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RULE ADOPTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

44 N.J.R. 512(a)

Adopted Amendments *N.J.A.C. 19:31-4.2, 9.1, 9.2, 9.3, 9.5, 9.7, 9.9, 9.11, and 9.12*

Adopted Repeals and New Rules: *N.J.A.C. 19:31-9.10 and 9.14*

Economic Redevelopment and Growth Program; Urban Transit Hub Tax Credit Program

Proposed: November 7, 2011 at *43 N.J.R. 2991(a)*.

Adopted: January 26, 2012 by New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer.

Filed: January 26, 2012 as R.2012 d.044, **without change**.

Authority: P.L. 2011, c. 89, and P.L. 2007, c. 346, as amended by P.L. 2009, c. 90.

Effective Date: February 21, 2012.

Expiration Date: November 9, 2017.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments, repeals, and new rules are not subject to any Federal requirements or standards.

Full text of the adoption follows:

SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

19:31-4.2 Definitions

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

...

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" means Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a center as designated by the State Planning Commission; an area zoned for development pursuant to a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (*N.J.S.A. 13:17-6*) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (*N.J.S.A. 13:17-21*); any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (*N.J.S.A. 5:10-1 et seq.*), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (*N.J.S.A. 13:17-4*); a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and Federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L. 1979, c. 111 (*N.J.S.A. 13:18A-1 et seq.*); a transit village; and Federally owned land approved for closure under a Federal Base Realignment Closing Commission action.

...

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"), as amended by P.L. 2009, c. 90. The Act establishes a tax credit program for capital investment and increased employment in targeted urban rail transit hubs to catalyze economic development in those transit hubs. The Act further provides that the Urban Transit Hub Tax Credit Program (the "Program") is to be administered by the New Jersey Economic Development Authority and that the Authority consults with the Director of the Division of Taxation in the Department of the Treasury when adopting rules for the Program. The Program provides that businesses making at least \$ 50,000,000 in new capital investments in a qualified business facility in an "urban transit hub" and employing at least 250 full-time employees at that facility may be eligible for tax credits in order to catalyze economic development in those urban areas. Businesses may apply for the tax credits by January 13, 2013 and satisfy the capital investment and employment conditions for award of the credits by January 13, 2016, subject to the rules in this subchapter. The tax credits are equal to 100 percent of the claimants' qualified capital investments made, and taxpayers may apply 10 percent of the total credit amount per year over a 10-year period against their corporation business tax, insurance premiums tax or gross income tax liability. Tenants in qualified business facilities may also receive tax credits, if they occupy space in a qualified business facility that proportionally represents at least \$ 17,500,000 of the capital investment in the facility and employ at least 250 full-time employees in that facility. Developers may apply for a credit of up to 35 percent of their capital investment in a qualified residential project by July 28, 2014 and satisfy the capital investment conditions for award of credits by July 28, 2017, subject to the rules in this subchapter; and developers that previously applied for the 20 percent credit of their capital investment in a qualified residential project may reapply provided the project meets the statutory criteria that it is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits. Finally, businesses may apply for a credit for their capital investment in a qualified business facility that is part of a mixed use project and developers may apply for a credit for their capital investment in a qualified residential project that includes a mixed use project, but not for both a residential project and mixed use project separately. The tax credits are reduced to 80 percent if 200 new jobs (to the State) are not created, or forfeited if certain facility and State-wide employment levels are not maintained. The program is limited to municipalities that are eligible for urban aid, that had at least 30 percent of their real property value exempt from property taxes during 2006, and that have a specified commuter rail station, excluding any rail station located at an international airport.

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.

...

"Mixed use project" means a project comprising both a qualified business facility and a qualified residential project, provided that the residential project does not need to be the predominant part of the mixed use project if it meets the criteria set forth in *N.J.A.C. 19:31-9.3(a)5*.

...

"Qualified residential project" means any building, complex of buildings or structural components of buildings, consisting predominantly of residential units, located in an urban transit hub within an eligible municipality.

"Urban transit hub" means property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations, and property located within a one-mile radius of the mid point of the platform area of such a rail station if the property is in a qualified municipality under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1 et seq.*); property located within a one-half mile radius surrounding the mid point of one of up to two underground light rail stations' platform areas that are most proximate to an interstate rail station; and property adjacent to, or connected by rail spur to, a freight rail line if the business uses that freight line at any rail spur located adjacent to or within a one-mile radius surrounding the entrance to the property, provided the property is located in the eligible municipality, if, as part of its regular course of business, as determined by the Authority, the business utilizes that freight rail line for loading and unloading freight cars on trains delineated by the Authority pursuant to subsection e. of section 3 of P.L. 2007, c. 346 (*N.J.S.A. 34:1B-3e*). A property, which is partially included within the radius, shall only be considered part of the hub if over 50 percent of its land area falls within the radius. In the case of a rail station with multiple rail lines, a separate midpoint shall be determined for each such rail line. Once the hubs have been delineated, the Authority will post eligible rail stations and corresponding midpoints on the website at www.newjerseybusiness.gov. The posting will be updated if the eligible rail stations change and to reflect changes in station midpoints.

"Urban transit hub tax credit" or "tax credit" means the tax credit permitted under P.L. 2007, c. 346, as amended by P.L. 2009, c. 90 and this subchapter, which may be applied against the tax liability otherwise due for corporation business tax or insurance premiums tax pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (*N.J.S.A. 54:18A-2 and 54:18A-3*), pursuant to section 1 of P.L. 1950, c. 231 (*N.J.S.A. 17:32-15*), or pursuant to *N.J.S.A. 17B:23-5*.

"Urban transit hub tax credit transferee" or "tax credit transferee" means if the business transfers its tax credits by first obtaining and then selling or assigning its tax credits as evidenced by a tax credit transfer certificate, then the owner of the tax credits, including any subsequent owners of the tax credits.

19:31-9.3 Eligibility criteria

(a) In order to be eligible to be considered for an urban transit hub tax credit:

1.-2. (No change.)

3. For a qualified residential project, the residential developer shall:

i. (No change.)

ii. Demonstrate to the Authority that the qualified residential project is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits; and

iii. Not be required to meet the employment requirements required for a qualified business facility.

4. For a qualified mixed use facility, the business shall:

i. Make or acquire capital investments in a qualified business facility that is part of a mixed use project provided that the qualified business facility represents at least \$ 17,500,000 of the total capital investment in the mixed use project and

the total capital investment in the mixed use project of which the qualified business facility is a part is not less than \$ 50,000,000;

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

iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment, not to exceed 20 years.

5. For a qualified residential project that includes a mixed use project, the developer shall:

i. Make or acquire capital investments in a qualified residential project that is part of a mixed use project provided that the qualified residential project represents at least \$ 17,500,000 of the total capital investment in the mixed use project and the total capital investment in the mixed use project of which the qualified residential project is a part is not less than \$ 50,000,000;

ii. Demonstrate to the Authority that the qualified residential project is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits; and

iii. Not be required to meet the employment requirements required for a qualified business facility.

(b)-(f) (No change.)

(g) In determining whether a proposed capital investment will yield a net positive benefit, the transfer of an existing job from one location in the State to another may be considered as the creation of a new job if:

1. The business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality whether in-State or out-of-State; or

2. The business's chief executive officer, or equivalent officer, submits a certification pursuant to *N.J.A.C. 19:31-9.5(a)3iv*.

(h) For purposes of mixed use projects or qualified residential projects, an eligible municipality shall have the option, pursuant to section 18 of P.L. 2008, c. 46 (*N.J.S.A. 52:27D-329.9*), of deciding the percentage of newly-constructed residential units within the project, up to 20 percent of the total, required to be reserved for occupancy by low or moderate income households, as those terms are defined under the rules of the Department of Community Affairs concerning affordable housing. For a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L. 2011, c. 89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low or moderate income households in accordance with the terms and conditions of such approval.

(i) A developer of a mixed use project shall be allowed a credit pursuant to (a)4 or 5 above, but not both.

19:31-9.5 Application submission requirements

(a) Each application to the Authority made by an owner, tenant or residential developer shall include the following information in an application format prescribed by the Authority:

1. (No change.)

2. Project information shall include the following:

i.-ix. (No change.)

x. The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility; and, if an application involves intra-State job transfers, a full economic analysis of all locations under consideration by the company and copies of all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and, to the extent they exist, for the potential out-of-State location alternatives;

xi.-xii. (No change.)

3. Employee information shall include the following:

i.-iii. (No change.)

iv. For the purpose of *N.J.A.C. 19:31-9.3(g)2*, a written certification by the chief executive officer, or equivalent officer, that the existing jobs are at risk of leaving the State and that the chief executive officer, or equivalent officer, has reviewed the information submitted that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility;

Recodify existing iv. and v. as v. and vi. (No change in text.)

(b)-(c) No change.)

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

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

(c) In determining whether the company meets the net economic benefits test, as certified by the owner pursuant to *N.J.A.C. 19:31-9.5(a)2iv* and *3iv*, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by and generated indirectly by the business, property taxes or payment in lieu of taxes paid directly by and generated indirectly by the business, taxes paid directly or generated indirectly by new or retained employees, and peripheral economic growth caused by the business's relocation to the urban transit hub, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) (No change.)

(e) Upon completion of the review of an application pursuant to (b) through (d) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits to be granted and, in the case of a residential developer, the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, and promptly notify the applicant and the Director of the Division of Taxation of the determination. When considering an application involving intra-State transfers pursuant to *N.J.A.C. 19:31-9.3(g)*, the Board shall make a separate determination to verify and confirm that the jobs are at risk of leaving the State, which will consist of reviewing the materials submitted by the applicant, testing the validity of financial information and assumptions through the use of computer models and, to the extent necessary, seeking input from third party consultants, the cost of which will be paid by the applicant. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements P.L. 2007, c. 245 (*N.J.S.A. 34:1B-5.1*) and affirmative action requirements P.L. 1979, c. 303 (*N.J.S.A. 34:1B-5.4*), that the project does not violate any environmental law requirements, and requirements regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1.-2. (No change.)

(f)-(h) (No change.)

19:31-9.9 Tax credit amount; application and allocation of the tax credit

(a)-(e) (No change.)

(f) The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the business does not take more than one-tenth of its approved credit amount in any tax period and the value of all credits approved by the Authority against tax liabilities pursuant to P.L. 2007, c. 346 (*N.J.S.A. 34:1B-207* et seq.), in any fiscal year, shall not exceed \$ 150,000,000.

(g) (No change.)

19:31-9.10 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (*N.J.S.A. 54:18A-2* and *54:18A-3*), pursuant to section 1 of P.L. 1950, c. 231 (*N.J.S.A. 17:32-15*), or pursuant to *N.J.S.A. 17B:23-5*. A business may apply to the Director of the Division of Taxation in the Department of Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. The total amount transferred for any single tax period shall be at least \$ 1 million in tax credits. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business' right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

(b) The initial sale or assignment of any amount of a tax credits allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount.

(c) In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to *N.J.A.C. 19:31-9.5(a)*.

(d) Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (*N.J.S.A. 54:18A-2* and *54:18A-3*), pursuant to section 1 of P.L. 1950, c. 231 (*N.J.S.A. 17:32-15*), or pursuant to *N.J.S.A. 17B:23-5*. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

(e) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

19:31-9.11 Cap on total credits

The value of all credits approved by the Authority shall not exceed \$ 1,500,000,000 of which the Authority may approve up to \$ 150,000,000 in credits in the aggregate for residential developers making capital investments in qualified residential projects, provided that for each qualified residential facility, the residential developer shall be allowed tax credits of no more than 35 percent of its capital investment. Based on application and allocation activity and if sufficient credits are available, the Authority may direct that the \$ 150,000,000 cap be exceeded for allocation to qualified residential projects, as is deemed reasonable, justified and appropriate.

19:31-9.12 Reduction and forfeiture of tax credits

(a) (No change.)

(b) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under *N.J.A.C. 19:31-9.7(e)*, then the business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the 250 full-time employees at the qualified business facility.

(c) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility drops below 250 or the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to *N.J.A.C. 19:31-9.3(g)1*, employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its workforce in the last tax accounting or privilege period prior to the credit amount approval under *N.J.A.C. 19:31-9.7(e)*, then the business shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 250 or an increase above the 20 percent reduction has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

(d) If in any year in which the residential components of the qualified residential project no longer constitutes the preponderance thereof as it existed at the time of certification of the tax credit amount, the residential developer or his assignee shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating that the qualified residential project consists of the preponderance of residential units as existed at the time of certification of the tax credit amount has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed. Additions of commercial space to the project shall not be considered in this determination.

19:31-9.14 Reporting requirements; letter of compliance

(a) After notification pursuant to *N.J.A.C. 19:31-9.7(h)*:

1. In the case of a qualified business facility, the business shall furnish to the Authority an annual report certified by a certified public accountant in a format as may be determined by the Authority which shall contain the following information:

i. The number of full-time employees and new full-time positions employed at the qualified business facility, the number pertaining to the business's Statewide employment, total lease payments and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and, failure to submit the certified report within 120 days will result in forfeiture of the tax credit for that privilege period; and

ii. A certification indicating whether or not the business is aware of any condition, event, or act which would cause the business not to be in compliance with the approval, the Act or this subchapter; and

2. In the case of a qualified residential project, either the owner of the project or a tax credit transferee shall furnish to the Authority a report in a format as may be determined by the Authority which shall contain the following information:

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

ii. Evidence that the residential units of the qualified residential project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or a certification by a MAI appraiser or governmental official. Failure to submit a copy of the annual report or submission of the annual report, without the information required above, will result in forfeiture of any annual tax credits to be received by the business or tax credit holder unless the Authority determines that there are extenuating circumstances excusing the business or tax credit transferee from the timely filing required. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

(b) The tax credit certificate may provide for additional reporting requirements.

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