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Webinar

Technology Business Tax Certificate Transfer Program

April 20, 2010

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Agenda

- Review Program Eligibility Criteria
- 2010 Statute Modifications
- Application

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Public – Private Partnership

Technology/
Biotechnology
Businesses

Certificate Buyers

Facilitators

NJEDA

Commission on
Science &
Technology

NJ Division of
Taxation

BioNJ

New Jersey
Department of Labor

New Jersey
Technology Council

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Primary Goal

Focus available benefit on New Jersey-based
biotechnology & technology companies most
likely to achieve long-term success.

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Maximum Company Lifetime Value of Surrendered Tax Benefits

Increased from

\$10,000,000

to

\$15,000,000



NJ State Annual NOL Allocation

INNOVATION ZONE (IZ)	\$10,000,000*
GENERAL POOL	<u>\$50,000,000</u>
TOTAL ANNUAL ALLOCATION	\$60,000,000**

* Unused balances of annual \$10 million IZ set-aside for business in the 3 IZ zones (Camden, Newark & Greater New Brunswick Area) will now revert to the general program pool for use by businesses not located in IZs.

** Subject to confirmation by NJ Legislature to reduce total annual allocation to \$30 million, as recommended by Governor Christie.



Tax Benefit Calculation

NOL Tax Benefit Calculation Example

Net Operating Loss		\$3,000,000
Corporate Business Tax (CBT)		<u>@ 9%</u>
Tax benefit available for sale		\$270,000
Assume 100% allocation Factor		
Minimum Sale Price	@80%	\$216,000

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Tax Transfer Statistics

	2009	2008	2007	2006	2005
Applicants	113	107	116	164	234
Innovation Zone Avg. Award	\$1,314,354	\$848,434	\$1,126,749	\$1,399,477	\$342,961
Avg. Award	\$612,244	\$750,000	\$659,341	\$467,159	\$236,125
Avg. Sale Price	\$.88	\$.88	\$.88	\$.87	n/a
Avg. Purchase Price	\$.92	\$.92	\$.92	\$.92	n/a
Highest Award	\$4,473,692	\$3,273,562	\$3,746,713	\$6,475,952	\$2,178,563
Lowest Award	\$11,793	\$21,355	\$1,619	\$6,407	\$7,773



Net Operating Income

Eligibility Criteria

- Applicant **cannot** show positive **net operating income** in any of the two previous full years of ongoing operations, as determined on its financial statements.

(2010 statute does not penalize applicant's reporting net income as a result of selling NOLs or R&D credits, sale of a major asset, or other non recurring income, as in past years.)



Net Operating Income *Eligibility Criteria*

- Applicant cannot be, directly or indirectly, 50% or more owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations, as determined on its financial statements.
- Applicant cannot be a part of a consolidated group of affiliated corporations, as filed for Federal Income Tax purposes, that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its combined financial statements.



Full Time Employee – Health Benefits

- A “full-time employee” is a person employed by a new or expanding emerging technology or biotechnology company **for at least 35 hours a week**, and whose wages are subject to withholding tax in New Jersey (W2).
- To qualify as a “full-time employee,” an employee must be **offered health benefits under a group health plan**.
- “Full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology business (1099).



New Employment Eligibility Criteria

- Total U.S. employment cannot exceed 224 employees, including employees of all affiliates, parents, and subsidiaries;
- The 75% NJ employee requirement was eliminated and a new minimum employment threshold was established as follows:

Incorporated	Minimum Number of Full Time Employees in New Jersey at time of Application and Sale of Tax Benefits
Less than 3 years	1
More than 3 years less than 5 years	5
More than 5 years	10



Financial Statement Requirements

- Attach the two most recent years of **independent accountant prepared** (CPA) financial statements or annual reports in accordance with GAAP (include footnotes).
- If a publicly held company, please submit Form 10K. For applicants that are subsidiary corporations, include parent company financial statements.
- Include financial statements of **all affiliates**, as filed for federal income tax purposes.



Technology Business Tax Certificate Transfer *Eligibility Criteria*

- Company must be a **new** or **emerging** technology or biotechnology business in New Jersey with:
 - unused amounts of R&D tax credits,
 - unused net operating loss (NOL) carryover, due to the continuing losses.
- **Headquarters or base of operations located in New Jersey.**
- **Primary business** must involve the provision of a scientific process, product or service.
- **Owns, has filed for, or has license to use protected, proprietary intellectual property.**



Unacceptable Criteria & IP Documentation

- Exclusive Distribution Agreement
- Exclusive Sales Agreement
- Exclusive Service Agreement
- Licensed Software such as Microsoft Windows or Oracle
- Trade Secrets, Trademarks
- Unregistered Copyright
- Longevity of its Key Company Personnel



Biotechnology - Primary Business

- Owns, has filed for, or has a valid license to use protected, proprietary intellectual property
- Engaged in Research & Development
- Production for the purpose of developing or providing products or processes for specific commercial or public purposes
- Providing customized biotechnology services or products requiring specialized knowledge or expertise
- Providing products or processes for specific commercial or public purposes

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Biotechnology - Primary Business

Medical

Pharmaceutical

Nutrition

Health-related

Agricultural

Environmental



Technology - Primary Business

- Owns or has a license to use protected, proprietary intellectual property
- Uses a scientific process, product or service
- Employs some combination of highly educated and/or trained managers and workers
- Uses sophisticated scientific research, service, production equipment, processes or knowledge
- Designing and developing of computing hardware and certain software
- Research, development, production, or provision of materials with engineered properties created through the company's development of specialized processing

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Technology – Primary Business

Microelectronics

Semiconductors

Electronic equipment &
instrumentation

Radio Frequency

Microwave and millimeter
electronics

Optical & optic-related
electrical devices

Data & digital communications

Imaging devices

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IP Evidence Required

- Summary of relevant patents or patent applications
- License agreement from the patent owner granting control of all aspects of the patent to commercialize technology
- Copyright registration documentation



Who Can Buy The Tax Benefits?

- The NOLs & R&D tax credits may be acquired by a profitable New Jersey business that will file a New Jersey corporation business tax return, showing state tax liability, in exchange for private financial assistance (buy).
- The seller of the tax credits can use the sale proceeds to assist in the funding of any allowable expenditures related to the new or expanding emerging technology or biotechnology company.



Affiliated Business Test *Sale of Tax Benefits*

- The taxpayer (buyer) receiving the surrendered tax benefits cannot be affiliated with a corporation that is surrendering its tax benefits under the program.
- The buyer cannot directly or indirectly own or control 5% or more of the voting rights or 5% or more of the value of all classes of stock of both the taxpayer receiving the benefits and a corporation that is surrendering the benefits.

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Increased Minimum Sale Price

The purchaser of the benefits must pay
at least 80% of the value of the
benefit being surrendered;
up from 75% under the original statute.



2010 Statute Modifications *Recapture of Tax Benefits*

In the event a selling business fails to maintain a headquarters or base of operation in the State during the five years following the receipt of the private financial assistance, the Authority will allow the selling business to retain 20 percent of the face value of the tax credit certificate for each full year the business remained in New Jersey (example on next slide).

Move within years from disbursement:	Recapture % of the face value of the tax credit certificate:
1	100%
2	80%
3	60%
4	40%
5	20%



2010 Statute Modifications

Recapture of Tax Benefits

- **The forfeiture requirement pertaining to the failure to maintain a headquarters or a base of operation in this State shall not be applied if the failure is due to the liquidation of the new or expanding emerging technology or biotechnology business.**
- In the event a selling business fails to use the tax benefits or cash benefits as required by the Act, the Authority shall require the selling business to remit to the Department of Treasury 100% of the unallowable expenditures.

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Application Fee* = \$2,500

Going forward, each year all applicants will be treated as a
“New” Applicant.

Those who were previously defined as “Recertified” or
“Returning” applicants seeking to sell unused net operating
loss carryover or unused research & development tax credits
that were approved in a previous year but did not receive a full
allocation, will no longer be “grandfathered.”

2010 application will be available on the NJEDA website:
www.njeda.com

**non refundable*



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

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Q & A

Thank you for showing your interest in the program by joining us today!

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