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RULE ADOPTIONS

OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

41 N.J.R. 807(a)

Adopted New Rules: N.J.A.C. 19:31-9

Authority Assistance Programs

Urban Transit Hub Tax Credit Program

Proposed: November 3, 2008 at *40 N.J.R. 6426(a)*.

Adopted: January 7, 2009 by the New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer.

Filed: January 8, 2009 as R.2009 d.53, **without change**.

Authority: P.L. 2007, c. 346.

Effective Date: February 2, 2009.

Expiration Date: July 22, 2010.

Summary of Public Comment and Agency Response:

One comment was submitted from Steven R. Tombalakian, Associate, Sills Cummis & Gross, Newark, New Jersey.

1. COMMENT: The definition of "rail station" should not exclude light rail stations and particularly several underground stations of the Newark City Subway that serve as urban transit hubs within the City of Newark's downtown business center.

2. RESPONSE: The Authority has considered the comment, which was previously submitted in response to the rules originally proposed by the Commerce Commission, and restates that the new rules do not include light rail stations as the requirements for eligibility are based on the provisions contained in the Act.

Federal Standards Statement

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

Full text of the adopted new rules follows:

SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

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"). 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 \$ 75 million 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 \$ 25 million of the capital investment in the facility and employ at least 250 full-time employees in that facility. The tax credits are reduced 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 have a least 30 percent of their real property value exempt from property taxes, and that have a specified commuter rail station, excluding any rail station located at an international airport and all light rail stations.

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 or is controlled by the business. Evidence of such control shall include whether 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 being 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). An affiliate is an entity that contributes to meeting either the capital investment or employment requirements or both for the project.

"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 10-year eligibility period is scheduled to commence, the estimated amount of tax credits, and other such provisions which further the purposes of P.L. 2007, c. 346.

"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 for Federal income tax purposes. If a business is using an affiliate to satisfy the employment or capital investment requirements or both, of the Program, a business shall include such affiliate or affiliates. For purposes of identifying full-time employees of a business, any such employees hired by or taxes paid by a professional em-

ployer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business.

"Capital investment" in commercial development means the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility or improvement to real property. 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, except that it does not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment with a useful life of under five years. (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.) Also included is remediation of the qualified business facility site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. In residential development, only core and shell elements of the project shall constitute capital investment, for example all finishes, furnishings, plumbing and lighting fixtures, and tenant amenities shall be excluded. With respect to both commercial and residential development, to be included the capital investment must be undertaken after the January 13, 2008 effective date of the Act and completed by the eighth anniversary of that date. To be considered, the project consisting of construction of a new building shall not have progressed beyond site preparation prior to January 13, 2008; the project consisting of acquisition of an existing building shall not have closed title prior to January 13, 2008; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction prior to January 13, 2008.

"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 accepts the certification of the business that it has met the capital investment and employment qualifications 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 is exempt from local property taxation. 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 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 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.

"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.

"Light rail station" is 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 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.

"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.

"Program" means the Urban Transit Hub Tax Credit Program created pursuant to P.L. 2007, c. 346 and provided in this subchapter.

"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.

"Rail station" shall include a rail station 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 or any light rail station.

"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.

"Tax accounting period" or "tax privilege period" or "tax period" shall mean tax year for purposes of this chapter.

"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, 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 and this subchapter, which may be applied against the tax liability otherwise due for corporation business tax, insurance premiums tax or gross income 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*), pursuant to *N.J.S.A. 17B:23-5*, or pursuant to the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq.

19:31-9.3 Eligibility criteria

(a) To qualify for the tax credit, a business shall enter into a project agreement with the Authority to undertake a project as follows:

1. If the business is other than a tenant, the business shall:

i. Make or acquire capital investments, or in a mixed-use facility capital and residential capital investments totaling not less than \$ 75,000,000 in a qualified business facility. The capital investments of the owner may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), 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; and

ii. Employ not fewer than 250 full-time employees at the qualified business facility.

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 \$ 75,000,000. The capital investments of the owner may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s) 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. The tenant shall occupy a leased area of the qualified business facility that represents at least \$ 25,000,000 of the capital investment in the facility;

iii. The tenant business shall employ not fewer than 250 full-time employees at the qualified business facility; and

iv. The business shall lease the qualified business facility for a term of not less than 10 years.

(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 leaseable area.

(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) A business that acquires a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller. Any right by the seller to the tax credits terminates upon sale of the qualified business facility and such tax credits may not be transferred to the buyer.

(e) 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 [page=810] investment requirement does not need to be the same as the entity satisfying the employment requirement.

(f) A business shall be treated as owner of a qualified business facility 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.

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;

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.*); or

3. The business is a casino as defined by licensee as pursuant to section 33 of P.L. 1977, c. 110 (*N.J.S.A. 5:12-33*).

(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) 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, but before the end of the eighth year after the effective date, and thus, before the end of 2016. This eighth 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.

(d) 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 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 or Business Retention and Relocation Assistance Grant Program, as applicable.

19:31-9.5 Application submission requirements

(a) Each application to the Authority made by an owner or a tenant 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. Certification that the business applying for the program is not in default with any other program administered by the State of New Jersey;

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 subsidies 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 amount of credit 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 which at minimum must conform with *N.J.A.C. 19:31-9.8(b)*¹⁰. 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;

iii. The estimated value of the capital investment;

iv. 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 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;

v. A project schedule that identifies projected move dates for the proposed qualified business facility;

vi. A schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

vii. 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;

viii. 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

ix. 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 are full-time employees as defined in this chapter 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 that would occupy 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; and

iv. 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*

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, the application fee is \$ 2,500; or
3. If a business is a developer of the proposed qualified business facility, the application fee of \$ 5,000.

(b) 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 information to the Authority [page=811] required for an annual review of full-time employment at the qualified business facility. The annual servicing fee shall be .25 percent of the amount of tax credit taken for each tax accounting or privilege period of the business. If the tenant or owner is a business engaged in financial services, life sciences and technology, communications, logistics, renewable energy and manufacturing, this fee shall not exceed \$ 40,000 per year.

19:31-9.7 Review of application and certification of project completion

(a) A business may apply for tax credits within five years after January 13, 2008, the effective date of the Act (that is, by January 13, 2013). The application is a two-stage process, with the first being the application for eligibility of a hub project, and the second being a certification by the business within the timeframe of (d) below evidencing completion of the project and satisfaction of the conditions for award of the hub tax credits. A developer may apply to have a building approved as a qualified business facility within five years after January 13, 2008, the effective date of the Act (that is, by January 13, 2013). Any tenant seeking an approval of tax credits for a qualified business facility so approved may apply after this date provided its application and certification are received by the date set forth in subsection (d)3 hereof.

(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 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) Upon completion of the review of an application pursuant to (b) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and promptly notify the applicant and the Director of the Division of Taxation of the determination.

1. If the application is approved, the project approval is subject to the terms and conditions of the project 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 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.

(d) 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 it has satisfied such capital investment and employment requirements, and is therefore eligible to be awarded the tax credits.

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1. The certification with respect to the capital investment shall define the amount of the benefit and shall not be increased regardless of additional capital investment in the qualified business facility.
2. In general, this certification shall be submitted to the Authority no later than five years after execution of the project agreement.
3. For project applications 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).
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.

(e) Once the Authority accepts the certification of the business that it has satisfied the capital investment and employment requirements of the program, it shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate upon submission of a satisfactory report pursuant to *N.J.A.C. 19:31-9.11(a)*.

19:31-9.8 Project agreement

(a) Within one year following application approval by the Authority, all applicants shall execute a project agreement to establish the terms and conditions of the tax credits.

(b) The project agreement shall include, but not be limited to, the following terms and conditions as determined by the Authority:

1. Terms establishing the starting date, or event that will determine the starting date and ending date, of the eligibility period;
2. Requirements and time period for undertaking the project;
3. Representations pertaining to the capital investment for the project;
4. Requirements for maintaining full-time employees and new full-time positions at the qualified business facility and maintaining full-time employees in the business's Statewide workforce;
5. Representations that the business is in good standing, the project complies with all applicable law, and specifically, 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*), and the project does not violate any environmental law;
6. Indemnification and insurance requirements;
7. Limitations on the award of tax credits;
8. 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, an agreement 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. Such allocation may be adjusted as a result of future audits by the Internal Revenue Service or a state tax agency. Any such adjustment of the allocation will be reported by the business to the Division of Taxation and the Authority 30 days prior to filing an amended return or closing agreement or final determination. 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. In the event the business allocates to an

affiliate that was not included in the business's initial application, the business shall submit the name of the affiliate and the information required pursuant to *N.J.A.C. 19:31-9.5(a)*1vi through xv to the Authority staff for its review with the submission of the report required pursuant to *N.J.A.C. 19:31-9.11(b)*. Upon satisfactory review, the schedule to the project agreement that lists eligible affiliates shall be amended;

9. Designation of the tax year in the event the business is using one or more affiliates in order to satisfy the employment and or capital investment requirements of the program;

10. In the event that the business is a partnership and chooses to allocate the amount of credit other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall notify the Authority and the Division at least 30 days prior to the date of filing relating to each tax accounting or privilege period the proposed allocation of the tax credits. Such allocation may be adjusted as a result of future audits by the Internal Revenue Service or a state tax agency. Any such adjustment of the allocation will be reported by the business to the Division of Taxation and the Authority 30 days prior to filing an amended return or closing agreement or final determination;

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

12. Default and remedies; and

13. Reporting requirements, such as an annual report and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

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 capital investment made by the business or the capital investment represented by the business' leased area, subject to any reduction or disqualification provided in the Act, this subchapter, or the project agreement.

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 [page=812] 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 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 satisfaction of the investment capital and employment requirements of the program to be awarded the tax credit, a business may apply 10 percent of the total credit amount per each tax accounting or privilege period.

(c) A business that is a partnership shall not be allowed a credit under this program directly, but the amount of credit of any owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or with the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury pursuant to *N.J.A.C. 19:31-9.5(a)*xiv.

(d) The business may apply the credit against their corporation business tax, insurance premiums tax or gross income tax liabilities 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

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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*), pursuant to *N.J.S.A. 17B:23-5*, or pursuant to the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq. 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 project agreement.

(e) 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.

(f) 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.

(g) Any amount of tax credit that exceeds final liabilities for any tax year may not be carried forward for use in a later tax year.

(h) Credits unused at the conclusion of 10 years beginning with the tax period in which the Authority accepts the certification that the business has satisfied its investment capital and employment qualifications shall be void.

19:31-9.10 Reduction and forfeiture of tax credits

(a) Unless excepted pursuant to (a)2 below, the amount of the annual credit otherwise determined pursuant to final calculation of the award of tax credits shall be reduced by 20 percent for that tax period if:

1. Fewer than 200 full-time employees of the business at the qualified business facility 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. 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 10 percent, 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' 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, 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 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) 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, and the surviving, resulting or transferee entity assumes in writing the obligations of the business under the project agreement, the surviving, 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.

19:31-9.11 Reporting requirements

(a) After the submission of the certificate that the project is complete and that the business has satisfied the capital investment and employment requirements for the award of credit, the business shall furnish to the Authority a certified report 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 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;

2. 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 project agreement, of which would constitute an event of default with the giving of notice or passage of time, or both, under the project agreement.

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

(c) The project agreement may provide for additional reporting requirements.

(d) The Authority shall prepare and transmit to the Governor and the Legislature on or before November 1st of each year, a report concerning the impact of the program on employment in urban transit hubs.

19:31-9.12 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 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; or the business has violated the debarment standards of the Authority; or

3. The business fails to observe 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 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 ex-

tend 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.

19:31-9.13 Remedies

(a) Upon the occurrence of any event of default as described in *N.J.A.C. 19:31-9.12* 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 Authority in its sole discretion shall determine, without limiting any other right or remedy the Authority 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 or a portion of the tax credits if a representation of the business is false, misleading, or inaccurate in any material respect by notifying the Director of the Division of Taxation, who shall issue a recapture assessment which shall be based upon the proportional value of the tax credits that corresponds to the amount and period of noncompliance;
 - ii. Recovering damages for loss of a bargain for any default during the eligibility period;
 - iii. Terminating the project agreement; or
 - iv. Proceeding by appropriate court action (legal or equitable) to enforce the terms of the project agreement.

(b) 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 allowed by law with respect to any event of default under this subchapter or the project agreement.

19:31-9.14 Appeals

(a) The procedure for an appeal of the Authority's action on an application to the program shall be as follows. An applicant may appeal the Authority's action on an application to the program by submitting in writing to the Authority, within 30 days from the date of the Authority's action, an explanation as to how the applicant has met the program criteria and may also request an informal hearing. In the event the application is reconsidered as eligible for the program, such application shall be presented for action to the Board.

(b) In the event of an adverse decision after an informal hearing under (a) 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 Authority if any informal hearing is not sought, a formal hearing.

(c) Upon filing of the initial pleading in a contested case, the Authority 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*.

(d) Every determination of a dispute or controversy arising from this subchapter by the Authority, constituting final agency action by the Authority, 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.

19:31-9.15 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.