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RULE ADOPTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

38 N.J.R. 3184(c)

Adopted Amendments: *N.J.A.C. 19:31-12.2 through 12.7*

Authority Assistance Programs

Technology Business Tax Certificate Transfer Program

Definitions; Eligibility; Application to the Program; Evaluation Process; Approval Process; Allocation of Tax Benefits

Proposed: May 1, 2006 at *38 N.J.R. 1801(a)*.

Adopted: July 12, 2006 by the New Jersey Economic Development Authority, Caren Franzini, Chief Executive Officer.

Filed: July 14, 2006 as R.2006 d.284, **without change**.

Authority: *N.J.S.A. 34:1B-1* et seq.

Effective Date: August 7, 2006.

Expiration Date: July 22, 2010.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

The adopted amendments are not subject to any Federal standards or requirements; therefore, an analysis is not required.

Full text of the adoption follows:

19:31-12.2 Definitions

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

...

"Biotechnology business" means an emerging corporation that has a headquarters or base of operations located in New Jersey that owns, has filed for, or has a license to use protected, proprietary intellectual property and is engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a corporation that has a headquarters or base of operations located in New Jersey, and that is engaged in providing services or products necessary for such research, development, production, or provision.

...

"New or expanding" means a technology or biotechnology company that has fewer than 225 employees of whom at least 75 percent are employed in New Jersey. This includes employees of all affiliates and subsidiaries as shown on its consolidated financial statements, employees of any company that owns or controls at least 50 percent of the applicant, as well as the employees of any consolidated group of affiliated corporations as filed for Federal income tax purposes.

...

"Technology business" means an emerging corporation, that has a headquarters or base of operations located in New Jersey, that owns, has filed for, or has a license to use protected, proprietary intellectual property whose primary business is the provision of a scientific process, product, or service and that employs some combination of the following: highly educated and/or trained managers and workers employed in New Jersey who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service. Examples of activities satisfying this definition include: the designing and developing of computing hardware and software; the research, development, production, or provision of materials with engineered properties created through the company's development of specialized processing and synthesis technology and the research, development, production or provision of technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices.

...

19:31-12.3 Eligibility

(a) A business shall be eligible to apply to the program if the Authority finds that the business:

1. (No change.)
2. Has unused amounts of research and development tax credits and/or unused net operating loss carryover; and
3. Meets the definition of new or expanding, provided that returning applicants are not required to meet this condition of eligibility.

(b) No application shall be approved in which the business:

1. Has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its financial statements;
2. Has demonstrated a ratio in excess of 110 percent or greater of operating revenues divided by operating expenses in any of the two previous full years of ongoing operations as determined on its financial statements; or
3. Is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its financial statements or is part of a consolidated group of affiliated corporations, as filed for Federal income tax purposes, that in aggregate has

demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its combined financial statements.

(c) Returning applicants are not required to meet the conditions of eligibility in (b) above.

19:31-12.4 Application to the program

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable application fee as outlined in (a)1 through 3 below. Complete applications must be received by June 30 for each State fiscal year.

1. New applicants will be required to submit an application with a \$ 1,500 non-refundable application fee.

2. Re-certification applicants will be required to submit an application with a \$ 1,500 non-refundable application fee.

3. Returning applicants will be required to submit an application with a \$ 1,000 non-refundable application fee unless the applicant is also a recertification applicant, in which case they will be required to submit a single \$ 1,500 non-refundable application fee pursuant to (a)2 above.

(b) (No change.)

(c) In addition to the material specified in (b) above, a completed application shall include, but is not limited to:

1.-2. (No change.)

3. Annual consolidated financial statements prepared by an independent accountant for the three most recent full years, including balance sheets, operating statements, statements of cash flow and annual company financial statements for the same periods and/or tax returns for the same periods;

4. (No change.)

5. The number of permanent full time jobs created by the applicant over the course of the three most recent calendar years as well as documentation supporting the fact that the applicant will create permanent full-time jobs in the near future;

6. A list of all affiliates and subsidiaries as reflected on the consolidated financial statements of the applicant, the number and location of all employees of such corporation(s) and the two most recent full years of financial statements for each;

7. A list of all corporations and affiliated groups of corporations that directly or indirectly own or control 50 percent or greater of the selling business, the number and location of all employees of such corporation(s), and the two most recent full years of financial statements for each;

8. A list of all corporations that form a consolidated group of affiliated corporations as filed for Federal income tax purposes, the number and location of all employees of such corporation(s), and the two most recent full years of financial statements for each;

Recodify existing 7.-9. as 9.-11. (No change in text.)

12. A description of efforts made during the past two years to secure any form of financial assistance to support its operations;

13. A representation as to the location of the applicant's primary place of business in an Innovation Zone or a state-sponsored incubator site;

14. A description of the type of technology business or biotechnology business that the applicant engages in; and

15. Any other supplemental information required by the Authority.

(d)-(e) (No change.)

19:31-12.5 Evaluation process

(a) When all of the required information is received, the Authority shall perform its own review based on the following minimum criteria:

1.-3. (No change.)

4. The degree to which the proposed financial assistance will result in growth in permanent full-time employment;

5. The short-term financial resources of the applicant or the inability of the applicant to access capital; and

6. The degree to which the proposed financial assistance demonstrates the prospect of a significant positive change in net income or loss;

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

19:31-12.6 Approval process

(a)-(c) (No change.)

(d) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. The Authority cannot consider any new information about the project developed after the June 30 submission deadline. Only that information which clarifies the application filed shall be considered. In the event the company is reconsidered as eligible, its application shall be presented at the next available Board meeting.

19:31-12.7 Allocation of tax benefits

(a) The Program is authorized to provide no more than \$ 60,000,000 of tax benefits over each State fiscal year. Of the \$ 60,000,000 of transferable tax benefits authorized for State fiscal year 2005 and each State fiscal year thereafter, \$ 5,000,000 shall be allocated for the surrender of transferable tax benefits exclusively among the eligible companies that operate within the boundaries of the innovations zones during State fiscal year 2005, and \$ 10,000,000 shall be so allocated exclusively among the eligible companies that operate within the boundaries of the innovation zones during fiscal year 2006 and for each State fiscal year thereafter. In the event the total amount of transferable tax benefits approved exceeds these limitations or any subsequent limitations, the Authority shall allocate the transfer of tax benefits as follows:

1.-2. (No change.)

3. Businesses with more than \$ 250,000 in tax benefits will be authorized to sell at least \$ 250,000 of their benefits in the current year. In each successive year in which a selling business reapplies to the program, the applicant will also be authorized to sell at least 50 percent of the amount sold in the prior year, with a minimum of \$ 250,000. This portion of the allocation will be in addition to the first \$ 250,000 in benefits pursuant to the first sentence of this paragraph.

4.-5. (No change.)

(b) In the event the authorized minimums exceed the authorized annual cap, applicants shall be allocated benefits with priority given to those applicants with less than \$ 250,000 of tax benefits and to businesses with more than \$ 250,000 in tax benefits that are reapplying to the program pursuant to (a)3 above.

