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RULE ADOPTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

47 N.J.R. 3160(a)

Adopted Amendments: *N.J.A.C. 19:31-9.1, 9.2, 9.4, 9.7, 18.2, 18.3, 18.7, 18.11, and 18.15*

Authority Assistance Programs

Urban Transit Hub Tax Credit Program and Grow New Jersey Assistance Program

Proposed: August 17, 2015, at *47 N.J.R. 2055(a)*.

Adopted: November 18, 2015, by the New Jersey Economic Development Authority, Melissa Orsen, Chief Executive Officer.

Filed: November 18, 2015, as R.2015 d.201, **without change, but with the proposed amendment to *N.J.A.C. 19:31-18.4* not adopted.**

Authority: P.L. 2007, c. 346 and P.L. 2011, c. 149.

Effective Date: December 21, 2015.

Expiration Date: November 9, 2017.

Summary of Public Comment and Agency Response:

Julie Tattoni, Windels Marx Lane & Mittendorf, LLP

COMMENT: The provisions at proposed new *N.J.A.C. 19:31-18.4(c)*, which establishes requirements in instances where buildings in a complex of buildings are located in geographical locations that would give different tax credit calculations under *N.J.A.C. 19:31-18.8*, should be revised to add that: "[i]f a single building is located in multiple geographical locations that would yield different total tax credit calculations under *N.J.A.C. 19:31-18.8*, the qualified business facility will meet the capital investment and job eligibility requirements for the location that yields the highest level of per-employee tax credits among the multiple geographical locations in which the building is located; and all qualified jobs in the building shall be treated as being located in the geographical location which yields the highest per-employee tax credit among said multiple geographical locations."

RESPONSE: The provision at existing *N.J.A.C. 19:31-18.5(a)2vi* specifies that for purposes of determining geographical location of a qualified business facility (including a single building pursuant to the definition of "qualified business facility" at *N.J.A.C. 19:31-18.2*) that extends over more than one geographical location, the qualified business facility shall be considered in the geographical location with the most beneficial tax credit amount.

Larry Silk, Silk Associates Real Estate

COMMENT: The provision at *N.J.A.C. 19:31-18.3(a)3iv(1)*, which establishes requirements for a non-gaming business facility within an established Tourism District to qualify as a tourism destination project, specifically a capital investment in excess of \$ 50,000,000 excluding any capital investment for site acquisition, should be revised to either \$ 10,000,000 to \$ 15,000,000 or \$ 35,000,000 inclusive of land and building acquisition costs.

RESPONSE: The statutory definition of "tourism destination project" in the Economic Opportunity Act of 2014, Part 3, P.L. 2014, c. 63 requires that such project have a "significant impact on the economic viability of the [Tourism] District." The \$ 50 million and 250 job requirement is consistent with the largest investment required for a mega-project and thus is an appropriate benchmark for "significant impact."

Summary of Agency-Initiated Change:

The New Jersey Economic Development Authority is not adopting the proposed requirements at *N.J.A.C. 19:31-18.4(c)* pertaining to instances where buildings in a complex of buildings are located in geographical locations that would have different tax credit calculations because substantive, more detailed requirements that could not be made upon adoption are proposed in a notice of proposed amendments at *N.J.A.C. 19:31-18.3, 18.5, and 18.8* and published elsewhere in this issue of the New Jersey Register.

Federal Standards Statement

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

Full text of the adoption follows:

SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM**19:31-9.1 Applicability and scope**

These rules are promulgated by the New Jersey Economic Development Authority (the "Authority") to implement the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346 (the "Act"), as amended by P.L. 2009, c. 90. The Act establishes a tax credit program for capital investment and increased employment in targeted urban rail transit hubs to catalyze economic development in those transit hubs. The Act further provides that the Urban Transit Hub Tax Credit Program (the "Program") is to be administered by the New Jersey Economic Development Authority and that the Authority consults with the Director of the Division of Taxation in the Department of the Treasury when adopting rules for the Program. The Program provides that businesses making at least \$ 50,000,000 in new capital investments in a qualified business facility in an "urban transit hub" and employing at least 250 full-time employees at that facility may be eligible for tax credits in order to catalyze economic development in those urban areas. Businesses may apply for the tax credits by January 13, 2013, and satisfy the capital investment and employment conditions for award of the credits by January 13, 2016, subject to the rules in this subchapter. The tax credits are equal to 100 percent of the claimants' qualified capital investments made, and taxpayers may apply 10 percent of the total credit amount per year over a 10-year period against their corporation business tax, insurance premiums tax, or gross income tax liability. Tenants in qualified business facilities may also receive tax credits, if they occupy space in a qualified business facility that proportionally represents at least \$ 17,500,000 of the capital investment in the facility and employ at least 250 full-time employees in that facility. Developers may apply for a credit of up to 35 percent of their capital investment in a qualified residential project by December 21, 2012, and shall submit their documentation to support the amount of their capital investment no later than April 26, 2017, subject to the rules in this subchapter; and the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it. Developers that previously applied for the 20 percent credit of their capital investment in a qualified residential project may reapply provided the project meets the statutory criteria that it is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits. Finally, businesses may apply for a credit for their capital investment in a qualified business facility that is part of a mixed use project and developers may apply for a credit for their capital investment in a qualified residential project that includes a mixed use project, but not for both a residential

project and mixed use project separately. The tax credits are reduced to 80 percent if 200 new jobs (to the State) are not created, or forfeited if certain facility and Statewide employment levels are not maintained. The program is limited to municipalities that are eligible for urban aid, that had at least 30 percent of their real property value exempt from property taxes during 2006, and that have a specified commuter rail station, excluding any rail station located at an international airport.

19:31-9.2 Definitions

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

...

"Capital investment" in a qualified business facility and a qualified residential project means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property, including associated soft costs. 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<(R)> 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 or qualified residential project site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. With respect to commercial development, to be included the capital investment must be commenced after January 13, 2008, the effective date of the Act, and the applicant submits its documentation for approval of its credit amount by the eighth anniversary of that date. With respect to residential development, to be included the capital investment must be commenced after July 28, 2009, the effective date of P.L. 2009, c. 90, and developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2017. For purposes of this subchapter, "commenced" shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

...

19:31-9.4 Restrictions

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

(d) Capital investments in a qualified business facility must be incurred after the effective date of P.L. 2007, c. 346, which is January 13, 2008, and must be submitted within five years of January 13, 2008. An approved business must submit its documentation for approval of its credit amount before the end of the eighth year after the effective date, and thus, before January 13, 2016. The credit amount allowed for a tax period ending after January 16, 2016 during which documentation of a business's credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it. This eight-year limit is expected to afford businesses applying toward the end of the five-year application period at least three years to complete the project. Capital investments in a qualified residential facility must be incurred after the effective date of P.L. 2009, c. 90, which is July 28, 2009, and developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2017. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit

amounts for the remainder of the years shall remain available to it. This eight-year limit is expected to afford businesses applying toward the end of the five-year application period at least three years to complete the project.

(e) (No change.)

19:31-9.7 Review of application and certification of project completion

(a) A business seeking an approval of tax credits for a qualified business facility may apply for tax credits for a qualified business facility that was commenced after January 13, 2008, within five years after January 13, 2008, the effective date of the Act. A residential developer may apply for tax credits for a qualified residential facility that was commenced after July 28, 2009, by December 21, 2012.

(b)-(f) (No change.)

(g) Upon completion of the capital investment and employment requirements of the program, 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 evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements.

1.-2. (No change.)

3. For project applications for a qualified business facility approved in the fifth year that the Act is in effect, the certification shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For developer applications approved in the fifth year that the Act is in effect, any tenant's application and certification relating to a qualified business facility so approved shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). Residential developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2017. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it.

4. (No change.)

(h) (No change.)

SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

19:31-18.2 Definitions

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

...

"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.

...

"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 provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

...

19:31-18.3 Eligibility criteria

(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.-2. (No change.)

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

i.-ii. (No change.)

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. 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. 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 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, 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 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

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)-(d) (No change.)

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

(a)-(e) (No change.)

(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 related to the retained full-time jobs before receiving benefits for new full-time jobs. 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.-4. (No change.)

(g) (No change.)

19:31-18.11 Reporting requirements and annual reports

(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.-2. (No change.)

(b)-(f) (No change.)

19:31-18.15 Reduction and forfeiture of tax credits

(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.

(b)-(d) (No change.)