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RULE ADOPTIONS

OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

42 N.J.R. 1902(a)

Adopted Amendments: *N.J.A.C. 19:31-9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10 and 9.11*

Adopted New Rules: *19:31-9.10, 9.11 and 9.13*

Adopted Repeals: *N.J.A.C. 19:31-9.12 and 9.13*

Authority Assistance Programs

Urban Transit Hub Tax Credit Program

Proposed: May 17, 2010 at *42 N.J.R. 907(a)*.

Adopted: July 23, 2010 by the New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer.

Filed: July 23, 2010 as R.2010 d.177, **with a substantive change** not requiring additional public notice and comment (see *N.J.A.C. 1:30-6.3*).

Authority: P.L. 2009, c. 90.

Effective Date: August 16, 2010.

Expiration Date: January 18, 2011.

Summary of Public Comments and Agency Responses:

Richard J. Landers, Vice President-Taxes, Campbell Soup Company:

COMMENT: The provision that only benefits derived from the capital investment commenced after the submission of an application shall be used for the purposes of calculating the net economic benefits test, pursuant to *N.J.A.C. 19:31-9.7(c)*, is unsupported by and contrary to the statute, which only requires that expenses must be incurred after the effective date of P.L. 2007, c. 346.

RESPONSE: Rejected. The EDA believes that authority exists in the statute with regard to the date used in determining what investments and activities should be included in the net economic benefits test calculation. The Authority concurs with the commenter that the statute provides that any capital costs incurred after January 18, 2008 are eligible costs, which forms the basis of the calculation of the amount of credit (80 percent or 100 percent depending on the number of new jobs). With respect to the net economic benefits test, the statute provides: "to be eligible for any tax credits authorized . . . a business shall demonstrate to the authority at the time of application that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality." Based on this language, only those items that were not committed to prior to the date of the application, or the time that substantive dialogue occurred between the applicant and staff which led to the submis-

sion of an application, shall be included in the net economic benefits test (these items would include investment in plant and equipment as well as new employees at the location). The Authority believes that since the Urban Transit Hub Tax Credit Program was imbedded in a stimulus bill, the Legislature intended the award of credits to be a factor in the company's decision to hire staff and make the capital investment.

Joanne Harkins, PP, AICP, Vice-President Regulatory Affairs, New Jersey Builders Association:

COMMENT: The definition of "capital investment" should be amended to also include land, as well as a reference to the National Green Building Standard, ICC-700-2008, approved by the American National Standards Institute (ANSI).

RESPONSE: Rejected. The definition of "capital investment" is based on the statutory definition in the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346 (*N.J.S.A. 34:1B-207 et seq.*), which does not include land. Also, the EDA utilizes the LEED<(R)> building rating system, developed by the United State Green Building Council, a third party verification system program and the nationally accepted benchmark for the design, construction and operation of high performance buildings.

COMMENT: The definition of "full-time employee at the qualified business facility" should credit full-time jobs created for salespeople and drivers that spend more than 20 percent of their time on the road.

RESPONSE: Rejected. The definition requires that a full-time employee maintain a primary office at the site and spend at least 80 percent of his or her time at the site, or spend any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority. The Authority believes that this provision is sufficient to enable the EDA to consider if salespeople and/or drivers, if verified as providing full-time employment at a qualified business facility, may be included.

COMMENT: The eligibility criteria, at *N.J.A.C. 19:31-9.3(a)3iv*, contain affordable housing criteria relating to residential development which may be counterproductive to providing needed tax credits to large building projects while burdening them with an affordable housing requirement.

RESPONSE: Rejected. The affordable housing requirement for the Urban Transit Hub Tax Credit Program is a directive contained in section 18 of P.L. 2008, c. 46 (*N.J.S.A. 52:27D-329.9*) and will remain part of the rules implementing the program, until statutory revision is made by the Legislature.

COMMENT: The .5 percent fee payable prior to the receipt of the tax credit certificate should be payable when the tax credit is monetized for residential developments.

RESPONSE: Rejected. The fees proposed by the Authority are commensurate with the considerable level of tax credits available and are necessary to cover the EDA's extensive administrative costs for the review of a proposed project, annual certification of capital investment and employment qualifications and approval of tax credit transfer certificates. The Authority does not believe that a residential project will be made economically unfeasible if the .5 percent fee is payable prior to receipt of the tax credit certificate, which may be transferred immediately thereafter.

COMMENT: The recommendation for allocating credits to qualified residential projects, at *N.J.A.C. 19:31-9.7(d)* and (e), are vague and should include specific factors and conditions, beyond those listed.

RESPONSE: Rejected. The Authority believes that the extensive criteria listed in both paragraphs provide clear direction to all applicants pertaining to the allocation of credits to qualified residential projects, and the reference to any other factors deemed relevant by the Executive Director is necessary to provide flexibility for the proper administration of the program; and if such other factors are developed, notice will be made in guidance documents and/or the EDA website, as the commenter suggests.

COMMENT: The provision, at *N.J.A.C. 19:31-9.5(a)1xiv* and 9.10(c), that tax credits can be allocated other than as a proportion on each partner's share of distributive income or gain, should be clarified to also allow the partnership to pledge, as securitization of equity, mezzanine, construction, and permanent debt financing, and pay the revenue generated from the sale of the credits to a private investor, who is not an owner, or to a bank.

RESPONSE: Rejected. The comment goes beyond the scope of the statute, which addresses the sale or assignment of a tax credit transfer certificate, not the assignment of revenue generated from such sale or assignment.

COMMENT: The tax credit should be allowed against the New Jersey Gross Income Tax, which are paid by limited liability companies (LLCs) and eligible under the Urban Transit Hub Tax Credit Program.

RESPONSE: Rejected. The elimination of the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq., from the list of tax liabilities upon which the credit may be applied, is by statute and may not be reversed by rule.

COMMENT: The approval of a tax credit under the program should be awarded conditionally based on termination of participation and repayment of assistance provided under the Business Employment Incentive Program (BEIP), Business Retention and Relocation Assistance Grant Program (BRRAG) and InvestNJ Business Grant Program, as required under the statute.

RESPONSE: Rejected. The Authority does not believe it necessary to provide for conditional approvals, as the statute and rules are clear that applicants that have received assistance under BEIP, BRRAG and InvestNJ, may not be eligible for credits under the Urban Transit Hub Tax Credit Program. In addition, the provisions for allowing a business participating in one of these programs to terminate funding and make reimbursement to participate in the Urban Hub program, is an essential safeguard to protect the integrity of public support provided under these programs.

Summary of Agency-Initiated Change:

The Authority is lessening the requirements of these rules to eliminate the provision that the report submitted by a business, pursuant to *N.J.A.C. 19:31-9.11* recodified as *N.J.A.C. 19:31-9.14*, be certified by a certified public accountant in conjunction with a licensed architect. The agency-initiated change, which deletes the requirement for the report to be certified in conjunction with a licensed architect, has been made as the report relates to the number of full-time employees and positions employed at the qualified business facility and any conditions, events or acts of default, neither of which require the professional services of a licensed architect.

Federal Standards Statement

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

Full text of the adopted amendments and new rules follows (deletion from proposal indicated in brackets with asterisks *[thus]*):

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 20 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. The tax credits are reduced to 80 percent if 200 new jobs (to the State) are not created, or forfeited if certain facility and Statewide employment levels are not maintained. The program is limited to municipalities that are eligible for urban aid, that had at least 30 percent of their real property value exempt from property taxes during 2006, and that have a specified commuter rail station, excluding any rail station located at an international airport.

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.

...

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business, and may include not-for-profit entities. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to *Section 1563 of the Internal Revenue Code of 1986*, as amended, *26 U.S.C. §1563* or the entity is an organization in a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended, *26 U.S.C. §414(b), (c)*. A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L. 2007, c. 346 (*N.J.S.A. 34:1B-209*).

"Approval letter" means the letter sent by the Authority that sets forth the conditions subsequent to the approval, the forecasted schedule for completion and occupancy of the project, the date the 10-year eligibility period is scheduled to commence, the estimated amount of tax credits, and other such information which further the purposes of P.L. 2007, c. 346. The approval letter will require the applicant to submit progress information by a certain date in order to preserve the approval of the tax credits.

...

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (*N.J.S.A. 54:18A-2* and *54:18A-3*), section 1 of P.L. 1950, c. 231 (*N.J.S.A. 17:32-15*) or *N.J.S.A. 17B:23-5*, or is an entity classified as a partnership, an S corporation, or a limited liability company. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by the affiliate or full-time employees of an affiliate are necessary to evidence compliance with eligibility requirements.

"Capital investment" in a qualified business facility and a qualified residential project means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility or improvement to real property, including associated soft costs. Capital investment includes obtaining and installing furnishings and machinery, apparatus or equipment for the operation of a business in a building, structure, facility or improvement to real property, site-related utility and transportation infrastructure improvements, plantings or other environmental components required to attain the level of silver rating or above in the LEED<(R)> building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including *N.J.S.A. 52:27H-80* et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third party certification program and the nationally accepted benchmark for the design, construction and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility or improvement shall not constitute a capital investment. Also included is remediation of the qualified business facility or qualified residential project site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. With respect to commercial development, to be included the capital investment must be commenced after the January 13, 2008 effective date of the Act and the applicant submits its documentation for approval of its credit amount by the eighth anniversary of that date. With respect to residential development, to be included the capital investment must be commenced after July 28, 2009, the effective date of P.L. 2009, c. 90, and the applicant submits its documentation for approval of its credit amount by the eighth anniversary of that date, that is, by July 28, 2017. For purposes of this subchapter, "commenced" shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

"Developer" means, with respect to a qualified business facility, a business that intends to construct and lease a business facility. A developer may seek to receive approval that the facility will constitute a qualified business facility conditioned upon identification of tenants that will have qualifying employment and pro formas indicating that the capital investment requirements will be met.

"Eligibility period" means the 10-year period in which a business may claim an urban transit hub tax credit, beginning with the tax period in which the Authority accepts the certification of the business that it has met the capital investment and employment qualifications, if any, of the Program.

"Eligible municipality" means a municipality: which qualifies for State aid pursuant to P.L. 1978, c. 14 (*N.J.S.A. 52:27D-178* et seq.) or which was continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation, which is taxable and that which is tax exempt. For State fiscal year 2008, the eligible municipalities are: Camden, East Orange, Elizabeth, Jersey City, Newark, New Brunswick, Paterson, Trenton and Hoboken. For subsequent State fiscal years, the Authority, after consultation of the Department of Community Affairs, shall annually publish at www.newjerseybusiness.gov a notice listing the eligible municipalities.

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (*N.J.S.A. 34:8-67* et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq., or an employee who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq., or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as determined by the Authority as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

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

...

"Letter of compliance" means the letter issued annually by the Authority pursuant to *N.J.A.C. 19:31-9.14* that must accompany the use of the tax credit certificate.

"Light rail station" means a location where passengers board or alight River Line Light Rail, the Hudson-Bergen Light Rail, the Newark Light Rail services, or any other light rail service owned and/or operated by New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation in the State of New Jersey. Light rail is a transit mode with a lighter volume traffic capacity compared to commuter rail service and characterized by lighter vehicles operating in one or two-car trains on fixed rails, powered by electric or diesel, and not regulated by the Federal Railroad Administration unless covered by a waiver for shared-use operation of freight and light rail passenger service.

...

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (*N.J.S.A. 34:8-67* et seq.).

...

"Progress information" means the information that must be submitted pursuant to *N.J.A.C. 19:31-9.8*.

...

"Qualified residential project" means any building, complex of buildings or structural components of buildings, including a mixed use project, the majority of which, as measured by square footage, consists of residential units, located in an urban transit hub within an eligible municipality.

"Rail station" means a rail station, including light rail stations, of the New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation, but shall not include any rail station located at an international airport.

"Residential developer" means a business that intends to make or acquire capital investments in a qualified residential project pursuant to sections 34 and 35 of P.L. 2009, c. 90.

"Residential unit" means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

...

"Soft costs" means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment.

...

"Tenant" means a business that is a lessee or owner of a condominium in a qualified business facility and does not include a lessee or owner of a condominium in a qualified residential facility.

"Urban transit hub" means property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations, 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, 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, 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*), or pursuant to *N.J.S.A. 17B:23-5*.

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

1. For a qualified business facility, if the business is other than a tenant, the business shall:

i. Make or acquire capital investments in a qualified business facility totaling not less than \$ 50,000,000. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner's minimum capital investment of \$ 50,000,000 provided that the owner so indicate in his application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;

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

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

2. If the business is a tenant in a qualified business facility:

i. The owner of the qualified business facility shall make or acquire capital investments, or in a mixed-use facility capital and residential capital investments in the facility totaling not less than \$ 50,000,000, as calculated in accordance with (a)1i above;

ii. The tenant shall occupy a leased area of the qualified business facility that represents at least \$ 17,500,000 of the capital investment in the facility, as calculated pursuant to (b) below;

iii. The tenant business and up to two other tenants shall employ not fewer than 250 full-time employees in the aggregate at the qualified business facility;

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

v. Except for tenants of a qualified business facility for which the owner has previously demonstrated a net positive benefit and received approval of the project site or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the 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 term of the tenant's lease, not to exceed 20 years. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment, but not from employees other than those referenced in (a)2iii above. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment and from all employees located in the qualified business facility.

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

i. Make or acquire capital investments totaling not less than \$ 50,000,000 in a qualified residential project. This requirement may be met by the residential developer or by one or more of its affiliates;

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

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

iv. Shall be required, pursuant to section 18 of P.L. 2008, c. 46 (*N.J.S.A. 52:27D-329.9*) to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L. 1985, c. 222 (*N.J.S.A. 52:27D-304*), with affordability controls as required under the rules of the Council on Affordable Housing, unless the municipality in which the property is located has received substantive certification from the Council and such a reservation is not required under the approved affordable housing plan, or the mu-

municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan.

(b) In order to determine whether the tenant's leasable area of the qualified business facility satisfies the capital investment eligibility threshold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$ 50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

(c) (No change.)

(d) (No change in text.)

(e) A business shall be treated as owner of a qualified business facility or a qualified residential project if it holds title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

(f) A business that is investing in a qualified business facility or qualified residential project may apply for tax credits valued at less than the total amount of the capital investments in its project.

19:31-9.4 Restrictions

(a) A business shall not be allowed urban transit hub tax credits if:

1. The business participates in a Business Employment Incentive Program grant pursuant to P.L. 1996, c. 26 (*N.J.S.A. 34:1B-124 et seq.*) relating to the same capital investment, employees, and site that qualify the business for urban transit hub tax credits; or

2. The business receives assistance from the Business Retention and Relocation Assistance Grant Program pursuant to P.L. 1996, c. 25 (*N.J.S.A. 34:1B-112 et seq.*).

(b) (No change.)

(c) A business shall not qualify for a tax credit based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the InvestNJ Business Grant Program Act, P.L. 2008, c. 112 (*N.J.S.A. 34:1B-237 et seq.*).

(d) Capital investments in a qualified business facility must be incurred after the effective date of P.L. 2007, c. 346, which is January 13, 2008, and must be applied for within five years of January 13, 2008. An approved business must submit its documentation for approval of its credit amount before the end of the eighth year after the effective date, and thus, before January 13, 2016. The credit amount allowed for a tax period ending after January 16, 2016 during which documentation of a business' credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it. 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. Capital investments in a qualified residential facility must be incurred after the effective date of P.L. 2009, c. 90, which is July 28, 2009, and be applied for within five years of July 28, 2009. A residential developer must submit its documentation for approval of its credit amount within eight years after July 28, 2009. The credit amount allowed for a tax period ending after July 28, 2017 during which documentation of a business' credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it. This eight-year limit is expected to afford businesses applying toward the end of the five-year application period at least three years to complete the project.

(e) If a business participating in a Business Employment Incentive Program grant for the same capital investment, employees, and site or receiving assistance from the Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act, seeks to qualify for urban transit hub tax credits, it shall first repay and terminate assistance pursuant to the rules go-

verning the Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act, as applicable.

19:31-9.5 Application submission requirements

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

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

i.-xiii. (No change.)

xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of Treasury by such time and with such information as the Director may require; and

xv. (No change.)

2. Project information shall include the following:

i. (No change.)

ii. A description of the capital investments planned by the business, if other than a tenant at the proposed qualified business facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified business facility; and if the business is a residential developer, a description of the capital investment planned to be made or acquired in a qualified residential project;

iii. (No change.)

iv. A certification from the owner, with supporting evidence, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit, equaling 110 percent of the requested tax allocation amount, to the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment or the term of the tenant's lease, not to exceed 20 years, taking into account the criteria listed at *N.J.A.C. 19:31-9.7(c)*. The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;

v. If the capital investment is a qualified residential project, a pro forma analysis demonstrating that the project is likely to be realized with the provision of the tax credits at the level requested to be realized but is not likely to be accomplished by private enterprise without the credits;

vi. A description of how the green building standards to be set forth in the green building manual prepared by the Department of Community Affairs, pursuant to section 1 of P.L. 2007, c. 132 (*N.J.S.A. 52:27D-130.6*) are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

vii. Identification of the site of the proposed qualified business facility or qualified residential project, including the block and lot of the site as indicated upon the local tax map and evidence that the site is located wholly or partially (over 50 percent) within an urban transit hub in the form of a survey or other documentation acceptable to the Authority;

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

ix. If the capital investment is a qualified business facility, a schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

Recodify existing vii.-ix. as x.-xii. (No change in text.)

3. Employee information shall include the following:

i. A written certification that the employees that are the subject of this application will be full-time employees at the qualified business facility and are subject to withholding as provided in the New Jersey Gross Income Tax Act;

ii. The average annual wage and benefit rates of full-time employees and new full-time positions at the qualified business facility;

iii. To the extent a tenant is meeting the employment requirement together with up to two other tenants in the qualified business facility, a submission from the other tenants relating to (a)3i above;

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

(b)-(c) (No change.)

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. (No change.)

2. If a business is a tenant of the proposed qualified business facility wherein the owner has not made application for the approval of tax credits, the application fee is \$ 5,000; or

3. (No change.)

(b) In addition to the application fees in (a)1, 2 and 3 above, for a qualified business facility, a business shall pay to the Authority the full amount of direct costs of an analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-fundable fee of .5 percent of the approved tax credit, not to exceed \$ 300,000, shall be charged by the Authority upon the approval of the tax credit.

(d) A non-fundable fee of .5 percent of the tax credit, not to exceed \$ 300,000, shall be paid prior to the receipt of the tax credit certificate.

(e) A business shall pay to the Authority an annual review fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period. The annual review fee shall be paid to the Authority by the business at the time the business submits its annual letter of compliance. The annual review fee shall be \$ 2,500 per year.

(f) A business applying for a tax credit transfer certificate pursuant to *N.J.A.C. 19:31-9.10* shall pay to the Authority a fee of \$ 2,500.

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

(a) A business seeking an approval of tax credits for a qualified business facility may apply for tax credits for a qualified business facility that was commenced after January 13, 2008 within five years after January 13, 2008, the effective date

of the Act. A residential developer may apply for tax credits for a qualified residential facility that was commenced after July 28, 2009 within five years after July 28, 2009, the effective date of P.L. 2009, c. 90 (that is, by July 28, 2014).

(b) The Authority shall conduct a review of the applications commencing with the application bearing the earliest submission date or if interest in the program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The review will determine whether the applicant:

1.-3. (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*, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by and generated indirectly by the business, property taxes or payment in lieu of taxes paid directly by and generated indirectly by the business, taxes paid directly or generated indirectly by new or retained employees, and peripheral economic growth caused by the business's relocation to the urban transit hub, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) In developing a recommendation for allocating credits to qualified residential projects, the chief executive officer shall take into account, together with other factors deemed relevant by the Executive Director:

1. An evaluation of the residential developer's pro forma analysis submitted pursuant to *N.J.A.C. 19:31-9.5(a)2v*;
2. Input from the municipality in which the project is located;
3. Whether the project furthers specific State or municipal planning and development objectives, or both; and
4. Whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property or both.

(e) Upon completion of the review of an application pursuant to (b) through (d) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits to be granted and, in the case of a residential developer, the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, and promptly notify the applicant and the Director of the Division of Taxation of the determination. 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) Within one year following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for and site control of the qualified business facility or qualified residential project. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval.

(g) Upon completion of the capital investment and employment requirements of the program, the business shall submit a certification of a certified public accountant which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements.

1. The certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified business facility, provided however that in no event will the amount of tax credits exceed the amount of tax credits previously approved by the Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. In general, this certification shall be submitted to the Authority no later than five years after the Authority's receipt of the progress information.

3. For project applications for a qualified business facility approved in the fifth year that the Act is in effect, the certification shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For developer applications approved in the fifth year that the Act is in effect, any tenant's application and certification relating to a qualified business facility so approved shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For residential developers approved in the fifth year that P.L. 2009, c. 90 is in effect, any certification relating to a qualified residential project so approved shall be submitted no later than eight years after the effective date of the Act (that is, by July 28, 2017).

4. (No change.)

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

19:31-9.8 Tax credit certificate

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

1. The starting date of the eligibility period;

2. The amount of the tax credits;

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

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

5. (No change in text.)

6. Reporting requirements 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, or area owned by the business as a condominium, subject to any reduction or disqualification provided in the Act and this subchapter and, provided that in no event will the amount of tax credits exceed the amount of tax credits previously approved by Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project as follows:

1. (No change.)

2. In order to determine the amount of the tenant's or condominium's capital investment that will be attributed toward the amount of its tax credits, the Authority shall add the amount of capital investment that results from the calculation in *N.J.A.C. 19:31-9.3(b)* to any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant, provided that the owner has not included such tenant allowance or tenant improvements in its calculation of capital investment and further provided that such tenant allowance or tenant improvements meet the definition of capital investment.

(b) For the 10 consecutive years following the notification pursuant to *N.J.A.C. 19:31-9.7(h)*, a business may apply 10 percent of the total credit amount per each tax accounting or privilege period, subject to the provisions of the Act and this subchapter.

(c) The business may apply the credit against their corporation business tax or insurance premiums tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (*N.J.S.A. 54:18A-2* and *54:18A-3*), pursuant to section 1 of P.L. 1950, c. 231 (*N.J.S.A. 17:32-15*), or pursuant to *N.J.S.A. 17B:23-5*. The credit awarded to the business using one or more affiliates to satisfy the employment and or capital investment requirements of the program shall be applied on the basis of the allocation(s) submitted pursuant to the application, or as subsequently adjusted pursuant to *N.J.A.C. 19:31-9.14* provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the business facility or employees at the business facility during the tax period for which the tax credits are issued.

Recodify existing (e)-(h) as (d)-(g) (No change in text.)

19:31-9.10 Application for tax credit transfer certificate

(a) A business may apply to the Director of the Division of Taxation in the Department of Treasury and the Authority for a tax credit transfer certificate covering one or more years, 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 sold. Once approved by the Authority and the Director of the Division of Taxation, a tax certificate shall be issued. The tax credit certificate, upon receipt thereof by the business from the Director and the Authority, may be sold or assigned, in full or in part, 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*. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was allowed the credit.

(b) The sale or assignment of any amount of a tax credit transfer certificate 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 revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the selling agreement shall set forth the allocation among the owners 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)*.

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

1. Fewer than 200 full-time employees at the qualified business facility or, if the applicant is a tenant and has qualified under *N.J.A.C. 19:31-9.3(a)2iii*, fewer than 200 full-time employees in the aggregate are employed in new full-time positions in any tax period.

i.-ii. (No change.)

2. For businesses applying before January 1, 2010, there shall be no reduction if a business relocates to an urban transit hub from another location or locations in the same municipality.

(b) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under this section, 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) (No change.)

(d) If in any year the qualified residential facility no longer meets the definition thereof, 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 facility meets such definition 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.

19:31-9.13 Effect of sale or lease of qualified facilities

(a) The tax credit amount shall be forfeited in the event of sale of the qualified business facility or sublease of the business's tenancy as follows:

1. If the qualified business facility is sold in whole or in part during the 10-year eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, except that any credits of tenants shall remain unaffected. The new owner may not apply for tax credits based upon the seller's capital investment. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

2. If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period, the sublessee shall not acquire the credit of the lessor, and the lessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods, except that if the lessor tenant retains sufficient capital investment and employment to remain eligible for the program, the forfeiture shall affect only the credits attributable to the subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the sublessee shall be subtracted.

(b) In the event of sale of the qualified residential facility in whole or in part, the seller may either retain the tax credit amount or assign to the new owner a tax credit amount equal to the amount of the capital investment that is sold, pro-

vided that the capital investment sold represents at least \$ 17,500,000 of the capital investment in the facility. In order to determine the amount of capital investment sold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the square footage of the portion of the qualified residential facility that is sold and the denominator of which is the total square footage of the qualified residential facility.

(c) Tenants in a qualified residential project are not eligible to apply for tax credits and an owner may not assign tax credits to a tenant.

19:31-9.14 Reporting requirements; letter of compliance

(a) After notification pursuant to *N.J.A.C. 19:31-9.7(h)*, the business shall furnish to the Authority a report certified by a certified public accountant *[in conjunction with a licensed architect]* in a format as may be determined by the Authority, which shall contain the following information:

1. (No change.)

2. 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.

(b) (No change.)

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

(d) 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 may take all or a portion of the credits allocable to the tax privilege period.

(e) (No change in text.)

Recodify existing *N.J.A.C. 19:31-9.14* and *9.15* as 9.15 and 9.16

(No change in text.)