

The company we keep,
keeps getting better.



Technology Business Tax Certificate Transfer Program
April 20, 2010 Webinar
Questions & Answers

1) *Q: On the operating profit criteria, what if they don't meet it, but have grandfathered credits? Can they still use the grandfathered credits? Do previously approved applicants get any preferential consideration over first time applicants?*

A: No. Under the new Statute, no applicant will be grandfathered to carry forward NOL or R&D tax credits for the purpose of the Technology Business Tax Certificate Transfer Program. In the current application submission cycle, to be submitted by June 30, 2010, all applicants will be judged as "new" applicants, and must all meet the same criteria.

2) *Q: On the pre-existing approved losses, did the revised legislation remove the previous language from the statute that specifically called for up to 50% of an applicant's pre-approved losses going to them the following year?*

A: Yes. The formula to calculate the allocation this year has been changed, eliminating the 50% minimum of prior year allocation to be carried over to the following year allocation formula. Please keep in mind no applicant will be grandfathered this year for prior approved NOL or R&D losses.

3) *Q: How does a company find buyers of the NOL benefits?*

A: The EDA has a list of some buyers and facilitators on our website, www.njeda.com.

4) *Q: We are a pharmaceutical company registered as an LLC; do we qualify if we have a net operating loss?*

A: We suggest you consult with your tax department or auditors to confirm if the tax liability is reported by the company or passed through to the members.

The tax implications of an LLC differ from those of corporations. LLCs use "pass-through taxation," which means the LLC does not pay taxes. Income from the business is instead passed down to the company's owners, who are called members in LLCs. They claim the profits or losses on their personal tax forms.

Single-owner LLCs pay taxes on Form 1040 with the Internal Revenue Service. Partnership LLCs, in which there is more than one owner, must file partnership returns using Form 1065. Both of these are simpler than paying taxes through a corporate structure. Using these returns also avoids double taxation, under which corporations pay taxes on their income and shareholders also pay taxes when the corporation's profits are distributed to them through dividends. Because an LLC does not have shareholders, it has a different tax structure.

5) *Q: How do you enforce the recapture after a company leaves the State?*

A: We will contact the company to inform them of the recapture amount and make arrangements for the repayment. If the applicant is not cooperative, the account will be turned over to our collection group and the Attorney General's office for further action.

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6) *Q: Is the deadline for the application still 6/30/10? If so, when do you expect the application to be available? Is the application expected to be similar to last year?*

A: The application deadline of June 30, 2010 will remain the same as it is set by the Statute. Delays in posting the application this year are a result of the legislature approving a revision on February 22, 2010, that is currently awaiting the Governor's final review. We anticipate the application will be posted no later than the week of May 10, 2010. Please check our website, www.njeda.com, for updates on posting the application.

7) *Q: Are there rules, as in the past, that the company must show that it will become profitable in the next year?*

A: No. The new statute removed requirements pertaining to future profitability or job creation.

8) *Q: Based on the anticipated reduction in funding this year, do you have an estimate of what percentage of the approved NOL will be this year?*

A: The Governor has recommended to the Legislature that the tax credit benefit allocation for the 2010 application cycle of the Technology Business Tax Certificate Transfer Program be reduced from \$60 million to \$30 million. Until the Legislature approves a budget we will not know the final number. During the 2009 program cycle, the average award was in excess of \$612,000.

