

## **N.J.A.C. 19:31-18.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority ("EDA" or "Authority") to implement the Grow New Jersey Assistance Act, P.L. 2011, c. 149 (the Act). The Act establishes the Grow New Jersey Assistance Program (the Program), administered by the Authority, to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State.

### **History**

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#### **HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

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## **N.J.A.C. 19:31-18.2**

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### **§ 19:31-18.2 Definitions**

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

"Act" means the Grow New Jersey Assistance Program Act, P.L. 2011, c. 149.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-209).

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

"Aviation district" means the area within a one-mile radius of the outermost boundary of the "Atlantic City International Airport," established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24).

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means an applicant proposing to own or lease premises, or that has acquired the premises within 24 months prior to project application, in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is a partnership, an S corporation, or a limited liability company or a non-profit corporation. If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates. In connection with a regional distribution facility of foodstuffs, the business entity or entities that own or lease such facility shall qualify as a business regardless of the type of the business entity or entities that own or lease such facility; the ownership or leasing of such facility by more than one business entity; or the ownership of the business entity or entities that own or lease such facility. Such ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or

leasing by affiliates. Such members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. For the purposes of a regional distribution facility of foodstuffs, leasing shall include subleasing and tenants shall include subtenants. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate. After approval by the Board of the incentive, a business shall include a successor, as determined by the Authority in its sole discretion, to the business and a successor, as determined by the Authority in its sole discretion, to an affiliate of the business if the business applied for a credit based upon any capital investment made by or full-time employees of the affiliate, provided any successor must execute the incentive agreement, which shall include: the obligation to not reduce the number of full-time employees in the successor's Statewide employment in the last tax period prior to the approval of the award; an agreement that all parties to the incentive agreement are jointly and severally liable under the incentive agreement; and an acknowledgment that the tax credit will be allocated to each party to the incentive agreement in accordance with the number of full-time employees that each employs at the qualified business facility.

"Capital investment" in a qualified business facility means expenses by a business or any affiliate of the business incurred after application for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; obtaining and installing furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168 and 179), for the operation of a business on real property in a building, structure, facility, or improvement to real property, including associated soft costs; and receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13); or any of the preceding. Capital investment includes obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings, or other environmental components required to attain the level of silver rating or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified business facility, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. In a Garden State Growth Zone, the following qualify as a capital investment: any development, redevelopment, and relocation costs, including, but not limited to, site acquisition if made within 24 months of application to the Authority, engineering, legal, accounting, and other professional services required; and relocation, environmental remediation, and infrastructure improvements for the project area, including, but not limited to, on- and off-site utility, road, pier, wharf, bulkhead, or sidewalk construction or repair. A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord if pertaining primarily to the premises of the qualified business facility, and, if pertaining generally to the qualified business facility being acquired or leased, shall be allocated to the premises of the qualified business facility on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility. The capital investment described in this definition may include any capital investment made or acquired within 24 months prior to the date of application, so long as the amount of capital investment made or acquired by the business, any affiliate of the business, or any owner after the date of application equals at least 50 percent of the amount of capital investment, allocated to the premises of the qualified business facility being acquired or leased on the basis of the gross leasable

area of the premises in relation to the total gross leasable area in the qualified business facility made or acquired prior to the date of application.

"College or university" means a county college, an independent institution of higher education, a public research university, or a State college.

"Commitment period" means the period of time that is 1.5 times the eligibility period.

"Complex of buildings" means buildings that are part of the same financing plan and operational plan.

"County college" means an educational institution established by one or more counties, pursuant to Chapter 64A of Title 18A of the New Jersey Statutes.

"Deep poverty pocket" means a population census tract having a poverty level of 20 percent or more, and which is located within the qualified incentive area.

"Disaster recovery project" means a project located on property that has been wholly or substantially damaged or destroyed as a result of a Federally declared disaster which, after utilizing all disaster funds available from Federal, State, county, and local funding sources, demonstrates to the satisfaction of the Authority that access to additional funding authorized pursuant to the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161, is necessary to complete the redevelopment project, and which is located within the qualified incentive area.

"Distressed municipality" means a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

"Doctoral university" means a university located within New Jersey that is classified as a doctoral university under the Carnegie Classification of Institutions of Higher Education's Basic Classification methodology on August 7, 2017, the effective date of P.L. 2017, c. 221.

"Eligibility period" means the period in which a business may claim a tax credit under the Grow New Jersey Assistance Program, beginning with the tax period in which the Authority accepts certification of the business that it has met the capital investment and employment requirements of the Grow New Jersey Assistance Program and extending thereafter for a term of not more than 10 years, with the term to be determined solely at the discretion of the applicant, at the time of approval.

"Eligible position" or "full-time job" means a full-time position in a business in this State that the business has filled with a full-time employee. To be eligible as an eligible position or full-time job, the employee must have his or her primary office at the qualified business facility and must spend at least 80 percent of his or her time at the qualified business facility, or spend any other period of time generally accepted by custom or practice as full-time employment at the qualified business facility, as determined by the Authority in its sole discretion based on the characteristics of the employee's job and time at the facility, including, but not limited to, the amount of continuous time spent at the facility and the economic impact of the employee on the area in which the facility is located. For example, a reduced period of time is not applicable to a truck driver or salesperson who does not regularly contribute to the local economy due to the transient nature of his or her job responsibilities at the qualified business facility.

"Full-time employee" means a person: who is employed by a business 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, or who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) 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 resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a business 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., and who, except for purposes of the Statewide workforce, is provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law. With respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal: the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; full-time employment shall include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent; 35 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons. For any project located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or any project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, 30 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether the hours of work were performed by one or more persons, and the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the employees of the business are covered by a collective bargaining agreement. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. Full-time employee shall also not include any person who at the time of project application works in New Jersey for consideration for at least 35 hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment but who prior to project application was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law.

"Garden State Create Zone" means the campus of a doctoral university and the area within a three-mile radius of the outermost boundary of the campus of a doctoral university, according to a map appearing in the doctoral university's official catalog or other official publication on August 7, 2017, the effective date of P.L. 2017, c. 221.

"Garden State Growth Zone" or "growth zone" means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); or a municipality which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.

"Grow New Jersey tax credit transferee" or "tax credit transferee" means if the business transfers its tax credits, pursuant to N.J.A.C. 19:31-18.13, the purchaser of the tax credits, including any subsequent purchasers of the tax credits.

"Highlands development credit receiving area or redevelopment area" means an area located within a qualified incentive area and designated by the Highlands Water Protection and Planning Council for the receipt of Highlands Development Credits under the Highlands Transfer of Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13).

"Incentive agreement" means the contract between the business and the Authority, which sets forth the terms and conditions under which the business shall be eligible to receive the incentives authorized pursuant to the Program.

"Incentive effective date" means the date the Authority issues a tax credit based on documentation submitted by a business pursuant to paragraph (1) of subsection b. of section 6 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-247).

"Independent institution of higher education" means a college or university incorporated and located in New Jersey, which by virtue of law or character or license is a nonprofit educational institution authorized to

grant academic degrees and which provides a level of education that is equivalent to the education provided by the State's public institutions of higher education, as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion.

"Industrial premises" or "industrial space" means premises or space in which at least 51 percent of the square footage will be or has been used for the assembling, processing, and/or manufacturing of finished or partially finished products from materials or fabricated parts, including, but not limited to, factories or as a warehouse if the business uses the warehouse as part of the chain of distribution for products assembled, processed, and/or manufactured by the business at the qualified business facility; for the breaking or demolishing of finished or partially finished products; or for the production of oil or gas or the generation or transformation of electricity.

"Industrial use" means assembling, processing, and/or manufacturing of finished or partially finished products from materials or fabricated parts; the breaking or demolishing of finished or partially finished products; or the production of oil or gas or the generation or transformation of electricity, and including farming purposes as that term is defined under IRC section 6420(c)(3)(A), undertaken in an industrial space.

"Major rail station" means a railroad station located within a qualified incentive area that provides access to the public to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Mega project" means:

**1.A** qualified business facility located in a port district housing a business in the logistics, manufacturing, energy, defense, or maritime industries, either:

**i.** Having a capital investment in excess of \$ 20,000,000, and at which more than 250 full-time employees of the business are created or retained; or

**ii.** At which more than 1,000 full-time employees of the business are created or retained;

**2.A** qualified business facility located in an aviation district housing a business in the aviation industry, in a Garden State Growth Zone, or in a priority area housing the United States headquarters and related facilities of an automobile manufacturer, either:

**i.** Having a capital investment in excess of \$ 20,000,000, and at which more than 250 full-time employees of the business are created or retained; or

**ii.** At which more than 1,000 full-time employees of the business are created or retained;

**3.A** qualified business facility located in an urban transit hub housing a business of any kind, having a capital investment in excess of \$ 50,000,000, and at which more than 250 full-time employees of the business are created or retained;

**4.A** project located in an area designated in need of redevelopment, pursuant to P.L. 1992, c. 79 (N.J.S.A. 40A:12A-1 et seq.), prior to the enactment of P.L. 2014, c. 63, within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties, having capital investment in excess of \$ 20,000,000, and at which more than 150 full-time employees of the business are created or retained; or

**5.** For applications submitted after July 1, 2016, a qualified business facility primarily used by a business principally engaged in research, development, or manufacture of a drug or device, as defined in N.J.S.A. 24:1-1, or primarily used by a business licensed to conduct a clinical laboratory and business facility pursuant to the "New Jersey Clinical Laboratory Improvement Act," P.L. 1975, c. 166 (N.J.S.A. 45:9-42.26 et seq.), either:

**i.** Having a capital investment in excess of \$ 20,000,000, and at which more than 250 full-time employees of the business are created or retained; or

ii. At which more than 1,000 full-time employees of the business are created or retained.

"Minimum environmental and sustainability standards" means the standards set forth in the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

"Moderate-income housing" means housing affordable, according to United States Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal Revitalization Index" means the 2007 index by the Office for Planning Advocacy within the Department of State measuring or ranking municipal distress.

"New full-time job" means an eligible position created by the business at the qualified business facility that did not previously exist in this State. For the purposes of determining a number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

"Non-gaming business" means any business, or portion of any business, which is not engaged in the operation of casino gambling or other gaming as defined in N.J.S.A. 5:12-218. For projects that contain both gaming and non-gaming operations, the number of full-time jobs and amounts of eligible capital investment shall be apportioned based on the proportionate revenue from all non-gaming revenue compared to total revenue, for example, if gaming revenue is 40 percent of total revenue, then 60 percent of the full-time employees would be deemed non-gaming and in an eligible position for the program.

"Other eligible area" means the portions of the qualified incentive area that are not located within a distressed municipality, or the priority area.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Port district" means the portions of a qualified incentive area that are located within: the Port of New York District of the Port Authority of New York and New Jersey, as defined in Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to The South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

"Priority area" means the portions of the qualified incentive area that are not located within a distressed municipality and which: are designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition; intersect with portions of a deep poverty pocket, a port district, or were Federally owned land approved for closure under a Federal Commission on Base Realignment and Closure action; are the proposed site of a disaster recovery project, a qualified incubator facility, a highlands development credit receiving area or redevelopment area, a tourism destination project, or transit oriented development; or contain a vacant commercial building having over 400,000 square feet of office, laboratory, or industrial space available for occupancy for a period of over one year; or a site that has been negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208).

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

"Program" means the Grow New Jersey Assistance Program established pursuant to P.L. 2011, c. 149 and provided in this subchapter.

"Project" means the capital investment and the employment commitment at a qualified business facility pursuant to the incentive agreement.

"Public research university" means a public research university as defined in section 3 of P.L. 1994, c. 48 (N.J.S.A. 18A:3B-3).

"Qualified business facility" means any building, complex of buildings, or structural components of buildings, and all machinery and equipment located within a qualified incentive area, used in connection with the operation of a business that is not engaged in final point of sale retail business at that location, which shall not include a university research hospital, unless the building, complex of buildings, or structural components of buildings, and all machinery and equipment located within a qualified incentive area, are used in connection with the operation of: a final point of sale retail business located in a Garden State Growth Zone that will include a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by either a full service supermarket or grocery store; or a tourism destination project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219).

"Qualified incentive area" means an aviation district, a port district, a distressed municipality, urban transit hub municipality, or an area:

1.Designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or Planning Area 3 (Fringe Planning Area), pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.); or

2.Located within:

i.A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);

ii.Any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4), including the sports complex, that is, the 750-acre sports and exposition site located in the Borough of East Rutherford under the jurisdiction of the New Jersey Sports and Exposition Authority as of the effective date of P.L. 2015, c. 19 (N.J.S.A. 5:10A-1 et seq.) and such additional property that is owned and controlled by the New Jersey Sports and Exposition Authority as may be designated by the Meadowlands Regional Commission, as established by P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), and section 6 of P.L. 2015, c. 19 (N.J.S.A. 5:10A-6) from time to time as part of the sports complex;

iii.A regional growth area, a rural development area zoned for industrial use as of December 15, 2016, the effective date of P.L. 2016, c. 75, a town, a village, or a military and Federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

iv.The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or in a highlands development credit receiving area or redevelopment area;

v.A Garden State Growth Zone;

vi.Land approved for closure under any Federal Commission on Base Realignment and Closure action; or



vii.Areas designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) only if such areas are located within:

- (1)A designated center under the State Development and Redevelopment Plan;
- (2)A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts rules to revise this definition as it pertains to Statewide planning areas;
- (3)Any area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 40A:12A-6) or in need of rehabilitation pursuant to section 14 of P.L. 1992, 40 c. 79 (N.J.S.A. 40A:12A-14);
- (4)Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided the expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals;
- (5)The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or a highlands development credit receiving area or redevelopment area; or
- (6)Any area on which an existing tourism destination project is located.

"Qualified incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3).

"Qualified incubator facility" means a commercial building located within a qualified incentive area: that contains 50,000 or more square feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with a research institution, teaching hospital, college, or university, which is evidenced by a written agreement that demonstrates this collaboration; and within which, at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period. The restricted space may be comprised of non-contiguous areas, and its location within the qualified incubator facility may change from time to time.

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country or eliminated. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. For a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to P.L. 2011, c. 18, § 5 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, "retained full-time job" shall include any employee previously employed in New Jersey and transferred to the new location in the Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in the Garden State Growth Zone that contains a Tourism District as established pursuant to P.L. 2011, c. 18, § 5 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority. For the purposes of the certifications and annual reports required pursuant to the incentive agreement, N.J.S.A. 34:1B-245.e or 247.b(2), to the extent an eligible position that was the basis of the award no longer exists, a business shall include as a retained full-time job a new eligible position that is filled by a full-time employee as set forth in N.J.A.C. 19:31-18.4(d).

"SDA district" means an "SDA district" as defined in section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

"SDA municipality" means a municipality in which an SDA district is situate.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, provided they do not exceed 20 percent of total capital investment.

"Square feet" means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

"Square feet of gross leasable area" or "gross leasable area" means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"State college" means a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes.

"Substantial environmental remediation" means the completion of the necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq., which shall equal at least five percent of the capital investment in a qualified business facility.

"Targeted industry" means any industry identified from time to time by the Authority including initially, a transportation, manufacturing, defense, energy, logistics, life sciences, technology, health, and finance business, but excluding a primarily warehouse, distribution, or fulfillment center business.

"Technology startup company" means a for-profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which the business intends to move to commercialization. The business shall be deemed to have begun operation on the date that the business first hired at least one employee in a full-time position.

"Tourism destination project" means a qualified non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the qualified incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance, including a non-gaming business facility within an established Tourism District with a significant impact on the economic viability of that District.

"Transit oriented development" means a qualified business facility located within a 1/2-mile radius, or one-mile radius for projects located in a Garden State Growth Zone, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations. For the purposes of determining the transit project bonus pursuant to N.J.A.C. 19:31-8.8(c)4, a bus station platform is a terminal as listed on the EDA's website at [www.njeda.com](http://www.njeda.com).

"Urban transit hub" means an urban transit hub, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208) and also located within a qualified incentive area.

"Urban transit hub municipality" means a municipality that qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-17 178 et seq.), or that has continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation that is taxable and that which is tax exempt.

"Withholdings" means the amount withheld by a business from the wages of full-time employees or estimated taxes paid by, or on behalf of, partners that are full-time employees, or any combination thereof, pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Withholdings shall not include amounts withheld by a business from stock options or from stock options, money, or other payments given

to a full-time employee pursuant to the termination of employment of the full-time employee. Withholdings shall include amounts withheld by a business from money or other payments given to a full-time employee pursuant to a bonus for commencing employment or for services rendered by the full-time employee.

## History

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### **HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Added definitions, "Aviation district", "Commitment period", "Complex of buildings", "Deep poverty pocket", "Disaster recovery project", "Distressed municipality", "Eligibility period", " 'Garden State Growth Zone' or 'growth zone' ", "Highlands development credit receiving area or redevelopment area", "Incentive agreement", "Incentive effective date", "Industrial premises", "Major rail station", "Mega project", "Minimum environmental and sustainability standards", "Moderate-income housing", "Municipal Revitalization Index", "Non-industrial premises", "Other eligible area", "Port district", "Priority area", "Project", "Qualified incubator facility", "SDA district", "SDA municipality", "Square feet", " 'Square feet of gross leasable area' or 'gross leasable area' ", "Substantial environmental remediation", "Targeted industry", "Technology startup company", "Tourism destination project", "Transit oriented development", "Urban transit hub", "Urban transit hub municipality", and "Withholdings"; rewrote definitions "Business", "Capital investment", "Full-time employee", "Qualified business facility", "Qualified incentive area" and "Retained full-time job"; substituted definition, " 'Eligible position' or 'full-time job' " for definition "Eligible position"; and deleted definitions, "Commitment duration", "Public transit facility", and "Tax credit term".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

Added definition "Non-gaming business"; and rewrote definition "Retained full-time job".

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

In definition "Business", inserted the last sentence; and rewrote definition " 'Eligible position' or 'full-time job' ".

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In definition "Qualified incentive area", rewrote paragraph 2ii; and in definitions "Qualified incubator facility" and "Technology startup company", inserted the last sentence.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In definition "Mega project", in paragraph 3, deleted "or" from the end, in paragraph 4, inserted a comma following ") " and following "63", and substituted "; or" for a period at the end, and added paragraph 5; and in definition "Retained full-time job", substituted "as set forth in N.J.A.C. 19:31-18.4(d)" for "provided that the position is included in the order of date of hire and is not the basis for any other incentive award".

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

Added definitions "College or university", "County college", "Doctoral university", "Garden State Create Zone", "Independent institution of higher education", "Public research university", and "State college"; made grammatical and technical changes in definitions "Capital investment", "Disaster recovery project", "Full-time employee", and "Mega project"; in definition "Qualified incentive area", in 2iii, inserted "a rural development area zoned for industrial use as of December 15, 2016, the effective date of P.L. 2016, c. 75," and in 2vii(4) substituted the second occurrence of "the" for "such"; and in definition "Withholdings", deleted ", and, if the full-time employee is an employee whose position has moved to New Jersey but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., the amount of withholding that would occur if the employee were to move to New Jersey." from the end of the first sentence.

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## **N.J.A.C. 19:31-18.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.3 Eligibility criteria**

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(a) In order to be considered for a Grow New Jersey tax credit, the chief executive officer of a business shall demonstrate at the time of application that the business, expressly including its landlord or seller, will make, acquire, or lease a capital investment equal to or greater than, the applicable capital investment required in (a)1 below at which it will retain full-time jobs and/or create new full-time jobs in an amount equal to or greater than, the applicable number in (a)2 below.

1. For all projects approved after September 18, 2013, the effective date of P.L. 2013, c. 161, the minimum capital investment required shall be reduced by one-third (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties:

i. For the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development premises for continued similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of \$ 20.00 per square feet of gross leasable area;

ii. For the new construction of an industrial, warehousing, logistics, or research and development premises for similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of \$ 60.00 per square feet of gross leasable area;

iii. For the rehabilitation, improvement, fit-out, or retrofit of an existing premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$ 40.00 per square feet of gross leasable area;

iv. For the new construction of a premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$ 120.00 per square feet of gross leasable area. For purposes of this subparagraph, non-industrial premises shall include vacant industrial premises that are unleased and unoccupied; and

v. The minimum capital investment shall be aggregated only for buildings that are proximate, as determined by the Authority in its sole discretion, and have the same minimum investment per square feet of gross leasable area. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other.

Notwithstanding that buildings in a complex of buildings may have different minimum capital investment requirements, the capital investment in a complex of buildings shall be aggregated for purposes of qualifying as a mega project or for an award pursuant to N.J.A.C. 19:31-18.8(h). The following are examples:

**(1)**A complex of buildings consists of building A and building B, which are both on the same block but separated by other buildings. Both buildings are existing office buildings that will be rehabilitated. The minimum capital investment for the project will be aggregated based on the total square feet of gross leasable area of the two buildings.

**(2)**A complex of buildings will consist of building A and building B, which will be adjacent to each other but have separate entrances. Building A is an existing office building that will be rehabilitated; building B will be a newly constructed office building. The business will have to make a minimum capital investment at building A and a separate minimum capital investment at building B.

**(3)**A complex of buildings consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot. Both buildings are existing industrial buildings that will be rehabilitated for continued industrial use. The minimum capital investment for the project will be aggregated based on the total square feet of gross leasable area of the two buildings.

**2.**The minimum number of new or retained full-time jobs required shall be reduced by one-quarter (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties.

**i.**For a business that is a technology startup company or a manufacturing company, a minimum of 10 new or 25 retained full-time jobs.

**ii.**For a business engaged primarily in a targeted industry other than a technology startup company or a manufacturing company, a minimum of 25 new or 35 retained full-time jobs.

**iii.**For any other business, a minimum of 35 new or 50 retained full-time jobs.

**iv.**The minimum number of new or retained full-time jobs may be met in the aggregate in a complex of buildings. Notwithstanding the preceding sentence, if a complex of buildings includes one or more buildings located in a Garden State Growth Zone or a county for which the minimum number of new or retained full-time jobs is reduced, the business shall meet the minimum job requirement by locating no less than the reduced minimum number of new or reduced full-time jobs at the buildings in the Garden State Growth Zone or one of the counties for which the minimum capital investment required is reduced. The following are examples:

**(1)**The complex of buildings for a manufacturing company consists of three buildings located in one municipality and one building located in a different municipality. The company will have three new jobs at each building. Neither municipality is a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has met the minimum full-time jobs required because the minimum full-time jobs, 10 new or 25 retained full-time jobs may be met in the aggregate across all four buildings. If the company meets all other program requirements, the company will be eligible to receive tax credits for all 12 new full-time jobs.

**(2)**The complex of buildings for a manufacturing company consists of two buildings located in municipality A and one building located in municipality B. The company will have four new jobs at each building in municipality A and two new jobs at the building in municipality B. Municipality A is a Garden State Growth Zone, but municipality B is not a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has met the minimum full-time jobs required because the reduced minimum full-time jobs, eight new or 19 retained full-time jobs, has been met in the aggregate at the buildings in municipality A. If the company meets all other program requirements, the company will be eligible to receive tax credits for all 10 new full-time jobs.

**(3)**The complex of buildings for a manufacturing company consists of two buildings located in municipality A and one building located in municipality B. The company will have three new jobs at each building in municipality A and two new jobs at the building in municipality B. Municipality A is a Garden State Growth Zone, but municipality B is not a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has not met the minimum full-time jobs because the number of jobs in the aggregate at the buildings in municipality A is six, which is less than the reduced minimum full-time jobs, eight new or 19 retained full-time jobs.

**3.**The business shall also demonstrate to the Authority that:

**i.**The qualified business facility shall be constructed in accordance with the minimum environmental and sustainability standards;

**ii.**The proposed capital investment and the resultant retention and creation of full-time jobs will yield a net positive economic benefit, equaling at least 110 percent of the requested tax credit allocation amount, to the State, as calculated pursuant to N.J.A.C. 19:31-18.7(c) prior to taking into account the value of the requested tax credit, and shall be based on the benefits generated during the first 20 years following the completion of the project, except that:

**(1)**For a mega project or a project located in a Garden State Growth Zone, the determination shall be based on the benefits generated during a period of up to 30 years following the completion of the project;

**(2)**For a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the net positive economic benefit determination shall be based on the benefits generated during a period of up to 35 years following completion of the project, and shall equal at least 100 percent of the requested tax credit allocation; and

**(3)**The net positive economic benefit shall be discounted to reflect the uncertainty of the business's location after the commitment period expires;

**iii.**The award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, consistent with the following, as applicable:

**(1)**Except as determined by the Authority in its sole discretion based on extraordinary circumstances, including, but not limited to, geographic or regulatory constraints of a project, the business shall provide a full economic analysis of the in-State and out-of-State alternatives under consideration by the business to support that it demonstrates a material factor.

**(2)**Except for (a)3iii(4) below, the award of tax credits shall not be considered a material factor in the creation or retention of full-time jobs filled by employees providing professional services, as defined in N.J.S.A. 14A:17-3(1), and their direct administrative support staff, unless as of the date of the business's application, the full-time job is filled by an employee whose primary business office is located outside of the State. Direct administrative support staff shall not include employees in information technology, human resources, or employee relations positions.

**(3)**If, in a Garden State Growth Zone, the site was acquired or leased prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site.

**(4)**In satisfaction of this requirement, with respect to a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, the award of tax credits will be a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority; and

**iv.**For a non-gaming business facility within an established Tourism District to qualify as a tourism destination project, the facility will have a significant impact on the economic viability of the Tourism District within which it is located by satisfying the following:

**(1)**Having a capital investment in excess of \$ 50,000,000, excluding any capital investment for site acquisition, at which more than 250 full-time employees of a business are created or retained; and

**(2)**Demonstrating to the satisfaction of the Authority a combination of two or more of:

**(A)**Positive financial benefit to the District;

**(B)**A net increase in visitors to the District;

**(C)**An increase in marketing dollars spent on the District; or

**(D)**The addition of unique amenities or services to the existing project or District.

**(b)**Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

**(c)**A business shall be treated as owner of a qualified business facility if it holds fee simple title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

**(d)**Pursuant to P.L. 2013, c. 161, a business may apply for tax credits under the program for more than one project pursuant to one or more applications. Notwithstanding this subsection, the Authority may, in its sole discretion, consider two or more applications as one application based on factors including, but not limited to, the location of the qualified business facilities, the types of jobs proposed, and the business's financing and operational plans.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.



See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a)3iii, substituted "; and" for a period at the end, and added (a)3iv.

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

In (a)1iii, deleted "and" from the end; in (a)1iv, substituted "; and" for a period; added (a)1v and (a)2iv; in (a)2iii, substituted a period for a semicolon; and rewrote (a)3iii.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a)1v, inserted the second sentence; in the introductory paragraph of (a)3iii, substituted ", consistent with the following, as applicable" for a period at the end; added (a)3iii(2); recodified former (a)3iii(2) through (3) as (a)3iii(3) through (4); and in (d), inserted the second sentence.

Amended by R.2017 d.071, effective April 17, 2017.

See: 49 N.J.R. 197(a), 49 N.J.R. 776(b).

In (a)3ii(1), deleted "and" from the end; in (a)3ii(2), inserted "and" at the end; and added (a)3ii(3).

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## **N.J.A.C. 19:31-18.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.4 Restrictions**

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(a) The Authority, pursuant to P.L. 2013, c. 161, shall not enter into an incentive agreement with a business that has previously received incentives pursuant to the Business Retention and Relocation Assistance Act, P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.), the Business Employment Incentive Program Act, P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.), or any other program administered by the Authority unless:

1. The business has satisfied all of its obligations underlying the previous award of incentives or is compliant with section 4 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-245). In the instance of the business terminating an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, the Authority shall recapture all or part of any award, provided that such permitted recapture may be calculated to recognize the period of time that the business was in compliance prior to termination and such recapture amount may be paid after approval by the Authority of the business's application for a tax credit incentive award under P.L. 2013, c. 161, but the recapture amount must be paid before the Authority shall execute the incentive agreement, which shall be executed within 18 months following the date of approval of the business's application;
2. The capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives; or
3. The incentives pursuant to the Business Retention and Relocation Assistance Grant (BRRAG) Program Sales and Use Tax Exemption, sections 19 through 22 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-185 through 188) are awarded simultaneously with the Grow New Jersey Tax credit.

(b) A project that consists solely of point-of-final-purchase retail facilities, excluding catalog distribution centers, shall not be eligible for a grant of tax credits. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. For a qualified business facility that is a mixed-use project that includes retail facilities and that is located in a Garden State Growth Zone or the Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, retail facilities in an amount up to 7.5 percent of the mixed-use project may be included in the mixed-use project application for a grant of tax credits along with the non-retail facilities and that application may include in the aggregate the pro-rata number of full-time employees employed by any number of tenants or other occupants of the included retail facilities. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this subsection, a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by a full-service supermarket or grocery store, located in a Garden State Growth Zone that qualified under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or a

tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), or catalog distribution centers shall not be considered point-of-final-purchase retail facilities.

**(c)**For a qualified incubator facility, the maximum number of positions and full-time jobs employed by businesses that are not technology startup companies that are included in the calculation of the total tax credit amount shall not exceed twice the number of positions and full-time jobs employed by technology startup companies. No position or full-time job employed by the operator or a technology startup company may be included in the application as a retained position or full-time job.

**(d)**For the purposes of the certifications and annual reports required pursuant to the incentive agreement and set forth in N.J.A.C. 19:31-18.7(f) and 18.11(a), if a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs. To the extent an eligible retained full-time job that was the basis of the award no longer exists, the business shall include as a retained full-time job a new eligible position that is filled by a full-time employee, provided that the position is included in the order of date of hire and is not the basis for any other incentive award. If a qualified business facility comprises a complex of buildings with different factors affecting the tax credit calculation, the business shall meet the employment requirements related to the retained full-time jobs at each building before receiving benefits for new full-time jobs at any building. The business shall include as a retained full-time job a new eligible position that is filled by a full-time employee, regardless of the location of such position, provided that the position is included in the order of date of hire and is not the basis for any other incentive award, and shall be paid at the lower of the tax credit for the new eligible position filled by a full-time employee or the tax credit for the retained full-time job that no longer exists. The following are examples:

**1.**A project is approved for 38 new full-time jobs and 53 retained full-time jobs. The business submits a certification that it created 38 new full-time jobs and retained 50 full-time jobs. Because three eligible positions that were the basis of the award no longer exist, three of the new eligible positions shall be included as retained full-time jobs. The jobs in the certification shall be considered as 35 new full-time jobs and 53 retained full-time jobs for the term of the grant. If, in an annual report, retained full-time jobs fall to 45, the jobs in the annual report shall be considered as 30 new full-time jobs and 53 retained full-time jobs.

**2.**A project consisting of a complex of two buildings is approved for 50 new full-time jobs and 100 retained full-time jobs. The total tax credit amount is calculated separately for jobs at each building because building A is in a transit-oriented development and building B is not. The calculation, based on 50 new full-time jobs and 50 retained full-time jobs in building A and 50 retained full-time jobs in building B, results in \$ 3,625 per retained full-time job in building A and \$ 2,219 per retained full-time job in building B. The business submits a certification that it created 50 new full-time jobs and retained 47 full-time jobs in building A and retained 45 full-time jobs in building B. Because eight eligible positions that were the basis of the award no longer exist, eight of the new eligible positions shall be included as retained full-time jobs with the retained full-time positions in building B filled first. The jobs in the certification shall be considered as 42 new full-time jobs and 50 retained full-time jobs in building A and 50 retained full-time jobs in building B. The five eligible positions that are allocated to building B will be paid at the rate of \$ 2,219 per position. The three eligible positions that are allocated to building A will be paid at the rate of \$ 3,625 per position. If in an annual report, the retained full-time jobs at building B fall to 40, the jobs in the annual report shall be considered as 45 new full-time jobs and 50 retained full-time jobs in building A and 50 retained full-time jobs in building B, and will be paid accordingly.

**3.**A manufacturing company's project is approved for 10 new full-time jobs and 30 retained full-time jobs. The business submits a certification that it created 10 new full-time jobs and retained 28 full-time jobs. Because two eligible positions that were the basis of the award no longer exist, two of the new eligible positions shall be included as retained full-time jobs. The jobs in the certification shall be considered as eight new full-time jobs and 30 retained full-time jobs. As the eight new full-time jobs are

less than the minimum number of new jobs required for eligibility, only the 30 retained full-time jobs are eligible for the tax credit, regardless of any increase in new jobs in future years.

## History

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### **HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Added new (a); deleted former (a) through (c) and (e) through (i); recodified former (d) as (b); and rewrote (b).

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (b).

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Reserved (c); and added (d).

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Deleted (c); recodified former (d) as (c) and rewrote (c); and added (d).

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## **N.J.A.C. 19:31-18.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.5 Application submission requirements**

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(a) Each application to the Authority made by a business shall include the following information in an application format prescribed by the Authority:

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:
  - i. The name of the business;
  - ii. The contact information of the business;
  - iii. The prospective future address of the business (if different);
  - iv. The type of the business;
  - v. The principal products and services and three-digit North American Industry Classification System number;
  - vi. The New Jersey tax identification number;
  - vii. The Federal tax identification number;
  - viii. The total number of full-time employees in New Jersey at the time of application and in the last tax period prior to the credit amount approval;
  - ix. The total list of New Jersey operations;
  - x. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;
  - xi. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
  - xii. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
  - xiii. A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
  - xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the

allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of Treasury by such time and with such information as the Director may require; and

**xv.** Any other necessary and relevant information as determined by the Authority for a specific application;

**2.** Project information shall include the following:

**i.** An overall description of the proposed project;

**ii.** A description of the capital investments planned by the business, if other than a tenant at the proposed qualified business facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified business facility, and financial information demonstrating ability to complete the capital investment;

**iii.** The estimated value of the capital investment;

**iv.** Supporting evidence that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit pursuant to N.J.A.C. 19:31-18.3(a)3ii, taking into account the criteria listed at N.J.A.C. 19:31-18.7(c).

**(1)** In determining whether a proposed capital investment will yield a net positive benefit, the business's chief executive officer, or equivalent officer for North American operations, shall submit a certification indicating that:

**(A)** Any existing full-time jobs are at risk of leaving the State or being eliminated;

**(B)** Any projected creation or retention, as applicable, of new full-time jobs would not occur but for the provision of tax credits under the program; and

**(C)** The business's chief executive officer, or equivalent officer for North American operations, has reviewed the information submitted to the Authority and that the representations contained therein are accurate;

**(2)** In satisfaction of (a)2iv(1)(A) and (B) above, the certification with respect to a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, shall indicate that the provision of tax credits under the program is a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority. If the site was acquired within 24 months prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site;

**(3)** For a qualified incubator facility, the certifications in (a)2iv(1) above shall be certified by the operator's chief executive officer or equivalent officer for North American operations, provided that to include any retained full-time job or position employed by a business that is not a technology startup company, the operator shall submit with the application the certification by that business's chief executive officer or equivalent officer for North American operations. To demonstrate that such certifications and the certification in (a)2iv(1)(A) and (B) above are satisfied, the operator shall demonstrate that it would locate the qualified incubator facility at an

out-of-State location, but for the tax credit award or that it has a project financing gap in its business model as determined by a fiscal analysis conducted by the Authority, taking into account the project's internal rate of return on the operator's contributed capital and net profit margin; and

**(4)**The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project.

**v.**A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

**vi.**Identification of the site of the proposed qualified business facility, including the block and lot of the site as indicated upon the local tax map. For purposes of determining geographical location of contiguous buildings that extend over more than one geographical location, the contiguous buildings shall be considered in the geographical location in which the contiguous buildings are located with the most beneficial total tax credit amount. For a qualified incubator facility, common areas that are shared by the entire building in which the qualified incubator facility is located and not exclusive to the qualified incubator facility shall not be counted as part of the qualified incubator facility, but the size of the space restricted for use by technology startup companies may include the pro-rata share of any common areas within the qualified business facility;

**vii.**A project schedule that identifies projected move dates for the proposed qualified business facility;

**viii.**A schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

**ix.**The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility; and, if an application involves intra-State job transfers, a full economic analysis of all locations under consideration by the business, as well as all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist;

**x.**The total number of anticipated new and retained full-time jobs in New Jersey and occupy the qualified business facility and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity; and

**xi.**Any other necessary and relevant information as determined by the Authority for a specific application; and

**3.**Employee information shall include the following:

**i.**A written certification that the employees that are the subject of this application will be full-time employees at the qualified business facility;

**ii.**The average annual wage and benefit rates of full-time employees and new and retained full-time jobs at the qualified business facility;

**iii.**Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy, such as the tax credits, pursuant to P.L. 2007, c. 200;

**iv.**Any other necessary and relevant information as determined by the Authority for a specific application; and

**4.**A list of all affiliates that are directly or indirectly controlled by the business, and the total number of full-time employees in New Jersey of each affiliate at the time of application and in the last tax period prior to the credit amount approval.

**(b)**The business applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-18.6(a).

**(c)**A business shall be allowed to assign their ability to apply for the tax credit for a project located in a Garden State Growth Zone under this subchapter to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone, as determined by the Authority. The non-profit organization may make an application on behalf of a business which meets the requirements for the tax credit, or a group of non-qualifying businesses or positions, located at a qualified business facility, that shall be considered a unified project for the purposes of the incentives provided under this section.

**(d)**An organization operating a qualified incubator facility may make an application on behalf of a business which meets the requirements for the tax credit, or a group of non-qualifying businesses or positions, located at a qualified incubator facility, that shall be considered a unified project for the purposes of the incentives provided under this section.

**1.**For purposes of this subsection, "positions" mean full-time employees who are employed by a business at a qualified incubator facility and who spend at least 16 hours a week at the qualified incubator facility and must spend at least 80 percent of his or her time, or any other period of time generally accepted by custom or practice as determined by the Authority, in this State. A position at a qualified incubator facility shall be considered a full-time job under this program.

**2.**In addition to the information required pursuant to (a) above, the organization operating a qualified incubator facility shall be required to submit:

- i.**The names, contact information, New Jersey employer identification, and Federal employer identification number of any party on whose behalf it is making the application to the extent known at the time of application; and
- ii.**The organization's business model and a detailed explanation as to how the business model will ensure that the benefit from the award of tax credits will inure to the businesses and positions on whose behalf the application is made and how the businesses and full-time employees filling positions will be informed of the award and the benefits from the award.

**(e)**For any project located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or any project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, a business may assign its ability to apply for the tax credit under this subsection to the developer of the facility. The developer may make an application on behalf of the business which meets the requirements for the tax credit, or a group of non-qualifying businesses located at the business facility, that shall be considered a unified project for the purposes of the incentives provided under this section, and the developer may apply for tax credits available based on the number of jobs provided by the business or businesses and the total capital investment of the business or businesses and the developer.

**(f)**In addition to the information required pursuant to (a) above, any applicant authorized pursuant to (c) and (e) above shall be required to submit:

- 1.**Evidence of the assignment to apply for the tax credit from the assignee or the party on whose behalf it is making the application;
- 2.**The name of the assignee or the party on whose behalf it is making the application;
- 3.**The contact information of the assignee or the party on whose behalf it is making the application;



4.The New Jersey employer identification number of the assignee or the party on whose behalf it is making the application;

5.The Federal employer identification number of the assignee or the party on whose behalf it is making the application; and

6.If the applicant is a non-profit authorized under (c) above, the mission statement of the non-profit organization.

(g)A business that has already applied for a tax credit incentive award prior to September 18, 2013, the effective date of P.L. 2013, c. 161, but who has not yet been approved for such tax credits, or has not executed an agreement with the Authority, may proceed under that application or seek to amend such application or reapply for a tax credit incentive award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions of the program.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (a)2iv(3), (a)2vi, and (c); added new (d) through (f); and recodified former (d) as (g).

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (a)1viii and (a)2vi; in (a)3iii, inserted a comma following "subsidy", and deleted "and" from the end; in (a)3iv, substituted "; and" for a period; and added (a)4.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Rewrote (a)2iv, (a)2vi, (c), and (d); and in the introductory paragraph of (f), deleted ", (d)," following "(c)".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Rewrote (a)2iv(3).

## **N.J.A.C. 19:31-18.6**

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### **§ 19:31-18.6 Fees**

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**(a)** A business applying for benefits under this program shall submit a one-time non-refundable application fee, with payment in the form of a check, payable to the "New Jersey Economic Development Authority." The application fee shall be as follows:

1. For projects with total tax credits of \$ 10,000,000 or less and 100 or fewer new and retained full-time jobs, the fee to be charged at application shall be \$ 1,000;
2. For projects with total tax credits of \$ 10,000,000 or less and more than 100 new and retained jobs, the fee to be charged at application shall be \$ 2,500; and
3. For projects with total tax credits in excess of \$ 10,000,000, the fee to be charged at application shall be \$ 5,000.

**(b)** In addition to the application fee in (a) above, a business shall pay to the Authority the full amount of direct costs of an analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary.

**(c)** A non-refundable fee of .5 percent of the approved tax credit shall be charged prior to the approval of the tax credit by the Authority as follows:

1. For each project with tax credits of \$ 1,000,000 or less annually, the fee shall not exceed \$ 50,000;
2. For each project with tax credits of \$ 1,000,000 to \$ 4,000,000 annually, the fee shall not exceed \$ 200,000; and
3. For each project with tax credits in excess of \$ 4,000,000 annually, the fee shall not exceed \$ 500,000. The fee shall be refunded if the Authority does not approve the tax credit.

**(d)** For each project with tax credits of \$ 1,000,000 or less annually, a non-refundable fee of .5 percent of the tax credit, not to exceed \$ 50,000, shall be paid prior to the receipt of the tax credit certificate. For each project with tax credits in excess of \$ 1,000,000 annually, a non-refundable fee of .5 percent of the tax credit, not to exceed \$ 500,000, shall be paid prior to the receipt of the tax credit certificate.

**(e)** A business shall pay to the Authority an annual servicing fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report. For each project with tax credits of \$ 1,000,000 or less annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$ 20,000 per year; and for each project with tax credits in excess of \$ 1,000,000

annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$ 75,000 per year.

**(f)**A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-18.13 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee of \$ 5,000 and \$ 2,500 for each additional request made annually.

**(g)**For each project with total tax credits of \$ 5,000,000 or less, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with total tax credits in excess of \$ 5,000,000, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

**(h)**A non-refundable fee of \$ 5,000 shall be paid for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and with respect to the employees required upon completion of the capital investment and employment requirement; and a non-refundable fee of \$ 10,000 shall be paid for the second such six-month extension.

**(i)**A business seeking to terminate an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, shall pay to the Authority an additional fee of \$ 5,000 for terminations that do not require extensive staff time and Board approval; and a non-refundable fee of \$ 25,000 for terminations that require extensive staff time or Board approval.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Rewrote (c); in (f), substituted "\$ 5,000 and \$ 2,500 for each additional request made annually" for "\$ 2,500"; in (g), substituted "\$ 5,000" for "\$ 2,500" and "\$ 10,000" for "\$ 5,000"; and in (h), substituted "\$ 5,000" for "\$ 1,000" and "\$ 10,000" for "\$ 2,500".

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

In (g), inserted "or less".

## **N.J.A.C. 19:31-18.7**

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### **§ 19:31-18.7 Review of application and certification of project completion**

**(a)**A business seeking an approval of tax credits for a qualified business facility shall apply for tax credits prior to July 1, 2019, except as set forth at N.J.A.C. 19:31-18.3(b) and except for businesses seeking a credit for a mega project, which shall apply by September 18, 2017, four years after the effective date of P.L. 2013, c. 161.

**(b)**The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be deemed complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project. The review will determine whether the applicant:

- 1.Complies with the eligibility criteria;
- 2.Satisfies the submission requirements; and
- 3.Provides adequate information for the subject application.

**(c)**In determining whether the company meets the net positive economic benefits test pursuant to N.J.A.C. 19:31-18.3(a)3ii and as certified by the chief executive officer pursuant to N.J.A.C. 19:31-18.5(a)2iv, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by and generated indirectly by the business, property taxes or payment in lieu of taxes paid directly by and generated indirectly by the business, taxes paid directly or generated indirectly by new employees and retained employees for which the award of tax credits will be a material factor in the business's decision to retain the employees in the State, and peripheral economic growth caused by the business's relocation, provided that such determination shall be limited to the net positive economic benefits derived from the capital investment commenced after the submission of an application to the Authority. Retained employees in a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), and regulated by the Casino Reinvestment Development Authority shall not be included unless the business demonstrates that the award of tax credits will be a material factor to retain the employees in the State in addition to demonstrating the material factor provision in N.J.A.C. 19:31-18.3(a)3iii(4). For a project located in a Garden State Growth Zone, the Authority may award bonuses in its net positive economic benefit calculation including, but not limited to, full payment of taxes for a qualified business facility that receives a tax abatement pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. With regard to a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery

Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the net positive economic benefits test may utilize the value of those property taxes subject to the provisions of section 24 of P.L. 2013, c. 161 (N.J.S.A. 52:27D-489s) or the value of those property taxes that would have been assessed on the new construction, improvements, or substantial rehabilitation of structures on real property if the structures were not exempt because they are on real property owned by a public entity and incremental sales and excise taxes that are derived from activities within the area and which are rebated or retained by the municipality pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.) or any other law providing for such rebate or retention.

**(d)** Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, and the maximum amount of tax credits to be granted and, shall promptly notify the applicant and the Director of the Division of Taxation of the determination. When considering an application involving intra-State job transfers, after staff's review of the materials submitted by the applicant, testing the validity of financial information and assumptions through the use of computer models and, to the extent necessary, seeking input from third-party consultants, the cost which will be paid by the applicant, the Board shall make a separate determination to verify and confirm by way of making a factual finding by separate vote that the jobs are at risk of leaving the State, and as to the date or dates at which the Authority expects that those jobs would actually leave the State, or, with respect to projects located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), that the provision of tax credits under the program is a material factor in the business's decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.). The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and requirements regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter and incentive agreement, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the Grow New Jersey tax credits.

2. In the approval letter to the business, the Authority shall set a date by which its approval will expire.

**(e)** Within 12 months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, committed financing for and site control of the qualified business facility, except that a business shall have 24 months to submit such progress information for a mega project or for a qualified business facility that consists of new construction. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within the required period of time, or if progress as indicated has not been achieved.

**(f)** Upon completion of the capital investment and employment requirements of the program, the business shall submit certifications evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements with supporting evidence satisfactory to the Authority.

1. The business shall submit a certification of a certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority, relating to the capital investment. The amount of the capital investment in the certification that has been approved by the Authority shall not be increased regardless of additional capital investment in the qualified business facility, provided, however, that in no event will the amount of capital investment exceed the amount of capital investment previously approved by the Board. In the event the capital investment is reduced

below the capital investment in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

**2.**The business shall submit a certification of the chief financial officer of the business, which certification shall be acceptable to the Authority, evidencing that the business has satisfied the conditions relating to any employment requirements. The number of new and retained full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of additional jobs located at the qualified business facility, and, except as set forth in N.J.A.C. 19:31-18.11(e), in no event will the number of jobs exceed the number of jobs previously approved by the Board. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth in N.J.A.C. 19:31-18.4(d). In the event the number of new and/or retained full-time jobs is reduced below the number of new and/or retained full-time jobs in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

**3.**Absent extenuating circumstances and the written approval of the Authority, the certification with respect to capital investment and employment shall be submitted within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline, however, in no event, shall the incentive effective date occur later than four years following the date of approval of an application by the Authority, except that:

- i. As of January 19, 2016, the effective date of P.L. 2015, c. 252, a business that applied for the tax credit prior to July 1, 2014, under P.L. 2011, c. 149 (N.J.S.A. 34:1B-242 et seq.), and was required to submit its documentation no later than July 28, 2017, shall submit its documentation to the Authority no later than July 28, 2018, indicating that it has met the capital investment and employment requirements specified in the incentive agreement for certification of its tax credit amount; and
- ii. The Authority may grant additional extensions for projects located in a Garden State Growth Zone with a capital investment greater than \$ 100,000,000 and a total tax credit award greater than \$ 100,000,000 as a result of force majeure that will be recognized under the following circumstances, which shall be demonstrated by the business to the satisfaction of the Authority:

- (1) The business is delayed due to unforeseeable acts related to the project beyond the business's control and without its fault or negligence;
- (2) The business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification;
- (3) The business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay;
- (4) The business provides timely notice to the Authority of the delay, not to exceed 30 days after the business's actual or constructive knowledge of the delay; and
- (5) The business provides periodic reports, not less than every 30 days, of the status of the delay and the steps being taken to mitigate or overcome the delay.

**4.**An organization operating a qualified incubator facility shall provide written evidence that the qualified business facility continues to qualify as a qualified incubator facility and that the benefit from the award of tax credits will inure to the businesses and positions on whose behalf the application was made.

**5.**The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification.

(g) Once the Authority accepts the certification of the business that it has satisfied the capital investment and employment requirements, if any, of the program, and the Authority determines that other necessary conditions have been met, within 90 days of the submission of the certifications and evidence satisfactory to the Authority, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate which will be based on the information submitted in the certifications under (f) above, provided it shall not exceed the maximum amount determined by the Board under (d) above. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance issued by the Authority.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (c) and (e).

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In the introductory paragraph of (f), deleted "of a certified public accountant, which may be made pursuant to an 'agreed upon procedures' letter acceptable to the Authority" following "certifications"; and in (f)1 and (f)2, inserted the first sentence.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Added new (f)4, and recodified former (f)4 as (f)5.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (c), substituted "employees and" for "or", inserted "for which the award of tax credits will be a material factor in the business's decision to retain the employees in the State", and inserted the second sentence; in (e), substituted "12" for "six" and "24" for "12"; in (f)2, deleted a comma following "award" and substituted "as set forth in N.J.A.C. 19:31-18.4(d)" for "related to the retained full-time jobs before receiving benefits for new full-time jobs"; and rewrote (f)3.

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## **N.J.A.C. 19:31-18.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.8 Determination of grant amount; bonus award**

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**(a)**The total amount of the tax credit for an eligible business shall be for each new or retained full-time job as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period; however, except as set forth in N.J.A.C. 19:31-18.11(e), the total tax credit amount credited annually to the business shall not exceed the maximum amount determined by the Board under N.J.A.C. 19:31-18.7(d) and the amount calculated pursuant to N.J.A.C. 19:31-18.7(g), divided by the number of years in the eligibility period. The total amount of tax credit shall be calculated by combining the jobs in buildings that have the same factors set forth in this section that affect the tax credit calculation. The total amount of tax credit shall be calculated separately for jobs in a building with factors that are different than the factors affecting the calculation for jobs in the other buildings in a complex of buildings. Notwithstanding that the total tax credit for jobs in different buildings may be calculated separately, forfeitures pursuant to N.J.A.C. 19:31-18.15 and defaults and recaptures included in the incentive agreement pursuant to N.J.A.C. 19:31-18.10(b) shall be based on the aggregate capital investment and eligible full-time jobs.

**(b)**The base amount of the tax credit for each new or retained full-time job shall be as follows:

- 1.For a qualified business facility located within an urban transit hub municipality, in a Garden State Growth Zone, a Garden State Create Zone and used by an eligible business in a targeted industry to conduct a collaborative research relationship with a doctoral university within the zone, or which is a mega project, \$ 5,000 per year;
- 2.For a qualified business facility located within a distressed municipality but not qualifying under (b)1 above, \$ 4,000 per year;
- 3.For a project in a priority area, \$ 3,000 per year; and
- 4.For a project in other eligible areas, \$ 500.00 per year.

**(c)**In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased if the qualified business facility meets any of the following priority criteria or other additional or replacement criteria determined by the Authority from time to time in response to evolving economic or market conditions, provided that (c)5, 6, 8, and 10 below shall not apply to a qualified incubator facility:

- 1.For a qualified business facility located in a deep poverty pocket or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the Federal Department of Housing and Urban Development, an increase of \$ 1,500 per year;
- 2.For a qualified business facility located in a qualified incubator facility, an increase of \$ 500.00 per year;



- 3.**For a qualified business facility located in a mixed-use development that incorporates sufficient moderate income housing on site that is made available to accommodate a minimum of 20 percent of the full-time employees of the business, an increase of \$ 500.00 per year;
- 4.**For a qualified business facility located within a transit-oriented development, an increase of \$ 2,000 per year;
- 5.**For a qualified business facility, other than a mega project or a project in a Garden State Growth Zone, at which the capital investment in industrial premises for industrial use by the business is in excess of the minimum capital investment required for eligibility pursuant to subsection b. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244), an increase of \$ 1,000 per year for each additional amount of investment, as measured in square feet of measured gross leasable area, that exceeds the minimum amount required for eligibility by 20 percent, with a maximum increase of \$ 3,000 per year;
- 6.**For a business with new full-time jobs and retained full-time jobs at the project with a median average salary in excess of the existing median average salary for full-time workers residing in the county in which the project is located, or, in the case of a project in a Garden State Growth Zone, a business that employs full-time jobs at the project with a median average salary in excess of the median average salary for full-time workers residing in the Garden State Growth Zone, an increase of \$ 250.00 per year during the commitment period for each 35 percent by which the project's average salary levels exceeds the county or Garden State Growth Zone average salary, with a maximum increase of \$ 1,500 per year;
- 7.**For a business with large numbers of new full-time jobs and retained full-time jobs during the commitment period, the increases shall be in accordance with the following schedule:
  - i.**If the number of new full-time jobs and retained full-time jobs is between 251 and 400, \$ 500.00 per year;
  - ii.**If the number of new full-time jobs and retained full-time jobs is between 401 and 600, \$ 750.00 per year;
  - iii.**If the number of new full-time jobs and retained full-time jobs is between 601 and 800, \$ 1,000 per year;
  - iv.**If the number of new full-time jobs and retained full-time jobs is between 801 and 1,000, \$ 1,250 per year;
  - v.**If the number of new full-time jobs and retained full-time jobs is in excess of 1,000, \$ 1,500 per year;
- 8.**For a business in a targeted industry, an increase of \$ 500.00 per year;
- 9.**For a qualified business facility exceeding the Leadership in Energy and Environmental Design's "Silver" rating standards or completes substantial environmental remediation, an additional increase of \$ 250.00 per year;
- 10.**For a mega project or a project located within a Garden State Growth Zone at which the capital investment in industrial premises for industrial use by the business exceeds the minimum capital investment required for eligibility pursuant to subsection b of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244), an increase of \$ 1,000 per year for each additional amount of investment, as measured in square feet of measured gross leasable area, that exceeds the minimum amount by 20 percent, with a maximum increase of \$ 5,000 per year;
- 11.**For a project in which a business retains at least 400 jobs and is located within the municipality in which it was located immediately prior to the filing of the application hereunder and is the United States headquarters of an automobile manufacturer, an increase of \$ 1,500 per year;
- 12.**For a project located in a municipality in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties with a 2007 Municipality Revitalization Index rank greater than 465, an increase of \$ 1,000 per year;

**13.**For a project located within a half-mile of any light rail station constructed after September 18, 2013, the effective date of P.L. 2013, c. 161, an increase of \$ 1,000 per year;

**14.**For a marine terminal project in a municipality located outside the Garden State Growth Zone, but within the geographical boundaries of the South Jersey Port District, an increase of \$ 1,500 per year;

**15.**For a project located within an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 6), and which is located within a quarter mile of at least one United States highway and at least two New Jersey State highways, an increase of \$ 1,500 per year;

**16.**For a project that generates solar energy on site for use within the project of an amount that equals at least 50 percent of the project's annual electric supply service needs, an increase of \$ 250.00 per year;

**17.**For a qualified business facility in a vacant commercial building or campus having over 1,000,000 square feet of office or laboratory space available for occupancy for a period of over one year that the Authority designates, as listed on the Authority's website at [www.njeda.com](http://www.njeda.com), an increase of \$ 1,000 per year; and

**18.**For an eligible business in a targeted industry at a qualified business facility on the campus of a college or university other than a doctoral university, or at a qualified business facility within a three-mile radius of the outermost boundary of the campus of a college or university other than a doctoral university, which facility is used by the business to conduct a collaborative research relationship with the college or university, an increase of \$ 1,000 per year. The boundary of the campus of a college or university shall be based upon a map appearing in the college's or university's official catalog or other official publication on August 7, 2017, the effective date of P.L. 2017, c. 221.

**(d)**The gross amount of the tax credit for an eligible business for each new or retained full-time job shall be the sum of the base amount as set forth pursuant to (b) above and the various additional bonus amounts for which the business is eligible pursuant to (c) above, subject to the following limitations:

**1.**For a mega project or a project in a Garden State Growth Zone, the gross amount for each new or retained full-time job shall not exceed \$ 15,000 per year;

**2.**For a qualified business facility located within an urban transit hub municipality or a Garden State Create Zone, the gross amount for each new or retained full-time job shall not exceed \$ 12,000 per year;

**3.**For a qualified business facility in a distressed municipality the gross amount for each new or retained full-time job shall not exceed \$ 11,000 per year;

**4.**For a qualified business facility in other priority areas, the gross amount for each new or retained full-time job shall not exceed \$ 10,500 per year;

**5.**For a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed \$ 6,000 per year; and

**6.**For a disaster recovery project, the gross amount for each new or retained full-time job shall not exceed \$ 2,000 per year.

**(e)**After the determination by the Authority of the gross amount of tax credits for which a business is eligible pursuant to (d) above, the final total tax credit amount shall be calculated as follows:

**1.**For each new full-time job, the business shall be allowed tax credits equaling 100 percent of the gross amount of tax credits for each new full-time job; and

**2.**For each retained full-time job, the business shall be allowed tax credits equaling the lesser of 50 percent of the gross amount of tax credits for each retained full-time job, or one-tenth of the capital investment, which will be the lesser of actual capital investment or the business's proposed amount approved at application, divided by the number of retained and new full-time jobs per year over the

grant term of ten years, unless the jobs are part of a mega project that is the United States headquarters of an automobile manufacturer located within a priority area or a qualified business facility in a Garden State Growth Zone, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job, or unless the new qualified business facility would replace a facility that has been wholly or substantially damaged as a result of a Federally declared disaster, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job. The per retained full-time job tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) into the amount of capital investment in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g), provided that in no event shall the gross amount of tax credits per retained full-time job exceed the gross amount calculated at the approval of the application. Based on this per retained full-time job calculation, any reduction in the number of retained full-time jobs shall proportionately reduce the amount of tax credits for that year.

**(f)** For each application approved by the Board, the amount of tax credits available to be applied by the business annually shall not exceed:

1. Thirty-five million dollars (\$ 35,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority;
2. Thirty million dollars (\$ 30,000,000) and provides a net positive economic benefit to the State with respect to a mega project or a qualified business facility in a Garden State Growth Zone;
3. Ten million dollars (\$ 10,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in an urban transit hub municipality or a Garden State Create Zone;
4. Eight million dollars (\$ 8,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in a distressed municipality;
5. Four million dollars (\$ 4,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in other priority areas, but not more than 90 percent of the withholdings of the business's employees from the qualified business facility; and
6. Two-and-a-half million dollars (\$ 2,500,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in other eligible areas, but not more than 90 percent of the withholdings of the business's employees from the qualified business facility.

**(g)** Under (f) above, with the exception of a project located within a Garden State Growth Zone which qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, that divides the total capital investment of the project by the total number of full-time jobs at that project, for each application for tax credits in excess of \$ 4,000,000 annually, the amount of tax credits available to be applied by the business annually shall be the lesser of the maximum amount under the applicable paragraph or an amount determined by the Authority necessary to complete the project, with such determination made by the Authority's utilization of a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations, as applicable; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the Authority, including, but not limited to, factors affecting the decision of the business to relocate, the Authority shall independently verify and confirm the amount necessary to complete the project.

**(h)**Notwithstanding anything to the contrary in (a) through (g) above, for a project located within a Garden State Growth Zone that qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the total tax credit shall be:

1. For a project that creates or retains 35 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 5,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:
  - i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or
  - ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$ 2,000,000 each year of the grant term;
2. For a project that creates or retains 70 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 10,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:
  - i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or
  - ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$ 3,000,000 each year of the grant term;
3. For a project that creates or retains 100 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 15,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:
  - i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or
  - ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$ 4,000,000 each year of the grant term;
4. For a project that creates or retains 150 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 20,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:
  - i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or
  - ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$ 5,000,000 each year of the grant term; or
5. For a project that creates or retains 250 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 30,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:
  - i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or
  - ii. The total capital investment of the project divided by the total number of full-time jobs as defined for this program at that project divided by 10 years.
6. For projects approved under this subsection, the per full-time employee tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) into the lesser of the amount of capital investment in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) or the award of tax credits approved by the Board pursuant to N.J.A.C. 19:31-18.7(d). Based on this per full-time employee calculation and provided the business continues to meet the minimum number of employees required in subparagraphs (a), (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A.

34:1B-246), any reduction in the number of employees shall proportionately reduce the amount of tax credits for that year, that is, the number of full-time employees will be multiplied by the per full-time employee calculation done at certification.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (c)15, deleted "and" from the end; in (c)16, substituted "; and" for a period; added (c)17; rewrote (e)2, (f)1, and (g); in the introductory paragraphs of (h)1 through (h)5, inserted "new to the municipality"; and added (h)6.

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (a).

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In the introductory paragraph of (c), inserted ", provided that (c)5, 6, 8, and 10 below shall not apply to a qualified incubator facility".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), inserted the last sentence.

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

In (a), inserted the first occurrence of "the"; rewrote (b)1; in (c)10, substituted "exceeds" for "is in excess of" and "b" for "b."; in (c)16, deleted "and" from the end; in (c)17, substituted "; and" for a period at the end; added (c)18; and in (d)2 and (f)3, inserted "or a Garden State Create Zone".

## N.J.A.C. 19:31-18.9

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.9 Tax credit amount; application and allocation of the tax credit**

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**(a)**For each tax accounting or privilege period during the eligibility period, a business may apply the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years (fractions of a cent rounded down) subject to the provisions of the Act and this subchapter.

**(b)**The business may apply the credit against the tax liability otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and/or capital investment requirements of the program shall be applied on the basis of the allocation(s) submitted pursuant to the application, provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the business facility or employees at the business facility during the tax period for which the tax credits are issued.

**(c)**The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter. The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period during which it was transferred or in any of the next three successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

**(d)**Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director of the Division of Taxation in the Department of the Treasury accompanied by any additional information as the Director may require.

**(e)**In connection with a regional distribution facility of foodstuffs, the business entity or entities may distribute credits to members, shareholders, partners, or other ownership or leasing participants in accordance with their respective interests. If the business entity or entities or their members, shareholders, partners, or other ownership or leasing participants lease space in the facility to members, shareholders, partners, or other ownership or leasing participants or others as tenants in the facility, the leases shall be treated as a lease to an affiliate, and the business entity or entities shall not be subject to forfeiture of the credits. For the purposes of this subsection, leasing shall include subleasing and tenants shall include subtenants.

### **History**

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**HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (c) and (d).

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End of Document

## **N.J.A.C. 19:31-18.10**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.10 Incentive agreement**

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**(a)**All approved applicants shall execute an approval letter and an incentive agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to, the execution of an incentive agreement.

**(b)**The incentive agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer of the Authority:

- 1.A detailed description of the proposed project, which will result in job creation or retention, and the number of new or retained full-time jobs that are approved for tax credits;
- 2.The eligibility period of the tax credits, including the first year for which the tax credits may be claimed;
- 3.A requirement that the applicant maintain the project at a location in New Jersey for the commitment period, with at least the minimum number of full-time employees as required by the program, which shall include consideration of bonus award(s) and net positive economic benefit test pursuant to N.J.A.C. 19:31-18.3(a)3ii and the amount of tax credits previously received by the business during the eligibility period, and a provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the business does not remain in compliance with the requirements in this paragraph for the commitment duration. Such recapture may include interest on the recapture amount at the rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies, plus any statutory penalties and all costs incurred by the Authority and the Division of Taxation in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. If all or part of any tax credits awarded is subject to recapture, the Authority will pursue recapture from the business and not from a tax credit transfer certificate purchaser. Tax credit transfer certificate purchasers shall be subject to all other limitations and conditions that apply to the use of the tax credits by the business, including, but not limited to, reduction and forfeiture provisions and the requirement of a letter of compliance for the relevant tax period;
- 4.Personnel information that will enable the Authority to administer the program;
- 5.A requirement that the certifications relating to the amount of eligible capital investment and number of employees with supporting evidence satisfactory to the Authority shall be submitted by the business in accordance with N.J.A.C. 19:31-18.7(f);
- 6.An agreement by the applicant that the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;



7. Certifications by the business, including the following: the State's financial support will yield a net positive economic benefit to the State;
8. Requirements on maintaining the existence of the business and not relocating the project;
9. Annual reporting requirements for the number of full-time employees for which the tax credits are to be made;
10. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;
11. Audit of the payroll records, as deemed necessary by the Authority;
12. Indemnification and insurance requirements;
13. Limitations on the grant of tax credits;
14. A provision which permits the Authority to amend the agreement;
15. Default and remedies;
16. Reporting requirements; and
17. A provision to permit the Authority to recoup, during the period of the net positive economic benefit, all or a portion of the tax credits awarded based on the net positive economic benefit calculated for the years after the commitment period.

(c) The incentive agreement shall further provide that the Authority is not liable in damages for the issuance or use of the tax credits; and that there is no guarantee that legislation will not be enacted that would cause further changes to P.L. 2011, c. 149.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Section was "Project agreement". Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (b)3.

Amended by R.2017 d.071, effective April 17, 2017.

See: 49 N.J.R. 197(a), 49 N.J.R. 776(b).

In (b)15, deleted "and" from the end; in (b)16, substituted "; and" for a period; and added (b)17.

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## **N.J.A.C. 19:31-18.11**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.11 Reporting requirements and annual reports**

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(a) After notification pursuant to N.J.A.C. 19:31-18.7(g), the business shall furnish to the Authority an annual report certified by the chief financial officer of the business in a format as may be determined by the Authority, which shall contain the following information:

1. The number of full-time employees and new or retained full-time positions employed at the qualified business facility, the list of affiliates that contributed to the full-time employees at the qualified business facility, the number of full-time employees in its Statewide workforce as defined in N.J.A.C. 19:31-18.15(a), the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, total lease payments, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and failure to submit the certified report within 120 days, absent extenuating circumstances and the written approval of the Authority, will result in forfeiture of the tax credit for that privilege period. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth in N.J.A.C. 19:31-18.4(d); and

2. For an organization operating a qualified incubator facility that applied on behalf of businesses or positions, the number of full-time employees or positions in the space restricted for use by technology company startup companies and the number of full-time employees or positions outside of the space restricted for use by technology company startup companies. The annual report shall demonstrate that at least 50 percent of the qualified business incubator remains restricted for such use and that any company in the restricted space continues to qualify as a technology startup company.

3. A certification indicating whether or not the business is aware of any condition, event, or act, which would cause the business not to be in compliance with the approval, the Act, the incentive agreement, or this subchapter.

(b) The tax credit certificate may provide for additional reporting requirements.

(c) In conducting its annual review, the Authority may require a business to submit any information determined by the Authority to be necessary and relevant to its review.

(d) Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance will indicate whether the business or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.

**(e)**For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an additional tax credit award representing an increased base credit amount for that tax period and each subsequent tax period, for each additional full-time employee added above the number of full-time employees specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this subsection; provided that the adjustment may not affect other obligations under the incentive agreement to maintain a minimum number of employees. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time employees added above the number of full-time employees specified in the incentive agreement. Following EDA staff acceptance of the annual report, it shall notify the Director of the Division of Taxation and the business shall receive an increased tax credit certificate.

**(f)**For a project located within a Garden State Growth Zone which qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which qualifies for a tax credit pursuant to subparagraph (ii) of subparagraphs (a) through (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), if, in any tax period the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement such that the business shall then meet the minimum number of employees required in subparagraphs (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), then the Authority shall recalculate the total tax credit amount per full-time employee by using the certified capital investment of the project allowable under the applicable subparagraph and the number of full-time employees certified on the date of the recalculation and applying those numbers to subparagraphs (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount shall be adjusted accordingly pursuant to this section. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time employees added above the number of full-time employees specified in the incentive agreement. Following EDA staff acceptance of the annual report, it shall notify the Director of the Division of Taxation and the business shall receive an increased tax credit certificate.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (e), deleted ", which following review by EDA staff, the Board will determine whether to approve the request" following the fourth occurrence of "agreement", and inserted the last sentence; and added (f).

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In the introductory paragraph of (a), substituted "the chief financial officer of the business" for "a certified public accountant".

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (a)1.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Added new (a)2, and recodified former (a)2 as (a)3.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a)1, substituted "as set forth in N.J.A.C. 19:31-18.4(d)" for "related to the retained full-time jobs before receiving benefits for new full-time jobs".

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## **N.J.A.C. 19:31-18.12**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

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### **§ 19:31-18.12 Tax credit certificate**

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(a) The tax credit certificate shall set forth the following terms:

1. The starting date of the tax period and the commitment duration;
2. The amount of the tax credits;
3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;
4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and or capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period the proposed allocation of tax credits by the business;
5. Events that would trigger reduction and forfeiture of tax credit amounts; and
6. Reporting requirements and the requirement for an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

## **N.J.A.C. 19:31-18.13**

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***New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.13 Application for tax credit transfer certificate**

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**(a)** Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, in an amount not less than \$ 25,000 pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

**(b)** The initial sale or assignment of any amount of a tax credit allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted.

**(c)** In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-18.5(a)1xiv.

**(d)** Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the

transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

(e)The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In (a), inserted "the" preceding "Treasury", and substituted "\$ 100,000 in tax credits, provided that one transfer consisting of any remainder that is less than \$ 100,000, may be made in each tax period for less than \$ 100,000" for "\$ 1,000,000 in tax credits".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (a), inserted "in an amount not less than \$ 25,000", and deleted the former fourth sentence; and rewrote (b).

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## **N.J.A.C. 19:31-18.14**

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### **§ 19:31-18.14 Cap on total credits**

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The combined value of all credits approved by the Authority pursuant to P.L. 2007, c. 346 and P.L. 2010, c. 57 (N.J.S.A. 34:1B-207 et seq.) prior to December 31, 2013, shall not exceed \$ 1,750,000,000, except as may be increased by the Authority as set forth in paragraph (5) of subsection a. of P.L. 2009, c. 90 (N.J.S.A. 34:1B-209.3).

### **History**

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#### **HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

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## N.J.A.C. 19:31-18.15

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### **§ 19:31-18.15 Reduction and forfeiture of tax credits**

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**(a)**If, in any tax period during the eligibility period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. The Statewide workforce shall not include full-time employees at any point-of-final-purchase retail facilities, unless the award includes full-time employees engaged in final point of sale retail. The number of full-time employees in a business's Statewide workforce shall not include a new eligible position at the qualified business facility, unless the new eligible position is in addition to the number of full-time employees specified in the incentive agreement and the business is not receiving an additional tax credit award for the new eligible position pursuant to N.J.A.C. 19:31-18.11(e) or (f).

1.For purposes of this subsection, "business" shall include any affiliate that contributed to the full-time employees at the qualified business facility for the relevant tax period or contributed capital investment to the project.

**(b)**If, in any tax period during the eligibility period, the number of full-time employees employed by the business at the qualified business facility, or, for a qualified incubator facility, the number of full-time employees and positions employed by the operator or the businesses on whose behalf the operator applied, located within a qualified incentive area drops below 80 percent of the number of new and retained full-time jobs specified in the certification approved by the Authority pursuant to N.J.A.C. 19:31-18.7(g), then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 80 percent of the number of jobs specified in the certification approved by the Authority pursuant to N.J.A.C. 19:31-18.7(g).

**(c)**The credit amount allowed for a tax period for which documentation of a business's credit amount remains uncertified by the Authority, as of a date three years after the closing date of that period, shall be forfeited, although credit amounts for the remainder of the eligibility period shall remain available to it.

**(d)**Provided a business complies with all other requirements of the program, the amount of tax credits a business may take in a tax period shall be reduced in proportion to the reduction in the number of new or retained full-time jobs, as indicated in the annual report, below the number of full-time jobs specified in the incentive agreement. For projects for which awards are calculated pursuant to N.J.A.C. 19:31-18.8(h), if the number of new and retained full-time jobs, as indicated in annual report, is reduced below the required number to qualify under a subsection thereof, the tax credits that the business may take shall be rescored under the

subsection that corresponds to the number of new and retained full-time jobs reported. Any tax credits that the business could not take because of a reduction under this subsection shall be forfeited.

## History

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### **HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a), inserted the last sentence.

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Added (a)1.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In (b), inserted ", or, for a qualified incubator facility, the number of full-time employees and positions employed by the operator or the businesses on whose behalf the operator applied,".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), inserted the last sentence.

## N.J.A.C. 19:31-18.16

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

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### **§ 19:31-18.16 Effect of sale or lease of qualified facilities**

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**(a)**If the qualified business facility is sold by the owner in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that any credits of the business shall remain unaffected. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

**(b)**Unless otherwise permitted in this subchapter, if a business leases or subleases the qualified business facility in whole or in part during the eligibility period, the new tenant shall not acquire the credit of the business, and the business shall forfeit all credits for the tax period of its lease or sublease and all subsequent tax periods. Notwithstanding the foregoing, a business may lease or sublease an amount up to five percent of the qualified business facility to a new tenant without forfeiting any of the business's credits; however, no full-time employees or capital investment by the new tenant shall contribute to the business's eligible full-time employees or capital investment.

### **History**

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#### **HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In (a) and (b), deleted "10-year" preceding "eligibility"; and in (a), inserted "by the owner", and substituted "the business" for "tenants".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (b), substituted "Unless otherwise permitted in this subchapter, if" for "If".

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (b).

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In (a), inserted the last sentence.

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## **N.J.A.C. 19:31-18.17**

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### **§ 19:31-18.17 Affirmative action and prevailing wage**

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The Authority's affirmative action requirements, P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to State incentive grant projects undertaken in connection with financial assistance received under the Grow New Jersey Assistance Program.

### **History**

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#### **HISTORY:**

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Former N.J.A.C. 19:31-4.17, Severability, recodified to N.J.A.C. 19:31-18.19.

## **N.J.A.C. 19:31-18.18**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

***New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.18 Appeals**

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**(a)**The Board's action on applications shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

**(b)**An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**(c)**Appeals that are timely submitted shall be handled by the Authority as follows:

- 1.The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
- 2.Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
- 3.The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
- 4.Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

### **History**

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#### **HISTORY:**

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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## **N.J.A.C. 19:31-18.19**

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### **§ 19:31-18.19 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 19:31-18.17 by R.2015 d.014, January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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