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**RULE ADOPTIONS**

**OTHER AGENCIES**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

*42 N.J.R. 2436(a)*

**Readoption and Recodification with Amendments: N.J.A.C. 12A:2-1 as 19:31-14; 12A:2A-1 as 19:31-15; 12A:2A-2 as 19:31-16; and 12A:2A-4 as 19:31-17**

**Business Retention and Relocation Assistance Grant Program; Tax Credit Certificate Transfer Program; Sales and Use Tax Exemption Program; and Energy Sales Tax Exemption Program for Certain Counties**

Proposed: July 19, 2010 at *42 N.J.R. 1495(b)*.

Adopted: September 20, 2010 by the New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer.

Filed: September 21, 2010 as R.2010 d.231, **with technical changes** not requiring additional public notice and comments (see *N.J.A.C. 1:30-6.3*).

Authority: *N.J.S.A. 34:1B-1* et seq., P.L. 2004, c. 65, §§ 1 through 17, 19 and 23 and P.L. 2005, c. 374.

Effective Date: September 21, 2010, Readoption;

October 18, 2010, Recodifications and Amendments.

Expiration Date: January 18, 2011.

**Summary of Public Comments and Agency Response:**

**No public comments were received.**

**Federal Standards Statement**

The rules readopted and recodified with amendments are not subject to any Federal standards or requirements; therefore, a Federal standards analysis is not required.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 12A:2-1 and 12A:2A-1, 2 and 4, pending their recodification as N.J.A.C. 19:31-14, 15, 16 and 17, respectively, in the 10-18-10 Code update.

**Full text** of the adopted recodification with amendments follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

**Agency Note:** The adopted text below includes the recodification upon adoption of new rules *N.J.A.C. 12A:2-1.14*, *12A:2A-1.7* and *12A:2A-2.11*, adopted effective August 16, 2010 at *42 N.J.R. 1900(b)*, as *N.J.A.C. 19:31-14.14*, *19:31-15.7* and *19:31-16.11*, respectively.

## CHAPTER 31

### AUTHORITY ASSISTANCE PROGRAMS

#### SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

##### 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, as substantially amended by P.L. 2004, c.65, §§ 1 through 16 (the "Act"). 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.

##### 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.

...

"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.

...

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

...

"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 are subject to withholding as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq., 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.

...

#### 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 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. (No change.)

(b)-(d) (No change.)

Recodify existing *N.J.A.C. 12A:2-1.4* as 19:31-14.4 (No change in text.)

#### 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.

#### 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.-x. (No change.)

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 instead, to undertake the project and to relocate the full-time jobs relating to the project in the State;

xii. (No change.)

xiii. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

2. Project information shall include the following:

i.-xii. (No change.)

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 Chief Executive Officer for a specific application.

3. The employee information shall include the following:

i.-ii. (No change.)

iii. Evidence of the applicant's potential relocation to another site within New Jersey, if the applicant is a BEIP grantee;

iv. (No change.)

v. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

#### 19:31-14.7 Review of application

(a) Applicants shall submit to the Chief Executive Officer 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. 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, and provide a recommendation to the Chief Executive Officer regarding, the applications to determine whether the applicant:

1.-3. (No change.)

(c) The Board shall approve, approve with modifications, or deny an application in the program.

(d) 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.

(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) 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:

1.-2. (No change.)

19:31-14.8 Determination of grant amount

(a) Any business relocating 500 or more full-time employees that is approved for a grant of tax credits, shall receive a grant equal to the total allowable relocation costs, plus any applicable bonus award, up to the aggregate annual limit of \$ 20,000,000, and subject to the restrictions and limitations on the grant set forth at N.J.A.C. 19:31-14.4.

(b) Any business that is relocating between 50 and 499 full-time employees approved for a grant of tax credits, shall receive a grant in an amount determined by the Chief Executive Officer that shall not exceed the total allowable relocation costs, up to the aggregate annual limit, and is subject to the restrictions and limitations on the grant set forth at N.J.A.C. 19:31-14.4. In determining the amount of any grant, the Chief Executive Officer shall consider the following factors:

1.-8. (No change.)

9. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

Recodify existing *N.J.A.C. 12A:2-1.9* as 19:31-14.9 (No change in text.)

19:31-14.10 Project agreement

(a) All applicants shall execute a project agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The Chief Executive Officer may provide whatever assistance the Chief Executive Officer 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 Chief Executive Officer and the business with an approved project at the Chief Executive Officer's discretion subject to the provisions of P.L. 1996, c.25 (*N.J.S.A. 34:1B-112* et seq.), as amended by P.L. 2004, c.65.

(b) The project agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer:

1.-2. (No change.)

3. 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;

4.-10. (No change.)

(c) (No change.)

19:31-14.11 Tax credit applicable; when effective; when adjusted

(a) (No change.)

(b) Provided that the applicant has previously executed the project agreement, within six months of relocation of the retained employees, 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, the award of tax credits shall be adjusted accordingly and the project agreement shall be amended to so reflect the reduction.

(c) Upon receipt of the certification referenced in (b) above, for a project that covers 500 or more full-time employees, the Chief Executive Officer shall allocate a grant of tax credits to the applicant. The Chief Executive Officer shall notify the Director of the terms and conditions of the project agreement and the Director shall issue the appropriate tax credit certificate(s).

(d) For a project that covers a business relocating between 50 and 499 full-time employees, a grant of tax credits shall not be issued until the end of the fiscal year in which the certification referenced in (b) above is received.

(e) The total value of the grants of tax credits issued pursuant to this program shall not exceed an aggregate annual limit of \$ 20,000,000 for any fiscal year. If the sum of the amount of tax credits issued pursuant to (c) above in a fiscal year, plus the amount of tax credits approved pursuant to (d) above exceeds the \$ 20,000,000 aggregate annual limit, the Chief Executive Officer shall reduce the award to each business receiving a grant of tax credits pursuant to (d) above on a pro rata basis to the grant amounts determined in accordance with N.J.A.C. 19:31-14.8(b) to the extent necessary to comply with the aggregate annual limit.

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)-(c) (No change.)

(d) To the extent that the business (not an unaffiliated third party) has undertaken the construction of the new business location, 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 new business location 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*).

19:31-14.13 Reporting requirements and annual reports

(a) If requested by the Chief Executive Officer, 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 Chief Executive Officer, a business which is awarded a grant of tax credits under this program shall submit annually, no later than March 1st of each year, commencing the year following the calendar year in which the business was approved for the grant of tax credits and for the remainder of the commitment duration, an annual report listing the full-time employees in eligible positions employed at the location or locations approved for the grant of tax credits, to the Chief Executive Officer.

(c) Failure to submit a copy of its annual report or submission of the annual report without the information required above, may result in the forfeiture of any grant of tax credits to be received by the business and the recapture of any tax credits issued to the business unless the Chief Executive Officer determines that there are extenuating circumstances excusing the business from the timely filing required.

(d) (No change.)

\*[12A:2-1.14]\* **\*19:31-14.14\*** Fees

(a)-(c) (No change.)

19:31-~~[14.14]~~**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.-3. (No change.)

4. The business reduces or relocates the retained full-time jobs above the percentages certified under N.J.A.C. 19:31-14.6(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); or

5. 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 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 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.

19:31-\*[14.15]\*\***14.16\*** Remedies

(a) Upon the occurrence of any event of default as described in *N.J.A.C. 19:31-\*[14.14]\*\*14.15\** and the project 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 tax credit 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 agreement, including, without limitation:

i.-iv. (No change.)

(b) The rights and remedies of the Chief Executive Officer under this subchapter and the project 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 of the project agreement.

19:31-\*[14.16]\*\***14.17\*** Appeals

(a) The procedure for an appeal of the Chief Executive Officer's action on an application to the program shall be as follows. An applicant may appeal the Chief Executive Officer's action on an application to the program by submitting in writing to the Authority, within 30 days from the date of the Chief Executive Officer's action, an explanation as to how the applicant has met the program criteria. Only the information that clarifies the application filed shall be reconsidered. In the event the application is reconsidered as eligible for the program, such application shall be presented for action at the next available Board meeting.

(b) In general, appeals arising from decisions of the Chief Executive Officer may be requested in writing, and an opportunity given for an informal hearing on the papers, in person or via telephone with Authority staff. Such written request for any informal hearing must be made within 30 days of the receipt of the Chief Executive Officer's decision.

(c) In the event of an adverse decision after an informal hearing under (b) above, or if a business determines not to seek an informal hearing, and providing further, that the dispute or controversy is a contested case, as defined in *N.J.S.A. 52:14B-2(b)*, a business may request, within 45 days of the written decision resulting from the informal hearing or the determination of the Chief Executive Officer if any informal hearing is not sought, a formal hearing.

(d) Upon filing of the initial pleading in a contested case, the Chief Executive Officer may either retain the matter for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and *52:14F-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

(e) Every determination of a dispute or controversy arising from this subchapter by the Authority, constituting final agency action by the Chief Executive Officer, shall be embodied in a written decision that shall set forth findings of fact and conclusions of law pursuant to the applicable rules of the Office of Administrative Law.

Recodify proposed N.J.A.C. 19:31-14.17 as **\*19:31-14.18\***

(No change in text.)

## SUBCHAPTER 15. TAX CREDIT CERTIFICATE TRANSFER PROGRAM

### 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.

### 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.

...

"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.

...

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

...

#### 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.-3. (No change.)

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.

#### 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.

#### 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.-6. (No change.)

7. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

#### 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.-3. (No change.)

(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.-6. (No change.)

(f) (No change in text.)

\*[12A:2A-1.7]\* **\*19:31-15.7\*** Fees

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

19:31-~~[15.7]~~**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-~~[14.16]~~**14.17\****.

## SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM

### 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.

### 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.

...

"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).

...

"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.

...

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

...

"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.

...

"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); or

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).

"Sales tax repayment amount" means the sum of:

1.-2. (No change.)

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).

#### 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.-3. (No change.)

(b)-(e) (No change.)

(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.

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.

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.-2. (No change.)

3. The employee information shall include the following:

i.-iv. (No change.)

v. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

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.-3. (No change.)

(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.

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.

(b) (No change.)

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)-(c) (No change.)

(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*).

19:31-16.9 Sales and use tax exemption limitations

(a)-(c) (No change.)

(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.

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.-3. (No change.)

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.

\*[12A:2A-2.11]\* **\*19:31-16.11\*** Fees

(a) (No change.)

(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. \*[12A:2A-2.10(a)]\* **\*19:31-16.10(a)\*** are no longer required to be filed.

(c) (No change.)

19:31-~~[16.11]~~**\*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); or

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.

(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.-5. (No change.)

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.

19:31-[16.12]\*\*16.13\* Remedies

(a) Upon the occurrence of an event of recapture as described in *N.J.A.C. 19:31-[16.11]\*\*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-[16.11]\*\*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. (No change.)

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.-iv. (No change.)

(c) (No change.)

(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.

19:31-[16.13]\*\*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 on an application to the program 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. Only the information that clarifies the application filed shall be reconsidered. In the event the application is reconsidered as eligible for the program, such application shall be presented for action at the next available Board meeting.

(b) In general, appeals may be requested in writing, and an opportunity given for an informal hearing on the papers, in person or via telephone with Authority staff. Such written request for any informal hearing must be made within 30 days of the receipt of the Board's decision.

(c) In the event of an adverse decision after an informal hearing under (b) above, or if a business determines not to seek an informal hearing, and providing further, that the dispute or controversy is a contested case, as defined in *N.J.S.A. 52:14B-2(b)*, a business may request, within 45 days of the written decision resulting from the informal hearing or the determination of the Board if any informal hearing is not sought, a formal hearing.

(d) Upon filing of the initial pleading in a contested case, the Board may either retain the matter for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and *52:14F-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

(e) Every determination of a dispute or controversy arising from this subchapter by the Authority, constituting final agency action shall be embodied in a written decision which shall set forth findings of fact and conclusions of law pursuant to the applicable rules of the Office of Administrative Law.

Recodify proposed N.J.A.C. 19:31-16.14 as **\*19:31-16.15\*** (No change in text.)

## SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION PROGRAM FOR CERTAIN COUNTIES

### 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.

### 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.

...

"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.

...

"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.

...

Recodify existing *N.J.A.C. 12A:2A-4.3* as 19:31-17.3 (No change in text.)

### 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.

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.-10. (No change.)

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.

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.-3. (No change.)

(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 that 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.

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.

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. (No change.)
2. Submission of false or misleading information, or failure to submit relevant or complete information to the Authority;
3. (No change.)
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.

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.