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RULE ADOPTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

43 N.J.R. 2622(a)

Adopted Amendments: *N.J.A.C. 19:31-9.6, 16.2, 16.5, 16.7 and 16.12*

Adopted Repeal and New Rule: *N.J.A.C. 19:31-16.14*

Business Retention and Relocation Assistance Grant Sales and Use Tax Exemption Program

Urban Transit Hub Tax Credit Program

Proposed: June 20, 2011 at *43 N.J.R. 1415(a)*.

Adopted: August 26, 2011 by the New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer.

Filed: August 26, 2011 as R.2011 d.243, **without change**.

Authority: *N.J.S.A. 34:1B-1* et seq. and P.L. 2004, c. 65.

Effective Date: October 3, 2011.

Expiration Date: November 9, 2017.

Summary of Public Comment and Agency Response:

No public comments were received.

Federal Standards Statement

The adopted amendments and new rule are not subject to any Federal standards or requirements; therefore, a Federal standards analysis is not required.

Full text of the adoption follows:

SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

19:31-9.6 Application and servicing fees

(a)-(b) (No change.)

(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)-(f) (No change.)

SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM

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.

"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).

"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.-ii. (No change.)

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.-ii. (No change.)

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).

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. (No change.)

2. Project information shall include the following:

i.-xi. (No change.)

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. (No change in text.)

3. (No change.)

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. (No change.)

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.

Recodify existing 2. through 10. as 3. through 11. (No change in text.)

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) (No change.)

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.