



# **THE TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM**

## **FREQUENTLY ASKED QUESTIONS**

These questions and answers are meant to provide general guidance regarding a number of often misunderstood components of the Technology Business Tax Certificate Transfer Program. This information does not constitute legal advice.

If you have any questions or need clarification on any of these questions or answers, please email your request to [NOL@njeda.com](mailto:NOL@njeda.com).

### **SUMMARY:**

The Technology Business Tax Certificate Transfer Program enables approved Technology and Biotechnology Businesses with Net Operating Losses to sell their Unused Net Operating Loss Carryover (NOL) and Unused Research and Development Tax Credits (R&D Tax Credits) for at least 80% of the value of the tax benefits to a profitable corporate taxpayer in the State of New Jersey that is not an Affiliated Business. This allows Technology and Biotechnology Businesses with Net Operating Losses to turn their tax losses and credits into cash to buy equipment or facilities, or for other Allowable Expenditures. The New Jersey Economic Development Authority (NJEDA) determines eligibility, and the New Jersey Division of Taxation determines the value of the tax benefits (NOL and R&D Tax Credits).

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## **ELIGIBILITY:**

#1)

**Q. My non-technology/non-biotechnology business has a Net Operating Loss in each of the last two years. May we sell our NOL's in this Program?**

A. No. Only Technology and Biotechnology Businesses as defined in this Program may participate. Please refer to the definitions of Biotechnology and Technology Business. A link to the NOL Program definitions can be found at the bottom of the NOL Program website ([www.njeda.com/NOL](http://www.njeda.com/NOL)).

#2)

**Q. Our financial statements show a small positive net income this year, as a result of selling NOL's last year, but we continue to have a net operating loss. May we still sell our NOL's?**

A. Yes. The 2009 Economic Stimulus Act changed the loss requirement from net loss to a net operating loss. The difference is that net operating loss is more indicative of the actual day to day operations of the business as it takes into account the business's operational revenues and expenses. Applicants are no longer ineligible for selling prior year NOLs or for having a one-time, non-recurring gain on the sale of an asset.

#3)

**Q. Our financial statements show a small positive net operating income this year, but our tax return produces a New Jersey Net Operating Loss. May we sell based on this loss?**

A. No. Though the New Jersey Net Operating Losses are what is typically sold in this Program, one of the core eligibility requirements to participate in the Technology Business Tax Certificate Transfer Program is that the business not have positive net operating income on any of its last two full-year Income Statements as per GAAP.

#4)

**Q. The application indicates my business must employ at least 10 full-time employees in New Jersey as of June 30, and at time of sale of the tax credits, as the business was incorporated more than 5 years ago. If my business meets the employment criteria on June 30 at time of filing the application but goes below that number after the application is filed and it does not hire new people to meet the minimum at the time of closing, will my business still be able to sell its NOLs and/or R&D Tax Credits?**

A. No. If, after the application is submitted, the applicant's number of full-time employees in New Jersey goes below the minimum required number based on the number of years since original incorporation/formation and there is no increase to meet the minimum requirements by the time the applicant is seeking to sell its tax credits, the applicant will not be allowed to sell its NOLs or R&D Tax Credits. Please keep in mind, employment numbers may be verified with the N.J. Division of Labor and Workforce Development.

#5)

**Q. As of June 30, my business has been incorporated for 4 years and 11 months, and it meets the minimum 5 full-time New Jersey employee requirement. At the time of closing in December the business will have been incorporated for more than 5 years and will not meet the minimum 10 full-time New Jersey employee requirement. Does my business meet the eligibility requirements of the Program for the current year?**

A. Yes. As long as the applicant meets the minimum full-time New Jersey employee threshold as of June 30, and continues to meet the June 30 minimum employment requirements, it will qualify for the Program for the entire Program cycle. If the applicant applies for the program

next year, the applicant will be required to have 10 or more full-time employees physically working in New Jersey as of June 30 of next year.

#6)

**Q. We are a biotechnology company registered as an LLC; is it possible for an LLC to qualify for the Technology Business Tax Certificate Transfer Program?**

A. Maybe. If the company's gains and losses are passed through to the members of the LLC, no benefits remain with the company to sell. If, however, the losses remain with the company, are not passed through to the members of the LLC, and the LLC files New Jersey Corporate Business Tax Returns, the benefits may be sold assuming all other eligibility requirements have been met. 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.

#7)

**Q. Is the deadline for receipt of the application by the NJEDA still June 30 of each year?**

A. Yes. The application deadline remains June 30 each year as set by the Statute. The application can be found on our website ([www.njeda.com/NOL](http://www.njeda.com/NOL)). Also, an applicant's Corporate Business Tax return with all attachments and schedules must be filed with Division of Taxation by this June 30 deadline. Failure to file NJ Corporate Business Tax returns by June 30<sup>th</sup> will disqualify you from selling participating in the program.

#8)

**Q. Is a company eligible for the Program in the event all the Company's full-time New Jersey employees work from their homes?**

A. No. The company's employees may meet the definition of a "full time employee". But, the definition of a "Biotechnology Business" and "Technology Business" requires that the applying business "has a headquarters or base of operations located in New Jersey". A company where all the employees are virtual would not meet this requirement.

#9)

**Q. We are currently incorporated in Delaware, but are considering a change to have the company owned by a foreign-incorporated holding company. Our facilities, employees, etc. would continue to be in NJ, as they are currently. This would have no effect upon our eligibility for the NOL program, correct?**

A. This may affect your eligibility. If your company still meets all program requirements, it will be eligible to participate in future program years. Additionally, your eligibility is affected by your holding company meeting the program requirements i.e. the new holding company cannot have positive net operating income. Also, a company cannot change its corporate structure during the time from application to closing of benefits.

### **GENERAL QUESTIONS:**

#10)

**Q. Can the Authority consider new information about the project developed after the June 30 submission deadline?**

A. No. June 30<sup>th</sup> is the deadline for receiving a complete application with all requested attachments. Please note, per the Authority's published Regulations (N.J.A.C. 19:31-12.6(d)), the Authority cannot consider any new information after the June 30<sup>th</sup> submission deadline. During the review process, we may receive clarifying information submitted on events that happened prior to June 30.

#11)

**Q. When is the dead line to file NOL this year?**

- A. Deadline date for NOL applications is June 30th for every program year. This deadline is part of the program's legislation/regulations. In addition to the application, the applicant must have filed with the NJ Division of Taxation their corporate business tax returns with all applicable forms and schedules by June 30<sup>th</sup>.

#12)

**Q. If my company gets sold and the new parent company decides to move our business out of NJ, does my company have to pay New Jersey back for the benefits it sold?**

- A. Yes. There are recapture provisions if the applicant does not remain in New Jersey. If an applicant company fails to maintain a headquarters or a base of operation in NJ for 5 years after receiving Program benefits, the seller must forfeit and pay back the face value of the Corporation Business Tax Benefit Transfer Certificate. The closing date of benefits determined by NJEDA closing services is the start date for the required 5 year period to remain in NJ. The face value is the approved benefit amount determined by the Division of Taxation, not the cash value of benefit received by the selling business. The selling business will be allowed to retain 20% of the face value of the Corporation Business Tax Benefit Transfer Certificate for each full year the business remained in New Jersey after the sale of the Corporation Business Tax Benefit Transfer Certificate.

<b>Moves out of State within</b>	<b>Recapture Percentage of the Face Value</b>
1 year of sale	100%
2 years of sale	80%
3 years of sale	60%
4 years of sale	40%
5 years of sale	20%

### **INTELLECTUAL PROPERTY:**

#13)

**Q. We have intellectual property but it is not formally protected. Is there a need for the intellectual property to be protected?**

- A. Yes. As described in the Technology Business and Biotechnology Business definitions, Protected Proprietary Intellectual Property (PPIP) qualifies the applicant as a Technology or Biotechnology Business. This PPIP must be proprietary to the applicant and protected by a patent, a registered copyright, or an exclusive license. Additionally, this PPIP must be the technology of the applicant's primary business. A link to the NOL Program definitions can be found at the bottom of the NOL Program website ([www.njeda.com/NOL](http://www.njeda.com/NOL)).

#14)

**Q. We have filed for a patent but not yet received approval. Does this count as PPIP?**

- A. Yes. An application for a patent is sufficient for demonstrating that the intellectual property is protected as long as the Patent Office hasn't denied the application. This patent must also be in the applicant's name or assigned to the applicant as well as be for the applicant's primary business.

#15)

**Q. We have a patent in the name of a company founder. Does this count as PPIP?**

A. No. The patent must be assigned to the applicant business in order to qualify as PPIP.

#16)

**Q. Is an unregistered copyright considered to be Proprietary Protected Intellectual Property?**

A. No. A copyright must be registered with the Library of Congress to be considered Protected Proprietary Intellectual Property.

#17)

**Q. Is a Trademark considered to be Proprietary Protected Intellectual Property?**

A. No. A Trademark is not considered an acceptable form of Protected Proprietary Intellectual Property for this program.

#18)

**Q. We are not the originator of the Protected Proprietary Intellectual Property, but have an exclusive license for the technology from the originator. Is this license satisfactory to demonstrate ownership of Protected Proprietary Intellectual Property?**

A. Maybe. The exclusive license must be the technology of the applicant's primary business and qualify the applicant as a Technology Business or Biotechnology Business. Also, the underlying technology that is exclusively licensed must be protected by a patent or registered copyright, and the exclusive license must grant the applicant exclusive control of the Protected Proprietary Intellectual Property. The exclusive license agreement from the patent owner to the Technology/Biotechnology Business must be included with the application prior to the June 30 submission deadline and remain in effect after benefits are closed. The license agreement must state that it is granting an exclusive license and that the license authorizes the applicant to control aspects of the development of the Protected Proprietary Intellectual Property. Exclusive distribution agreements or similar business arrangements not registered with the U.S. Federal Government, such as the U.S. Office of Patents, do not qualify as PPIP.

#19)

**Q. I noticed in the prior question a focus on an exclusive license for the technology. What if my license is not exclusive to my company and does not provide my company exclusive control of the Protected Proprietary Intellectual Property? Will my company be eligible to participate in the program?**

A. No. Each applicant is required to own or control protected intellectual property that is also proprietary to the applicant.

#20)

**Q. Our Parent company is the exclusive licensee of several patents. Do we as a wholly owned subsidiary need an exclusive license agreement to use the technology?**

A. Yes. All PPIP must be in the name of the NOL program applicant. Assuming the exclusive license agreement the parent company signed with the originator of the intellectual property allows it to be sublicensed, the applicant will need to exclusively license the intellectual property from the parent which will, in turn, need to cease utilizing the intellectual property in any way in order to preserve the proprietary nature of the protected intellectual property to the applicant.

#21)

**Q. My company has a method patent for alphabetizing data contained in a database. Our primary business involves providing access to the database for our customers to ensure**

**they obtain the data most in line with their needs. Does our method patent for alphabetizing data meet the definition of Protected Proprietary Intellectual Property?**

- A. No. In order to qualify as Protected Proprietary Intellectual Property, the method patent would need to be for the technology that is the applicant's primary business, a proprietary database of information, and the method patent would need to be on the technology that enables the applicant to meet the Technology Business definition. There are two eligibility issues with the facts as stated in the above question. First, though alphabetizing data may be a function utilized within the proprietary database, it is not, in itself, the primary business of the applicant. Second, the method patent for alphabetizing data contained in a database would not meet the definition of Technology Business in that alphabetizing data is not a sophisticated scientific process, product or service nor would alphabetizing data require highly educated and/or trained managers using sophisticated scientific research service or production equipment, processes, or knowledge to discover, develop, test, transfer or manufacture a product or service.

#22)

**Q. My company has a non-exclusive license to further develop a particular medical imaging software program, and further developing and selling that program is its primary business. The licensor holds a patent on the technology used in the software program. My company has developed additions to the software program but has not registered a copyright on the software for these additions or patented the technology underlying our additions. I understand the non-exclusive license does not meet the definition of Protected Proprietary Intellectual Property but does the fact that we have developed additions to the underlying software meet the definition of Protected Proprietary Intellectual Property?**

- A. No. As mentioned in the question, a non-exclusive license does not meet the definition of being Protected Proprietary Intellectual Property as, in order to meet that definition, it must be an exclusive license. Regarding the development of additions to the underlying software, in order to be considered Protected Proprietary Intellectual Property, the applicant would need to have applied for a patent on the additions (and not been rejected), been approved for a patent on the additions, or registered a copyright on the additions AND the additions would have to qualify the applicant as a Technology Business when viewed on a standalone basis. Since no patent or registered copyright was attained, the additions would not be considered Protected Proprietary Intellectual Property.

#23)

**Q. If a company withdraws their patent pending at a later date, after this year, are they subject to recapture?**

- A. No.

#24)

**Q. We have an exclusive license in NJ for an Intellectual prop, how does this impact qualifying and apportionment?**

- A. An exclusive license for only New Jersey would not meet the requirement of PPIP. The company would not be eligible to participate in the NOL Program.

#25)

**Q. If the parent Company owns the IP, would that qualify all of the subsidiaries or does the parent Company need to have the operating activity?**

- A. In order to qualify for the NOL program, the applicant company must own, have filed for, or have a license to use of the PPIP. This company must also generate the losses and file corporate business tax returns.

#26)

**Q. Are patents obtained from other countries acceptable PPIP?**

A. Yes. As with patents obtained from the U.S Patent and Trademark Office, such patents must be in force, or, in the case of a patent application, the application must be pending.

**FINANCIAL STATEMENTS:**

#27)

**Q. We have never engaged an independent CPA firm to prepare our financial statements. Do we need to do so to participate in the Program?**

A. Yes. It is a requirement of the Program that each applicant have financial statements that were compiled, reviewed, or audited by an independent CPA firm. These financial statements must be prepared according to GAAP and should also contain footnotes.

#28)

**Q. We do not have our own financial statements prepared; rather, our parent company has audited financial statements which include our results in Consolidated Statements (but not Consolidating Statements). Do we need to have our own financial statements prepared by an independent CPA firm too?**

A. Yes. The financial statements of the applicant **AND** the financial statements of all parent companies are required. All the financial statements must be compiled, reviewed, or audited by an independent CPA firm. If the parent company's financial statements are Consolidated Statements which display the financial results of all companies comingled, they will not satisfy the financial statement requirement for the individual applicant business. However, if the parent company's financial statements are Consolidating Statements which display the individual results of the applicant **AS WELL AS** the parent, they will satisfy the requirement for both the applicant's and parent company financial statements.

#29)

**Q. The application requires that we submit our two most recent years of independent CPA prepared financial statements. Though we had independent CPA prepared financial statements in the past, we have only done internal statements for the past several years. Should we send in the independent CPA prepared financial statements even though they are several years out of date?**

A. No. The Statute requires applicants to send in independent CPA prepared financial statements for the prior two most recent full years of operations (except as set forth in the following Answer).

#30)

**Q. We have not had independent CPA prepared financial statements for either of the two most recent years. We can have our most recent financial statements prepared by an independent CPA and can send in the prior year's internal financial statements. Does this satisfy the requirement?**

A. Yes. If the two most recent years of financial statements were prepared by an independent CPA, they are required to accompany the application. If the financial statements were **ONLY** done internally in the past, we need to receive the most recent years' financial statements prepared by an independent CPA and will accept the internally prepared financial statements for the



immediately preceding year. If any of the most recent two years of financial statements were prepared by an independent CPA, they are required to accompany the application.

#31)

**Q. We have a company as an investor with less than 50% direct ownership of our company if we look only at shares that have been issued. When including options that have been granted to purchase shares, the company could obtain more than 50% direct ownership, if executed. Do we need to provide the previous 2 years' independent CPA prepared financial statements for the company?**

A. No. The fact that options have been granted to purchase shares of stock does not impact the 50% direct ownership. Only the shares of stock that have been issued demonstrate ownership of the company. Having an unexercised option to purchase shares of stock does not create ownership nor does it allow the option holder voting rights for the optioned shares in the company.

#32)

**Q. We have positive net operating income, in the most recent year, on our financial statements which were prepared by an independent CPA according to GAAP. May we change the reference on our financial statements from net operating income to some other name and be approved in the Technology Business Tax Certificate Program?**

A. No. Having net operating income on either of the 2 most recent years' financial statements will make the applicant ineligible. Merely calling net operating income something else on the financial statements does not mean the applicant did not have net operating income. The GAAP financial statements should have a line titled net operating income/(loss) (or something similar like gain/(loss) from operations). Financial statements that do not have a readily discernable line for net operating income/(loss) will be deemed non-conforming financial statements and the application will be denied.

#33)

**Q. My company will not have final financial statements complete for the June 30th Deadline. Are draft financial statements acceptable?**

A. Maybe. We will accept 3rd party accountant prepared draft financial statements so that your company can meet the June 30 deadline. However, the EDA must receive your final, outside accountant prepared GAAP financial statements by **July 31st** as clarifying information and those statements must not have any material change from the draft financial statements previously submitted. We will NOT accept management prepared draft financial statements. This is in addition to meeting the other program requirements for financial statements.

#34)

**Q. My company's fiscal year ends after March 31 of the current program year. Do we have to follow the same timeline as other applicants in regard to submitting Financials Statements?**

A. No. If your company's fiscal year end is April 1st of the current program year or after, we will accept the two previous years' accountant prepared financial statements. (i.e. An applicant in year 2018 with fiscal year ending in April 2018 would require the financial statements from 4/2015 - 4/2016 and 4/2016 - 4/2017). However, if your company's fiscal year end is March 31<sup>st</sup> of the current program year or earlier, you will be on the same timeline as applicants that close at a calendar year end. We shall give you additional time to submit your final accountant prepared financials following submission of draft accountant prepared financials, as discussed in the preceding question.

#35)

**Q. We are an independent company, incorporated in the State of Delaware and doing business in the State of New Jersey. We have multiple shareholders. Two of the shareholders are a) affiliated, and b) together own 51%. Together, they are NOT operating at a loss. Are we qualified for the Program?**

A. The answer to this question is directly affected by the use of the term “affiliated.” If the 2 shareholders in question are “affiliates” in the context that they are both a part of a consolidated group of affiliated corporations as filed for Federal income tax purposes, then these 2 shareholders are considered as one in regards to eligibility of the applicant for the Technology Business Tax Certificate Transfer Program. As such, if these 2 shareholders together control or own 50% or more of the applicant, the consolidated group of affiliated corporations is subject to financial reporting and net operating loss requirement. So, the consolidated group of affiliated corporations would be required to submit its combined financial statements for review and these statements must not demonstrate positive net operating income in any of the two previous full years of ongoing operations.

#36)

**Q. A venture capital fund owns over 50% of our company. Is the fund subject to the financial requirement of not having positive net operating income in any of the two previous full years?**

A. Maybe. An entity is only subject to the “no positive net operating income in any of the two previous full years” rule if the entity is required to report net operating income in their financial statements per US GAAP. Any entity owning 50% or more of an applicant company is required to provide copies of their financial statements for the previous two years of operation. Review of the entity and its financial statements would determine if the entity must report net operating income per US GAAP.

### **EMPLOYMENT:**

#37)

**Q. As a previous applicant of the Technology Business Tax Certificate Transfer Program, I recall that at least 75% of our U.S. employees need to be employed in New Jersey. Is this still the case?**

A. No. The Technology Business Tax Certificate Transfer Program Statute changed in 2009 and one of the changes has to do with employment. It is no longer necessary to have New Jersey employment meet a minimum percentage of U.S. employment. However, a minimum number of full-time employees, working physically in New Jersey, was established. The following chart indicates the minimum number of full-time employees a company must employ, physically in New Jersey, based on the date of original incorporation/formation. If the applicant acquired an older company, merged with an older company, or changed its name or corporate structure and re-incorporated/re-formed, we will base the minimum job requirement on the incorporation/formation date of the oldest company. Please note, the benchmark is as of June 30 of the application cycle year and at the time of closing.

- Less than three years 1 full-time employee
- More than three years but less than five years 5 full-time employees
- More than five years 10 full-time employees

#38)

**Q. My business was incorporated 2 years ago. As such, it is required to have at least 1 full-time employee working in New Jersey and we have 3 full-time employees working in New Jersey. There was a predecessor entity which was an LLC formed 4 years ago but that entity ceased to exist upon our recent incorporation. As such, may we qualify if we meet the minimum full-time New Jersey employment requirements for a business incorporated/formed 2 years ago even if we don't meet the minimum full-time New Jersey employment requirements for a business incorporated/formed 4 years ago?**

A. No. The minimum number of jobs to qualify for the program is to be counted from the initial incorporation or formation date of the applicant or its earliest predecessor (if applicable), irrespective of corporate structure or tax status at the time of original incorporation/formation.

#39)

**Q. My business (A) was an internal division of another business (B) that "spun out" 2 years ago. Business B was originally formed 7 years ago. For the required minimum eligible employee count, which of the 2 formation dates should we use?**

A. It Depends. Because of the potential complexity, and wide variations of the term "spin out" we must review each instance on a case by case basis. These determinants are based on multiple factors including, but not limited to, asset transfer, Intellectual Property transfer and/or rights, ownership stake in the new company, shared employees, etc. Since this diligence review will take place after the application deadline, we encourage all applicants to err on the side of caution and ensure that they meet the minimum required number of eligible employees for the older of the two companies. This helps to avoid a potential declination and loss of application fees.

#40)

**Q. My business just meets the minimum full-time New Jersey employment requirements, we have 10 full-time New Jersey employees and the minimum full-time New Jersey employees we need is also 10. One of my full-time New Jersey employees spends about 25% of their work week time working for the business outside of New Jersey. Do we meet the minimum employment eligibility requirements?**

A. No. To make the rules for the Technology Business Tax Certificate Transfer Program consistent with the rules for other New Jersey incentive programs, an employee must spend at least 80% of work week time working in New Jersey to be considered a full-time New Jersey employee.

#41)

**Q. My technology/biotechnology company was incorporated 4 years ago and has 5 full-time New Jersey employees. However, 2 of the full-time New Jersey employees work from their homes in another State. Does my technology/biotechnology company meet the minimum employment requirement for the Technology Business Tax Certificate Transfer Program?**

A. No. The focus of the program is to provide a benefit for biotechnology and technology companies that employ at least the minimum number of full-time employees working physically in New Jersey at least 80% of their work week time. In order to be eligible for the Technology Business Tax Certificate Transfer Program, each applicant must meet the minimum employment test in 2 ways. First, the applicant must employ at least the minimum number of full-time employees based upon the earliest incorporation/formation date of the applicant. Second, of those full-time employees, at least the minimum number of full-time employees must also be working physically in New Jersey, at least 80% of their work week time, and be working at least 35 hours per week. In the question above, the employees working in their homes outside the State do not count because they are not physically working in New Jersey at least 80% of the time, so the applicant only has 3 full-time employees working physically in New Jersey at least

80% of the time and falls short of the minimum requirement for a 4 year old company of 5 full-time employees working physically in New Jersey at least 80% of the time.

#42)

**Q. We are related to another entity. Do we need to count the employees of the related entity to satisfy the requirements regarding the 224 maximum number of employees in the US?**

A. Maybe. You must include in the count toward the maximum number of U.S. employees (224) the U.S. employees of all affiliates, parents, and subsidiaries. The maximum 224 employee limit includes U.S. employees of all subsidiaries, any company that owns or controls, directly or indirectly, at least (50%) of the applicant (along with the U.S. employees of any other subsidiaries of the parent(s)) and the U.S. employees of any consolidated group of affiliated corporations as filed for federal income tax purposes. The total number of these U.S. employees must not exceed 224.

#43)

**Q. All of our “employees” are leased from a Professional Employment Organization (PEO). The PEO files its W-2’s in the aggregate for all of its employees including ours. Do we still need to send in the required Federal and State payroll forms/statements?**

A. No. However, the PEO must write a letter on your behalf indicating the total number of full-time employees it leased to you as of June 30 of the previous year, the number of leased full-time employees currently working at least 80% of the time in New Jersey, and the anticipated number of leased full-time employees working at least 80% of the time in New Jersey on June 30 of this year. The PEO will need to include the State in which those employees are located, the state in which each employee resides, and how many employees have submitted a Certificate of Non-Residence for exemption from the New Jersey Gross Income Tax Act. This same information must be provided at benefit closing by your PEO.

#44)

**Q. I noticed in the application that the applicant must provide health insurance for all its full-time New Jersey employees. Are we eligible if some full-time New Jersey employees decline the coverage because they are covered by their spouse, or some other health insurance plan?**

A. Maybe. Healthcare coverage must be available and offered to all full-time New Jersey employees. If healthcare coverage is requested by a full time employee, the applicant business must be able to provide coverage immediately and before application deadline. If a full time employee declines coverage, the employee must submit an “opt-out of medical insurance form” indicating the employee has been offered health insurance and declined the coverage due having an alternative source for healthcare coverage. (The “opt-out of medical insurance form” can be created by you and made a part of the employee personnel file.)

#45)

**Q. Our company provides all employees with a monthly cash stipend to be used for healthcare coverage and/or expenses. Does this satisfy the NOL Program requirement that employees shall receive health benefits?**

A. No. To meet this requirement, health benefits are considered to be either 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 cash stipend or reimbursement does not meet this definition. Health benefits that meet this definition must be available and offered to all full-time

New Jersey employees. If healthcare coverage is requested by a full time employee, the applicant business must be able to provide coverage immediately and before application deadline. Verification of healthcare availability can include, but is not limited to, policy documentation, price quotes, employment letters that offer health insurance, and confirmation letters from providers.

#46)

**Q. I noticed in the application that, because they are not subject to New Jersey Gross Income Tax, Pennsylvania residents cannot be considered Full-Time Employees in the Technology Business Tax Certificate Transfer Program. Is there any flexibility on this requirement as my company will meet the minimum employment requirement if we count the Pennsylvania resident but will fall short if we are not allowed to count the Pennsylvania resident?**

A. No. When the Statute was updated in 2009, the Full-Time Employee definition was updated to include a requirement that the employee's wages must be subject to withholding under the New Jersey Gross Income Tax Act to be considered a Full-Time Employee. As a result of the Reciprocal Income Tax Agreement between New Jersey and Pennsylvania, compensation earned in New Jersey by a Pennsylvania resident is not subject to New Jersey Gross Income Tax. Therefore, Pennsylvania residents are not eligible to be considered Full-Time Employees in the Technology Business Tax Certificate Transfer Program.

#47)

**Q. My company is 1 Full-Time Employee short of meeting the minimum employment requirement for the Technology Business Tax Certificate Transfer Program. I would like to hire an intern for the summer so my company meets the minimum employment requirement at June 30 and I anticipate creating and filling a full-time position in time to sell our NOL and R&D Tax Credit benefits later in the year. Does my intern count as a Full-Time Employee?**

A. No. A Full-Time Employee may not be an intern, a temporary employee, an employee in a temporary position, an independent contractor, a consultant, or an employee whose compensation is not subject to the New Jersey Gross Income Tax Act.

#48)

**Q. My company has only 9 Permanent Full-Time Employees and does not appear to meet the minimum number of Permanent Full-Time Employees required by the Technology Business Tax Certificate Transfer Program. However, the company has a 10<sup>th</sup> position that is occupied on a permanent basis by a succession of university students through a formal program as evidenced by a written agreement with the university. The university student employee is paid a competitive salary, is offered health care under a group health plan and will work 35 or more hours in New Jersey each week. After completing the specified employment duration with my company, the university student will return to the university and will be replaced at my company by a new university student employee under the same salary, healthcare, and work hours parameters. May we count the rotating university student employee as our 10<sup>th</sup> Full-Time Employee thereby meeting the minimum job requirement of the Technology Business Tax Certificate Transfer Program?**

A. Yes. This method of employment is distinguished from a standard internship because the position itself is a permanent one albeit filled by multiple university students over time. By working in conjunction with a university and having a written agreement with the university documenting the fact that university students will be continuously employed by the applicant in a

manner that satisfies the salary, healthcare, and time spent working in New Jersey requirements, makes the university student eligible to be counted as a Full-Time Employee.

#49)

**Q. I notice that it is now required that we disclose whether any employees are related to other employees, shareholders or investors, whether any employees are currently pursuing college degrees, as well as offer letters, resumes, and job descriptions for employees hired in the current year. What will this information be used for?**

A. The requested information, along with all of the information submitted as part of the application package, will be reviewed in its totality to ascertain whether any of the employees shown as Full-Time Employees should be excluded from the Full-Time Employee list because they are deemed to be an intern, a temporary employee, an employee in a temporary position, an independent contractor, a consultant, or an employee whose compensation is not subject to the New Jersey Gross Income Tax Act.

#50)

**Q. Recently we had an employee move their residence from New Jersey to Delaware however they remained a full time employee working in New Jersey. Based upon my reading of the program requirements, since they work 40 hours in NJ, there is no tax reciprocity with Delaware and they receive appropriate health benefits, I am assuming they still qualify as a full time employee in New Jersey for meeting our minimum number of full time employees. Could you confirm if this is accurate?**

A. Correct. Living in Delaware does not disqualify an employee from meeting the definition of a full time New Jersey employee.

#51)

**Q. A company was initially incorporated in 2007 but shut down operations for many years. In 2014, the company restarted operations. How old are they for minimum employee purposes?**

A. For the purpose of determining the minimum number of required full time employees, the incorporation date of 2007 would be considered as the beginning for the company. A lapse in operations would not be considered as the ending of the original company, and then, the creation of a new company.

#52)

**Q. Could an employee currently on maternity leave be considered a full time employee?**

A. Maybe. Situations where there is an extended leave of employment for reasons such as disability or family leave are examined on a case by case basis. The evaluation to determine if the person still meets the definition of a “full time employee” would be very fact-specific depending on what is meant by a “leave” as well as if employer-employee relationship continues to exist during that leave. Some factors that may be considered include, but are not limited to, whether the employee continues to receive benefits from the employer and whether the employer is obligated to offer the same or a similar position to the employee upon the termination of the leave.

#53)

**Q. We have an employee working for our company not receiving compensation. Do they meet the requirement of a “full time employee”?**

A. No. To meet the definition of a “full time employee”, the employee’s wages must be subject to withholding as provided in the New Jersey Gross Income Tax Act, or the employee distributive

share of the company's income, gain, loss, or deduction, or guaranteed payments, or any combination thereof, must be subject to the payment of estimated taxes as provided in the New Jersey Gross Income Tax Act. If the employee is not receiving compensation subject to withholding or payment of estimated taxes according to the New Jersey Gross Income Tax Act, the employee does not meet the definition of a "full time employee" or be counted towards the Program's minimum "full time employee" requirements.

### **TAXATION:**

#54)

**Q. Can tax benefits transferred under to program be used to offset 100% of the transferee's tax liability? If a company is unable to use a portion of the tax benefit in one year may they carry that credit forward to the next year? If so, for how many years may the credit be carried forward?**

A. The EDA is not able to provide opinions or guidance regarding tax implications. All questions regarding treatment and utilization of tax benefits/credits must be answered by NJ Division of Taxation. A representative can be reached at 609-292-6400.

### **BENEFIT CLOSING:**

#55)

**Q. My company is interested in purchasing net operating losses under the Technology Business Tax Certificate Transfer Program. Could you please tell me how to go about it?**

A. The EDA maintains a "buyers list" on the NOL Program website to assist sellers locate buyers. No third parties or service providers are allowed on this list, only final purchasers. Any company wishing to be added to this Buyers List may email your representative's contact information to [NOL@njeda.com](mailto:NOL@njeda.com).

#56)

**Q. I received notification that my company has been approved to sell a portion of our Net Operating Losses and/or R & D Tax Credits. How do I go about finding a buyer of the benefits?**

A. For your convenience, a list of interested tax credit buyers is available on our ([www.njeda.com/NOL](http://www.njeda.com/NOL)). Also please note your approval in the program is a matter of public information, and often sellers are contacted directly by interested buyers based on the approval list under the EDA's board information on the website [www.njeda.com](http://www.njeda.com).

#57)

**Q. I was approved to sell \$1,000,000 in NOL for this current tax year, but during closing I decided to only sell \$250,000. Does the remaining \$750,000 count against my maximum lifetime tax benefit of \$ 15,000,000?**

A. Yes. The maximum lifetime benefit is determined by what each applicant was approved to sell, not by what they ultimately decide to sell.