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RULE ADOPTIONS

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Administrative Code Citation

Adopted New Rules: N.J.A.C. 19:31-24

Text

Authority Assistance Programs

PPE Manufacturing Tax Credit Program

Proposed: September 7, 2021, at 53 N.J.R. 1519(a).

Adopted: November 8, 2021, by the New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: November 8, 2021, as R.2021 d.140, **without change**.

Authority: P.L. 2020, c. 156.

Effective Date: November 8, 2021.

Expiration Date: May 8, 2025.

Summary of Public Comment and Agency Response:

No public comments were received.

Federal Standards Statement

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

Full text of the adopted new rules follows:

SUBCHAPTER 24. PPE MANUFACTURING TAX CREDIT PROGRAM

19:31-24.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement sections 106 and 107 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, establishing the PPE Manufacturing Tax Credit Program. The Act authorizes the Authority to administer the program to encourage economic development, job creation, and the production of PPE within the State. The Board may approve the award of tax credits to a taxpayer upon application of the taxpayer and following the execution of an approval letter and the payment of fees, subject to the limitations set forth in this subchapter.

19:31-24.2 Definitions

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

"Act" means sections 106 and 107 of P.L. 2020, c. 156.

"Approval letter" means the letter sent by the Authority to the applicant that sets forth the conditions to maintain the approval and to receive the tax credits, the amount of tax credits, the date the commitment period commences, and other requirements to comply with the Program. The approval letter will require the applicant to submit certain additional information on an annual basis in order to preserve the approval of the tax credits.

"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).

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

"Capital investment" means expenses at a qualified facility that a taxpayer incurs prior to the submission of an application to the Authority but by no earlier than March 9, 2020, for:

1. Site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility, and transportation infrastructure improvements, and plantings, solar panels and components, energy storage components, installation costs of solar energy systems, or other environmental components required to attain the level of silver rating and gold rating standards 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 sources, including N.J.S.A. 52:27H-80 et seq.;

2. Obtaining and installing, furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation pursuant to 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 or in a building, structure, facility, or improvement to real property, or any combination of the foregoing. Capital investment shall include the value of a capital lease, as defined by generally accepted accounting practices (GAAP), of furnishings and machinery, apparatus, or equipment, based on the shorter of the useful life of the leased property or the commitment period;

3. Associated soft costs, which shall not exceed 20 percent of all capital investment; and

4. Capital investment does not include site acquisition or vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement.

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

"Commitment period" means a five-year period commencing with the date on which an eligible business may claim a tax credit pursuant to the program.

"Completion date of capital investment" means the date of the certificate of occupancy or other indication of completion acceptable to the Authority.

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

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Independent institution of higher education" means a college or university incorporated and located in New Jersey, which by virtue of law, 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.

"Manufacturing" or "manufacture" means the performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition, or character different from that in which they were acquired. The change must be substantial and must result in a transformation of property into a different or substantially more useable product.

"Mask" means any one of the following: (i) an N95 respirator regulated by the United States National Institute for Occupational Safety and Health (NIOSH); (ii) any other respirator approved or allowable under an active Emergency Use Authorization by the United States Food and Drug Administration; (iii) a tightly-fitting face covering made of multiple layers of non-woven material, with a nose wire and ear loops; or (iv) a tightly-fitting face covering made of multiple layers of cloth or other woven material or breathable fabric, with a nose wire and ear loops. "Mask" does not include a face-covering that allows light to shine through when held up to a light source or that contains exhalation valves or vents.

"New hire" or "new qualifying full-time job" means a qualifying full-time job created by the taxpayer that did not previously exist in this State prior to the start date of capital investment. To qualify as a "new hire," the employee filling the qualifying full-time job shall have been hired between the start date of capital investment and the earlier of: (i) 12 months after the completion date of capital investment; or (ii) the application date. "New hire" shall not mean a full-time job filled by an existing employee who was not involved in the manufacturing of personal protective equipment who is transferred to a full-time job involved in the manufacturing of personal protective equipment.

"Northern counties" means Bergen County, Essex County, Hudson County, Hunterdon County, Mercer County, Middlesex County, Monmouth County, Morris County, Passaic County, Somerset County, Sussex County, Union County, or Warren County.

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

"Personal protective equipment" or "PPE" means coveralls, face shields, gloves, gowns, masks, respirators, footwear coverings, head coverings, safeguard equipment, and other equipment designed to protect the wearer from the spread of infection or illness.

"Privilege period" means the calendar or fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, N.J.S.A. 54:10A-5.

"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 PPE Manufacturing Tax Credit Program established by sections 106 and 107 of P.L. 2020, c. 156.

"Project" means the capital investment and the employment commitment at a qualified facility required by the Act and this subchapter. The capital investment must be completed during privilege periods 2020, 2021, or 2022.

"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 facility" means a facility, or a portion of a facility used in connection with the manufacture of PPE, including pro rata areas such as bathrooms, breakrooms, or administrative spaces that support the manufacture of personal protective equipment, that is:

1. Located in a redevelopment area or rehabilitation area as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3);

2. Located in a Smart Growth Area as identified by the Office of Planning Advocacy;

3. A facility in which the manufacturing of personal protective equipment is part of a research collaboration between the taxpayer and a college or university located within the State;

4. A facility in which the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or community college located within the State; or

5. A building vacant for not less than seven years, in need of rehabilitation with a minimum of 250,000 square feet.

"Qualifying full-time job" means a full-time position in a business in this State at a qualified facility, which the taxpayer has filled with a full-time employee at least 50 percent of whose time is dedicated to the manufacturing of personal protective equipment in this State or to the support of such manufacturing. The employee's primary place of business shall be the qualified facility, and the employee shall spend at the qualified facility at least 80 percent of the employee's time, or any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority. The employee shall be employed for at least 35 hours a week and shall be paid employee wages at a rate of not less than $ 15.00 per hour, and the employee's wages shall be subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. A qualifying full-time job shall also include a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the taxpayer and the professional employer organization for the manufacturing of personal protective equipment in this State for at least 35 hours a week and who shall be paid employee wages at a rate of not less than $ 15.00 per hour, and the person's wages shall be subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. The Authority may determine any other standard of service generally accepted by custom or practice as full-time employment. A qualifying full-time job shall not include any person who works as an independent contractor or on a consulting basis for the taxpayer. A qualifying full-time job includes only a position for which the taxpayer provides employee health benefits no later than 90 days following the date of hire under a health benefits plan authorized pursuant to State or Federal law.

"Retained qualifying full-time job" means a qualifying full-time job in a business in this State that was at risk of being eliminated because the taxpayer was negatively impacted by the COVID-19 pandemic or the mitigation measures required by the State after the declared state of emergency on March 9, 2020, including, but not limited to, the taxpayer's business was temporarily shut down, was required to reduce hours, had at least a 20 percent drop in revenue, had been materially impacted by employees who could not work due to the pandemic, or relied on a supply chain that has been materially disrupted and therefore slowed firm-level production. A retained qualifying full-time job may include an employee who was not involved in the manufacturing of personal protective equipment who is transferred to a qualifying full-time job.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery, but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

"Southern counties" means the following counties in New Jersey: Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County. A facility that is located partially in a southern county and partially in a northern county shall be treated as located entirely within the southern county.

"Square foot of gross leasable area" means a rentable area of the building or structure 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 or structure that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building or structure and is not affected by changes in corridor sizes or configuration.

"Start date of capital investment" means the date of execution of the first contract under which the taxpayer incurs expenses for eligible capital investments at the qualified facility or the date of the first invoice for such expenses, but no earlier than March 9, 2020.

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

"Taxable year" means the calendar or fiscal accounting period for which a tax is payable under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

"Taxpayer" means the individual, estate, or trust filing a tax return pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or the entity filing a tax return pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). A taxpayer shall also include a partnership, a New Jersey S Corporation, or any entity treated as a partnership for tax purposes.

"Technical school" means a program approved by the Department of Education that offers a sequence of courses that provide students with the coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions. A technical education program provides technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree.

19:31-24.3 Eligibility criteria

(a) A taxpayer eligible pursuant to this section may submit an application to the Authority in accordance with N.J.A.C. 19:31-24.5 on or after August 5, 2021, the effective date of this subchapter, but prior to the earlier of 18 months following the completion date of capital investment, or July 1, 2024.

(b) The Authority shall make the determination that an applicant has met the criteria for eligibility for an award and shall determine the amount of the award. A taxpayer shall be eligible for tax credits if the Authority finds that as of the date of the taxpayer's application:

1. The taxpayer has made a capital investment in the qualified facility equal to or greater than the applicable amount set forth at (c) below with a completion date of capital investment during the privilege periods or taxable years 2020, 2021, or 2022; and

2. The taxpayer has new qualifying full-time jobs or retained qualifying full-time jobs in an amount equal to or greater than the applicable number set forth at (d) below.

(c) The minimum capital investment in a qualified facility required for eligibility under the program shall be as follows:

1. For the rehabilitation, improvement, fit-out, or retrofit of an existing premises, a minimum investment of:

i. $ 10.00 per square foot of gross leasable area for a qualified facility located in any of the southern counties; and

ii. $ 20.00 per square foot of gross leasable area for a qualified facility located in any of the northern counties.

2. For the new construction of a premises:

i. $ 100.00 per square foot of gross leasable area for qualified facilities located in any of the southern counties; and

ii. $ 120.00 per square foot of gross leasable area for qualified facilities located in any of the northern counties.

(d) The minimum number of new or retained qualifying full-time jobs required to be eligible for tax credits under the program shall be as follows:

1. For a qualified facility located in any of the southern counties, a minimum of five new or 15 retained qualifying full-time jobs; and

2. For a qualified facility located in any of the northern counties, a minimum of 10 new or 25 retained qualifying full-time jobs.

(e) The Authority shall not award tax credits under this program to a taxpayer that has previously received incentives administered by the Authority, unless the capital investment incurred and the new or retained qualifying full-time jobs identified in the taxpayer's application are separate and apart from any capital investment or jobs underlying the previous award of incentives.

19:31-24.4 Application submission requirements

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

1. Taxpayer information, which shall include the following:

i. The name of the taxpayer;

ii. Any other name(s) under which the taxpayer conducts business, if applicable;

iii. The name and contact details (name, telephone, and email address) of the primary contact person and, if different, the name and contact details of a person with authority to sign on behalf of the taxpayer;

iv. The taxpayer's address;

v. The address of the qualified facility, if different than the taxpayer address;

vi. The type of business organization;

vii. The New Jersey tax identification number;

viii. The Federal tax identification number;

ix. A list of all New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the owner or business is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest

numbers or licensing numbers. The taxpayer shall also submit a written certification by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, stating that the taxpayer applying for the program is in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury as set forth at N.J.A.C. 19:31-24.6(b), and that the individual has reviewed the application information submitted and that the representations contained therein are accurate, under the penalty of perjury;

x. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

xi. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101; and

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

2. Project information shall include the following:

i. Site control documentation, for example, deed or lease;

ii. An overall description of the completed project;

iii. A written certification of an independent certified public accountant that is qualified pursuant to (b) below, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to the capital investment. If the certified capital investment is less than the minimum eligibility requirement set forth at N.J.A.C. 19:31-24.3(c), the taxpayer shall not be eligible for the tax credit;

iv. Whether the project involved new construction or the rehabilitation, retrofit, improvement, or fit-out of an existing premises;

v. An explanation of how the facility at which the capital investment was made meets the definition of a qualified facility;

vi. The start date of capital investment and the completion date of capital investment;

vii. A floor plan of the qualified facility that identifies functionality and square footage;

viii. The types and descriptions of the personal protective equipment manufactured at the qualified facility;

ix. An acknowledgement by the taxpayer that it must maintain the new qualifying full-time jobs for the duration of the commitment period and that failure to do so may result in the Authority recapturing all or part of the tax credits awarded;

x. Documentation evidencing that the taxpayer has met the criteria for the tax credit amounts at N.J.A.C. 19:31-24.7(b);

xi. Evidence to the Authority's satisfaction that the taxpayer complied with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), for all capital investment and with the Authority's affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), commencing with August 5, 2021 (the effective date of this subchapter); and

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

3. Employee information shall include the following:

i. A list of all current new and retained qualifying full-time jobs and all employees at the qualified facility, certified by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, under penalty of perjury;

ii. The WR 30s of the taxpayer for the quarter immediately preceding the commencement date of capital investment and the quarter immediately preceding date of application;

iii. The taxpayer shall submit a certification of an independent certified public accountant that is qualified pursuant to (b) below, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to employment. The number of all new and retained qualifying 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 facility. If the certification indicates that the employment is less than the minimum eligibility requirement set forth at N.J.A.C. 19:31-24.3(d), the taxpayer shall not be eligible for the tax credit; and

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

(b) The Authority shall qualify certified public accountants and provide to the taxpayer the list of qualified certified public accountants, provided however, the taxpayer may select a certified public accountant that is independent to the taxpayer and not on the Authority's list of qualified certified public accountants for purposes of the capital investment certification, or the taxpayer's chief financial officer may certify for purposes of the employment certification upon the Authority's prior approval, if the taxpayer demonstrates an extenuating circumstance prohibiting the taxpayer from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the taxpayer, or the taxpayer is a business with fewer than 100 employees, as measured on a full-time equivalent basis.

(c) The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete.

19:31-24.5 Fees

(a) A business applying for benefits under this program shall submit a one-time non-refundable application fee of $ 2,000.

(b) A business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee of $ 5,000 shall be charged prior to the approval of the tax credit by the Authority, except that the fee shall be refunded if the Authority does not approve the tax credit.

(d) A business shall pay to the Authority an annual servicing fee of $ 2,000 at the time the business submits its annual report.

(e) A business shall pay to the Authority a non-refundable fee of $ 1,000 for each request for any administrative changes, additions, or modifications to the tax credit. If the Authority deems the changes, additions, or modifications to be major, such as those requiring extensive staff time and Board approval, the fee shall be $ 2,500.

(f) A business seeking to terminate an existing incentive agreement in order to participate in the PPE Manufacturing Tax Credit Program shall pay to the Authority a non-refundable fee of $ 2,500 for a termination that does not require extensive staff time and Board approval and $ 7,500 for a termination that requires extensive staff time and Board approval.

19:31-24.6 Evaluation process; approval and award of tax credits

(a) The Authority shall conduct a review of the applications on a first in time rolling basis commencing with the completed application bearing the earliest submission date, subject to an annual cap of $ 10 million in any State fiscal year. Completed applications submitted in a fiscal year where the annual cap has been met will be considered first in the subsequent fiscal year. The review will determine whether the applicant:

1. Complies with all program eligibility criteria;

2. Satisfies the submission requirements, including fee requirements; and

3. Provides adequate information for the subject application.

(b) Before the Board may consider a taxpayer's application for tax credits:

1. The Authority will confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the taxpayer is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the taxpayer has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the taxpayer:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the taxpayer; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether a taxpayer is in substantial good standing.

2. The Authority may contract with an independent third-party to perform a background check on the taxpayer.

(c) Upon completion of the review of an application pursuant to (a) and (b) 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 the determination.

(d) Upon Board approval, the Authority shall provide the taxpayer with the approval letter set forth at N.J.A.C. 19:31-24.8. The taxpayer shall execute and return the approval letter to the Authority within the period of time required by the Authority. Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the Authority does not receive the approval letter within the required period of time.

(e) Upon receipt of the executed approval letter from the taxpayer, the Authority shall notify the Director of receipt of the approval letter, and the taxpayer shall receive its tax credit certificate.

19:31-24.7 Determination of tax credit amount; application of the tax credit

(a) The tax credit for each new qualifying full-time job shall be the sum of $ 10,000 and the amount set forth at (b) below. The tax credit for each retained qualifying full-time job shall be the amount set forth at (b) below.

(b) The taxpayer shall receive the sum of the following amounts as tax credit for each new or retained qualifying full-time job:

1. $ 1,000 if the qualified facility is a building vacant for not less than seven years in need of rehabilitation with a minimum of 250,000 square feet.

2. $ 1,500 for a qualified facility in which at the date of application the manufacturing of personal protective equipment, is part of a research collaboration between the taxpayer and a college or university located within the State. The research collaboration must require at least 35 hours per week of collaborative activity, or any other standard of collaborative activity generally accepted by custom or practice as full-time, as determined by the Authority, and evidenced by an agreement at application.

3. $ 1,000 for a qualified facility in which at the date of application, the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or county college located within the State. The apprenticeship program or pre-apprenticeship program must require at least 35 hours per week of employment or training, or any other standard of apprenticeship or pre-apprenticeship activity generally accepted by custom or practice as full-time, as determined by the Authority, and evidenced by an agreement at application.

(c) The total amount of all tax credits allowed to a taxpayer under this program shall not exceed $ 500,000.

(d) The amount of tax credit per job will not be prorated if the number of qualifying full-time jobs in the application would have resulted in a tax credit amount that is reduced to the $ 500,000 cap per taxpayer pursuant to (c) above. For purposes of this program, the number of new and retained jobs shall be the number of new and retained qualifying full-time jobs for which the taxpayer receives a tax credit after the project cap is applied.

(e) The amount of credit awarded to a taxpayer may be applied against the tax liability otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) or the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., as relevant to tax liability of the taxpayer.

(f) Notwithstanding the minimum tax schedule imposed pursuant to subsection (e) of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), if the amount of the tax credit allowed exceeds the amount of corporation business tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), the amount of excess shall be treated as a refundable overpayment except that interest shall not be paid pursuant to P.L. 1992, c. 175 (N.J.S.A. 54:49-15.1) on the amount of overpayment attributable to this credit amount.

(g) If the credit exceeds the amount of tax liability otherwise due pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., that amount of excess shall be an overpayment for the purposes of N.J.S.A. 54A:9-7; provided, however, that subsection (f) of N.J.S.A. 54A:9-7 shall not apply.

(h) A taxpayer that is classified as a partnership or an entity treated as a partnership for tax purposes shall not be allowed a tax credit directly, but the amount of credit of each member or partner taxpayer in respect to the distributive share of partnership income under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., shall be determined by allocating to each member or partner taxpayer that proportion of the credit acquired by the partnership or entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership or entity for its taxable year ending within or with the taxpayer's taxable year.

(i) A New Jersey S Corporation shall not be allowed a tax credit against the tax imposed pursuant to the New Jersey Gross Income Tax, N.J.S.A. 54A:1-1 et seq., directly, but the amount of gross income tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the gross income tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer's taxable year.

(j) The order of priority in which the tax credit allowed by this section and any other credits allowed by law may be taken, shall be as prescribed by the Director.

19:31-24.8 Approval letter

(a) The Board's award of the credit will be subject to conditions in the approval letter that the taxpayer must satisfy to remain in compliance with the program.

(b) The terms of the approval letter shall include, but shall not be limited to, the following:

1. A detailed description of the project that has resulted in job creation or retention, and the number of new and retained qualifying full-time jobs that are approved for tax credits;

2. The taxable year or privilege period of the tax credits;

3. The dates of the commitment period, a requirement that the taxpayer maintain the new qualified full-time jobs for such period, and a provision allowing the Authority to recapture all or part of any tax credits awarded, at its discretion, if the taxpayer does not remain in compliance with this provision;

4. A method for the taxpayer to report annually as required pursuant to N.J.A.C. 19:31-24.9;

5. A provision permitting an audit of the payroll records of the taxpayer and any other evidence and documentation supporting the applications and certifications made pursuant to the requirements of the program;

6. A provision establishing the conditions under which the Authority, the taxpayer, or both, may terminate compliance with the requirements of the program;

7. An agreement by the taxpayer that the statute of limitations for the collection and assessment of corporation business tax or gross income tax, as applicable, will be extended to the period of the commitment period;

8. A requirement that the taxpayer indemnify and insure the Authority and the State;

9. Default and remedies, including, but not limited to, a default if a taxpayer made a material misrepresentation on its application; and

10. A provision requiring that 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), apply for two years after the tax credit certificate is issued.

19:31-24.9 Annual compliance certificate; compliance

(a) For each year of the commitment period, not later than 120 days following the end of the business's tax privilege period beginning with the year in which the capital investment was certified, the taxpayer shall provide the Authority with its annual compliance certificate in a form satisfactory to the Authority. The annual compliance certificate shall include, but shall not be limited to:

1. A certification by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, under the penalty of perjury, that the taxpayer has met its commitment to maintain the new qualifying full-time jobs that were used in calculating the awarded tax credits under the program. New qualifying full-time jobs for a year shall be determined as the average of the monthly new qualifying full-time jobs for the period.

2. For the purposes of the annual reports required pursuant to (a)1 above, if a taxpayer has received an award for both new and retained qualifying full-time jobs, the taxpayer shall meet the employment requirements related to the retained qualifying full-time jobs before receiving tax credits for the new qualifying full-time jobs.

3. To the extent a retained qualifying full-time job that was the basis of an award no longer exists, the taxpayer shall include as a retained qualifying full-time job, a new qualifying full-time job that is filled by a new hire, provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

4. A certification by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, under penalty of perjury, indicating whether or not the taxpayer is aware of any condition, event, or act, which would cause the business not to be in compliance with the approval, the Act, or the approval letter.

(b) In the event a taxpayer fails to retain during the commitment period, the number of new qualifying full-time jobs for which tax credits were awarded, and such failure continues for two years, the Authority may recapture, at its sole discretion, all or a portion of the tax credits awarded. In determining the amount to recapture, the Authority shall recognize the period of time the taxpayer has been in compliance and the number of new qualifying full-time jobs that the taxpayer has maintained.

(c) Failure to submit the annual compliance certificate by the dates established at (a) above shall result in a recapture of the awarded tax credits in accordance with the provisions at (b) above.

(d) In the event that any certification required from the taxpayer, including, but not limited to, the certification required pursuant to (a) above, is found to be willfully false or that the taxpayer submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority or the Division of Taxation, the Authority may, at its sole discretion, and, in addition to, any other remedies available, revoke any award of tax credits in their entirety and may require repayment of all tax credits received by the taxpayer.

19:31-24.10 Appeals

(a) The Board's action 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 effective 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 52:14F-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 the hearing officer's 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.

19:31-24.11 Severability

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.

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