

54 N.J.R. 122(a)

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RULE PROPOSALS

Reporter

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Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Code Citation

Proposed Amendments: N.J.A.C. 19:31-12.1, 12.2, 12.4, 12.5, and 12.7

Text

Authority Assistance Programs

Technology Business Tax Certificate Transfer Program

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2019, c. 145.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-009.

Submit written comment by March 19, 2022, to:
Jacob Genovay, Senior Legislative and Regulatory Officer
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990

jgenovay@njeda.com

The agency proposal follows:

Summary

The New Jersey Economic Development Authority ("NJEDA" or "Authority") is proposing amendments to the Technology Business Tax Certificate Transfer Program to implement certain policy and statutory revisions pursuant to the recently enacted New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, and P.L. 2021, c. 160, as follows:

At N.J.A.C. 19:31-12.1, Applicability and scope, the proposed amendments revise the section to include new statutory citations for P.L. 2020, c. 156, and P.L. 2021, c. 160.

At N.J.A.C. 19:31-12.2, Definitions, the proposed amendments update the subchapter to add a new definition of "Board" and "opportunity zone"; and to revise the definition of "full-time employee" pursuant to P.L. 2020, c. 156, pertaining to the requirement that to qualify as a "full time employee" an employee shall receive, from the new or expanding emerging technology or biotechnology company, certain health benefits, to delete "a group health plan as defined under section 14 of P.L. 1997, c. 146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes," which is replaced with "a health benefits plan authorized pursuant to State or Federal law."

At N.J.A.C. 19:31-12.4, Application to the program, the proposed amendment at N.J.A.C. 19:31-12.4(a) reduces the amount of the existing \$ 2,500 non-refundable application fee to \$ 1,000; and the proposed amendment at N.J.A.C. 19:31-12.4(d) deletes the terms "Authority's Board of Directors at its scheduled public meeting," which is replaced with "Board" pursuant to the proposed new definition at N.J.A.C. 19:31-12.2, pertaining to final consideration of applications.

At N.J.A.C. 19:31-12.5, Evaluation process, proposed new N.J.A.C. 19:31-12.5(d) establishes a new non-refundable approval fee, which will be charged following the approval of the tax benefit by the Division of Taxation in the amount of one percent of the final allocation of the tax benefit, less the application fee of \$ 1,000, due upon final approval by the Authority.

At N.J.A.C. 19:31-12.7, Allocation of tax benefits, the proposed amendments revise certain existing tax credit amounts authorized under the program pursuant to P.L. 2020, c. 156, as follows:

At N.J.A.C. 19:31-12.7(a), the amendments revise references to the annual amount authorized from \$ 60,000,000 to \$ 75,000,000 for each State fiscal year, and from \$ 10,000,000 to \$ 15,000,000, which shall be allocated

exclusively among eligible companies that operate within the boundaries of the innovation zones, and adds "opportunity zones" or "new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application";

At N.J.A.C. 19:31-12.7(a)1, the proposed amendment increases the maximum lifetime tax benefit of \$ 15,000,000 to \$ 20,000,000;

At N.J.A.C. 19:31-12.7(a)2, the proposed amendment increases the allocation, from \$ 10,000,000 to \$ 15,000,000, designated for eligible companies in innovation zones and adds, as eligible for the allocation, "opportunity zones" or "new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application";

At N.J.A.C. 19:31-12.7(a)2i, the proposed amendment revises the \$ 250,000 per company allocation provided for eligible companies in innovation zones to include "opportunity zones" or "new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application," and revises the references to the former \$ 10,000,000 to \$ 15,000,000 allocation amount;

At N.J.A.C. 19:31-12.7(a)2ii, the proposed amendment revises the reference to the former \$ 10,000,000 allocation to \$ 15,000,000 and includes, in addition to companies in innovation zones, "opportunity zones" or "new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application," as it pertains to an unused portion of the allocation amount, which shall be available for that State fiscal year for certain businesses that do not operate within the boundaries of an innovation zone or that are certified as a woman- or minority-owned business at the time of application;

At N.J.A.C. 19:31-12.7(a)2iii, the proposed amendment adds to the eligible companies in innovation zones "or opportunity zones" and "new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application," as eligible to participate in the remaining unmet eligible benefits in the allocation of the remaining pool as set forth at N.J.A.C. 19:31-12.7(a)3; and

At N.J.A.C. 19:31-12.7(a)3iii, the proposed amendment increases the reference to the total amount of benefits authorized from \$ 60,000,000 to \$ 75,000,000 pertaining to the allocation on an apportioned basis following approval of certain benefits for applicants at N.J.A.C. 19:31-12.7(a)2 and 3i and ii.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Technology Business Tax Certificate Transfer (NOL) Program allows technology and biotechnology companies with fewer than 225 employees in the U.S. and with a certain minimum number of full-time employees in the State to sell their net operating losses and/or research and development tax credits to profitable corporate entities. The proposed amendments will have a positive social impact, as additional biotechnology and technology businesses would be eligible for assistance under the NOL program through the statutory increase in the annual amount authorized for tax credits from \$ 60,000,000 to \$ 75,000,000 and the increase in the maximum lifetime tax benefit of \$ 15,000,000 to \$ 20,000,000, per eligible business.

Economic Impact

The NOL Program strengthens the State's innovation economy through expanded financial support for emerging biotechnology and technology businesses. Therefore, it is anticipated that the availability of the increased tax credits will have a positive social impact.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The proposed amendments will result in the continued creation of an indeterminate number of new full-time, private sector jobs at emerging technology and biotechnology businesses in New Jersey as additional applicants are eligible, and participating businesses make use of the expanded lifetime tax benefit.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments will impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., should the business look to apply for the expanded and increased tax credits. Generally, a business would be required to comply with the NJEDA's standard, online application process, otherwise, it is not anticipated that there will be a need for professional services, nor should there be any costs related to compliance with the proposed amendments. In addition, the proposed amendments include a reduced application fee and new graduated approval fee designed to reduce the burden on applicants that may be small businesses.

Housing Affordability Impact Analysis

The proposed amendments will not impact the affordability of housing in New Jersey or evoke a change in the average costs associated with housing units, including multi-family rental housing and for-sale housing in the State. The proposed amendments increase certain tax credit amounts available under the NOL Program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

Smart Growth Development Impact Analysis

The proposed amendments will not impact smart growth or evoke a change in the number of housing units or result in any increase or decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments increase certain tax credit amounts available under the NOL Program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

19:31-12.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1997, c. 334, as amended by P.L. 2009, c. 90, [and] P.L. 2010, c. 10, **P.L. 2020, c. 156, and P.L. 2021, c. 160**. This Act establishes a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in New Jersey.

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.

...

"Board" means the Board of the New Jersey Economic Development Authority, established at section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

...

"Full-time employee" means a person employed by a new or expanding emerging technology or biotechnology company on a permanent or indefinite basis 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 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 who is a partner of a new or expanding emerging technology or biotechnology company 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 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., or who is employed under a formal written agreement with an institution of higher education, whereby the institution's students are employed by the technology or biotechnology company on a permanent basis within a single position and in compliance with all other requirements of this definition. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits under [a group health plan as defined under section 14 of P.L. 1997, c. 146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes] **a health benefits plan authorized pursuant to State or Federal law.** "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; or any person who works as an intern, as a temporary employee, or in a temporary position.

...

"Opportunity zone" means a Federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1.

...

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 [\$2,500] **\$ 1,000** application fee. Complete applications must be received by June 30 for each State fiscal year.

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

(d) Applications are processed through several layers of staff review and may then be recommended for consideration and official action of the [Authority's Board of Directors at its scheduled public meeting] **Board.**

(e) (No change.)

19:31-12.5 Evaluation process

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

(d) Upon the final approval of the tax benefit by the Division of Taxation, a non-refundable fee of one percent of the amount of the final allocation of tax benefit less the application fee of \$ 1,000 shall be charged prior to approval by the Authority.

19:31-12.7 Allocation of tax benefits

(a) The Program is authorized to provide no more than [\$ 60,000,000] **\$ 75,000,000** of tax benefits over each State fiscal year. Of the [\$ 60,000,000] **\$ 75,000,000** of transferable tax benefits authorized for each State fiscal year, [\$ 10,000,000] **\$ 15,000,000** shall be allocated exclusively among the eligible companies that operate within the boundaries of the innovation zones **or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**, except as provided [in] **at (a)2ii below**. 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. Each company is limited to a maximum lifetime tax benefit of [\$ 15,000,000] **\$ 20,000,000**.

2. The Authority shall allocate the [\$ 10,000,000] **\$ 15,000,000** designated for eligible companies in innovation zones **or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**, as follows:

i. For eligible companies in innovation zones **or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**, each company is eligible for an allocation of the lesser of \$ 250,000 or the value of their eligible benefits. After these allocations are made to these companies from the [\$ 10,000,000] **\$ 15,000,000** innovation zone **/new or expanding emerging technology and biotechnology** allocation, any remaining balance of the [\$ 10,000,000] **\$ 15,000,000** shall be apportioned among eligible companies in innovation zones with unmet eligible benefits on a pro rata basis;

ii. If, in any State fiscal year, there is an unused portion of the [\$ 10,000,000] **\$ 15,000,000** allocated exclusively for companies in innovation zones **or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**, that portion shall be available for that State fiscal year for the surrender of transferable tax benefits by new and/or expanding emerging technology and biotechnology businesses that do not operate within the boundaries of an innovation zone **or that are new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**; and

iii. The eligible companies in innovation zones **or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application** with remaining unmet eligible benefits shall participate in the allocation of the remaining pool as set forth [in] **at (a)3 below**.

3. The Authority shall allocate the remaining tax benefits as follows:

i.-ii. (No change.)

iii. If the total amount of benefits authorized [under] **at (a)2 and 3i and ii above** exceeds [\$ 60,000,000] **\$ 75,000,000**, each applicant shall receive a lesser amount on an apportioned basis, otherwise after the dollars are set aside in the amounts provided [in] **at (a)2 and 3i and ii above**, the remaining funds available to the program, in that fiscal year, shall be allocated among the businesses with more than \$ 250,000 of tax benefits. The available tax benefits shall be determined by reducing the amount of tax benefits to be transferred for each business by the minimum amount of tax benefits authorized for that business and then multiplying that amount by the following factor:

Numerator of Fiscal Year Dollar Authorization less Total Minimum Tax Benefits Authorized over denominator of Total Tax Benefits Requested to be Transferred less Total Minimum Tax Benefits Authorized.

The total minimum tax benefits authorized is the amount authorized for businesses with less than \$ 250,000 of tax benefits plus the minimum tax benefits authorized for businesses with more than \$ 250,000 of tax benefits. The total

tax benefits requested to be transferred is the total amount of tax benefits requested to be transferred by all businesses.

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