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RULE ADOPTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

45 N.J.R. 1921(b)

Adopted Amendments: *N.J.A.C. 19:31-12.2, 12.3, 12.4, and 12.7*

Technology Business Tax Certificate Transfer Program

Proposed: May 6, 2013 at *45 N.J.R. 1098(a)*.

Adopted: July 9, 2013 by the New Jersey Economic Development Authority, Michele Brown, Chief Executive Officer.

Filed: July 9, 2013 as R.2013 d.099, **without change**.

Authority: *N.J.S.A. 34:1B-7.42a* et seq.

Effective Date: August 5, 2013.

Expiration Date: November 9, 2017.

Summary of Public Comment and Agency Response:

No public comments were received.

Federal Standards Statement

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

Full text of the adoption follows:

SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

19:31-12.2 Definitions

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

...

"Full-time employee" means a person employed by a new or expanding emerging technology or biotechnology company on a permanent or indefinite basis for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq., or who is a partner of a new or expanding emerging technology or biotechnology company who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq., or who is employed under a formal written agreement with an institution of higher education whereby the institution's students are employed by the technology or biotechnology company on a permanent basis within a single position and in compliance with all other requirements of this definition. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits under a group health plan as defined under section 14 of P.L. 1997, c. 146 (*N.J.S.A. 17B:27-54*), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (*N.J.S.A. 17B:27A-17*), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology business; or any person who works as an intern, as a temporary employee, or in a temporary position.

...

"License" means an agreement that states therein that it is granting an exclusive license that authorizes the applicant to control aspects of the development of the protected proprietary intellectual property. License shall not include an agreement, such as an exclusive distribution agreement or similar business arrangement that is not registered with the U.S. Federal Government, such as the U.S. Patent and Trademark Office, that does not grant the applicant control of the protected proprietary intellectual property.

...

"Protected proprietary intellectual property" means intellectual property that is the technology of the applicant's primary business as a technology or biotechnology business that is also protected via a patent pending, patent awaiting approval, approved patent, or registered copyright.

...

19:31-12.3 Eligibility

(a) (No change.)

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

1. Has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements;
2. Is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements or is part of a consolidated group of affiliated corporations, as filed for Federal income tax purposes, that in aggregate has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its combined financial statements; or
3. Filed its application, such that the Authority received the application after June 30 of the program cycle year.

19:31-12.4 Application to the program

(a)-(b) (No change.)

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

1.-3. (No change.)

4. A list of all affiliates and subsidiaries as reflected on the consolidated financial statements of the applicant and the number and location of all employees of such corporation(s);

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

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

7.-8. (No change.)

9. A list of all full-time employees employed in this State, including Social Security number for each, address on record with the applicant for each employee, whether the employee has submitted a Certificate of Non-residence for an exemption from the New Jersey Gross Income Tax, whether any employee is pursuing a higher education degree, if so known to the applicant, whether any employee is related, as defined in *Section 152(d)(2) of the Internal Revenue Code*, to any other employee, shareholder, or investor if so known to the applicant, and copies of most recent year's Federal and New Jersey W-3 forms for applicant, parent company, and all related entities, or documentation from a professional employer organization summarizing W-2 forms issued on behalf of the applicant, parent company, and all related entities in New Jersey and in the United States for the calendar year prior to the year in which the company files its application and at the time of the application;

10. The employment offer letter, resume, and job description for every employee hired in the current year;

11. A list of 100 percent of ownership of the applicant by percentage;

12. A copy of the certificate of incorporation/formation for the applicant and its earliest predecessor entity; and

13. (No change in text.)

(d) (No change.)

(e) The Division of Taxation, Department of the Treasury separately reviews applicants and may make recommendations regarding program eligibility.

19:31-12.7 Allocation of tax benefits

(a) The Program is authorized to provide no more than \$ 60,000,000 of tax benefits over each State fiscal year. Of the \$ 60,000,000 of transferable tax benefits authorized for each State fiscal year \$ 10,000,000 shall be allocated exclusively among the eligible companies that operate within the boundaries of the innovation zones, except as provided in (a)2ii below. In the event the total amount of transferable tax benefits approved exceeds these limitations or any subsequent limitations, the Authority shall allocate the transfer of tax benefits as follows:

1. Each company is limited to a maximum lifetime tax benefit of \$ 15,000,000.

2. The Authority shall allocate the \$ 10,000,000 designated for eligible companies in innovation zones as follows:

i. For eligible companies in innovation zones, each company is eligible for an allocation of the lesser of \$ 250,000 or the value of their eligible benefits. After these allocations are made to these companies from the \$ 10,000,000 innovation

zone allocation, any remaining balance of the \$ 10,000,000 shall be apportioned among eligible companies in innovation zones with unmet eligible benefits on a pro rata basis;

ii. If, in any State fiscal year, there is an unused portion of the \$ 10,000,000 allocated exclusively for companies in innovation zones, that portion shall be available for that State fiscal year for the surrender of transferable tax benefits by new and/or expanding emerging technology and biotechnology businesses that do not operate within the boundaries of an innovation zone; and

iii. (No change.)

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

i.-ii. (No change.)

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

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

The total minimum tax benefits authorized is the amount authorized for businesses with less than \$ 250,000 of tax benefits plus the minimum tax benefits authorized for businesses with more than \$ 250,000 of tax benefits. The total tax benefits requested to be transferred is the total amount of tax benefits requested to be transferred by all businesses.