, the Authority may award a smaller grant of tax credits, no grants of tax credits or may assign credits to be issued in subsequent years, as necessary to comply with the aggregate limit.

(d) The total value of the grants of tax credits, issued pursuant this program, that a single business may apply against its tax liability shall not exceed an aggregate annual limit of $ 10,000,000 in a fiscal year. A tax credit issued pursuant to this program may be applied against liability in the single tax period in which the tax credit or portion of the tax credit may be applied as prescribed in the project agreement and as set forth in N.J.A.C. 19:31-14.8(a) and shall expire thereafter.

HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Section was "Tax credit applicable; when effective; when reduced". In (c), substituted "500 or more" for "over 500"; and in (e), substituted "(c)" for "(c) or (d)" preceding "above in a fiscal year", and substituted "(d)" for "(c) or (d)" preceding "above, exceeds".

Recodified from N.J.A.C. 12A:2-1.11 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (b), (c) and (e), substituted "Chief Executive Officer" for "Secretary" throughout; in (d), substituted "50" for "250"; and in (e), updated the N.J.A.C. reference.

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote the section.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (c), substituted "for any tax period" for "in a fiscal year".

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N.J.A.C. 19:31-14.12 (2016)

§ 19:31-14.12 New business location for the project

(a) Once the project agreement is fully executed by the business and the Authority, the business shall complete the project and seek a temporary certificate of occupancy and such other permits and approvals as may be required for the new business location in a timely manner, as further described in the project agreement.

(b) The business shall design, acquire, install, and operate the new business location in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) related to zoning, building safety, and environmental quality.

(c) The business shall not use any hazardous substance on, from, or affecting the new business location in any manner which violates any environmental law, and shall keep or cause the new business location to be kept free of hazardous substances, except as provided in applicable environmental law.

(d) The business shall comply with the Authority's prevailing wage requirements, N.J.A.C. 19:30-4, and affirmative action requirements, N.J.A.C. 19:30-3, in the performance of the construction contract for the project, provided that prevailing wage shall not be required for construction commencing more than two years after an entity has executed with the Authority a commitment letter and the first payment or other provisions of assistance is received.

HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Section was "Undertaking the project". In (a), inserted "for the new business location"; in (b) and (c), substituted "new business location" for "project" throughout; rewrote (d); and added (e).

Recodified from N.J.A.C. 12A:2-1.12 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (e), substituted "Authority" for "Commission"; in (d), substituted "Authority's" for "Commission's" and "P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1)" for "(N.J.S.A. 52:27C-73.1 and implementing rules at N.J.A.C. 12A:2A-3)"; and in (e), substituted "Authority's affirmative action requirements" for "Commission's set-aside program goals and targets" and "P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4)" for "N.J.A.C. 12A:10 and Executive Order No. 71 (October 2, 2003)".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote (d); and deleted (e).

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N.J.A.C. 19:31-14.13 (2016)

§ 19:31-14.13 Reporting requirements and annual reports

(a) If requested by the Authority, a business which is awarded a grant of tax credits under this program shall submit a copy of the State tax return for the business showing business income or activity, appropriate to its form of ownership.

(b) As determined by the Authority, a business which is awarded a grant of tax credits under P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.) shall submit annually, no later than March 1st of each year, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment duration, a certification of compliance that indicates that the business continues to maintain the number of retained full-time jobs as specified in the project agreement. Retained full-time jobs shall be calculated by averaging the monthly average of the business' retained full-time jobs in the previous calendar year, provided if the previous calendar year is the year in which the business submitted the certificate required by N.J.A.C. 19:31-14.11(b), such calculation shall use only the months since the submission of the certificate. Upon receipt and review thereof during the tax credit term, the Authority shall issue a certificate of compliance indicating the amount of tax credits that the business may apply against liability pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3). Any reduction in the number of retained full-time jobs below the number prescribed under the terms of the project agreement shall proportionately reduce the amount of tax credits the business may apply against liability in that tax period and the credits that may no longer be applied for that tax period shall be forfeited. However, if in any tax period, the number of retained full-time jobs drops below the minimum number of retained full-time jobs indicated in the paragraph of subsection b. of section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3) pursuant to which the project agreement was executed such that the business would no longer be eligible to apply the credits for the number of years for which it was approved, then the Authority shall reduce the amount of tax credits the business may apply against liability and the number of years in which the business may apply the tax credits. The grant shall be subject to recapture provisions pursuant to the project agreement.

(c) The project agreement may provide for additional reporting requirements.

HISTORY:

Recodified from N.J.A.C. 12A:2-1.13 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) through (c), substituted "Chief Executive Officer" for "Secretary" throughout.

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a), substituted "Authority" for "Chief Executive Officer"; rewrote (b); deleted former (c); and recodified (d) as (c).

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N.J.A.C. 19:31-14.14 (2016)

§ 19:31-14.14 Fees

(a) A non-refundable application fee of $ 1,000 shall accompany every application for assistance.

(b) A non-refundable commitment fee of two percent of the assistance not to exceed $ 75,000 shall be charged with the acceptance by an applicant of the assistance.

(c) For each project with total approved tax credits of $ 1,000,000 or less, a non-refundable fee of $ 1,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of $ 2,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total approved tax credits of $ 1,000,000 to $ 5,000,000, a non-refundable fee of $ 2,500 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of $ 7,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total approved tax credits in excess of $ 5,000,000, a non-refundable fee of $ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of $ 25,000 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval.

(d) In addition to the fees in (a), (b) and (c) above, an annual servicing fee shall be paid to the Authority. The servicing fee shall be two percent of the annual tax credit amount that may be applied not to exceed $ 75,000.

HISTORY:

New Rule, R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2-1.14, Events of default, recodified to N.J.A.C. 12A:2-1.15.

Recodified from N.J.A.C. 12A:2-1.14 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Added (d).

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (c).

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N.J.A.C. 19:31-14.15 (2016)

§ 19:31-14.15 Events of default

(a) The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "event of default" under the project agreement:

1. The business fails to strictly observe or comply with the limitations and conditions of the use of the grant of tax credits as set forth in this subchapter, the tax credit certificate and the project agreement;

2. Any representation or warranty made by the business in its application or in the project agreement that is false, misleading, or inaccurate in any material respect;

3. Failure to comply with any condition or requirement of the project agreement; or

4. The business fails to serve or perform in any other material respect any other term, covenant or condition of the business under the project agreement and this subchapter and such failure shall have continued for 30 days after the earlier of delivery to the business of written notice thereof from the Authority or the business's actual or constructive knowledge of such failure; provided, however, that if such failure is capable of cure, but cannot be cured by the payment of money or by diligent efforts within such 30-day period, but diligent efforts are properly commenced within the cure period and business is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional 45 days and in no case to extend beyond the expiration of the project agreement. Violations of the "events of default" provision of the project agreement shall be cause for immediate termination of the tax credit certificate as provided by law and repayment of State tax.

(b) Upon a default under the project agreement, in addition to any other remedies in the project agreement and available under this subchapter and under the Act, the Authority may withhold any payment not yet paid at the time of the default under the project agreement. The Authority shall provide written notice to the business of its intent to withhold, reduce or terminate the grant of tax credits. The business may request in writing reconsideration of the Authority's decision. The determination to withhold, reduce or terminate a grant of tax credits is solely within the Authority's discretion.

(c) Upon termination of the project agreement, in addition to any other remedies in the project agreement and available under this subchapter and under the Act, the Authority may require repayment of an amount of the grant of tax credits based on the period of time the business complied with the grant, provided, however, that the Authority may require repayment of the total amount paid to the business during the commitment duration if the default results from the business moving the project out of the State of New Jersey or the business being sold and moved out of the State of New Jersey.

HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Rewrote (a)4.

Recodified from N.J.A.C. 12A:2-1.14 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2-1.15, Remedies, recodified to N.J.A.C. 12A:2-1.16.

Recodified from N.J.A.C. 12A:2-1.15 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a)4, updated the N.J.A.C. reference and inserted a semicolon following "duration"; and in (a)5, substituted "Chief Executive Officer" for "Secretary" and "30-day" for "30 day".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a)3, inserted "or" at the end; deleted former (a)4; recodified former (a)5 as (a)4; in (a)4, substituted "Authority" for "Chief Executive Officer"; and added (b) and (c).

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N.J.A.C. 19:31-14.16 (2016)

§ 19:31-14.16 Remedies

(a) Upon the occurrence of any event of default as described in N.J.A.C. 19:31-14.15 and the project agreement, the Authority may, so long as such event of default is continuing, do one or more of the following as the Chief Executive Officer in his or her sole discretion shall determine, without limiting any other right or remedy the Authority or the Division of Taxation may have on account of such event of default:

1. The Authority may require the surrender by the business to the Authority of the tax credit certificate for suspension or cancellation; and/or

2. The Authority may exercise any other right or remedy that may be available under applicable law or under the project agreement, including, without limitation:

i. Recapturing all (for example, if a business is unable to certify the minimum job threshold during the commitment duration) or a portion of the grant of tax credits upon failure of the business to maintain for the remainder of the commitment duration 80 percent of the retained full-time jobs that it had during the last year of the tax credit term;

ii. Notifying the Director, who shall issue a recapture assessment which shall be based upon the proportionate value of the grant of tax credits that corresponds to the amount and period of noncompliance;

iii. Recovering damages for loss of a bargain for any default during the commitment duration;

iv. Terminating the project agreement; or

v. Proceeding by appropriate court action (legal or equitable) to enforce the terms of the project agreement.

(b) For the purposes of determining the amount of the grant of tax credits to be recaptured, the amount shall include the sum of the following:

1. A cash payment in the amount of tax credits which were applied by the business or its assignee which amount may be reduced as set forth in (a)2i above;

2. Interest on the repayment amount referred to in (b)1 above at the rate equal to the statutory rate for tax deficiencies plus any penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq.; and

3. All costs incurred by the Authority and the Division of Taxation in connection with the pursuit of the sales tax repayment amount (including, but not limited to, counsel fees, court costs and other costs of collection).

(c) The rights and remedies of the Authority under this subchapter and the project agreement shall be cumulative and shall not exclude any other rights and remedies of the Authority or the Division of Taxation allowed by law with respect to any event of default under this subchapter of the project agreement.

HISTORY:

Recodified from N.J.A.C. 12A:2-1.15 and amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

In the introductory paragraph of (a), updated the N.J.A.C. reference. Former N.J.A.C. 12A:2-1.16, Appeals, recodified to N.J.A.C. 12A:2-1.17.

Recodified from N.J.A.C. 12A:2-1.16 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer" for "Secretary" throughout; and in the introductory paragraph of (a), updated the N.J.A.C. reference.

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Substituted "Authority" for "Chief Executive Officer" throughout; rewrote (a)2; added new (b); and recodified former (b) as (c).

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N.J.A.C. 19:31-14.17 (2016)

§ 19:31-14.17 Appeals

(a) The procedure for an appeal of the Board's action on an application to the program shall be as follows. An applicant may appeal the Board's action by submitting in writing to the Authority, within 30 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Appeals will be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his/her finding(s) and recommendation(s) on the merits of the appeal; and

3. The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final agency decision on the appeal.

HISTORY:

Recodified from N.J.A.C. 12A:2-1.16 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2-1.17, Severability, recodified to N.J.A.C. 12A:2-1.18.

Recodified from N.J.A.C. 12A:2-1.17 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer's" for "Secretary's", "Chief Executive Officer" for "Secretary", and "Authority" for "Commission" throughout; and in (a), deleted "of Director's" following "Board".

Repeal and New Rule, R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Section was "Appeals".

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N.J.A.C. 19:31-14.18 (2016)

§ 19:31-14.18 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

HISTORY:

Recodified from N.J.A.C. 12A:2-1.17 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Recodified from N.J.A.C. 12A:2-1.18 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

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N.J.A.C. 19:31-15.1 (2016)

§ 19:31-15.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65 (the "Act"), and specifically section 17 of the Act (N.J.S.A. 34:1B-120.2). The Act provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The Act established a business retention and relocation assistance grant program, a tax credit certificate transfer program (the "BRRAG Tax Credit Certificate Transfer Program" or "Program"), a sales and use tax exemption program, and an energy sales tax exemption program (for businesses located in New Jersey urban enterprise zones).

(b) The purpose of the BRRAG Tax Credit Certificate Transfer Program is to allow businesses in this State with unused amounts of BRRAG tax credit to surrender those tax credits to other corporations desiring such credits which in exchange will provide private financial assistance to assist in the funding of costs incurred by the relocating business. A BRRAG tax credit may be applied against liability arising in the tax period in which the tax credit is issued and the tax period next following, and shall expire thereafter. However, it is possible that unused credits that remain stranded in the allowable periods may be utilized in the event of future additional liability, like an audit assessment. Therefore, eligibility for this program will require the business to certify that, to the best of its knowledge, it cannot use the tax credits originally issued for the tax periods in which the credits are allowable.

HISTORY:

Recodified from N.J.A.C. 12A:2A-1.1 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Economic Development Authority" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')" and deleted the last two sentences; and in (b), inserted "BRRAG Tax Credit Certificate Transfer".

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N.J.A.C. 19:31-15.2 (2016)

§ 19:31-15.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"Agreement" or "project agreement" means an agreement between a business and the Authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123).

"Application" means the application submitted to the Authority from the seller of BRRAG tax credits, for approval of the BRRAG tax credit transfer certificate.

"Authority" means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority.

"BRRAG program" means the tax credit grant program created pursuant to P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65 §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123), and provided in N.J.A.C. 12A:2-1.

"BRRAG tax credit certificate transfer program" or "Program" means the Business Retention and Relocation Assistance Grant Tax Credit Transfer Program created pursuant to section 17 of the Act (N.J.S.A. 34:1B-120.2).

"Business" means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is subject to the provisions of N.J.S.A. 43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business.

"Business retention or relocation grant of tax credits" or "grant of tax credits" means a grant which consists of the value of corporation business tax credits against the liability imposed pursuant to section 5 of P.L. 1945, c.162 (N.J.S.A. 54:10A-5) or credits against the taxes imposed on insurers pursuant to P.L. 1945, c.132 (N.J.S.A. 54:18A-1 et seq.), section 1 of P.L. 1950, c.231 (N.J.A.C. 17:32-15), and N.J.S.A. 17B:23-5, provided to fund a portion of retention and relocation costs pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, and pursuant to N.J.A.C. 12A:2-1.

"Business retention or relocation tax credit" or "BRRAG tax credit" means the tax credit that a business obtains through the BRRAG program.

"Buying business," means a business with the financial ability to purchase the unused BRRAG tax credits from an unaffiliated selling business. For the purpose of this definition, the test of affiliation is whether the same entity directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of both the selling and buying businesses.

"Certificate" or "BRRAG tax credit transfer certificate" means the certificate issued by the Division of Taxation certifying to the selling business amounts of unused BRRAG tax credit. The certificates are issued in the form of corporation business tax credit and insurance premiums tax credit transfer certificates.

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"New business location" means the premises that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than eight years from the date of relocation. A new business location may also include the premises from which the business moves on a temporary basis due to the rehabilitation of permanent premises that also qualifies as reconstruction as "reconstruction" is defined in the Uniform Construction Code, N.J.A.C. 5:23-6.3. In that case, the move to the permanent premises will trigger availability of the grant of tax credits.

"Private financial assistance" means the assistance that the buying business provides the selling business to assist in the funding of costs incurred by the relocating business.

"Project" means the construction, renovation or expansion of facilities at the approved site as described in the project description in the application and the agreement that will become the business's new business location.

"Selling business" means a business that has unused BRRAG tax credits issued under P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, and otherwise allowable which it wishes to "sell."

"Total allowable relocation costs" means $ 1,500 times the number of retained full-time jobs. "Total allowable relocation costs" does not include the amount of any bonus award authorized pursuant to section 5 of P.L. 2004, c.65 (N.J.S.A. 34:1B-115.1).

HISTORY:

Amended by R.2008 d.53, effective March 3, 2008.

See: 39 N.J.R. 4385(a), 40 N.J.R. 1355(a).

In definition "Business", substituted ", such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For" for "for".

Recodified from N.J.A.C. 12A:2A-1.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In definitions "Agreement" and "Application", substituted "Authority" for "Commission"; added definitions "Authority", "Board" and "Chief Executive Officer"; and deleted definitions "Board of Directors", "Commission" and "Secretary".

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N.J.A.C. 19:31-15.3 (2016)

§ 19:31-15.3 Eligibility criteria

(a) A business shall be eligible to apply to the program if the business:

1. Entered into a BRRAG project agreement pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2000, c.65 and N.J.A.C. 19:31-14 and is not in default of that BRRAG project agreement;

2. Has unused amounts of BRRAG tax credits issued and otherwise allowable;

3. Certifies, to the best of its knowledge, that it cannot use the BRRAG tax credits originally issued for the tax periods in which the credits are allowable; and

4. Has incurred or will incur expenses in connection with the operation of the business in the State, including, but not limited to, the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the Chief Executive Officer to be necessary to carry out the purposes of the Act.

HISTORY:

Recodified from N.J.A.C. 12A:2A-1.3 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a)1, updated the N.J.A.C. reference; and in (a)4, substituted "Chief Executive Officer" for "Secretary".

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N.J.A.C. 19:31-15.4 (2016)

§ 19:31-15.4 Requests for applications

All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625, in a manner prescribed and adopted by the Authority, after recommendation from the Director.

HISTORY:

Recodified from N.J.A.C. 12A:2A-1.4 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote the section.

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N.J.A.C. 19:31-15.5 (2016)

§ 19:31-15.5 Submission requirements

(a) Each application to the Authority by a selling company shall include the following information in a format prescribed by the Chief Executive Officer, after recommendation by the Board. Complete applications must be received by at least 120 days prior to the expiration of the second tax period, pursuant to N.J.A.C. 19:31-14.11.

1. The name and address of the applicant;

2. A statement that all terms and conditions of the selling business' BRRAG project agreement have been and/or are continuing to be met;

3. A list of all corporations and affiliated groups of corporations that directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of the selling business;

4. A statement that the selling business is operating and has no current intention to cease operating;

5. A certification that, to the best of the applicant's knowledge, the applicant cannot use the BRRAG tax credits originally issued for the tax periods in which the credits are allowable;

6. The proposed use of any private financial assistance that would be provided by a buying business, to assist in the funding of costs incurred by the relocating business;

7. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

HISTORY:

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Deleted (b).

Recodified from N.J.A.C. 12A:2A-1.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a) and (a)7, substituted "Chief Executive Officer" for "Secretary"; in the introductory paragraph of (a), substituted "Authority" for "Commission", deleted "of Directors" following "Board" and updated the N.J.A.C. reference; and deleted (b).

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N.J.A.C. 19:31-15.6 (2016)

§ 19:31-15.6 Application and review procedures

(a) Applicants shall submit to the Chief Executive Officer a completed BRRAG Tax Credit Transfer Program application. The application shall bear either a legible post-mark date or a date received stamp from the Authority.

(b) The Authority, in cooperation with the Director, shall conduct a review of the applications commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Authority, in cooperation with the Director, shall review the applications to determine whether the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Adequately provides information for the subject application.

(c) Once the review in (b) above is completed, the Board shall either approve or deny a request. The minutes of the meeting at which such action occurs are submitted to the Governor for review and become effective 10 working days of the Governor's receipt of the minutes unless earlier approval or vetoed.

(d) After action by the Board, the Chief Executive Officer shall issue a preliminary approval, approval with modifications, or denial of an application in the program and so notify the applicant.

(e) In the event that the applicant receives notification of preliminary approval, that notification will state the conditions that must be met before the Chief Executive Officer will issue a final approval. The notification of preliminary approval will state that the Chief Executive Officer will forward the application to the Division of Taxation only upon receipt of the following:

1. A statement, dated the date of the closing of the sale of the tax credit transfer certificate that states, among other matters, that as of the date of the certificate, the selling business is operating and has no current intention to cease operating;

2. A completed Tax Benefit Identification Form that identifies the accumulated BRRAG tax credits, the amount intended to be sold, and the years that the BRRAG tax credit were incurred;

3. A Buying Business Information Sheet that identifies the buying business' name, address, telephone number, the estimated value of the tax credits to be transferred, and from whom and a certification that the buying business is not an affiliate;

4. An executed form of standard selling agreement between the buying and selling business defining the terms and conditions of the sale of the tax certificate(s), with the Private Financial Assistance Form attached as an exhibit;

5. A Private Financial Assistance Form specifying how the applicant will expend the private financial assistance for allowable expenditures for the expenses incurred in by the selling business in connection with the operation of the business in the State; and

6. Information evidencing that the amount of private financial assistance to be made by the buying business is equal to at least 75 percent of the amount of the to be surrendered BRRAG tax credit of the selling business.

(f) In the event that an application is denied for either preliminary or final approval, the applicant shall be notified of the denial and the reasons for such denial.

HISTORY:

Recodified from N.J.A.C. 12A:2A-1.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (e), substituted "Chief Executive Officer" for "Secretary" throughout; in (a) and the introductory of (b), substituted "Authority" for "Commission" throughout; in (c), deleted "of Directors" following "Board" and "recommend to" following "shall"; in (d), substituted "After action by the Board, the Chief Executive Officer" for "The Secretary, after receipt and consideration of the recommendation from the Board of Directors,"; deleted former (f); and recodified former (g) as (f).

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N.J.A.C. 19:31-15.7 (2016)

§ 19:31-15.7 Fees

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable fee of $ 2,500.

(b) For each project with total approved tax credits of $ 1,000,000 or less, a non-refundable fee of $ 1,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of $ 2,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total approved tax credits of $ 1,000,000 to $ 5,000,000, a non-refundable fee of $ 2,500 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of $ 7,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total approved tax credits in excess of $ 5,000,000, a non-refundable fee of $ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of $ 25,000 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval.

HISTORY:

New Rule, R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-1.7, Appeals, recodified to N.J.A.C. 12A:2A-1.8.

Recodified from N.J.A.C. 12A:2A-1.7 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (b).

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N.J.A.C. 19:31-15.8 (2016)

§ 19:31-15.8 Appeals

The procedure for appeals arising from the Chief Executive Officer's action on an application to the program as well as appeals arising from other decisions of the Chief Executive Officer relating to the program shall be the procedures set forth at N.J.A.C. 19:31-14.17.

HISTORY:

Recodified from N.J.A.C. 12A:2A-1.7 and amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Updated the N.J.A.C. reference.

Recodified from N.J.A.C. 12A:2A-1.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer's" for "Secretary's" and "Chief Executive Officer" for "Secretary" and updated the N.J.A.C. reference.

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SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM

N.J.A.C. 19:31-16.1 (2016)

§ 19:31-16.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority, after consultation with the Director of the Division of Taxation in the Department of the Treasury, to implement sections 19 through 22 of the Business Retention and Relocation Assistance Act, P.L. 2004, c.65 (the "Act"), which provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The purpose of the sales and use tax exemption program is to encourage economic development and to preserve jobs that currently exist in New Jersey. Qualifying businesses will be exempt from sales and use tax for eligible property located or placed at a business location for a construction and or renovation project pursuant to the terms and conditions of a project approval agreement. The sales tax exemption certificate, which applies only to property purchased for installation in that approved project will allow the business to purchase machinery, equipment, furniture and furnishings, fixtures and building materials other than tools and supplies for placement at the project location without the imposition of sales and use tax until the new facility is functional, as further specified in this subchapter.

HISTORY:

Recodified from N.J.A.C. 12A:2A-2.1 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Economic Development Authority" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')", deleted the second sentence and deleted "the Program" following "purpose of", and inserted "sales and use tax exemption program".

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SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM

N.J.A.C. 19:31-16.2 (2016)

§ 19:31-16.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"Agreement" or "project approval agreement" means the project approval agreement between a business and the Authority governing the terms and conditions of the project approval for the sales tax exemption program. The Agreement describes the project, the date the commitment duration shall commence, the extent of sales tax exemption, the conditions and limitations of the sales tax exemption, the representations and reporting obligations of the business, and other such provisions which further the purposes of P.L. 2004, c.65, §§ 19 through 22 (N.J.S.A. 34:1B-185 through 188).

"Application" means the application submitted by a business for the sales tax exemption program, pursuant to P.L. 2004, c.65 §§ 19 through 22.

"Approved site" means the site of the project in the New Jersey Development and Redevelopment Plan designated Planning Area 1 or 2 locations; however, if the site of the project is not located in either of such Planning Areas, the project involves renovation or expansion of an existing facility, and the project satisfies all other criteria of the program, as determined by the Secretary, the site may also be an approved site.

"Authority" means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is subject to the provisions of N.J.S.A. 43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business.

"BEIP grant" means the grant made to a business by the New Jersey Economic Development Authority pursuant to the provisions of P.L. 1996, c.26 (N.J.S.A. 34:1B-124 et al).

"Capital investment" means expenses that the business incurs following its submission of an application to the Authority pursuant to section 21 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-186) for:

1. The site preparation and construction, renovation, improvement, equipping of or obtaining and installing fixtures and machinery, apparatus or equipment, in a newly constructed, renovated or improved building, structure, facility or improvement to real property in this State; and

2. Obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure or facility in this State.

Provided however that "capital investment" shall not include soft costs, such as financing and design, furniture or decorative items, such as artwork or plants or office equipment, if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this definition, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 168). For the purposes of this definition, cubicles and cubicles that include office equipment shall constitute capital investment. If the business is a tenant, expenses incurred on behalf of the tenant by the landlord and financed through the lease shall constitute capital investment expenses incurred by the tenant provided that the capital investment shall relate solely to the tenant's leasehold space and not the common areas of the building and shall be supported by the documentation referenced in N.J.A.C. 19:31-16.5(a)2xiii and 16.7(a).

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Commitment duration" means five years from the later of the relocation of all of the retained full-time jobs included in the project, which shall not be more than one year from the issuance of a temporary certificate of occupancy, or the completion date specified in the project approval agreement entered into pursuant to section 19 through 22 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-185 through 188).

"Completion date" generally means the earlier of the date of the issuance of a temporary certificate of occupancy with respect to an approved site or in cases where no temporary certificate of occupancy is issued, one year from the project commencement date, as specifically set forth in the project approval agreement.

"Construction contract" means for purposes of undertaking the project, any contract for the acquisition, construction, improvement or installation of those portions of the project subject to sales tax or installation of eligible property. For purposes of this definition, the term "installation" means installation by a contractor, which involves access to pipes or wires within walls or any other alteration or modification of the project, but shall not include the delivery, locating, relocating, moving, assembling or setting up or eligible property by the provider of such property or the business's employees or any installation of such eligible property (including, but not limited to, machinery, apparatus and equipment) if such installation is made pursuant to a purchase contract by the provider of such property.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Eligible affiliate" means any person with respect to which the business:

1. Possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by contract or otherwise; and

2. Owns, either directly or indirectly, at least 51 percent of the voting stock or other equity or ownership interest of such person.

"Eligible property" means machinery, equipment, furniture and furnishings, fixtures, and building materials, but "eligible property" shall not include "motor vehicles" as defined pursuant to section 2 of P.L. 1966, c.30 (N.J.S.A. 54:32B-2), parts with a useful life of one year or less, or tools or supplies used in connection with the eligible property. Eligible property does not include machinery or equipment purchased, rented or leased by a project participant construction manager, contractor, or subcontractor under contract with the business for their own use on the project.

"Full-time employee" means a person who is employed for consideration 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, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) 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, 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 business. "Full-time employee"

shall not include a child, grandchild, parent or spouse of an individual who has direct or indirect ownership of at least five percent of the profits, capital, or value of the business.

"Headquarters" means the single location that serves as the national administrative center of a business or the worldwide administrative center of a key division of the business, at which the primary office of the chief executive officer or chief operating officer of the business or the key division of the business, as well as the offices of the management officials responsible for key businesswide functions such as finance, legal, marketing, and human resources, are located.

"Life sciences business" means a business engaged principally in the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products; or physical and biological research; or biotechnology.

"Manufacturing facility" means a business location at which more than 50 percent of the business personal property that is housed in the facility is eligible for the sales tax exemption pursuant to subsection a. of section 25 of P.L. 1980, c.105 (N.J.S.A. 54:32B-8.13) for machinery, apparatus or equipment used in the production of tangible personal property.

"New business location" means the premises that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than eight years from the date of relocation. A new business location may also include the premises from which the business moves on a temporary basis due to the rehabilitation of permanent premises that also qualifies as reconstruction as "reconstruction" is defined in the Uniform Construction Code, N.J.A.C. 5:23-6.3.

"Program" means the sales and use tax exemption program established under the jurisdiction of the Commission and administered by the Secretary, pursuant to P.L. 2004, c.65 §§ 19 through 22 and this subchapter.

"Project" means the construction, renovation or expansion of facilities at the approved site as described in the project description in the application and the agreement that will become the business's new business location and that will be related to retained full-time jobs. The eligible scope of the project shall accommodate no more than 20 percent above the number of retained full-time jobs. In the event that the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness, such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

"Project participant" means an eligible affiliate of the business or any construction manager, contractor or subcontractor that performs acquisition, construction, equipping, installation or improvements for the project and any other entities working on the project that use the sales tax certificate.

"Research and development facility" means a business location at which more than 50 percent of the business personal property that is purchased for the facility is eligible for the sales tax exemption pursuant to section 26 of P.L. 1980, c.105 (N.J.S.A. 54:32B-8.14) for property used in research and development.

"Retained full-time jobs" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of the members of a "controlled group of corporations" as defined pursuant to section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563, shall be considered the eligible positions of a single employer. A retained full-time job is one that will not be included in the calculation of a BEIP grant subsequent to being moved to the approved project site.

"Sales tax certificate" means the sales and use tax exemption certificate issued by the Director to the business upon approval by the Secretary of the terms and conditions of the agreement.

"Sales tax exemption" means the sales and use tax exemption approved under an agreement pursuant to the Act, and for purposes of this program, the sales tax exemption shall be administered pro rata to reflect the eligible scope of the project, based on the number of retained full-time jobs increased no more than 20 percent (eligible scope) relative to the sum of the number of all of the jobs of all employers located at an approved project site during the commitment duration period.

"Sales tax recapture amount" means either:

1. If the event of recapture occurs during the commitment duration, provided the reduction of retained full-time jobs in the aggregate from execution of the project approval agreement until the event of recapture does not exceed 20 percent of the number of the retained full-time jobs: the sum of 1i, ii and iii below. To the extent the reduction of retained full-time jobs in the aggregate exceeds 20 percent of the number of retained full-time jobs, penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq., may also be imposed.

i. A portion of the amount of the sales and use taxes, which would have been payable on all eligible property purchased for the project if the property was not purchased with the sales tax certificate based upon the proportionate value of such amount that corresponds to the reduction of retained full-time jobs and the period of noncompliance;

ii. Interest on the amount referred to in 1i above at the rate equal to the statutory rate for sales tax deficiencies; and

iii. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax recapture amount (including, but not limited to, counsel fees, court costs and other costs of collection);

2. If the event of recapture occurs prior to the commitment duration, provided the reduction of retained full-time jobs in the aggregate from execution of the project approval agreement until the event of recapture does not exceed 20 percent of the number of retained full-time jobs: the sum of 2i, ii and iii below. To the extent the reduction of retained full-time jobs in the aggregate exceeds 20 percent of the number of retained full-time jobs, penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq., may also be imposed.

i. A portion of the amount of the sales and use taxes, which would have been payable on all eligible property purchased for the project if the property was not purchased with the sales tax certificate based upon the proportionate value of such amount that corresponds to the reduction of retained full-time jobs and the failure to comply for any portion of the commitment duration;

ii. Interest on the amount referred to in 2i above at the rate equal to the statutory rate for sales tax deficiencies; and

iii. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax recapture amount (including, but not limited to, counsel fees, court costs and other costs of collection); or

3. If the event of recapture, pursuant to N.J.A.C. 19:31-16.12(a)3, occurs during or prior to the commitment duration: the sum of 3i, ii and iii below and penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq. may also be imposed.

i. Repayment of the amount of the sales and use taxes, which would have been payable on the property purchased for the project if the property was not purchased with the sales tax certificate that is no longer eligible as a result of the calculation in N.J.A.C. 19:31-16.12(a)3;

ii. Interest on the amount referred to in 3i above at the rate equal to the statutory rate for sales tax deficiencies; and

iii. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax recapture amount (including, but not limited to, counsel fees, court costs and other costs of collection).

"Sales tax repayment amount" means the sum of:

1. The amount of sales and use taxes which would have been payable on all eligible property purchased for the project if the property was not purchased with the sales tax certificate; provided that if repayment is the result of a default of the agreement during the commitment duration, this amount shall be reduced by an amount allocable to the proportionate amount of the sales and use tax that corresponds to the period of time in which the business was in compliance measured from the completion date until the date of default;

2. Interest on the repayment amount referred to in paragraph 1 above at the rate equal to the statutory rate for sales tax deficiencies plus any penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq.; and

3. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax repayment amount (including, but not limited to, counsel fees, court costs and other costs of collection).

HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

In definition "Business", in the first sentence substituted "Subchapter S of Chapter One" for "subchapter S of chapter one", inserted "of" preceding "1986" and substituted "either within or outside" for "within" and added the second sentence; and added the final sentence to definition "Project".

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In definition "Full-time employee", deleted "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.," following "full-time employment,".

Amended by R.2008 d.38, effective February 19, 2008.

See: 39 N.J.R. 3278(a), 40 N.J.R. 885(a).

In definition "Commitment duration", inserted "the later of the relocation of all of the retained full-time jobs included in the project, which shall not be more than one year from the issuance of a temporary certificate of occupancy, or"; in definition "Project", substituted "and that will be related to retained full-time jobs. The eligible scope of the project shall accommodate no more than 20 percent above the number of retained full-time jobs." for the period following the first occurrence of "location"; in definition "Sales tax exemption", inserted "to reflect the eligible scope of the project,", "increased no more than 20 percent (eligible scope)", "sum of the" and "of all employers" and substituted "all of the" for "total"; added definition "Sales tax recapture amount"; and in definition "Sales tax repayment amount", substituted "penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq." for "statutory penalties" in paragraph 2, and inserted "to" in paragraph 3.

Amended by R.2008 d.53, effective March 3, 2008.

See: 39 N.J.R. 4385(a), 40 N.J.R. 1355(a).

In definition "Business", inserted ", such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder".

Recodified from N.J.A.C. 12A:2A-2.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In definition "Agreement", substituted "Authority" for "Commission"; added definitions "Authority", "Board" and "Chief Executive Officer"; deleted definitions "Board of Directors", "Commission" and "Secretary"; rewrote definition "Full-time employee"; in the introductory paragraphs of 1 and 2 of definition "Sales tax recapture amount", inserted a comma following "et seq."; and in paragraphs 1iii and 2iii of definition "Sales tax recapture amount" and in paragraph 3 of definition "Sales tax repayment amount", substituted "Chief Executive Officer" for "Secretary".

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

Added definition "Capital investment"; and in definition "Sales tax recapture amount", in 1iii, deleted "or" from the end, in 2iii, substituted "; or" for a period at the end, and added paragraph 3.

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SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM

N.J.A.C. 19:31-16.3 (2016)

§ 19:31-16.3 Eligibility criteria

(a) Program eligibility requires that:

1. A business shall have operated continuously in New Jersey, in whole or in part, in its current form or as a predecessor entity, for at least 10 years prior to filing an application with the Authority;

2. A business certify and represent that the availability of financial assistance from the State as would be provided in the approval of the business's application for the program will be an important inducement to the business to undertake the project and to relocate full-time jobs in the State; and

3. A business shall satisfy at least one of the following four criteria:

i. The business has 1,000 or more full-time employees in the State and the project involves relocating 500 or more full-time employees into a new business location or locations;

ii. The business is a life sciences business or a manufacturing facility and the project is: constructing one or more new research and development facilities, constructing one or more new manufacturing facilities in this State, or relocating to a new headquarters in this State that will employ 250 or more full-time employees whose jobs are retained full-time jobs.

iii. The business is a life sciences business or a manufacturing business and the project is constructing a new, or substantially rehabilitating a vacant, property that will separately or collectively:

(1) Be predominantly a new research and development facility;

(2) Be predominantly a new manufacturing facility;

(3) House the headquarters of the business; or

(4) Separately or collectively be a combination of (a)3iii(1), (2) and (3) above; provided, that the new or substantially rehabilitated facility will house a minimum of 250 full-time employees whose jobs are retained full-time jobs. For the purposes of this sub-subparagraph, "predominantly" means a majority of the employees housed in the new facility are engaged in that activity; or a majority of the square footage of the new facility is used in that activity; or a majority of the total value of the investment made will be employed in that activity; or other measures of activity as may be determined by the Secretary that demonstrate that a critical concentration of research and development, manufacturing, or both, will occur at the new facility; or

iv. The business was, at the time of enactment of P.L. 2004, c.65, § 21, receiving a structured finance special guarantee pursuant to N.J.A.C. 19:31-2.1(c)3ii(5) for the project.

(b) For the purposes of determining a number of full-time employees pursuant to this section, the full-time employees of the members of a "controlled group of corporations" as defined pursuant to section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563, shall be considered the employees of a single employer.

(c) In addition to the eligibility criteria of (a) above, the project must be located at an approved site.

1. To be an approved site, the location for the project shall be situated in designated Planning Area 1 or 2, as defined in the State Development and Redevelopment Plan adopted by the State Planning Commission (pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et al.)).

2. Notwithstanding (c)1 above, a project involving the renovation or expansion of an existing facility that is not located in designated Planning Area 1 or 2 may be eligible to participate in the program, at the determination of the Secretary, if all other applicable criteria are satisfied.

3. A business located in an urban enterprise zone designated pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303 (N.J.S.A. 52:27H-60 et seq.) as of June 30, 2004 shall not be eligible to participate in this program if the relocation project is from a facility within the urban enterprise zone to a facility outside an urban enterprise zone.

4. Notwithstanding (c)3 above, if the relocation is to a facility already owned or leased by the same business and that business already employs at least the same number of persons as those being relocated from the urban enterprise zone, it may be eligible to apply.

(d) Program eligibility further requires that a business shall provide evidence and certify that it is not in default with any other program administered by the State of New Jersey.

(e) A project may be completed in up to two phases provided that it will be the national headquarters of a life sciences or manufacturing company, and will include a significant research and development, a significant manufacturing facility, or combination thereof if:

1. The first completed phase will house at least 200 full-time employees and the second phase will house at least 100 additional employees; and

2. The project is pre-approved for phases and that all phases are completed within 30 months of project approval.

(f) If a project consists of both point-of-purchase retail facilities, as defined at N.J.A.C. 19:31-14.2, and non-retail facilities, only the portion consisting of non-retail facilities shall be eligible for the sales tax exemption.

HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Added (f).

Recodified from N.J.A.C. 12A:2A-2.3 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a)1, substituted "Authority" for "Commission"; and in (f), updated the N.J.A.C. reference.

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N.J.A.C. 19:31-16.4 (2016)

§ 19:31-16.4 Requests for applications

All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625, on forms and/or in a manner prescribed by the Authority.

HISTORY:

Recodified from N.J.A.C. 12A:2A-2.4 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote the section.

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N.J.A.C. 19:31-16.5 (2016)

§ 19:31-16.5 Submission requirements

(a) Each application to the Authority shall include the following information in an application format prescribed by the Authority:

1. Business information shall include the following:

i. The name of the business;

ii. The address of the business;

iii. The type of business;

iv. Principal products and services;

v. The contact person for this application;

vi. The New Jersey tax identification number;

vii. The Federal tax identification number;

viii. The total number of employees in New Jersey;

ix. The total number of years of operation in New Jersey including evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of the application;

x. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey;

xi. Certification that the availability of financial assistance from the State as provided in this program at the site proposed for approval is an important inducement to the business to undertake the project and to relocate the full-time jobs relating to the project in the State; and

xii. Any other necessary and relevant information as determined by the Secretary for a specific application.

2. Project information shall include the following:

i. An overall description of the proposed project;

ii. The current location(s) (address(es)) and number of employees for each site that is subject to this application;

iii. The location(s) employees will be relocated from and identify the location(s) employees will be relocated to as per this application. Include number of employees for all sites;

iv. A description of the quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;

v. A description of any capital investments made by the business at the new business location;

vi. Identification of the site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) or if the site is outside the jurisdiction of the State Plan, evidence of approval under the applicable comprehensive management plan;

vii. A project schedule that identifies projected move dates for each site;

viii. A schedule of short-term and long-term employment projections of the business in the State based upon the relocation;

ix. The terms of any lease agreements or details of the purchase or building of the new business location;

x. An estimate of the projected retained State tax revenues resulting from the relocation;

xi. A description of the type of contribution the business can make to the long-term growth of the State's economy and a description of the potential impact on the State's economy if the jobs are not retained;

xii. Evidence of alternative relocation plans, such as an analysis of the cost effectiveness of remaining in this State versus relocation under the alternative plans;

xiii. If the applicant is a tenant with capital investment expenses incurred on behalf of the tenant by the landlord, the tenant's chief executive officer and the landlord shall certify to the amount of additional tenant improvements that the landlord is undertaking on behalf of the tenant and shall certify that the rent amortizes these tenant improvements over the term of the lease; and, the tenant shall provide evidence satisfactory to the Authority to support such certification, which may include evidence of comparable market rents; and

xiv. Any other necessary and relevant information as determined by the Secretary for a specific application.

3. The employee information shall include the following:

i. A written certification the employees that will be the subject of this application are full-time employees and receive health care benefits;

ii. The number of employees at the project site that are included in a BEIP grant calculation. Compare this to the number of employees that are subject to an application made under this section. Include the New Jersey Economic Development Authority BEIP project identification number;

iii. Evidence that the New Jersey Economic Development Authority has been notified of the applicant's potential relocation to another site within New Jersey, if the applicant is a BEIP grantee;

iv. A certification that the business will maintain 95 percent of the retained full-time jobs for at least the first two years of the commitment duration, and will maintain a minimum of 90 percent of the retained full-time jobs for the remainder of commitment duration; and

v. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

HISTORY:

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Deleted (a)4.

Recodified from N.J.A.C. 12A:2A-2.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), substituted "Authority" for "Commission" twice; in (a)3v, substituted "Chief Executive Officer" for "Secretary"; and deleted (a)4.

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

In (a)2xii, deleted "and" from the end; added new (a)2xiii, and recodified former (a)2xiii as (a)2xiv.

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N.J.A.C. 19:31-16.6 (2016)

§ 19:31-16.6 Application and review procedures

(a) Applicants shall submit to the Chief Executive Officer a completed Sales Tax Exemption Program application. The application shall bear either a legible post-mark date or a date received stamp from the Authority.

(b) The Authority shall conduct a review of the applications commencing with the application bearing the earliest submission date, including those applications submitted to the Authority prior to May 16, 2005. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Authority shall review the applications to determine whether the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Adequately provides information for the subject application.

(c) The Board shall approve, approve with modifications, or deny an application in the program.

(d) The minutes of the meeting at which such action occurs are submitted to the Governor for review and become effective 10 working days of the Governor's receipt of the minutes unless earlier approval or vetoed.

(e) If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.

(f) When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.

(g) If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.

(h) If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of the grant upon request by the business.

(i) In the event that an application is approved, the Chief Executive Officer will notify the Director of the terms and conditions of the approval and the Director shall issue a certificate pursuant to the terms and conditions of the project agreement. In the event that an application is denied, the applicant shall be notified of the denial and the reasons for such denial.

HISTORY:

Recodified from N.J.A.C. 12A:2A-2.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (b), substituted "Authority" for "Commission" throughout; in (a), substituted "Chief Executive Officer" for "Secretary"; in the introductory paragraph of (b), deleted ", and provide a recommendation to the Secretary regarding," following the second occurrence of "review"; in (c), substituted "Board" for "Secretary after receipt and consideration of the recommendation from the Board of Directors,"; in (d), substituted "The" for "When the Board of Directors recommends to either approve or deny a request, the"; rewrote (e); added new (f), (g) and (h); recodified former (f) as (i); and in (i), substituted "Chief Executive Officer" for "Secretary" and deleted "project" preceding and "agreement" following "approval".

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N.J.A.C. 19:31-16.7 (2016)

§ 19:31-16.7 Project approval agreement

(a) If the Board approves the application to the program, participation in the program is conditioned upon the applicant executing a project approval agreement with the Chief Executive Officer to establish the terms and the conditions of the project approval, which shall include, but not be limited to:

1. For a tenant with capital investment expenses incurred on behalf of the tenant by a landlord, prior to execution of the project agreement, the tenant shall provide documentation satisfactory to the Authority consistent with the chief executive officer's certification in N.J.A.C. 19:31-16.5(a)2xiii, which may include, but not be limited to, a lease or letter of credit that demonstrates in the event of an early termination of the lease that the tenant is financially liable for the cost of the capital investment.

(b) The terms and conditions of the project approval agreement shall include, but not be limited to, the following:

1. Terms establishing the starting date, or event that will determine the starting date and ending date, of the commitment duration;

2. A requirement that a certification by a certified public accountant relating to the amount of eligible capital investment with supporting evidence satisfactory to the Authority shall be submitted by the business or, in the case of a tenant, the landlord prior to the commencement of the tax exemption term.

3. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of sales and use tax will be extended to the period of the commitment duration;

4. Certifications by the business, including the following: eligibility for the program and participation in the program as an important inducement in the business' decision not to relocate outside of New Jersey and to relocate the project in the State;

5. Requirements for undertaking the project;

6. Requirements on maintaining the existence of the business and not relocating the project;

7. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;

8. Indemnification and insurance requirements;

9. Limitations on the scope and use of the sales tax exemption;

10. Default and remedies; and

11. Reporting requirements.

HISTORY:

Recodified from N.J.A.C. 12A:2A-2.7 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Board" for "Secretary" and "Chief Executive Officer" for "Secretary".

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

Rewrote (a); added new (b)2; and recodified former (b)2 through (b)10 as (b)3 through (b)11.

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N.J.A.C. 19:31-16.8 (2016)

§ 19:31-16.8 Undertaking the project

(a) Once the project approval agreement is fully executed by the business and the Chief Executive Officer, the business shall complete the project and seek a temporary certificate of occupancy and such other permits and approvals as may be required in a timely manner.

(b) The business shall design, acquire, install, and operate the project in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) related to zoning, building, safety, and environmental quality.

(c) The business shall not use any hazardous substance on, from, or affecting the project in any manner which violates any environmental law, and shall keep or cause the project to be kept free of hazardous substances, except as provided in applicable environmental law.

(d) To the extent that the business or its project participants (and not an unaffiliated third party who is not a project participant) have undertaken the construction of the project, the business shall comply with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), in the performance of construction contracts.

(e) The Authority encourages a business constructing a project to comply with the Authority's affirmative action requirements set forth at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4).

HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Rewrote (d); and added (e).

Recodified from N.J.A.C. 12A:2A-2.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Chief Executive Officer" for "Secretary"; in (d), substituted "Authority's" for "Commission's" and "P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1)" for "N.J.S.A. 52:27C-73.1 and implementing rules at N.J.A.C. 12A:2A-3"; and rewrote (e).

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N.J.A.C. 19:31-16.9 (2016)

§ 19:31-16.9 Sales and use tax exemption limitations

(a) The duration of the sales tax exemption shall be limited. In general, the sales tax certificate shall not apply to purchases initiated by the business after the date that the temporary certificate of occupancy is issued, or in cases where no temporary certificate of occupancy is issued shall not apply to purchases initiated by the business more than one year from the project commencement date; however, the duration of the sales tax certificate shall be pursuant to the terms and conditions of the project approval agreement.

(b) The scope of the sales tax exemption shall be limited. Any exemption from State sales and use taxes resulting from or occasioned by a business's use of the sales tax certificate shall be limited to purchases of eligible property that will be located at the approved site that are made between the commencement and completion dates by the business or a project participant. The sales tax exemption shall:

1. Only be utilized for materials which shall be purchased, completed, constructed or installed by the business or a project participant in connection with the project (and not with any intention to sell, transfer or otherwise dispose of any such materials to another party); and

2. Not be available for any cost of motor vehicles, tools, and parts with a useful life of one year or less, utilities, cleaning service or supplies, maintenance or any otherwise taxable services or property.

(c) The use by project participants of the sales tax exemption shall be limited. If the business undertakes the project, in whole or in part pursuant to a contract with a project participant, the project participant may utilize the business's sales tax exemption for purchases of eligible property for the project, provided that each project participant shall comply with all of the terms and conditions of this subchapter, the project approval agreement, the sales tax certificate and any reporting requirements. A project participant may not use the sales tax certificate issued to the business, except as authorized by the project approval agreement, which shall be strictly construed to limit use, and the business and the project participant shall be jointly or severally liable for any misuse.

(d) Notifications of violations of the terms and conditions of the sales tax exemption shall be addressed as follows. In the event that a project participant utilizes the sales tax exemption provided pursuant to the sales tax certificate in violation of the terms and conditions of this subchapter and or the project approval agreement, and the business is aware of such violation, the business shall promptly deliver notice of the violation to the Chief Executive Officer, and the business shall, upon demand by the Chief Executive Officer, pay to the Division of Taxation the sales or use tax that would have been paid on purchases not authorized by the project approval agreement in an amount equal to all such authorized sales or use tax exemptions claimed, subject to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., with regard to unpaid sales or use tax, penalty and interest.

HISTORY:

Recodified from N.J.A.C. 12A:2A-2.9 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (d), substituted "Chief Executive Officer" for "Secretary" twice.

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N.J.A.C. 19:31-16.10 (2016)

§ 19:31-16.10 Reporting requirements

(a) During the term of the project approval agreement, on the 15th business day of the quarter, the business that is party to the agreement shall furnish to the Chief Executive Officer a certified report of all purchases of eligible property made in the preceding quarter on which the sales tax exemption was claimed, including the date of purchase, an itemized description, amount of purchase, name of project participant that purchased the item, and name of vendor. "Certified" for purposes of this section means that the veracity of the report is attested by the business, and does not entail a certification by an outside accountant based upon an audit of any type.

1. A business having difficulty obtaining the itemized information from subcontractors on third-party construction contracts may file an estimated allocation of the costs of eligible property incurred under the construction contract, pursuant to the percentage determined by the Board, which shall be consistent with industry standards, and made available to the public upon its approval by the Board. Such estimated allocation shall be included in the certified report of all purchases of eligible property. The election of alternative reporting shall be set forth in the project approval agreement, and once selected, may not be revoked or the percentage changed, pursuant to the terms of that agreement.

(b) During the term of the project approval agreement, 30 days prior to each anniversary of the commencement date of the agreement, the business shall furnish to the Chief Executive Officer a certified report in a format as may be determined by the Chief Executive Officer which shall contain the following information:

1. A certification indicating whether or not the business is aware of any condition, event or act which constitutes a default or an event of default of the agreement, or which would constitute an event of default with the giving of notice or passage of time, or both, under the project approval agreement;

2. A written description of the present status of construction and use of the project and a description of any anticipated material change in the use of the project or in the number of employees located or to be located at the project;

3. For the applicable reporting year, the total amount of the sales tax that would have been paid on purchases of eligible property by or on behalf of the business but for the fact that the sales tax exemption provided was claimed and aggregated as a total from the commencement date; and

4. Any other reports required under the project approval agreement, such as the information provided to the Chief Executive Officer demonstrating the number of retained full-time jobs maintained by the business.

HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

In (a), inserted "made in the preceding quarter" in the first sentence and substituted "section" for "subchapter" in the second sentence of the introductory paragraph and added (a)1.

Recodified from N.J.A.C. 12A:2A-2.10 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer" for "Secretary" throughout; and in (a)1, deleted "of Directors of the Commission" following the first occurrence of "Board" and "of Directors" following the second occurrence of "Board".

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N.J.A.C. 19:31-16.11 (2016)

§ 19:31-16.11 Fees

(a) A non-refundable application fee of $ 1,000 shall accompany every application for grant assistance.

(b) An annual servicing fee in an amount equal to two percent of the sales tax exemption used in the previous year, with a cap of $ 75,000, shall be payable until the quarterly reports pursuant to N.J.A.C. 19:31-16.10(a) are no longer required to be filed.

(c) A non-refundable fee of $ 750.00 shall be paid for each request for any administrative changes, additions or modifications to the grant; and a non-refundable fee of $ 1,500 shall be paid for any major changes, additions or modifications to the grant, such as those requiring extensive staff time and Board approval.

HISTORY:

New Rule, R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-2.11, Events of recapture and default, recodified to N.J.A.C. 12A:2A-2.12.

Recodified from N.J.A.C. 12A:2A-2.11 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (b), updated the N.J.A.C. reference.

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N.J.A.C. 19:31-16.12 (2016)

§ 19:31-16.12 Events of recapture and default

(a) The occurrence of any one of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulations of any administrative or governmental body) shall constitute an event of recapture under the project approval agreement:

1. The business reduces or relocates the retained full-time jobs, such that the number of retained full-time jobs falls below the number required pursuant to N.J.A.C. 19:31-16.5(a)3iv (greater than five percent during the first two years of the commitment duration; greater than 10 percent during the remainder of the commitment duration) but has relocated at least the threshold number for project eligibility, 250 or 500 (as applicable to the type of business and as may be reduced up to five percent or 10 percent, as applicable);

2. The business notifies the Authority, prior to the commitment duration, that it will not relocate 100 percent of the retained full-time jobs set forth in the project approval agreement, but will relocate at least the threshold number for project eligibility, 250 or 500, as applicable to the type of business; or

3. The business is a tenant with capital investment expenses incurred on behalf of the tenant by the landlord, the amount of which is less than the amount as certified pursuant to N.J.A.C. 19:31-16.7(b)2.

(b) The occurrence of any one or more of the events in (b)1 through 6 below (whether such events shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulations of any administrative or governmental body) shall constitute an "event of default" under the project approval agreement. Violations of the "events of default" provision of the project approval agreement shall be cause for immediate termination of the sales tax certificate as provided by law and repayment of the State sales tax.

1. The business fails to strictly observe or comply with the limitations and conditions of the use of the sales tax exemption as set forth in this subchapter, the sales tax certificate and the project approval agreement;

2. Any representation or warranty made by the business in its application or in the project approval agreement that is false, misleading, or inaccurate in any material respect;

3. Failure to comply with any condition or requirement of the project approval agreement;

4. The business reduces or relocates the retained full-time jobs below the threshold number for project eligibility, either 250 or 500, as applicable to the type of business and as may be reduced up to five percent or 10 percent, as applicable;

5. The business fails to pay the sales tax recapture amount in a timely manner; or

6. The business fails to serve or perform in any other material respect any other term, covenant or condition of the business under the project approval agreement and this subchapter and such failure shall have continued for 30 days

after the earlier of delivery to the business of written notice thereof from the Chief Executive Officer or the business's actual or constructive knowledge of such failure; provided, however, that if such failure is capable of cure, but cannot be cured by the payment of money or by diligent efforts within such 30-day period, but diligent efforts are properly commenced within the cure period and the business is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional 45 days and in no case to extend beyond the expiration of the project approval agreement.

HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In the introductory paragraph of (a), substituted "events" for "event" following "whether such"; and rewrote (a)4.

Amended by R.2008 d.38, effective February 19, 2008.

See: 39 N.J.R. 3278(a), 40 N.J.R. 885(a).

Section was "Events of default". Added new (a); recodified former (a) as (b); in the introductory paragraph of (b), substituted "the events in (b)1 through 6 below" for "the following events" and "approval agreement." for "agreement:" and inserted the last sentence; in (b)4, substituted "below the threshold number for project eligibility, either 250 or 500, as applicable to the type of business and as may be reduced up to five percent or 10 percent, as applicable" for "above the percentages certified pursuant to N.J.A.C. 12A:2A-2.5(a)3iv (greater than five percent during the first two years of the commitment duration; greater than 10 percent during the remainder of the commitment duration)" and deleted "or" from the end; added new (a)5; recodified former (a)5 as (a)6; and in (a)6, inserted "the" preceding "business is diligently" and deleted the former last sentence.

Recodified from N.J.A.C. 12A:2A-2.11 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-2.12, Remedies, recodified to N.J.A.C. 12A:2A-2.13.

Recodified from N.J.A.C. 12A:2A-2.12 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a)1, updated the N.J.A.C. reference; in (a)2, substituted "Authority" for "Commission"; and in (b)6, substituted "Chief Executive Officer" for "Secretary".

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

In (a)1, deleted "or" from the end; in (a)2, substituted "; or" for a period at the end; and added (a)3.

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N.J.A.C. 19:31-16.13 (2016)

§ 19:31-16.13 Remedies

(a) Upon the occurrence of an event of recapture as described in N.J.A.C. 19:31-16.12 and the project approval agreement, the Chief Executive Officer may demand the payment of the sales tax recapture amount, and in his or her sole discretion, may request that the Director of the Division of Taxation recover the sales tax recapture amount.

(b) Upon the occurrence of any event of default as described in N.J.A.C. 19:31-16.12 and the project approval agreement, the Chief Executive Officer may, so long as such event of default is continuing, do one or more of the following as the Chief Executive Officer in his or her sole discretion shall determine, without limiting any other right or remedy the Chief Executive Officer or the Division of Taxation may have on account of such event of default:

1. The Chief Executive Officer may require the surrender by the business to the Chief Executive Officer of the sales tax certificate for suspension or cancellation; and/or

2. The Chief Executive Officer may exercise any other right or remedy that may be available under applicable law or under the project approval agreement, including, without limitation:

i. Requesting the Division of Taxation recover the sales tax repayment amount and any additional repayment amount pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq.;

ii. Recovering damages for loss of a bargain for any default during the commitment duration which damages the parties agree that the Chief Executive Officer's actual damages would be difficult to predict, and that the sales tax repayment amount and any additional repayment amount represents a reasonable approximation of such amount;

iii. Terminating the project approval agreement; or

iv. Proceeding by appropriate court action (legal or equitable) to enforce the terms of the project approval agreement.

(c) In the event of default or recapture, statutory interest shall be calculated from the date of default or recapture through the date of payment for all purchases made by the business or project participant pursuant to the exemption certificate issued under the Act.

(d) The rights and remedies of the Chief Executive Officer under this subchapter and the project approval agreement shall be cumulative and shall not exclude any other rights and remedies of the Chief Executive Officer or the Division of Taxation allowed by law with respect to any event of default under this subchapter or the project approval agreement.

HISTORY:

Amended by R.2008 d.38, effective February 19, 2008.

See: 39 N.J.R. 3278(a), 40 N.J.R. 885(a).

Added new (a); recodified former (a) through (c) as (b) through (d); and in (c), inserted "or recapture" twice.

Recodified from N.J.A.C. 12A:2A-2.12 and amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

In (a) and in the introductory paragraph of (b), updated the N.J.A.C. reference. Former N.J.A.C. 12A:2A-2.13, Appeals, recodified to N.J.A.C. 12A:2A-2.14.

Recodified from N.J.A.C. 12A:2A-2.13 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer" for "Secretary" throughout; in (a) and the introductory paragraph of (b), updated the N.J.A.C. references; and in (b)2ii, substituted "Chief Executive Officer's" for "Secretary's".

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N.J.A.C. 19:31-16.14 (2016)

§ 19:31-16.14 Appeals

(a) The procedure for an appeal of the Board's action on an application to the program shall be as follows. An applicant may appeal the Board's action by submitting in writing to the Authority, within 30 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Appeals will be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal; and

3. The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final agency decision on the appeal.

HISTORY:

Recodified from N.J.A.C. 12A:2A-2.13 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-2.14, Severability, recodified to N.J.A.C. 12A:2A-2.15.

Recodified from N.J.A.C. 12A:2A-2.14 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (b), substituted "Board's" for "Secretary's" throughout; in (a), (b) and (e), substituted "Authority" for "Commission"; in (a), deleted "of Directors" following "Board"; in (b), deleted "arising from decisions of the Secretary" following "appeals"; and in (e), deleted "by the Secretary" following "action".

Repeal and New Rule, R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

Section was "Appeals".

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N.J.A.C. 19:31-16.15 (2016)

§ 19:31-16.15 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

HISTORY:

Recodified from N.J.A.C. 12A:2A-2.14 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Recodified from N.J.A.C. 12A:2A-2.15 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

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N.J.A.C. 19:31-17.1 (2016)

§ 19:31-17.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement P.L. 2005, c. 374 (the "Act"), and specifically, section 2 of the Act. Section 2 establishes an energy sales tax exemption program (the "Program") for retail sales of electricity and natural gas and their transport to a business in counties designated for the 50 percent tax exemption under section 1 of P.L. 1993, c. 373 that employs at least 50 people at that facility, at least 50 percent of whom are directly employed in a manufacturing process, and provided that the energy and utility services are consumed exclusively at that facility. The Program is to be administered by the Authority in accordance with the procedures for obtaining the exemption as may be provided under the Sales and Use Tax Act, P.L. 1966, c. 30, and this subchapter.

HISTORY:

Recodified from N.J.A.C. 12A:2A-4.1 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Economic Development Authority (Authority)" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')" and "Authority" for "Commission," preceding "in accordance", and deleted "established under the jurisdiction of the Commission, and is" following "Program is".

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N.J.A.C. 19:31-17.2 (2016)

§ 19:31-17.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means P.L. 2005, c. 374, the Act extending the eligibility for the sales use tax exemption of energy and utility service purchases by certain manufacturing-intensive businesses in Urban Enterprise Zones and certain counties with reduced sales tax and amending P.L. 2004, c. 65.

"Application" means the authorized application submitted to the Authority from a business for approval of an energy sales tax exemption under the program.

"Authority" means the New Jersey Economic Development Authority.

"Board" means the Board of the New Jersey Economic Development Authority.

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Directly employed" means employed as an employee, and not as an independent contractor, and directly involved in the manufacturing process of the business applying for the energy sales tax exemption.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Employ" means utilize the productive services of people as full-time employees. "Full-time employee" is defined at N.J.A.C. 19:31-14.2.

"Energy sales tax exemption" means the energy sales and use tax exemption for retail sales of energy and utility service approved by the Chief Executive Officer pursuant to the Act and this subchapter.

"Manufacturing" means the performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition or character different from that in which they were acquired. The change must be substantial and must result in a transformation of property into a different or substantially more useable product.

"Program" means the energy sales tax exemption program for retail sales of electricity and natural gas and their transport to a business in counties designated for the 50 percent tax exemption under section 1 of P.L. 1993, c. 373, that employs at least 50 people at that facility, at least 50 percent of whom are directly employed in a manufacturing process, and provided that the energy and utility services are consumed exclusively at that facility, as authorized by P.L. 2005, c. 374 and this subchapter.

"Qualified county" means a county that is designated for the 50 percent sales tax exemption under section 1 of P.L. 1993, c. 373 (N.J.S.A. 54:32B-8.45).

HISTORY:

Recodified from N.J.A.C. 12A:2A-4.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In definition "Application", substituted "Authority" for "Commission"; added definitions "Authority", "Board" and "Chief Executive Officer"; and deleted definitions "Commission" and "Secretary"; in definition "Employ", updated the N.J.A.C. reference; and in definition "Energy sales tax exemption", substituted "Chief Executive Officer" for "Secretary".

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N.J.A.C. 19:31-17.3 (2016)

§ 19:31-17.3 Eligibility criteria and condition for exemption

(a) To qualify for energy sales tax exemption for the retail sale, transmission, or distribution of electricity and natural gas, an applicant shall be required:

1. To operate a manufacturing facility in a qualified county; and

2. Employ at least 50 people at that facility, at least 50 percent of whom are directly employed in the manufacturing process.

(b) The exemption is limited to retail sales of electricity and natural gas that are consumed at the manufacturing facility located in the qualified county.

HISTORY:

Recodified from N.J.A.C. 12A:2A-4.3 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

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N.J.A.C. 19:31-17.4 (2016)

§ 19:31-17.4 Requests for applications and renewal applications

(a) All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625, on forms and/or in a manner prescribed by the Authority.

(b) Annual renewal applications by applicants satisfying the criteria of N.J.A.C. 19:31-17.3 shall be required to be submitted annually within 45 days prior to the expiration date of the energy sales tax exemption.

HISTORY:

Recodified from N.J.A.C. 12A:2A-4.4 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote (a); and in (b), updated the N.J.A.C. reference.

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N.J.A.C. 19:31-17.5 (2016)

§ 19:31-17.5 Application submission requirements

(a) Applicants shall submit to the Authority a completed Application for Energy Sales Tax Exemption signed by an authorized representative of the business. The application shall bear either a legible post-mark date or a date received stamp from the Authority.

(b) Each application for the energy sales tax exemption submitted to the Authority shall include the following:

1. The name, address and Employer Identification Number (EIN), also known as a Federal tax identification number, of the applicant;

2. The address of the facility that is the subject of this application;

3. The number of total full-time employees at the facility for which the exemption application is being submitted;

4. The number of full-time employees at that facility that are directly employed in the manufacturing process of the applicant;

5. The name and address of the company(ies) that supply, transmit, and distribute electricity and natural gas to the facility;

6. The account identification numbers and billing information including contact name for each account identified in (a)5 above;

7. An estimate of the facility's annual quantity use of electricity and natural gas in units and in dollars;

8. A description of the nature of the business and the facility for which the application is being made;

9. The North American Industrial Classification System identification number(s) relating to the applicant;

10. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey; and

11. Such additional information as may be required by the Chief Executive Officer to provide a complete and accurate description of a particular business that is applying for the exemption.

HISTORY:

Recodified from N.J.A.C. 12A:2A-4.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (b), substituted "Authority" for "Commission" throughout; and in (b)11, substituted "Chief Executive Officer" for "Secretary".

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N.J.A.C. 19:31-17.6 (2016)

§ 19:31-17.6 Application review procedures

(a) The Authority shall conduct a review of the applications in the order received, commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application. Once the Authority determines that the application is complete, the Authority has 20 days to determine whether:

1. The application complies with the eligibility criteria;

2. The application satisfies the submission requirements; and

3. The application adequately provides information for the subject applicants.

(b) Upon completion of the review of an application pursuant to (a) above:

1. In the event that an application is approved, the Chief Executive Officer will promptly notify the applicant, the President of the Board of Public Utilities, and the Director that a business has met the requirements for the energy sales tax exemption. In accordance with P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.), the Division of Taxation shall then issue an Exemption Certificate to the approved applicant business.

2. In the event than an application is denied, the Chief Executive Officer will promptly notify the applicant of the denial and the reasons for the denial.

3. After notification of a denial, should the circumstances change so that the applicant reasonably believes its application will be approved, the applicant may reapply to the program no earlier than 90 days from the date the Chief Executive Officer issued the denial.

HISTORY:

Recodified from N.J.A.C. 12A:2A-4.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), substituted "Authority" for "Commission" throughout; and in (b)1 through (b)3, substituted "Chief Executive Officer" for "Secretary" throughout.

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N.J.A.C. 19:31-17.7 (2016)

§ 19:31-17.7 Monitoring, inspection, and reporting

(a) The Authority and agents of the State of New Jersey shall monitor compliance with respect to the eligibility criteria and conditions for this energy sales tax exemption. An applicant that is approved to receive this exemption benefit shall permit any agency of the State of New Jersey to enter said business during reasonable business hours to determine compliance with the eligibility criteria and conditions of the program. Failure to permit access for this purpose will result in the forfeiture of the exemption benefit and may require repayment of sales and use tax previously exempted from payment, as the Authority shall determine.

(b) Each business that receives this energy sales tax exemption shall be required to maintain records documenting all of its tax-exempt energy purchases. This information must be supplied to the Authority upon request. In addition, a report summarizing the totals of all exempt energy purchases must be provided for the prior year as a component of the annual renewal application.

(c) The Chief Executive Officer shall provide the President of the Board of Public Utilities and Director with an annual list of all businesses that have been approved under this subchapter.

HISTORY:

Recodified from N.J.A.C. 12A:2A-4.7 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (b), substituted "Authority" for "Commission" throughout; and in (c), substituted "Chief Executive Officer" for "Secretary".

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N.J.A.C. 19:31-17.8 (2016)

§ 19:31-17.8 Rescission

(a) The Chief Executive Officer, in addition to any other rights or remedies available pursuant to law, may withhold, reduce, or terminate this energy sales tax exemption or any portion thereof for good cause. The circumstances under which this may occur include, but are not limited to:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or rules, such as failure to maintain the employment levels or the direct employment in manufacturing process required for eligibility;

2. Submission of false or misleading information, or failure to submit relevant or complete information to the Authority;

3. Any act of insolvency, the filing of a petition in bankruptcy (voluntary or involuntary), or the existence of other conditions affecting the financial integrity of the business; or

4. Failure to comply with any condition, term, or requirement of the Authority relating to this program.

(b) The Chief Executive Officer shall provide written notice to the business of the intent to rescind the approval of the business' application for the energy sales tax exemption benefit.

(c) The Chief Executive Officer shall provide notice of the determination to rescind to the Director, who shall rescind the energy sales tax exemption certificate issued to the business.

(d) Any rescission of the energy sales tax exemption will require repayment by the business of all exempted tax payments, and such penalties as may be assessed in accordance with the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., from the effective date of the rescission as determined by the Authority.

HISTORY:

Recodified from N.J.A.C. 12A:2A-4.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), in (b) and in (c), substituted "Chief Executive Officer" for "Secretary"; and in (a)2, (a)4 and (d), substituted "Authority" for "Commission".

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION PROGRAM FOR CERTAIN COUNTIES

N.J.A.C. 19:31-17.9 (2016)

§ 19:31-17.9 Appeals

Appeals under this subchapter shall be subject to the appeal procedures governing the subchapter on sales and use tax exemption at N.J.A.C. 19:31-16.13.

HISTORY:

Recodified from N.J.A.C. 12A:2A-4.9 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Updated the N.J.A.C. reference.

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TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

N.J.A.C. 19:31-18.1 (2016)

§ 19:31-18.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority ("EDA" or "Authority") to implement the Grow New Jersey Assistance Act, P.L. 2011, c. 149 (the Act). The Act establishes the Grow New Jersey Assistance Program (the Program), administered by the Authority, to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

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TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

N.J.A.C. 19:31-18.2 (2016)

§ 19:31-18.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Grow New Jersey Assistance Program Act, P.L. 2011, c. 149.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-209).

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4 et seq.).

"Aviation district" means the area within a one-mile radius of the outermost boundary of the "Atlantic City International Airport," established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24).

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means an applicant proposing to own or lease premises, or that has acquired the premises within 24 months prior to project application, in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is a partnership, an S corporation, or a limited liability company or a non-profit corporation. If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates. In connection with a regional distribution facility of foodstuffs, the business entity or entities that own or lease such facility shall qualify as a business regardless of the type of the business entity or entities that own or lease such facility; the ownership or leasing of such facility by more than one business entity; or the ownership of the business entity or entities that own or lease such facility. Such ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or leasing by affiliates. Such members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. For the purposes of a regional distribution facility of foodstuffs, leas-

ing shall include subleasing and tenants shall include subtenants. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate. After approval by the Board of the incentive, a business shall include a successor, as determined by the Authority in its sole discretion, to the business and a successor, as determined by the Authority in its sole discretion, to an affiliate of the business if the business applied for a credit based upon any capital investment made by or full-time employees of the affiliate, provided any successor must execute the incentive agreement, which shall include: the obligation to not reduce the number of full-time employees in the successor's Statewide employment in the last tax period prior to the approval of the award; an agreement that all parties to the incentive agreement are jointly and severally liable under the incentive agreement; and an acknowledgment that the tax credit will be allocated to each party to the incentive agreement in accordance with the number of full-time employees that each employs at the qualified business facility.

"Capital investment" in a qualified business facility means expenses by a business or any affiliate of the business incurred after application for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; obtaining and installing furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168 and 179), for the operation of a business on real property in a building, structure, facility, or improvement to real property, including associated soft costs; and receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13); or any of the preceding. Capital investment includes obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings or other environmental components required to attain the level of silver rating or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified business facility, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. In a Garden State Growth Zone, the following qualify as a capital investment: any and all development, redevelopment and relocation costs, including, but not limited to, site acquisition if made within 24 months of application to the Authority, engineering, legal, accounting, and other professional services required; and relocation, environmental remediation, and infrastructure improvements for the project area, including, but not limited to, on- and off-site utility, road, pier, wharf, bulkhead, or sidewalk construction or repair. A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord if pertaining primarily to the premises of the qualified business facility, and, if pertaining generally to the qualified business facility being acquired or leased, shall be allocated to the premises of the qualified business facility on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility. The capital investment described in this definition may include any capital investment made or acquired within 24 months prior to the date of application, so long as the amount of capital investment made or acquired by the business, any affiliate of the business, or any owner after the date of application equals at least 50 percent of the amount of capital investment, allocated to the premises of the qualified business facility being acquired or leased on the basis of the gross leasable area of such premises in relation to the total gross leasable area in the qualified business facility made or acquired prior to the date of application.

"Commitment period" means the period of time that is 1.5 times the eligibility period.

"Complex of buildings" means buildings that are part of the same financing plan and operational plan.

"Deep poverty pocket" means a population census tract having a poverty level of 20 percent or more, and which is located within the qualified incentive area.

"Disaster recovery project" means a project located on property that has been wholly or substantially damaged or destroyed as a result of a Federally declared disaster which, after utilizing all disaster funds available from Federal, State, county, and local funding sources, demonstrates to the satisfaction of the Authority that access to additional funding authorized pursuant to the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161, is necessary to complete such redevelopment project, and which is located within the qualified incentive area.

"Distressed municipality" means a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

"Eligibility period" means the period in which a business may claim a tax credit under the Grow New Jersey Assistance Program, beginning with the tax period in which the Authority accepts certification of the business that it has met the capital investment and employment requirements of the Grow New Jersey Assistance Program and extending thereafter for a term of not more than 10 years, with the term to be determined solely at the discretion of the applicant, at the time of approval.

"Eligible position" or "full-time job" means a full-time position in a business in this State that the business has filled with a full-time employee. To be eligible as an eligible position or full-time job, the employee must have his or her primary office at the qualified business facility and must spend at least 80 percent of his or her time at the qualified business facility, or spend any other period of time generally accepted by custom or practice as full-time employment at the qualified business facility, as determined by the Authority in its sole discretion based on the characteristics of the employee's job and time at the facility, including, but not limited to, the amount of continuous time spent at the facility and the economic impact of the employee on the area in which the facility is located. For example, a reduced period of time is not applicable to a truck driver or salesperson who does not regularly contribute to the local economy due to the transient nature of his or her job responsibilities at the qualified business facility.

"Full-time employee" means a person: who is employed by a business for consideration 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, or who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) 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 wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a 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, 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. and who, except for purposes of the Statewide workforce, is provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law. With respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal: the requirement that employee health benefits are to be provided shall be deemed to be satisfied if such benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; full-time employment shall include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent; 35 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons. For any project located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or any project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, 30 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons, and the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the employees of the business are covered by a collective bargaining agreement. "Full-time employee"shall not include any person who works as an independent contractor or on a consulting basis for the business. Full-time employee shall also not include any person who at the time of project application works in New Jersey for consideration for at least 35 hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment but who prior to project application was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law.

"Garden State Growth Zone" or "growth zone" means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); or a municipality which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.

"Grow New Jersey tax credit transferee" or "tax credit transferee" means if the business transfers its tax credits, pursuant to N.J.A.C. 19:31-18.13, the purchaser of the tax credits, including any subsequent purchasers of the tax credits.

"Highlands development credit receiving area or redevelopment area" means an area located within a qualified incentive area and designated by the Highlands Water Protection and Planning Council for the receipt of Highlands Development Credits under the Highlands Transfer of Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13).

"Incentive agreement" means the contract between the business and the Authority, which sets forth the terms and conditions under which the business shall be eligible to receive the incentives authorized pursuant to the Program.

"Incentive effective date" means the date the Authority issues a tax credit based on documentation submitted by a business pursuant to paragraph (1) of subsection b. of section 6 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-247).

"Industrial premises" or "industrial space" means premises or space in which at least 51 percent of the square footage will be or has been used for the assembling, processing, and/or manufacturing of finished or partially finished products from materials or fabricated parts, including, but not limited to, factories or as a warehouse if the business uses the warehouse as part of the chain of distribution for products assembled, processed, and/or manufactured by the business at the qualified business facility; for the breaking or demolishing of finished or partially finished products; or for the production of oil or gas or the generation or transformation of electricity.

"Industrial use" means assembling, processing, and/or manufacturing of finished or partially finished products from materials or fabricated parts; the breaking or demolishing of finished or partially finished products; or the production of oil or gas or the generation or transformation of electricity, and including farming purposes as that term is defined under IRC section 6420(c)(3)(A), undertaken in an industrial space.

"Major rail station" means a railroad station located within a qualified incentive area that provides access to the public to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Mega project" means:

1. A qualified business facility located in a port district housing a business in the logistics, manufacturing, energy, defense, or maritime industries, either:

i. Having a capital investment in excess of $ 20,000,000, and at which more than 250 full-time employees of such business are created or retained; or

ii. At which more than 1,000 full-time employees of such business are created or retained;

2. A qualified business facility located in an aviation district housing a business in the aviation industry, in a Garden State Growth Zone, or in a priority area housing the United States headquarters and related facilities of an automobile manufacturer, either:

i. Having a capital investment in excess of $ 20,000,000, and at which more than 250 full-time employees of such business are created or retained; or

ii. At which more than 1,000 full-time employees of such business are created or retained;

3. A qualified business facility located in an urban transit hub housing a business of any kind, having a capital investment in excess of $ 50,000,000, and at which more than 250 full-time employees of a business are created or retained; or

4. A project located in an area designated in need of redevelopment, pursuant to P.L. 1992, c. 79 (N.J.S.A. 40A:12A-1 et seq.) prior to the enactment of P.L. 2014, c. 63 within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties having capital investment in excess of $ 20,000,000, and at which more than 150 full-time employees of a business are created or retained.

"Minimum environmental and sustainability standards" means the standards set forth in the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

"Moderate-income housing" means housing affordable, according to United States Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal Revitalization Index" means the 2007 index by the Office for Planning Advocacy within the Department of State measuring or ranking municipal distress.

"New full-time job" means an eligible position created by the business at the qualified business facility that did not previously exist in this State. For the purposes of determining a number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

"Non-gaming business" means any business, or portion of any business, which is not engaged in the operation of casino gambling or other gaming as defined in N.J.S.A. 5:12-218. For projects that contain both gaming and non-gaming operations, the number of full-time jobs and amounts of eligible capital investment shall be apportioned based on the proportionate revenue from all non-gaming revenue compared to total revenue, for example, if gaming revenue is 40 percent of total revenue, then 60 percent of the full-time employees would be deemed non-gaming and in an eligible position for the program.

"Other eligible area" means the portions of the qualified incentive area that are not located within a distressed municipality, or the priority area.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Port district" means the portions of a qualified incentive area that are located within: the Port of New York District of the Port Authority of New York and New Jersey, as defined in Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to The South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

"Priority area" means the portions of the qualified incentive area that are not located within a distressed municipality and which: are designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition; intersect with portions of a deep poverty pocket, a port district, or were Federally owned land approved for closure under a Federal Commission on Base Realignment and Closure action; are the proposed site of a disaster recovery project, a qualified incubator facility, a highlands development credit receiving area or redevelopment area, a tourism destination project, or transit oriented development; or contain a vacant commercial building having over 400,000 square feet of office, laboratory, or industrial space available for occupancy for a period of over one year; or a site that has been negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208).

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

"Program" means the Grow New Jersey Assistance Program established pursuant to P.L. 2011, c. 149 and provided in this subchapter.

"Project" means the capital investment and the employment commitment at a qualified business facility pursuant to the incentive agreement.

"Qualified business facility" means any building, complex of buildings, or structural components of buildings, and all machinery and equipment located within a qualified incentive area, used in connection with the operation of a business that is not engaged in final point of sale retail business at that location, which shall not include a university re-

search hospital, unless the building, complex of buildings, or structural components of buildings, and all machinery and equipment located within a qualified incentive area, are used in connection with the operation of: a final point of sale retail business located in a Garden State Growth Zone that will include a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by either a full service supermarket or grocery store; or a tourism destination project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219).

"Qualified incentive area" means an aviation district, a port district, a distressed municipality, urban transit hub municipality, or an area:

1. Designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or Planning Area 3 (Fringe Planning Area), pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.); or

2. Located within:

i. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);

ii. Any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4), including the sports complex, that is, the 750-acre sports and exposition site located in the Borough of East Rutherford under the jurisdiction of the New Jersey Sports and Exposition Authority as of the effective date of P.L. 2015, c. 19 (N.J.S.A. 5:10A-1 et seq.) and such additional property that is owned and controlled by the New Jersey Sports and Exposition Authority as may be designated by the Meadowlands Regional Commission, as established by P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), and section 6 of P.L. 2015, c. 19 (N.J.S.A. 5:10A-6) from time to time as part of the sports complex;

iii. A regional growth area, a town, a village, or a military and Federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

iv. The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or in a highlands development credit receiving area or redevelopment area;

v. A Garden State Growth Zone;

vi. Land approved for closure under any Federal Commission on Base Realignment and Closure action; or

vii. Areas designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) only if such areas are located within:

(1) A designated center under the State Development and Redevelopment Plan;

(2) A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts rules to revise this definition as it pertains to Statewide planning areas;

(3) Any area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 40A:12A-6) or in need of rehabilitation pursuant to section 14 of P.L. 1992, 40 c. 79 (N.J.S.A. 40A:12A-14);

(4) Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided such expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals;

(5) The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or a highlands development credit receiving area or redevelopment area; or

(6) Any area on which an existing tourism destination project is located.

"Qualified incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3).

"Qualified incubator facility" means a commercial building located within a qualified incentive area: that contains 50,000 or more square feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with a research institution, teaching hospital, college, or university, which is evidenced by a written agreement that demonstrates this collaboration; and within which, at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period. The restricted space may be comprised of non-contiguous areas, and its location within the qualified incubator facility may change from time to time.

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country or eliminated. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. For a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to P.L. 2011, c. 18, § 5 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, "retained full-time job" shall include any employee previously employed in New Jersey and transferred to the new location in the Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in the Garden State Growth Zone that contains a Tourism District as established pursuant to P.L. 2011, c. 18, § 5 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority. For the purposes of the certifications and annual reports required pursuant to the incentive agreement, N.J.S.A. 34:1B-245.e or 247.b(2), to the extent an eligible position that was the basis of the award no longer exists, a business shall include as a retained full-time job a new eligible position that is filled by a full-time employee provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

"SDA district" means an "SDA district" as defined in section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

"SDA municipality" means a municipality in which an SDA district is situate.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, provided they do not exceed 20 percent of total capital investment.

"Square feet" means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

"Square feet of gross leasable area" or "gross leasable area" means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"Substantial environmental remediation" means the completion of the necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq., which shall equal at least five percent of the capital investment in a qualified business facility.

"Targeted industry" means any industry identified from time to time by the Authority including initially, a transportation, manufacturing, defense, energy, logistics, life sciences, technology, health, and finance business, but excluding a primarily warehouse, distribution, or fulfillment center business.

"Technology startup company" means a for-profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which the business intends to move to commercialization. The business shall be deemed to have begun operation on the date that the business first hired at least one employee in a full-time position.

"Tourism destination project" means a qualified non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the qualified incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance, including a non-gaming business facility within an established Tourism District with a significant impact on the economic viability of that District.

"Transit oriented development" means a qualified business facility located within a 1/2-mile radius, or one-mile radius for projects located in a Garden State Growth Zone, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations. For the purposes of determining the transit project bonus pursuant to N.J.A.C. 19:31-8.8(c)4, a bus station platform is a terminal as listed on the EDA's website at www.njeda.com.

"Urban transit hub" means an urban transit hub, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208) and also located within a qualified incentive area.

"Urban transit hub municipality" means a municipality that qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-17 178 et seq.), or that has continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation that is taxable and that which is tax exempt.

"Withholdings" means the amount withheld by a business from the wages of full-time employees or estimated taxes paid by, or on behalf of, partners that are full-time employees, or any combination thereof, pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and, if the full-time employee is an employee whose position has moved to New Jersey but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., the amount of withholding that would occur if the employee were to move to New Jersey. Withholdings shall not include amounts withheld by a business from stock options or from stock options, money, or other payments given to a full-time employee pursuant to the termination of employment of the full-time employee. Withholdings shall include amounts withheld by a business from money or other payments given to a full-time employee pursuant to a bonus for commencing employment or for services rendered by the full-time employee.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Added definitions, "Aviation district", "Commitment period", "Complex of buildings", "Deep poverty pocket", "Disaster recovery project", "Distressed municipality", "Eligibility period", " 'Garden State Growth Zone' or 'growth zone' ", "Highlands development credit receiving area or redevelopment area", "Incentive agreement", "Incentive effective date", "Industrial premises", "Major rail station", "Mega project", "Minimum environmental and sustainability standards", "Moderate-income housing", "Municipal Revitalization Index", "Non-industrial premises", "Other eligible area", "Port district", "Priority area", "Project", "Qualified incubator facility", "SDA district", "SDA municipality", "Square feet", " 'Square feet of gross leasable area' or 'gross leasable area' ", "Substantial environmental remediation", "Targeted industry", "Technology startup company", "Tourism destination project", "Transit oriented development", "Urban transit hub", "Urban transit hub municipality", and "Withholdings"; rewrote definitions "Business", "Capital investment", "Full-time employee", "Qualified business facility", "Qualified incentive area" and "Retained full-time job"; substituted definition, " 'Eligible position' or 'full-time job' " for definition "Eligible position"; and deleted definitions, "Commitment duration", "Public transit facility", and "Tax credit term".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

Added definition "Non-gaming business"; and rewrote definition "Retained full-time job".

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

In definition "Business", inserted the last sentence; and rewrote definition " 'Eligible position' or 'full-time job' ".

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In definition "Qualified incentive area", rewrote paragraph 2ii; and in definitions "Qualified incubator facility" and "Technology startup company", inserted the last sentence.

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*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

N.J.A.C. 19:31-18.3 (2016)

§ 19:31-18.3 Eligibility criteria

(a) In order to be considered for a Grow New Jersey tax credit, the chief executive officer of a business shall demonstrate at the time of application that the business, expressly including its landlord or seller, will make, acquire, or lease a capital investment equal to or greater than, the applicable capital investment required in (a)1 below at which it will retain full-time jobs and/or create new full-time jobs in an amount equal to or greater than, the applicable number in (a)2 below.

1. For all projects approved after September 18, 2013, the effective date of P.L. 2013, c. 161, the minimum capital investment required shall be reduced by one-third (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties:

i. For the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development premises for continued similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of $ 20.00 per square feet of gross leasable area;

ii. For the new construction of an industrial, warehousing, logistics, or research and development premises for similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of $ 60.00 per square feet of gross leasable area;

iii. For the rehabilitation, improvement, fit-out, or retrofit of an existing premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of $ 40.00 per square feet of gross leasable area;

iv. For the new construction of a premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of $ 120.00 per square feet of gross leasable area. For purposes of this subparagraph, non-industrial premises shall include vacant industrial premises that are unleased and unoccupied; and

v. The minimum capital investment shall be aggregated only for buildings that are proximate, as determined by the Authority in its sole discretion, and have the same minimum investment per square feet of gross leasable area. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. The following are examples:

(1) A complex of buildings consists of building A and building B, which are both on the same block but separated by other buildings. Both buildings are existing office buildings that will be rehabilitated. The minimum capital investment for the project will be aggregated based on the total square feet of gross leasable area of the two buildings.

(2) A complex of buildings will consist of building A and building B, which will be adjacent to each other but have separate entrances. Building A is an existing office building that will be rehabilitated; building B will be a newly constructed office building. The business will have to make a minimum capital investment at building A and a separate minimum capital investment at building B.

(3) A complex of buildings consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot. Both buildings are existing industrial buildings that will be rehabilitated for continued industrial use. The minimum capital investment for the project will be aggregated based on the total square feet of gross leasable area of the two buildings.

2. The minimum number of new or retained full-time jobs required shall be reduced by one-quarter (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties.

i. For a business that is a technology startup company or a manufacturing company, a minimum of 10 new or 25 retained full-time jobs.

ii. For a business engaged primarily in a targeted industry other than a technology startup company or a manufacturing company, a minimum of 25 new or 35 retained full-time jobs.

iii. For any other business, a minimum of 35 new or 50 retained full-time jobs.

iv. The minimum number of new or retained full-time jobs may be met in the aggregate in a complex of buildings. Notwithstanding the preceding sentence, if a complex of buildings includes one or more buildings located in a Garden State Growth Zone or a county for which the minimum number of new or retained full-time jobs is reduced, the business shall meet the minimum job requirement by locating no less than the reduced minimum number of new or reduced full-time jobs at the buildings in the Garden State Growth Zone or one of the counties for which the minimum capital investment required is reduced. The following are examples:

(1) The complex of buildings for a manufacturing company consists of three buildings located in one municipality and one building located in a different municipality. The company will have three new jobs at each building. Neither municipality is a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has met the minimum full-time jobs required because the minimum full-time jobs, 10 new or 25 retained full-time jobs may be met in the aggregate across all four buildings. If the company meets all other program requirements, the company will be eligible to receive tax credits for all 12 new full-time jobs.

(2) The complex of buildings for a manufacturing company consists of two buildings located in municipality A and one building located in municipality B. The company will have four new jobs at each building in municipality A and two new jobs at the building in municipality B. Municipality A is a Garden State Growth Zone, but municipality B is not a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has met the minimum full-time jobs required because the reduced minimum full-time jobs, eight new or 19 retained full-time jobs, has been met in the aggregate at the buildings in municipality A. If the company meets all other program requirements, the company will be eligible to receive tax credits for all 10 new full-time jobs.

(3) The complex of buildings for a manufacturing company consists of two buildings located in municipality A and one building located in municipality B. The company will have three new jobs at each building in municipality A and two new jobs at the building in municipality B. Municipality A is a Garden State Growth Zone, but municipality B is not a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has not met the minimum full-time jobs because the number of jobs in the aggregate at the buildings in municipality A is six, which is less than the reduced minimum full-time jobs, eight new or 19 retained full-time jobs.

3. The business shall also demonstrate to the Authority that:

i. The qualified business facility shall be constructed in accordance with the minimum environmental and sustainability standards;

ii. The proposed capital investment and the resultant retention and creation of full-time jobs will yield a net positive economic benefit, equaling at least 110 percent of the requested tax credit allocation amount, to the State, as calculated pursuant to N.J.A.C. 19:31-18.7(c) prior to taking into account the value of the requested tax credit, and shall be based on the benefits generated during the first 20 years following the completion of the project, except that:

(1) For a mega project or a project located in a Garden State Growth Zone, the determination shall be based on the benefits generated during a period of up to 30 years following the completion of the project; and

(2) For a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the net positive economic benefit determination shall be based on the benefits generated during a period of up to 35 years following completion of the project, and shall equal at least 100 percent of the requested tax credit allocation;

iii. The award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program.

(1) Except as determined by the Authority in its sole discretion based on extraordinary circumstances, including, but not limited to, geographic or regulatory constraints of a project, the business shall provide a full economic analysis of the in-State and out-of-State alternatives under consideration by the business to support that it demonstrates a material factor.

(2) If, in a Garden State Growth Zone, the site was acquired or leased prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site.

(3) In satisfaction of this requirement, with respect to a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, the award of tax credits will be a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority; and

iv. For a non-gaming business facility within an established Tourism District to qualify as a tourism destination project, the facility will have a significant impact on the economic viability of the Tourism District within which it is located by satisfying the following:

(1) Having a capital investment in excess of $ 50,000,000, excluding any capital investment for site acquisition, at which more than 250 full-time employees of a business are created or retained; and

(2) Demonstrating to the satisfaction of the Authority a combination of two or more of:

(A) Positive financial benefit to the District;

(B) A net increase in visitors to the District;

(C) An increase in marketing dollars spent on the District; or

(D) The addition of unique amenities or services to the existing project or District.

(b) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(c) A business shall be treated as owner of a qualified business facility if it holds fee simple title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

(d) Pursuant to P.L. 2013, c. 161, a business may apply for tax credits under the program for more than one project pursuant to one or more applications.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a)3iii, substituted "; and" for a period at the end, and added (a)3iv.

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

In (a)1iii, deleted "and" from the end; in (a)1iv, substituted "; and" for a period; added (a)1v and (a)2iv; in (a)2iii, substituted a period for a semicolon; and rewrote (a)3iii.

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

N.J.A.C. 19:31-18.4 (2016)

§ 19:31-18.4 Restrictions

(a) The Authority, pursuant to P.L. 2013, c. 161, shall not enter into an incentive agreement with a business that has previously received incentives pursuant to the Business Retention and Relocation Assistance Act, P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.), the Business Employment Incentive Program Act, P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.), or any other program administered by the Authority unless:

1. The business has satisfied all of its obligations underlying the previous award of incentives or is compliant with section 4 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-245). In the instance of the business terminating an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, the Authority shall recapture all or part of any award, provided that such permitted recapture may be calculated to recognize the period of time that the business was in compliance prior to termination and such recapture amount may be paid after approval by the Authority of the business's application for a tax credit incentive award under P.L. 2013, c. 161, but the recapture amount must be paid before the Authority shall execute the incentive agreement, which shall be executed within 18 months following the date of approval of the business's application;

2. The capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives; or

3. The incentives pursuant to the Business Retention and Relocation Assistance Grant (BRRAG) Program Sales and Use Tax Exemption, sections 19 through 22 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-185 through 188) are awarded simultaneously with the Grow New Jersey Tax credit.

(b) A project that consists solely of point-of-final-purchase retail facilities, excluding catalog distribution centers, shall not be eligible for a grant of tax credits. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. For a qualified business facility that is a mixed-use project that includes retail facilities and that is located in a Garden State Growth Zone or the Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, retail facilities in an amount up to 7.5 percent of the mixed-use project may be included in the mixed-use project application for a grant of tax credits along with the non-retail facilities and that application may include in the aggregate the pro-rata number of full-time employees employed by any number of tenants or other occupants of the included retail facilities. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this subsection, a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by a full-service supermarket or grocery store, located in a Garden State Growth Zone that qualified under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or a tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), or catalog distribution centers shall not be considered point-of-final-purchase retail facilities.

(c) (Reserved)

(d) For a qualified incubator facility, the maximum number of positions employed by businesses that are not technology startup companies that are included in the calculation of the total tax credit amount shall not exceed twice the number of positions employed by technology startup companies.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Added new (a); deleted former (a) through (c) and (e) through (i); recodified former (d) as (b); and rewrote (b).

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (b).

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Reserved (c); and added (d).

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

N.J.A.C. 19:31-18.5 (2016)

§ 19:31-18.5 Application submission requirements

(a) Each application to the Authority made by a business shall include the following information in an application format prescribed by the Authority:

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

i. The name of the business;

ii. The contact information of the business;

iii. The prospective future address of the business (if different);

iv. The type of the business;

v. The principal products and services and three-digit North American Industry Classification System number;

vi. The New Jersey tax identification number;

vii. The Federal tax identification number;

viii. The total number of full-time employees in New Jersey at the time of application and in the last tax period prior to the credit amount approval;

ix. The total list of New Jersey operations;

x. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

xi. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

xii. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

xiii. A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of Treasury by such time and with such information as the Director may require; and

xv. Any other necessary and relevant information as determined by the Authority for a specific application;

2. Project information shall include the following:

i. An overall description of the proposed project;

ii. A description of the capital investments planned by the business, if other than a tenant at the proposed qualified business facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified business facility, and financial information demonstrating ability to complete the capital investment;

iii. The estimated value of the capital investment;

iv. Supporting evidence that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit pursuant to N.J.A.C. 19:31-18.3(a)3ii, taking into account the criteria listed at N.J.A.C. 19:31-18.7(c).

(1) In determining whether a proposed capital investment will yield a net positive benefit, the business's chief executive officer, or equivalent officer for North American operations, shall submit a certification indicating that:

(A) Any existing full-time jobs are at risk of leaving the State or being eliminated;

(B) Any projected creation or retention, as applicable, of new full-time jobs would not occur but for the provision of tax credits under the program; and

(C) The business's chief executive officer, or equivalent officer for North American operations, has reviewed the information submitted to the Authority and that the representations contained therein are accurate;

(2) In satisfaction of (a)2iv(1)(A) and (B) above, the certification with respect to a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, shall indicate that the provision of tax credits under the program is a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority. If the site was acquired within 24 months prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site;

(3) For a qualified incubator facility, the certifications in (a)2iv(1)(A) and (B) above regarding projected retention of full-time jobs shall be certified by the business employing the full-time jobs to be retained and shall not include full-time jobs employed by the operator or a technology startup company. To demonstrate that such certifications and the certification in (a)2iv(1)(B) above regarding the creation of new full-time jobs employed by any business at the qualified incubator facility are satisfied, the operator shall demonstrate that it would locate the qualified incubator facility at an out-of-State location, but for the tax credit award or that it has a project financing gap in its business model as determined by a fiscal analysis conducted by the Authority, taking into account the project's internal rate of return on the operator's contributed capital and net profit margin.

(4) The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project.

v. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

vi. Identification of the site of the proposed qualified business facility, including the block and lot of the site as indicated upon the local tax map. For purposes of determining geographical location of contiguous buildings that extend over more than one geographical location, the contiguous buildings shall be considered in the geographical location in which the contiguous buildings are located with the most beneficial total tax credit amount. For a qualified incubator facility, common areas that are shared by the entire building in which the qualified incubator facility is located and not

exclusive to the qualified incubator facility shall not be counted as part of the qualified incubator facility, but the size of the space restricted for use by technology startup companies may include the pro-rata share of any common areas within the qualified business facility;

vii. A project schedule that identifies projected move dates for the proposed qualified business facility;

viii. A schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

ix. The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility; and, if an application involves intra-State job transfers, a full economic analysis of all locations under consideration by the business, as well as all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist;

x. The total number of anticipated new and retained full-time jobs in New Jersey and occupy the qualified business facility and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity; and

xi. Any other necessary and relevant information as determined by the Authority for a specific application; and

3. Employee information shall include the following:

i. A written certification that the employees that are the subject of this application will be full-time employees at the qualified business facility;

ii. The average annual wage and benefit rates of full-time employees and new and retained full-time jobs at the qualified business facility;

iii. Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy, such as the tax credits, pursuant to P.L. 2007, c. 200;

iv. Any other necessary and relevant information as determined by the Authority for a specific application; and

4. A list of all affiliates that are directly or indirectly controlled by the business, and the total number of full-time employees in New Jersey of each affiliate at the time of application and in the last tax period prior to the credit amount approval.

(b) The business applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-18.6(a).

(c) A business shall be allowed to assign their ability to apply for the tax credit for a project located in a Garden State Growth Zone under this subchapter to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone, as determined by the Authority. The non-profit organization may make an application on behalf of a business which meets the requirements for the tax credit, or a group of non-qualifying businesses or positions, located at a qualified business facility, that shall be considered a unified project for the purposes of the incentives provided under this section.

(d) An organization operating a qualified incubator facility may make an application on behalf of a business which meets the requirements for the tax credit, or a group of non-qualifying businesses or positions, located at a qualified incubator facility, that shall be considered a unified project for the purposes of the incentives provided under this section.

1. For purposes of this subsection, "positions" mean full-time employees who are employed by a business at a qualified incubator facility and who spend at least 16 hours a week at the qualified incubator facility and must spend at least 80 percent of his or her time, or any other period of time generally accepted by custom or practice as determined by the Authority, in this State. A position at a qualified incubator facility shall be considered a full-time job under this program.

2. In addition to the information required pursuant to (a) above, the organization operating a qualified incubator facility shall be required to submit:

i. The names, contact information, New Jersey employer identification, and Federal employer identification number of any party on whose behalf it is making the application to the extent known at the time of application; and

ii. The organization's business model and a detailed explanation as to how the business model will ensure that the benefit from the award of tax credits will inure to the businesses and positions on whose behalf the application is made and how the businesses and full-time employees filling positions will be informed of the award and the benefits from the award.

(e) For any project located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or any project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, a business may assign its ability to apply for the tax credit under this subsection to the developer of the facility. The developer may make an application on behalf of the business which meets the requirements for the tax credit, or a group of non-qualifying businesses located at the business facility, that shall be considered a unified project for the purposes of the incentives provided under this section, and the developer may apply for tax credits available based on the number of jobs provided by the business or businesses and the total capital investment of the business or businesses and the developer.

(f) In addition to the information required pursuant to (a) above, any applicant authorized pursuant to (c) and (e) above shall be required to submit:

1. Evidence of the assignment to apply for the tax credit from the assignee or the party on whose behalf it is making the application;

2. The name of the assignee or the party on whose behalf it is making the application;

3. The contact information of the assignee or the party on whose behalf it is making the application;

4. The New Jersey employer identification number of the assignee or the party on whose behalf it is making the application;

5. The Federal employer identification number of the assignee or the party on whose behalf it is making the application; and

6. If the applicant is a non-profit authorized under (c) above, the mission statement of the non-profit organization.

(g) A business that has already applied for a tax credit incentive award prior to September 18, 2013, the effective date of P.L. 2013, c. 161, but who has not yet been approved for such tax credits, or has not executed an agreement with the Authority, may proceed under that application or seek to amend such application or reapply for a tax credit incentive award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions of the program.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (a)2iv(3), (a)2vi, and (c); added new (d) through (f); and recodified former (d) as (g).

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (a)1viii and (a)2vi; in (a)3iii, inserted a comma following "subsidy", and deleted "and" from the end; in (a)3iv, substituted "; and" for a period; and added (a)4.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Rewrote (a)2iv, (a)2vi, (c), and (d); and in the introductory paragraph of (f), deleted ", (d)," following "(c)".

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

N.J.A.C. 19:31-18.6 (2016)

§ 19:31-18.6 Fees

(a) A business applying for benefits under this program shall submit a one-time non-refundable application fee, with payment in the form of a check, payable to the "New Jersey Economic Development Authority." The application fee shall be as follows:

1. For projects with total tax credits of $ 10,000,000 or less and 100 or fewer new and retained full-time jobs, the fee to be charged at application shall be $ 1,000;

2. For projects with total tax credits of $ 10,000,000 or less and more than 100 new and retained jobs, the fee to be charged at application shall be $ 2,500; and

3. For projects with total tax credits in excess of $ 10,000,000, the fee to be charged at application shall be $ 5,000.

(b) In addition to the application fee in (a) above, a business shall pay to the Authority the full amount of direct costs of an analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee of .5 percent of the approved tax credit shall be charged by the Authority as follows:

1. For each project with tax credits of $ 1,000,000 or less annually, the fee shall not exceed $ 50,000 and shall be charged upon execution of the incentive grant agreement;

2. For each project with tax credits of $ 1,000,000 to $ 4,000,000 annually, the fee shall not exceed $ 200,000 and shall be charged upon execution of the incentive grant agreement; and

3. For each project with tax credits in excess of $ 4,000,000 annually, the fee shall not exceed $ 500,000 and shall be charged prior to the approval of the tax credit. The fee shall be refunded if the Authority does not approve the tax credit.

(d) For each project with tax credits of $ 1,000,000 or less annually, a non-refundable fee of .5 percent of the tax credit, not to exceed $ 50,000, shall be paid prior to the receipt of the tax credit certificate. For each project with tax credits in excess of $ 1,000,000 annually, a non-refundable fee of .5 percent of the tax credit, not to exceed $ 500,000, shall be paid prior to the receipt of the tax credit certificate.

(e) A business shall pay to the Authority an annual servicing fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report. For each project with tax credits of $ 1,000,000 or less annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed $ 20,000 per year; and for each project with tax credits in excess of $ 1,000,000 annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed $ 75,000 per year.

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-18.13 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee of $ 2,500.

(g) For each project with total tax credits of $ 5,000,000, a non-refundable fee of $ 2,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of $ 7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with total tax credits in excess of $ 5,000,000, a non-refundable fee of $ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of $ 25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee of $ 1,000 shall be paid for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and with respect to the employees required upon completion of the capital investment and employment requirement; and a non-refundable fee of $ 2,500 shall be paid for the second such six-month extension.

(i) A business seeking to terminate an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, shall pay to the Authority an additional fee of $ 5,000 for terminations that do not require extensive staff time and Board approval; and a non-refundable fee of $ 25,000 for terminations that require extensive staff time or Board approval.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

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*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
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SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

N.J.A.C. 19:31-18.7 (2016)

§ 19:31-18.7 Review of application and certification of project completion

(a) A business seeking an approval of tax credits for a qualified business facility shall apply for tax credits prior to July 1, 2019, except as set forth at N.J.A.C. 19:31-18.3(b) and except for businesses seeking a credit for a mega project, which shall apply by September 18, 2017, four years after the effective date of P.L. 2013, c. 161.

(b) The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be deemed complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project. The review will determine whether the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Provides adequate information for the subject application.

(c) In determining whether the company meets the net positive economic benefits test pursuant to N.J.A.C. 19:31-18.3(a)3ii and as certified by the chief executive officer pursuant to N.J.A.C. 19:31-18.5(a)2iv, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by and generated indirectly by the business, property taxes or payment in lieu of taxes paid directly by and generated indirectly by the business, taxes paid directly or generated indirectly by new or retained employees, and peripheral economic growth caused by the business's relocation, provided that such determination shall be limited to the net positive economic benefits derived from the capital investment commenced after the submission of an application to the Authority. For a project located in a Garden State Growth Zone, the Authority may award bonuses in its net positive economic benefit calculation including, but not limited to, full payment of taxes for a qualified business facility that receives a tax abatement pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. With regard to a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the net positive economic benefits test may utilize the value of those property taxes subject to the provisions of section 24 of P.L. 2013, c. 161 (N.J.S.A. 52:27D-489s) or the value of those property taxes that would have been assessed on the new construction, improvements, or substantial rehabilitation of structures on real property if the structures were not exempt because they are on real property owned by a public entity and incremental sales and excise taxes that are derived from activities within the area and which are rebated or retained by the municipality pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.) or any other law providing for such rebate or retention.

(d) Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, and the

maximum amount of tax credits to be granted and, shall promptly notify the applicant and the Director of the Division of Taxation of the determination. When considering an application involving intra-State job transfers, after staff's review of the materials submitted by the applicant, testing the validity of financial information and assumptions through the use of computer models and, to the extent necessary, seeking input from third-party consultants, the cost which will be paid by the applicant, the Board shall make a separate determination to verify and confirm by way of making a factual finding by separate vote that the jobs are at risk of leaving the State, and as to the date or dates at which the Authority expects that those jobs would actually leave the State, or, with respect to projects located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), that the provision of tax credits under the program is a material factor in the business's decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.). The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and requirements regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter and incentive agreement, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the Grow New Jersey tax credits.

2. In the approval letter to the business, the Authority shall set a date by which its approval will expire.

(e) Within six months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, committed financing for and site control of the qualified business facility, except that a business shall have 12 months to submit such progress information for a mega project or for a qualified business facility that consists of new construction. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within the required period of time, or if progress as indicated has not been achieved.

(f) Upon completion of the capital investment and employment requirements of the program, the business shall submit certifications evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements with supporting evidence satisfactory to the Authority.

1. The business shall submit a certification of a certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority, relating to the capital investment. The amount of the capital investment in the certification that has been approved by the Authority shall not be increased regardless of additional capital investment in the qualified business facility, provided, however, that in no event will the amount of capital investment exceed the amount of capital investment previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The business shall submit a certification of the chief financial officer of the business, which certification shall be acceptable to the Authority, evidencing that the business has satisfied the conditions relating to any employment requirements. The number of new and retained full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of additional jobs located at the qualified business facility, and, except as set forth in N.J.A.C. 19:31-18.11(e), in no event will the number of jobs exceed the number of jobs previously approved by the Board. To the extent a business has received an award, for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs. In the event the number of new and/or retained full-time jobs is reduced below the number of new and/or retained full-time jobs in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

3. Absent extenuating circumstances and the written approval of the Authority, the certification with respect to capital investment and employment shall be submitted within three years following the date of approval of the application.

The Authority may grant two six-month extensions of the deadline, however, in no event, shall the incentive effective date occur later than four years following the date of approval of an application by the Authority.

4. An organization operating a qualified incubator facility shall provide written evidence that the qualified business facility continues to qualify as a qualified incubator facility and that the benefit from the award of tax credits will inure to the businesses and positions on whose behalf the application was made.

5. The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification.

(g) Once the Authority accepts the certification of the business that it has satisfied the capital investment and employment requirements, if any, of the program, and the Authority determines that other necessary conditions have been met, within 90 days of the submission of the certifications and evidence satisfactory to the Authority, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate which will be based on the information submitted in the certifications under (f) above, provided it shall not exceed the maximum amount determined by the Board under (d) above. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance issued by the Authority.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (c) and (e).

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In the introductory paragraph of (f), deleted "of a certified public accountant, which may be made pursuant to an 'agreed upon procedures' letter acceptable to the Authority" following "certifications"; and in (f)1 and (f)2, inserted the first sentence.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Added new (f)4, and recodified former (f)4 as (f)5.

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

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SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

N.J.A.C. 19:31-18.8 (2016)

§ 19:31-18.8 Determination of grant amount; bonus award

(a) The total amount of tax credit for an eligible business shall be for each new or retained full-time job as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period; however, except as set forth in N.J.A.C. 19:31-18.11(e), the total tax credit amount credited annually to the business shall not exceed the maximum amount determined by the Board under N.J.A.C. 19:31-18.7(d) and the amount calculated pursuant to N.J.A.C. 19:31-18.7(g), divided by the number of years in the eligibility period. The total amount of tax credit shall be calculated by combining the jobs in buildings that have the same factors set forth in this section that affect the tax credit calculation. The total amount of tax credit shall be calculated separately for jobs in a building with factors that are different than the factors affecting the calculation for jobs in the other buildings in a complex of buildings.

(b) The base amount of the tax credit for each new or retained full-time job shall be as follows:

1. For a qualified business facility located within an urban transit hub municipality or Garden State Growth Zone or is a mega project, $ 5,000 per year;

2. For a qualified business facility located within a distressed municipality but not qualifying under (b)1 above, $ 4,000 per year;

3. For a project in a priority area, $ 3,000 per year; and

4. For a project in other eligible areas, $ 500.00 per year.

(c) In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased if the qualified business facility meets any of the following priority criteria or other additional or replacement criteria determined by the Authority from time to time in response to evolving economic or market conditions, provided that (c)5, 6, 8, and 10 below shall not apply to a qualified incubator facility:

1. For a qualified business facility located in a deep poverty pocket or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the Federal Department of Housing and Urban Development, an increase of $ 1,500 per year;

2. For a qualified business facility located in a qualified incubator facility, an increase of $ 500.00 per year;

3. For a qualified business facility located in a mixed-use development that incorporates sufficient moderate income housing on site that is made available to accommodate a minimum of 20 percent of the full-time employees of the business, an increase of $ 500.00 per year;

4. For a qualified business facility located within a transit-oriented development, an increase of $ 2,000 per year;

5. For a qualified business facility, other than a mega project or a project in a Garden State Growth Zone, at which the capital investment in industrial premises for industrial use by the business is in excess of the minimum capital investment required for eligibility pursuant to subsection b. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244), an

increase of $ 1,000 per year for each additional amount of investment, as measured in square feet of measured gross leasable area, that exceeds the minimum amount required for eligibility by 20 percent, with a maximum increase of $ 3,000 per year;

6. For a business with new full-time jobs and retained full-time jobs at the project with a median average salary in excess of the existing median average salary for full-time workers residing in the county in which the project is located, or, in the case of a project in a Garden State Growth Zone, a business that employs full-time jobs at the project with a median average salary in excess of the median average salary for full-time workers residing in the Garden State Growth Zone, an increase of $ 250.00 per year during the commitment period for each 35 percent by which the project's average salary levels exceeds the county or Garden State Growth Zone average salary, with a maximum increase of $ 1,500 per year;

7. For a business with large numbers of new full-time jobs and retained full-time jobs during the commitment period, the increases shall be in accordance with the following schedule:

i. If the number of new full-time jobs and retained full-time jobs is between 251 and 400, $ 500.00 per year;

ii. If the number of new full-time jobs and retained full-time jobs is between 401 and 600, $ 750.00 per year;

iii. If the number of new full-time jobs and retained full-time jobs is between 601 and 800, $ 1,000 per year;

iv. If the number of new full-time jobs and retained full-time jobs is between 801 and 1,000, $ 1,250 per year;

v. If the number of new full-time jobs and retained full-time jobs is in excess of 1,000, $ 1,500 per year;

8. For a business in a targeted industry, an increase of $ 500.00 per year;

9. For a qualified business facility exceeding the Leadership in Energy and Environmental Design's "Silver" rating standards or completes substantial environmental remediation, an additional increase of $ 250.00 per year;

10. For a mega project or a project located within a Garden State Growth Zone at which the capital investment in industrial premises for industrial use by the business is in excess of the minimum capital investment required for eligibility pursuant to subsection b. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244), an increase of $ 1,000 per year for each additional amount of investment, as measured in square feet of measured gross leasable area, that exceeds the minimum amount by 20 percent, with a maximum increase of $ 5,000 per year;

11. For a project in which a business retains at least 400 jobs and is located within the municipality in which it was located immediately prior to the filing of the application hereunder and is the United States headquarters of an automobile manufacturer, an increase of $ 1,500 per year;

12. For a project located in a municipality in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties with a 2007 Municipality Revitalization Index rank greater than 465, an increase of $ 1,000 per year;

13. For a project located within a half-mile of any light rail station constructed after September 18, 2013, the effective date of P.L. 2013, c. 161, an increase of $ 1,000 per year;

14. For a marine terminal project in a municipality located outside the Garden State Growth Zone, but within the geographical boundaries of the South Jersey Port District, an increase of $ 1,500 per year;

15. For a project located within an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 6), and which is located within a quarter mile of at least one United States highway and at least two New Jersey State highways, an increase of $ 1,500 per year;

16. For a project that generates solar energy on site for use within the project of an amount that equals at least 50 percent of the project's annual electric supply service needs, an increase of $ 250.00 per year; and

17. For a qualified business facility in a vacant commercial building or campus having over 1,000,000 square feet of office or laboratory space available for occupancy for a period of over one year that the Authority designates, as listed on the Authority's website at www.njeda.com, an increase of $ 1,000 per year.

(d) The gross amount of the tax credit for an eligible business for each new or retained full-time job shall be the sum of the base amount as set forth pursuant to (b) above and the various additional bonus amounts for which the business is eligible pursuant to (c) above, subject to the following limitations:

1. For a mega project or a project in a Garden State Growth Zone, the gross amount for each new or retained full-time job shall not exceed $ 15,000 per year;

2. For a qualified business facility located within an urban transit hub municipality, the gross amount for each new or retained full-time job shall not exceed $ 12,000 per year;

3. For a qualified business facility in a distressed municipality the gross amount for each new or retained full-time job shall not exceed $ 11,000 per year;

4. For a qualified business facility in other priority areas, the gross amount for each new or retained full-time job shall not exceed $ 10,500 per year;

5. For a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed $ 6,000 per year; and

6. For a disaster recovery project, the gross amount for each new or retained full-time job shall not exceed $ 2,000 per year.

(e) After the determination by the Authority of the gross amount of tax credits for which a business is eligible pursuant to (d) above, the final total tax credit amount shall be calculated as follows:

1. For each new full-time job, the business shall be allowed tax credits equaling 100 percent of the gross amount of tax credits for each new full-time job; and

2. For each retained full-time job, the business shall be allowed tax credits equaling the lesser of 50 percent of the gross amount of tax credits for each retained full-time job, or one-tenth of the capital investment, which will be the lesser of actual capital investment or the business's proposed amount approved at application, divided by the number of retained and new full-time jobs per year over the grant term of ten years, unless the jobs are part of a mega project that is the United States headquarters of an automobile manufacturer located within a priority area or a qualified business facility in a Garden State Growth Zone, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job, or unless the new qualified business facility would replace a facility that has been wholly or substantially damaged as a result of a Federally declared disaster, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job. The per retained full-time job tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) into the amount of capital investment in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g), provided that in no event shall the gross amount of tax credits per retained full-time job exceed the gross amount calculated at the approval of the application. Based on this per retained full-time job calculation, any reduction in the number of retained full-time jobs shall proportionately reduce the amount of tax credits for that year.

(f) For each application approved by the Board, the amount of tax credits available to be applied by the business annually shall not exceed:

1. Thirty-five million dollars ($ 35,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority;

2. Thirty million dollars ($ 30,000,000) and provides a net positive economic benefit to the State with respect to a mega project or a qualified business facility in a Garden State Growth Zone;

3. Ten million dollars ($ 10,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in an urban transit hub municipality;

4. Eight million dollars ($ 8,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in a distressed municipality;

5. Four million dollars ($ 4,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in other priority areas, but not more than 90 percent of the withholdings of the business's employees from the qualified business facility; and

6. Two-and-a-half million dollars ($ 2,500,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in other eligible areas, but not more than 90 percent of the withholdings of the business's employees from the qualified business facility.

(g) Under (f) above, with the exception of a project located within a Garden State Growth Zone which qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, that divides the total capital investment of the project by the total number of full-time jobs at that project, for each application for tax credits in excess of $ 4,000,000 annually, the amount of tax credits available to be applied by the business annually shall be the lesser of the maximum amount under the applicable paragraph or an amount determined by the Authority necessary to complete the project, with such determination made by the Authority's utilization of a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations, as applicable; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the Authority, including, but not limited to, factors affecting the decision of the business to relocate, the Authority shall independently verify and confirm the amount necessary to complete the project.

(h) Notwithstanding anything to the contrary in (a) through (g) above, for a project located within a Garden State Growth Zone that qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the total tax credit shall be:

1. For a project that creates or retains 35 or more full-time jobs new to the municipality and makes a capital investment of at least $ 5,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than $ 2,000,000 each year of the grant term;

2. For a project that creates or retains 70 or more full-time jobs new to the municipality and makes a capital investment of at least $ 10,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than $ 3,000,000 each year of the grant term;

3. For a project that creates or retains 100 or more full-time jobs new to the municipality and makes a capital investment of at least $ 15,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than $ 4,000,000 each year of the grant term;

4. For a project that creates or retains 150 or more full-time jobs new to the municipality and makes a capital investment of at least $ 20,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than $ 5,000,000 each year of the grant term; or

5. For a project that creates or retains 250 or more full-time jobs new to the municipality and makes a capital investment of at least $ 30,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs as defined for this program at that project divided by 10 years.

6. For projects approved under this subsection, the per full-time employee tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) into the lesser of the amount of capital investment in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) or the award of tax credits approved by the Board pursuant to N.J.A.C. 19:31-18.7(d). Based on this per full-time employee calculation and provided the business continues to meet the minimum number of employees required in subparagraphs (a), (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), any reduction in the number of employees shall proportionately reduce the amount of tax credits for that year, that is, the number of full-time employees will be multiplied by the per full-time employee calculation done at certification.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (c)15, deleted "and" from the end; in (c)16, substituted "; and" for a period; added (c)17; rewrote (e)2, (f)1, and (g); in the introductory paragraphs of (h)1 through (h)5, inserted "new to the municipality"; and added (h)6.

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (a).

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In the introductory paragraph of (c), inserted ", provided that (c)5, 6, 8, and 10 below shall not apply to a qualified incubator facility".

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N.J.A.C. 19:31-18.9 (2016)

§ 19:31-18.9 Tax credit amount; application and allocation of the tax credit

(a) For each tax accounting or privilege period during the eligibility period, a business may apply the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years (fractions of a cent rounded down) subject to the provisions of the Act and this subchapter.

(b) The business may apply the credit against the tax liability otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and/or capital investment requirements of the program shall be applied on the basis of the allocation(s) submitted pursuant to the application, provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the business facility or employees at the business facility during the tax period for which the tax credits are issued.

(c) The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter. The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period during which it was transferred or in any of the next three successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

(d) Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director of the Division of Taxation in the Department of the Treasury accompanied by any additional information as the Director may require.

(e) In connection with a regional distribution facility of foodstuffs, the business entity or entities may distribute credits to members, shareholders, partners, or other ownership or leasing participants in accordance with their respective interests. If the business entity or entities or their members, shareholders, partners, or other ownership or leasing participants lease space in the facility to members, shareholders, partners, or other ownership or leasing participants or others as tenants in the facility, the leases shall be treated as a lease to an affiliate, and the business entity or entities shall not be subject to forfeiture of the credits. For the purposes of this subsection, leasing shall include subleasing and tenants shall include subtenants.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (c) and (d).

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N.J.A.C. 19:31-18.10 (2016)

§ 19:31-18.10 Incentive agreement

(a) All approved applicants shall execute an approval letter and an incentive agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to, the execution of an incentive agreement.

(b) The incentive agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer of the Authority:

1. A detailed description of the proposed project, which will result in job creation or retention, and the number of new or retained full-time jobs that are approved for tax credits;

2. The eligibility period of the tax credits, including the first year for which the tax credits may be claimed;

3. A requirement that the applicant maintain the project at a location in New Jersey for the commitment period, with at least the minimum number of full-time employees as required by the program, which shall include consideration of bonus award(s) and net positive economic benefit test pursuant to N.J.A.C. 19:31-18.3(a)3ii and the amount of tax credits previously received by the business during the eligibility period, and a provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the business does not remain in compliance with the requirements in this paragraph for the commitment duration. Such recapture may include interest on the recapture amount at the rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies, plus any statutory penalties and all costs incurred by the Authority and the Division of Taxation in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. If all or part of any tax credits awarded is subject to recapture, the Authority will pursue recapture from the business and not from a tax credit transfer certificate purchaser. Tax credit transfer certificate purchasers shall be subject to all other limitations and conditions that apply to the use of the tax credits by the business, including, but not limited to, reduction and forfeiture provisions and the requirement of a letter of compliance for the relevant tax period;

4. Personnel information that will enable the Authority to administer the program;

5. A requirement that the certifications relating to the amount of eligible capital investment and number of employees with supporting evidence satisfactory to the Authority shall be submitted by the business in accordance with N.J.A.C. 19:31-18.7(f);

6. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;

7. Certifications by the business, including the following: the State's financial support will yield a net positive economic benefit to the State;

8. Requirements on maintaining the existence of the business and not relocating the project;

9. Annual reporting requirements for the number of full-time employees for which the tax credits are to be made;

10. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;

11. Audit of the payroll records, as deemed necessary by the Authority;

12. Indemnification and insurance requirements;

13. Limitations on the grant of tax credits;

14. A provision which permits the Authority to amend the agreement;

15. Default and remedies; and

16. Reporting requirements.

(c) The incentive agreement shall further provide that the Authority is not liable in damages for the issuance or use of the tax credits; and that there is no guarantee that legislation will not be enacted that would cause further changes to P.L. 2011, c. 149.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Section was "Project agreement". Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (b)3.

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N.J.A.C. 19:31-18.11 (2016)

§ 19:31-18.11 Reporting requirements and annual reports

(a) After notification pursuant to N.J.A.C. 19:31-18.7(g), the business shall furnish to the Authority an annual report certified by the chief financial officer of the business in a format as may be determined by the Authority, which shall contain the following information:

1. The number of full-time employees and new or retained full-time positions employed at the qualified business facility, the list of affiliates that contributed to the full-time employees at the qualified business facility, the number of full-time employees in its Statewide workforce as defined in N.J.A.C. 19:31-18.15(a), the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, total lease payments, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and failure to submit the certified report within 120 days, absent extenuating circumstances and the written approval of the Authority, will result in forfeiture of the tax credit for that privilege period. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs; and

2. For an organization operating a qualified incubator facility that applied on behalf of businesses or positions, the number of full-time employees or positions in the space restricted for use by technology company startup companies and the number of full-time employees or positions outside of the space restricted for use by technology company startup companies. The annual report shall demonstrate that at least 50 percent of the qualified business incubator remains restricted for such use and that any company in the restricted space continues to qualify as a technology startup company.

3. A certification indicating whether or not the business is aware of any condition, event, or act, which would cause the business not to be in compliance with the approval, the Act, the incentive agreement, or this subchapter.

(b) The tax credit certificate may provide for additional reporting requirements.

(c) In conducting its annual review, the Authority may require a business to submit any information determined by the Authority to be necessary and relevant to its review.

(d) Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance will indicate whether the business or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.

(e) For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an additional tax credit award representing an increased base credit amount for that tax period and each subsequent tax

period, for each additional full-time employee added above the number of full-time employees specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this subsection; provided that the adjustment may not affect other obligations under the incentive agreement to maintain a minimum number of employees. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time employees added above the number of full-time employees specified in the incentive agreement. Following EDA staff acceptance of the annual report, it shall notify the Director of the Division of Taxation and the business shall receive an increased tax credit certificate.

(f) For a project located within a Garden State Growth Zone which qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which qualifies for a tax credit pursuant to subparagraph (ii) of subparagraphs (a) through (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), if, in any tax period the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement such that the business shall then meet the minimum number of employees required in subparagraphs (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), then the Authority shall recalculate the total tax credit amount per full-time employee by using the certified capital investment of the project allowable under the applicable subparagraph and the number of full-time employees certified on the date of the recalculation and applying those numbers to subparagraphs (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount shall be adjusted accordingly pursuant to this section. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time employees added above the number of full-time employees specified in the incentive agreement. Following EDA staff acceptance of the annual report, it shall notify the Director of the Division of Taxation and the business shall receive an increased tax credit certificate.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (e), deleted ", which following review by EDA staff, the Board will determine whether to approve the request" following the fourth occurrence of "agreement", and inserted the last sentence; and added (f).

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In the introductory paragraph of (a), substituted "the chief financial officer of the business" for "a certified public accountant".

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (a)1.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Added new (a)2, and recodified former (a)2 as (a)3.

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N.J.A.C. 19:31-18.12 (2016)

§ 19:31-18.12 Tax credit certificate

(a) The tax credit certificate shall set forth the following terms:

1. The starting date of the tax period and the commitment duration;

2. The amount of the tax credits;

3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;

4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and or capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period the proposed allocation of tax credits by the business;

5. Events that would trigger reduction and forfeiture of tax credit amounts; and

6. Reporting requirements and the requirement for an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

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N.J.A.C. 19:31-18.13 (2016)

§ 19:31-18.13 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, in an amount not less than $ 25,000 pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

(b) The initial sale or assignment of any amount of a tax credit allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted.

(c) In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-18.5(a)1xiv.

(d) Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

(e) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In (a), inserted "the" preceding "Treasury", and substituted "$ 100,000 in tax credits, provided that one transfer consisting of any remainder that is less than $ 100,000, may be made in each tax period for less than $ 100,000" for "$ 1,000,000 in tax credits".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (a), inserted "in an amount not less than $ 25,000", and deleted the former fourth sentence; and rewrote (b).

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N.J.A.C. 19:31-18.14 (2016)

§ 19:31-18.14 Cap on total credits

The combined value of all credits approved by the Authority pursuant to P.L. 2007, c. 346 and P.L. 2010, c. 57 (N.J.S.A. 34:1B-207 et seq.) prior to December 31, 2013, shall not exceed $ 1,750,000,000, except as may be increased by the Authority as set forth in paragraph (5) of subsection a. of P.L. 2009, c. 90 (N.J.S.A. 34:1B-209.3).

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

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SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

N.J.A.C. 19:31-18.15 (2016)

§ 19:31-18.15 Reduction and forfeiture of tax credits

(a) If, in any tax period during the eligibility period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. The Statewide workforce shall not include full-time employees at any point-of-final purchase retail facilities, unless the award includes full-time employees engaged in final point of sale retail.

1. For purposes of this subsection, "business" shall include any affiliate that contributed to the full-time employees at the qualified business facility for the relevant tax period or contributed capital investment to the project.

(b) If, in any tax period during the eligibility period, the number of full-time employees employed by the business at the qualified business facility, or, for a qualified incubator facility, the number of full-time employees and positions employed by the operator or the businesses on whose behalf the operator applied, located within a qualified incentive area drops below 80 percent of the number of new and retained full-time jobs specified in the certification approved by the Authority pursuant to N.J.A.C. 19:31-18.7(g), then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 80 percent of the number of jobs specified in the certification approved by the Authority pursuant to N.J.A.C. 19:31-18.7(g).

(c) The credit amount allowed for a tax period for which documentation of a business's credit amount remains un-certified by the Authority, as of a date three years after the closing date of that period, shall be forfeited, although credit amounts for the remainder of the eligibility period shall remain available to it.

(d) Provided a business complies with all other requirements of the program, the amount of tax credits a business may take in a tax period shall be reduced in proportion to the reduction in the number of new or retained full-time jobs, as indicated in the annual report, below the number of full-time jobs specified in the incentive agreement. For projects for which awards are calculated pursuant to N.J.A.C. 19:31-18.8(h), if the number of new and retained full-time jobs, as indicated in annual report, is reduced below the required number to qualify under a subsection thereof, the tax credits that the business may take shall be rescored under the subsection that corresponds to the number of new and retained full-time jobs reported. Any tax credits that the business could not take because of a reduction under this subsection shall be forfeited.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a), inserted the last sentence.

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Added (a)1.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In (b), inserted ", or, for a qualified incubator facility, the number of full-time employees and positions employed by the operator or the businesses on whose behalf the operator applied,".

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N.J.A.C. 19:31-18.16 (2016)

§ 19:31-18.16 Effect of sale or lease of qualified facilities

(a) If the qualified business facility is sold by the owner in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that any credits of the business shall remain unaffected. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

(b) Unless otherwise permitted in this subchapter, if a business leases or subleases the qualified business facility in whole or in part during the eligibility period, the new tenant shall not acquire the credit of the business, and the business shall forfeit all credits for the tax period of its lease or sublease and all subsequent tax periods. Notwithstanding the foregoing, a business may lease or sublease an amount up to five percent of the qualified business facility to a new tenant without forfeiting any of the business's credits; however, no full-time employees or capital investment by the new tenant shall contribute to the business's eligible full-time employees or capital investment.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In (a) and (b), deleted "10-year" preceding "eligibility"; and in (a), inserted "by the owner", and substituted "the business" for "tenants".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (b), substituted "Unless otherwise permitted in this subchapter, if" for "If".

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (b).

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In (a), inserted the last sentence.

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N.J.A.C. 19:31-18.17 (2016)

§ 19:31-18.17 Affirmative action and prevailing wage

The Authority's affirmative action requirements, P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to State incentive grant projects undertaken in connection with financial assistance received under the Grow New Jersey Assistance Program.

HISTORY:

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Former N.J.A.C. 19:31-4.17, Severability, recodified to N.J.A.C. 19:31-18.19.

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N.J.A.C. 19:31-18.18 (2016)

§ 19:31-18.18 Appeals

(a) The Board's action on applications shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

HISTORY:

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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N.J.A.C. 19:31-18.19 (2016)

§ 19:31-18.19 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

HISTORY:

Recodified from N.J.A.C. 19:31-18.17 by R.2015 d.014, January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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N.J.A.C. 19:31-19.1 (2016)

§ 19:31-19.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement the New Jersey Angel Investor Tax Credit Act, P.L. 2013, c. 14 (the Act). The Act authorizes credits against corporation business and gross income taxes for qualified investments in New Jersey emerging technology businesses to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

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N.J.A.C. 19:31-19.2 (2016)

§ 19:31-19.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"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 optic-electrical 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, 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, digestor 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.

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N.J.A.C. 19:31-19.3 (2016)

§ 19:31-19.3 Eligibility criteria

(a) In order to be considered for tax credits under the Angel Investor Tax Credit Program, an investor shall make a qualified investment in a New Jersey emerging technology business.

(b) The Program applies to privilege periods and taxable years beginning on or after January 1, 2012. For qualified investments made on or before July 1, 2013, an investor must submit a completed application by July 1, 2014. For all other qualified investments, an investor must submit a completed application within one year of the date of the qualified investment.

(c) A credit shall not be allowed pursuant to section 1 of P.L. 1993, c. 175 (N.J.S.A. 54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this subchapter.

(d) Any asset received and any agreement entered into by the investor in connection with the non-refundable transfer of cash that serves as a qualified investment must be an executed document in writing.

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N.J.A.C. 19:31-19.4 (2016)

§ 19:31-19.4 Application submission requirements

(a) An investor shall submit an application to the Authority; the Authority shall conduct a review of the applications commencing with the completed application bearing the earliest completion date.

(b) A completed application shall include, but not be limited to, the following:

1. Investor information, which shall include the following:

i. At the time of the qualified investment:

(1) The name, address, and Federal tax identification number or Social Security number, as applicable;

(2) The total amount of the qualified investment and amount of requested tax credit;

(3) A description of the qualified investment;

(4) Evidence of qualified investment, including the executed document demonstrating that the qualified investment was made, as required in N.J.A.C. 19:31-19.3(d);

(5) A list of all officers, directors, owners, and/or trustees;

(6) A list of 100 percent of ownership of the investor by percentage or if a publicly traded company, the 10 percent or greater officers, directors, or owners; and

(7) The Federal tax identification number or Social Security number as applicable, for all owners of the investor; and

ii. At the time of application, submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

2. New Jersey emerging technology business information, which shall include:

i. At the time of the qualified investment:

(1) The name, address, and Federal tax identification number; and

(2) A list of 100 percent of ownership of the business by percentage;

ii. At the time of the qualified investment and at the earliest of six months after the qualified investment or the time of application:

(1) A description of the business, which demonstrates that such business meets the definition of New Jersey emerging technology business;

(2) A list of all employees filling a position in New Jersey, whether any employee is related, as defined in Section 152(d)(2) of the Internal Revenue Code, to any other employee, shareholder, or investor, if so known, and either:

(A) Copies of the most recent year's Federal and New Jersey W-3 forms for the business and all entities other than the investor with control over the business or in the same controlled group as the business; or

(B) Documentation from a professional employer organization summarizing W-2 forms issued for full-time employees on behalf of the business, and all entities other than the investor with control over the business or in the same controlled group as the business, for the calendar year prior to the year in which the company files its application and at the time of the application; and

iii. At the time of application, submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39); and

3. Any other supplemental information required by the Authority to decide on the approval of the application or required by the Division of Taxation to administer the credit.

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N.J.A.C. 19:31-19.5 (2016)

§ 19:31-19.5 Fees

(a) The following fees shall apply to applications for qualified investments of more than $ 50,000:

1. A non-refundable application fee of $ 1,000 shall accompany every application for tax credits; and

2. A fee of five percent of the approved tax credit amount or $ 2,500, whichever is greater, shall be paid to the Authority upon the approval of the tax credit. The application fee of $ 1,000, required under (a)1 above, shall be applied toward the approval fee.

(b) A non-refundable application fee of $ 500.00 shall accompany every application for tax credits for qualified investments of $ 50,000 or less.

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*** New Jersey Register, Vol. 48 No. 11, June 6, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM

N.J.A.C. 19:31-19.6 (2016)

§ 19:31-19.6 Tax credit amount; overpayment and carryforward of tax credits

(a) A taxpayer, upon eligibility review and approval of the investor's application by the Authority in consultation with the Director, and upon issuance of a tax credit certificate by the Division of Taxation, shall be allowed a credit against the tax imposed under the Corporation Business Tax, 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., in an amount equal to 10 percent of the qualified investment made by the investor in a New Jersey emerging technology business, up to a maximum allowed credit of $ 500,000 for the tax credit vintage year for each qualified investment made by the investor.

(b) An investor that is a partnership or an entity treated as a partnership for tax purposes, upon eligibility review and approval, shall not be allowed a credit under this section directly, but the amount of credit of each member or partner taxpayer in respect to a distributive share of partnership income under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or under the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), shall be determined by allocating to each taxpayer, that proportion of the credit acquired by the partnership or entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership or entity for its taxable year ending within or with the taxpayer's tax credit vintage year. For the purposes of (c) and (d) below, the amount of tax liability that would be otherwise due of a taxpayer is that proportion of the total liability of the taxpayer that the taxpayer's share of the partnership income or gain included in gross income bears to the total gross income of the taxpayer.

(c) The amount of the credit allowed shall be applied against the tax otherwise due under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., for the tax credit approval year after all other credits and payments. If the credit exceeds the amount of tax liability otherwise due, that amount of excess shall be an overpayment for the purposes of N.J.S.A. 54A:9-7, provided, however, that N.J.S.A. 54A:9-7.f shall not apply. The 15-year carryforward in (e) below is not applicable to a credit claimed under the New Jersey Gross Income Tax Act.

(d) The order of priority in which the credit allowed by this section against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and any other credits allowed by law may be taken, shall be as prescribed by the Director.

(e) Except as provided in (f) below, the amount of tax credit otherwise allowable against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), which cannot be applied for the tax credit approval year against tax liability otherwise due for that tax credit approval year may either be carried over, if necessary, to the 15-tax years following the tax credit approval year or, at the election of the taxpayer, be claimed as and treated as an overpayment for the purposes of N.J.S.A. 54:49-15, provided, however, that section 7 of P.L. 1992, c. 175 (N.J.S.A. 54:49-15.1) shall not apply.

(f) A taxpayer may not carry over any amount of credit allowed against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the tax credit approval year was prior to the year of acquisition, mer-

ger, or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the Director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer.

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N.J.A.C. 19:31-19.7 (2016)

§ 19:31-19.7 Evaluation process; award of tax credits; appeals

(a) The Authority, in consultation with the Director, shall process and evaluate complete applications.

(b) The Authority shall transmit a copy of its decision to the applicant-investor.

(c) If the Authority has approved the application, the Authority shall notify the Division of Taxation of the approval. The Division of Taxation shall then issue the tax credit certificate to the applicant investor.

(d) An applicant investor may appeal the Authority's 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. Appeals will be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal; and

3. The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final decision on the appeal.

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N.J.A.C. 19:31-19.8 (2016)

§ 19:31-19.8 Cap on total credits

(a) The amount of credits approved by the Authority, in consultation with the Director, pursuant to P.L. 2013, c. 14 (N.J.S.A. 54A:4-13), shall not exceed a cumulative total of $ 25 million in any calendar year to apply against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and the tax imposed pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

(b) If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, under (a) above, then any complete applications for which no tax credits have been allowed for that reason may be approved by the Authority and allowed, in the order in which their applications were completed, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits are not in excess of the amount of credits available.