

This information may be supplemented by the use of industry accepted estimates, that is, U.S. Department of Commerce Regional Input-Output Modeling System data, when specific data is not available.

"Incentive grant" means reimbursement of all or a portion of the project financing gap of a redevelopment project.

"Infrastructure improvements in the public right-of-way" mean public structures or improvements located in the public right-of-way that are located within a project area or that constitute an ancillary infrastructure project and may include, but not be limited to, signalization and new interchanges, public parking structures, and pedestrian, bicycle-oriented and mass transit improvements; and public utilities such as water, sewer, electric and gas.

"Internal rate of return" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment.

"Local incentive grant" means a grant made pursuant to a redevelopment incentive grant agreement between a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, and which is subject to review by the Local Finance Board, in the Division of Local Government Services, in the Department of Community Affairs.

"Municipal redeveloper" means a municipal government or a redevelopment agency acting on behalf of a municipal government as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3) that is an applicant for a redevelopment incentive grant agreement.

"Net profit margin" means net income as a percentage of project sales value.

"Project area" or "redevelopment project area" means land or lands under common ownership or control which shall be located in a qualifying economic redevelopment and growth grant incentive area, including, but not limited to, control through a redevelopment agreement with a municipality pursuant to N.J.S.A. 40A:12A-1 et seq. or as otherwise established by a municipality.

"Project financing gap" means the part of the eligible project costs that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital or equity which shall not be less than 20 percent of the eligible project cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources. When calculating the project financing gap, the factors set forth at N.J.A.C. 19:31-4.5(a)4, including, but not limited to, return on investment, net profit margin and cash on cash yield will be considered. The project financing gap may be increased by the cost of capital necessary to raise an amount of current capital sufficient to complete the project

when combined with all other sources of capital in recognition that the incremental eligible revenues will be reimbursed over an estimated period of years.

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" means Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a center as designated by the State Planning Commission; a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and Federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.); a transit village; and Federally owned land approved for closure under a Federal Base Realignment Closing Commission action.

"Redevelopment incentive grant agreement" means an agreement between the State Treasurer, the Authority and a developer, or a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, under which, in exchange for the proceeds of an incentive grant, the developer agrees to perform any work or undertaking necessary for a redevelopment project, including the clearance, development or redevelopment, construction, or rehabilitation of any structure or improvement of commercial, industrial, residential, or public structures or improvements within a qualifying economic redevelopment and growth grant incentive area.

"Redevelopment project" or "project" means a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer within a project area and any ancillary infrastructure project associated therewith.

"Retained job" means a position that currently exists in New Jersey and is filled by a current employee but which, as certified by the business's chief executive officer, is at risk of being lost to another state or country.

"Revenue increment base" means the amounts of all eligible revenues from sources within the redevelopment project area in the calendar year preceding the year in which the redevelopment incentive grant agreement is executed, as certified by the State Treasurer for State revenues.

"Soft costs" means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of eligible project costs.

"Transit village" means a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its economic development and revitalization goals and designated by the New Jersey Department of Transportation as a transit village.

**19:31-4.3 Eligibility criteria**

(a) The Authority, in consultation with the Treasurer for a State grant, shall conduct a review to determine eligibility for any State or local incentive grant, wherein the following must apply:

1. The redevelopment project must be located in a qualifying economic redevelopment and growth grant incentive area, provided, however, that a State incentive grant shall not be given for a project in an incentive area that qualifies as such solely by virtue of being a transit village;

2. The developer must not have commenced any construction at the site of a proposed redevelopment project prior to submitting an application, except as set forth in (a)2i or ii below. For purposes of this paragraph, construction shall have commenced if the project has received site plan approval and started site preparation or utility installation.

i. In the event construction has commenced on a proposed redevelopment project, the project may be eligible if the Authority, at its sole discretion, determines that the project would not be completed otherwise; or

ii. In the event the project is to be undertaken in phases, a developer may apply for phases for which construction has not yet commenced, subject to N.J.A.C. 19:31-4.5(a)2;

3. For any State incentive grant project consisting of newly-constructed residential units, the developer shall be required, pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-304), with affordability controls as required under the rules of the Council on Affordable Housing, unless the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan;

4. A project financing gap exists; and

5. Pursuant to a fiscal impact analysis, for a State grant, the overall public assistance provided to the project will result in net benefits to the State.

**19:31-4.4 Application submission requirements for State incentive grants**

(a) A developer that submits an application to the Authority for a State incentive grant shall indicate on the application whether it is also applying for a local incentive grant. In each instance where an applicant indicates that it is also applying

for a local incentive grant, the EDA shall forward a copy of the application to the municipality wherein the redevelopment project is to be located so that the local incentive grant may be reviewed and approved by municipal ordinance. A developer or municipal redeveloper that submits an application for a local incentive grant shall indicate on the application whether it is also applying for a State incentive grant.

(b) A developer seeking a State incentive grant shall submit to the Authority the following information in its application:

1. The name of the business;
2. The contact information of the business;
3. Prospective future address of the business (if different);
4. The type of the business;
5. Principal products and services and three-digit North American Industry Classification System number;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. An anticipated construction schedule;
9. Estimated eligible project costs, including any State or local grant funding to the project, and proposed terms of financing, including projected internal rate of return, net margin, return on investment and cash on cash yield;
10. Estimates of the revenue increment base and projection of the eligible revenues for the project, and the assumptions upon which those estimates are made;
11. For certain projects consisting of newly-constructed residential units, a certification that it meets the requirements of N.J.A.C. 19:31-4.3(c);
12. Estimated costs to the municipality resulting from the project;
13. Certification that the business applying for the program is not in default with any other program administered by the State of New Jersey;
14. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
15. Submission of an application and fee for a tax clearance certificate pursuant to P.L. 2007, c. 101;
16. A list of all development subsidies, as defined by The Development Subsidy Job Goals Accountability Act, P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.), 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. Examples of development subsidies are tax bene-

(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a closing shall be scheduled and the funds made available to the applicant subject to approval by the Authority.

Administrative Correction.

See: 26 N.J.R. 2462(b).

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (d) and (f); in (e), inserted a reference to grants; and in (g), substituted a reference to closings for a reference to loan closings, and deleted a reference to sponsors.

Amended by R.2000 d.482, effective December 4, 2000.

See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

In (f), added "for municipalities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants" at the end of the second sentence, and inserted "for municipalities and 180 days from the acceptance date for other applicants" following "acceptance" in the third sentence.

Recodified from N.J.A.C. 19:31-8.9 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Rewrote (a) and (d)1; in (e), substituted "person" for "private entity" and "public entity" for "municipal governmental entity or NJRA"; in (f), substituted "applicant or public entity" for "municipality", "its designated representative" for "attorney for the applicant", and "public entities" for "municipalities" twice; and, also in (f), deleted "of Environmental Protection" following "Department". Former N.J.A.C. 19:31-8.11, Attorney General review, recodified to N.J.A.C. 19:31-8.13.

#### 19:31-8.12 Disbursement of financial assistance and grants

(a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant to the Department with a certification from the contractor or consultant that the requested moneys will be spent or have been spent in accordance with a Department approved scope of work and a certification from the applicant that it is in full compliance with all of the terms and conditions of the assistance agreement. Disbursements are subject to certain preconditions, including, among other things, approval by the Department of the remediation contracts and all previously performed work.

(b) The recipient of the financial assistance or grant must provide access, to the Authority and the Department, at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.

(c) In the case of a grant or financial assistance, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the insurance carrier, discharger or person in any way responsible for a hazardous substance pursuant to N.J.S.A. 58:10-23.118 who does not have a defense to that liability under N.J.S.A. 58:10-23.11(g). All moneys collected in a cost recovery subrogation action shall be deposited into the Fund. No award of a grant or financial assistance shall be made if the applicant relinquishes, impairs or waives, or has relinquished, impaired or waived, any right to recover the costs of remediation against any insurance carrier, discharger or per-

son in any way responsible for a hazardous substance pursuant to N.J.S.A. 58:10-23.11(g).

(d) Where financial assistance to a person is for a portion of the remediation cost, the applicant will be required to provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance will be disbursed.

(e) Upon request, the recipient of financial assistance or grant shall provide the Authority with evidence that the monies are being spent in accordance with the Department approved scope of work, and that it is adhering to the terms and conditions of its agreement with the Authority.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (a); in (c), substituted a reference to liable parties for a reference to responsible parties, and added a second sentence; and in (d) inserted a reference to the NJRA.

Recodified from N.J.A.C. 19:31-8.10 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In (a), inserted "or have been spent" and substituted "with" for "within" following "accordance"; in (b), substituted "to" for "by" following "access"; in (d), deleted "other than a municipal governmental entity or the NJRA" following "person"; and added (e). Former N.J.A.C. 19:31-8.12, Fees, recodified to N.J.A.C. 19:31-8.14.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), inserted "to the Department"; and rewrote (c).

#### 19:31-8.13 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General's Office.

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Recodified from N.J.A.C. 19:31-8.11 by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Former N.J.A.C. 19:31-8.13, Public record, recodified to N.J.A.C. 19:31-8.15.

#### 19:31-8.14 Fees

(a) Application fees shall be charged as follows:

1. A \$500.00 non-refundable fee shall be due upon submittal of an application for financial assistance or grant;

2. Additional non-refundable application fees for financial assistance are as follows: \$500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged upon the acceptance of financial assistance under the Fund; and \$500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged at closing.

(b) No Authority fees shall be paid from the financial assistance or grant award.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Recodified from N.J.A.C. 19:31-8.12 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).  
 Rewrote the section.  
 Repeal and New Rule, R.2010 d.285, effective December 6, 2010.  
 See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).  
 Section was "Fees".

### 19:31-8.15 Public record

All information submitted to the Department and/or the Authority as part of an application for financial assistance or grant shall be deemed a public record subject to the provisions of P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.).

Recodified from N.J.A.C. 19:31-8.13 by R.2006 d.369, effective October 16, 2006.  
 See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

## 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 20 percent of their capital investment in a qualified residential project by July 28, 2014 and satisfy the capital investment conditions for award of credits by July 28, 2017, subject to the rules in this subchapter. 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.

Amended by R.2010 d.177, effective August 16, 2010.  
 See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Inserted "as amended by P.L. 2009, c. 90", the seventh sentence, "to 80 percent if 200 new jobs (to the State) are not created," and "during 2006", substituted "\$50,000,000" for "\$75 million", "\$17,500,000" for "\$25 million" and "had at" for "have a" preceding "least 30 percent", and deleted "and all light rail stations" following "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.

"Acquisition" means the purchase of a qualified business facility between unrelated parties pursuant to an arm's length transaction. The value of the land shall be appraised as vacant and subtracted from the purchase price to determine the amount of the capital investment. If the acquisition is of a facility that existed prior to the January 13, 2008 effective date of the Act, the buyer shall undertake capital investments of a value not less than 50 percent of the total cost to acquire the facility in order for the acquisition of such facility to be included in this Program.

"Act" means the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business, and may include not-for-profit entities. 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, as amended, 26 U.S.C. §1563 or the entity is an organization in a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. §414(b), (c). 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).

"Approval letter" means the letter sent by the Authority that sets forth the conditions subsequent to the approval, the forecasted schedule for completion and occupancy of the project, the date the 10-year eligibility period is scheduled to commence, the estimated amount of tax credits, and other such information which further the purposes of P.L. 2007, c. 346. The approval letter will require the applicant to submit

progress information by a certain date in order to preserve the approval of the tax credits.

“Authority” means the New Jersey Economic Development Authority.

“Board” means the Board of the New Jersey Economic Development Authority.

“Business” means 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 an entity

classified as a partnership, an S corporation, or a limited liability company. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by the affiliate or full-time employees of an affiliate are necessary to evidence compliance with eligibility requirements.

“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® 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 the January 13, 2008 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 the applicant submits its documentation for approval of its credit amount by the eighth anniversary of that date, that is, by July 28, 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.

“Developer” means, with respect to a qualified business facility, a business that intends to construct and lease a business facility. A developer may seek to receive approval that the facility will constitute a qualified business facility conditioned upon identification of tenants that will have qualifying employment and pro formas indicating that the capital investment requirements will be met.

“Eligibility period” means the 10-year period in which a business may claim an urban transit hub tax credit, beginning with the tax period in which the Authority accepts the certification of the business that it has met the capital investment and employment qualifications, if any, of the Program.

“Eligible municipality” means a municipality: which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) or which was 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, which is taxable and that which is tax exempt. For State fiscal year 2008, the eligible municipalities are: Camden, East Orange, Elizabeth, Jersey City, Newark, New Brunswick, Paterson, Trenton and Hoboken. For subsequent State fiscal years, the Authority, after consultation of the Department of Community Affairs, shall annually publish at [www.newjerseybusiness.gov](http://www.newjerseybusiness.gov) a notice listing the eligible municipalities.

“Full-time employee” means a person employed by the 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, as determined by the Authority, or a person 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, as determined by the Authority, 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 an employee 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 determined by the Authority 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. “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 at the qualified business facility” means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

“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.

“Letter of compliance” means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-9.14 that must accompany the use of the tax credit certificate.

“Light rail station” means a location where passengers board or alight River Line Light Rail, the Hudson-Bergen Light Rail, the Newark Light Rail services, or any other light rail service owned and/or operated by New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation in the State of New Jersey. Light rail is a transit mode with a lighter volume traffic capacity compared to commuter rail service and characterized by lighter vehicles operating in one or two-car trains on fixed rails, powered by electric or diesel, and not regulated by the Federal Railroad Administration unless covered by a waiver for shared-use operation of freight and light rail passenger service.

“Net leasable area” means the usable area or actual occupiable area of a building, a floor or an office suite. The amount of usable area can vary over the life of a building as corridors expand and contract and as floors are remodeled, and thus is not fixed for the life of a building as would be the case with leasable area.

“New full-time position” means a position created by the business at the qualified business facility that did not previously exist in this State. New full-time position shall also include new full-time positions that a business creates after receipt of approval pursuant to N.J.A.C. 19:31-97 that are transferred to the qualified business facility upon completion thereof.

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

“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 Urban Transit Hub Tax Credit Program created pursuant to P.L. 2007, c. 346 and provided in this subchapter.

“Progress information” means the information that must be submitted pursuant to N.J.A.C. 19:31-9.8.

“Project” or “hub project” means employment by the business of a minimum of 250 full-time employees at a facility that meets the capital investment criteria of the Act in a qualified business facility located within a designated urban transit hub in an eligible municipality.

“Qualified business facility” means any building, complex of buildings or structural components of buildings, and all machinery and equipment as defined under capital investment, located within a designated urban transit hub in an eligible municipality, used in connection with the operation of a business.

“Qualified residential project” means any building, complex of buildings or structural components of buildings, including a mixed use project, the majority of which, as measured by square footage, consists of residential units, located in an urban transit hub within an eligible municipality.

“Rail station” means a rail station, including light rail stations, of the New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation, but shall not include any rail station located at an international airport.

“Residential developer” means a business that intends to make or acquire capital investments in a qualified residential project pursuant to sections 34 and 35 of P.L. 2009, c. 90.

“Residential unit” means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

“Site preparation” means the clearing, excavation, or removal of existing buildings, structures, vegetation, or facilities, and the site grading or other earth work, which is necessary for the construction of a qualified business facility.

“Soft costs” means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment.

“Tax accounting period” or “tax privilege period” or “tax period” shall mean tax year for purposes of this chapter.

“Tenant” means a business that is a lessee or owner of a condominium in a qualified business facility and does not include a lessee or owner of a condominium in a qualified residential facility.

“Urban transit hub” means property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations, and property located within a one-mile radius of the mid point of the platform area of such a rail station if the property is in a

qualified municipality under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.); property located within a one-half mile radius surrounding the mid point of one of up to two underground light rail stations' platform areas that are most proximate to an interstate rail station; and property adjacent to, or connected by rail spur to, a freight rail line if, as part of its regular course of business, as determined by the Authority, the business utilizes that freight rail line for loading and unloading freight cars on trains delineated by the Authority pursuant to subsection e. of section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-3e). A property, which is partially included within the radius, shall only be considered part of the hub if over 50 percent of its land area falls within the radius. In the case of a rail station with multiple rail lines, a separate midpoint shall be determined for each such rail line. Once the hubs have been delineated, the Authority will post eligible rail stations and corresponding midpoints on the website at [www.newjerseybusiness.gov](http://www.newjerseybusiness.gov). The posting will be updated if the eligible rail stations change and to reflect changes in station midpoints.

"Urban transit hub tax credit" or "tax credit" means the tax credit permitted under P.L. 2007, c. 346, as amended by P.L. 2009, c. 90 and this subchapter, which may be applied against the tax liability otherwise due for corporation business tax, insurance premiums tax or gross income tax 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.

Amended by R.2010 d.177, effective August 16, 2010.  
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote definitions "Affiliate", "Business", "Capital investment", "Full-time employee", "Light rail station", "Rail station", "Urban transit hub" and "Urban transit hub tax credit"; substituted definition "Approval letter" for definition "Agreement" or "project agreement"; rewrote definition "Approval letter"; added definitions "Developer", "Full-time employee at the qualified business facility", "Letter of compliance", "Professional employer organization", "Progress information", "Qualified residential project", "Residential developer", "Residential unit", "Soft costs" and "Tenant"; in definition "Eligibility period", inserted "if any"; and in definition "Eligible municipality", substituted the second occurrence of "was" for "is" preceding "exempt from", and inserted "during tax year 2006".

### 19:31-9.3 Eligibility criteria

(a) In order to be eligible to be considered for an urban transit hub tax credit:

1. For a qualified business facility, if the business is other than a tenant, the business shall:

i. Make or acquire capital investments in a qualified business facility totaling not less than \$50,000,000. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner's minimum capital investment of \$50,000,000 provided

that the owner so indicate in his application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;

ii. Employ not fewer than 250 full-time employees at the qualified business facility; and

iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment, not to exceed 20 years.

2. If the business is a tenant in a qualified business facility:

i. The owner of the qualified business facility shall make or acquire capital investments, or in a mixed-use facility capital and residential capital investments in the facility totaling not less than \$50,000,000, as calculated in accordance with (a)1i above;

ii. The tenant shall occupy a leased area of the qualified business facility that represents at least \$17,500,000 of the capital investment in the facility, as calculated pursuant to (b) below;

iii. The tenant business and up to two other tenants shall employ not fewer than 250 full-time employees in the aggregate at the qualified business facility;

iv. The business shall lease the qualified business facility for a term of not less than 10 years; and

v. Except for tenants of a qualified business facility for which the owner has previously demonstrated a net positive benefit and received approval of the project site or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the term of the tenant's lease, not to exceed 20 years. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment, but not from employees other than those referenced in (a)2iii above. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment and from all employees located in the qualified business facility.

3. For a qualified residential project, the residential developer shall:

i. Make or acquire capital investments totaling not less than \$50,000,000 in a qualified residential project. This requirement may be met by the residential developer or by one or more of its affiliates;

ii. Demonstrate to the Authority that the qualified residential project 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;

iii. Not be required to meet the employment requirements required for a qualified business facility; and

iv. Shall be required, pursuant to section 18 of P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9) to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-304), with affordability controls as required under the rules of the Council on Affordable Housing, unless the municipality in which the property is located has received substantive certification from the Council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan.

(b) In order to determine whether the tenant's leasable area of the qualified business facility satisfies the capital investment eligibility threshold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

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

(d) Because a business may include an affiliate or affiliates, the capital investment and employment requirements may be met by the business or by one or more of its affiliates, and the entity satisfying the capital investment requirement does not need to be the same as the entity satisfying the employment requirement.

(e) A business shall be treated as owner of a qualified business facility or a qualified residential project if it holds 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.

(f) A business that is investing in a qualified business facility or qualified residential project may apply for tax credits valued at less than the total amount of the capital investments in its project.

Amended by R.2010 d.177, effective August 16, 2010.  
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote the section.

#### 19:31-9.4 Restrictions

(a) A business shall not be allowed urban transit hub tax credits if:

1. The business participates in a Business Employment Incentive Program grant pursuant to P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.) relating to the same capital investment, employees, and site that qualify the business for urban transit hub tax credits; or

2. The business receives assistance from the Business Retention and Relocation Assistance Grant Program pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).

(b) A business that is allowed a tax credit under this section shall not be eligible for incentives authorized by the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

(c) A business shall not qualify for a tax credit based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the InvestNJ Business Grant Program Act, P.L. 2008, c. 112 (N.J.S.A. 34:1B-237 et seq.).

(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 applied for 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' credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it. This eighth 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 be applied for within five years of July 28, 2009. A residential developer must submit its documentation for approval of its credit amount within eight years after July 28, 2009. The credit amount allowed for a tax period ending after July 28, 2017 during which documentation of a business' 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.

(e) If a business participating in a Business Employment Incentive Program grant for the same capital investment, employees, and site or receiving assistance from the Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act,

seeks to qualify for urban transit hub tax credits, it shall first repay and terminate assistance pursuant to the rules governing the Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act, as applicable.

Amended by R.2010 d.177, effective August 16, 2010.  
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In (a)1, inserted "or" at the end; in (a)2, substituted a period for "; or" at the end; deleted (a)3; added new (c); recodified former (c) and (d) as (d) and (e); rewrote (d); and in (e), inserted "InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act," and "InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act," and substituted a comma for "or" following the second occurrence of "Business Employment Incentive Program".

### 19:31-9.5 Application submission requirements

(a) Each application to the Authority made by an owner, tenant or residential developer 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. Prospective future address of the business (if different);
- iv. The type of the business;
- v. 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 employees in New Jersey;
- ix. The total list of New Jersey operations;
- x. Certification that the business applying for the program is not in default with any other program administered by the State of New Jersey;
- xi. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 12A:4-12;
- 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. Examples of development subsidies are tax benefits

from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;

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 if the business is a residential developer, a description of the capital investment planned to be made or acquired in a qualified residential project;
- iii. The estimated value of the capital investment;
- iv. A certification from the owner, with 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, equaling 110 percent of the requested tax allocation amount, to the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment or the term of the tenant's lease, not to exceed 20 years, taking into account the criteria listed at N.J.A.C. 19:31-9.7(c). 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. If the capital investment is a qualified residential project, a pro forma analysis demonstrating that the project is likely to be realized with the provision of the tax credits at the level requested to be realized but is not likely to be accomplished by private enterprise without the credits;
- vi. A description of how the green building standards to be set forth in the green building manual prepared by the Department of Community Affairs, pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6) are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;
- vii. Identification of the site of the proposed qualified business facility or qualified residential project, includ-

ing the block and lot of the site as indicated upon the local tax map and evidence that the site is located wholly or partially (over 50 percent) within an urban transit hub in the form of a survey or other documentation acceptable to the Authority;

viii. A project schedule that identifies projected move dates for the proposed qualified business facility or qualified residential project;

ix. If the capital investment is a qualified business facility, a schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

x. 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;

xi. The total number of anticipated new full-time positions that would be created 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

xii. 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 and are subject to withholding as provided in the New Jersey Gross Income Tax Act;

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

iii. To the extent a tenant is meeting the employment requirement together with up to two other tenants in the qualified business facility, a submission from the other tenants relating to (a)3i above;

iv. 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; and

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

(b) A developer may apply to have a building approved as a qualified business facility by submitting the information required pursuant to (a)2i through ix above. Any tenant seeking an approval of tax credits for a qualified business fa-

cility so approved will be required to submit the information required pursuant to (a)1, 2v through ix and 3 above.

(c) The business or developer applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-2.7.

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In the introductory paragraph of (a), substituted a comma for "or a" following "owner" and inserted "or residential developer"; in (a)1xiv, substituted "revenue realized from the sale of the tax credits" for "amount of credit" and a semi-colon for the comma following "require", and deleted "which at minimum must conform with N.J.A.C. 19:31-9.8(b)10" following "owners"; rewrote (a)2ii; added new (a)2iv through (a)2vi; recodified former (a)2iv through (a)2ix as (a)2vii through (a)2xii; in (a)2vii and (a)2viii, inserted "or qualified residential project"; in (a)2ix, substituted "If the capital investment is a qualified business facility, a" for "A"; in (a)3i, substituted "will be" for the first occurrence of "are" and "at the qualified business facility" for "as defined in this chapter"; in (a)3ii, substituted "at" for "that would occupy"; added new (a)3iii; and recodified former (a)3iii and (a)3iv as (a)3iv and (a)3v.

### 19:31-9.6 Application and servicing fees

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

1. If a business is an owner of the proposed qualified business facility, the application fee is \$5,000;

2. If a business is a tenant of the proposed qualified business facility wherein the owner has not made application for the approval of tax credits, the application fee is \$5,000; or

3. If a business is a developer of the proposed qualified business facility, the application fee of \$5,000.

(b) In addition to the application fees in (a)1, 2 and 3 above, for a qualified business facility, 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, not to exceed \$300,000, shall be charged by the Authority upon the approval of the tax credit.

(d) A non-refundable fee of .5 percent of the tax credit, not to exceed \$300,000, shall be paid prior to the receipt of the tax credit certificate.

(e) A business shall pay to the Authority an annual review 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 review fee shall be paid to the Authority by the business at the time the business submits its annual letter of compliance. The annual review fee shall be \$2,500 per year.

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-9.10 shall pay to the Authority a fee of \$2,500.

Amended by R.2010 d.177, effective August 16, 2010.  
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In (a)2, inserted "wherein the owner has not made application for the approval of tax credits" and substituted "\$5,000" for "\$2,500"; added new (b); added (c), (d) and (f); recodified former (b) as (e); and rewrote (e).

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

In (c) and (d), substituted "non-refundable" for "non-fundable".

### 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 within five years after July 28, 2009, the effective date of P.L. 2009, c. 90 (that is, by July 28, 2014).

(b) The Authority shall conduct a review of the applications commencing with the 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. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Adequately provides information for the subject application.

(c) In determining whether the company meets the net economic benefits test, as certified by the owner pursuant to N.J.A.C. 19:31-9.5(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 or retained employees, and peripheral economic growth caused by the business's relocation to the urban transit hub, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) In developing a recommendation for allocating credits to qualified residential projects, the chief executive officer shall take into account, together with other factors deemed relevant by the Executive Director:

1. An evaluation of the residential developer's pro forma analysis submitted pursuant to N.J.A.C. 19:31-9.5(a)2v;

2. Input from the municipality in which the project is located;

3. Whether the project furthers specific State or municipal planning and development objectives, or both; and

4. Whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property or both.

(e) Upon completion of the review of an application pursuant to (b) through (d) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits to be granted and, in the case of a residential developer, the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, and promptly notify the applicant and the Director of the Division of Taxation of the determination. 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 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 urban transit hub tax credits.

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

(f) Within one year following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for and site control of the qualified business facility or qualified residential project. 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 one year of the date of application approval.

(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. The certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified business facility, provided however that in no event will the amount of tax credits exceed the amount of tax credits previously approved by the Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project. 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. In general, this certification shall be submitted to the Authority no later than five years after the Authority's receipt of the progress information.

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). For residential developers approved in the fifth year that P.L. 2009, c. 90 is in effect, any certification relating to a qualified residential project so approved shall be submitted no later than eight years after the effective date of the Act (that is, by July 28, 2017).

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

(h) 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, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.

Amended by R.2010 d.177, effective August 16, 2010.  
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote (a) and the introductory paragraph of (b); added new (c) and (d); recodified former (c) as new (e) and former (d) as (g); rewrote (e) and (g); added (f); recodified former (e) as (h); and rewrote (h).

Amended by R.2011 d.208, effective August 1, 2011.  
See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (e)1, substituted "approval letter" for "project agreement".

#### 19:31-9.8 Tax credit certificate

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

1. The starting date of the eligibility period;

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;

6. Reporting requirements and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Section was "Project agreement". Rewrote the section.

#### 19:31-9.9 Tax credit amount; application and allocation of the tax credit

(a) The amount of tax credit allowed shall be equal to the capital investment made by the business or the capital investment represented by the business' leased area, or area owned by the business as a condominium, subject to any reduction or disqualification provided in the Act and this subchapter and, provided that in no event will the amount of tax credits exceed the amount of tax credits previously approved by Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project as follows:

1. If the owner uses space in a qualified business facility, in order to determine the amount of the owner's capital investment that will be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified business facility not leased to tenants and the denominator of which is the total net leaseable area. For purposes of this calculation, unless the business that owns or operates the residential space qualifies under N.J.A.C. 19:31-9.3, residential space leased or offered for lease or sale shall not be included in the numerator.

2. In order to determine the amount of the tenant's or condominium's capital investment that will be attributed toward the amount of its tax credits, the Authority shall add the amount of capital investment that results from the calculation in N.J.A.C. 19:31-9.3(b) to any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant, provided that the owner has not included such tenant allowance or tenant improvements in its calculation of capital investment and further

provided that such tenant allowance or tenant improvements meet the definition of capital investment.

(b) For the 10 consecutive years following the notification pursuant to N.J.A.C. 19:31-9.7(h), a business may apply 10 percent of the total credit amount per each tax accounting or privilege period, subject to the provisions of the Act and this subchapter.

(c) The business may apply the credit against their corporation business tax or insurance premiums tax 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, or as subsequently adjusted pursuant to N.J.A.C. 19:31-9.14 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.

(d) The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy for the tax period.

(e) The tax credits are not refundable and shall not result in a refund in the event that they do not equal or exceed a business' tax liability.

(f) Any amount of tax credit that exceeds final liabilities for any tax year may not be carried forward for use in a later tax year.

(g) Credits unused at the conclusion of 10 years beginning with the tax period in which the Authority accepts the certification that the business has satisfied its investment capital and employment qualifications shall be void.

Amended by R.2010 d.177, effective August 16, 2010.  
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote the introductory paragraph of (a); in (a)2, inserted "or condominium's"; rewrote (b); deleted former (c); recodified former (d) through (h) as (c) through (g); and rewrote (c).

#### 19:31-9.10 Application for tax credit transfer certificate

(a) A business may apply to the Director of the Division of Taxation in the Department of Treasury and the Authority for a tax credit transfer certificate covering one or more years, 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 sold. Once approved by the Authority and the Director of the Division of Taxation, a tax certificate shall be issued. The tax credit certificate, upon receipt thereof by the business from the Director and the Authority, may be sold or assigned, in full or in part, 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. The certificate provided 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 credit by the business that originally applied for and was allowed the credit.

(b) The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount. 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.

(c) 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 selling agreement shall set forth the allocation among the owners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-9.5(a).

New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.10, Reduction and forfeiture of tax credits, recodified to N.J.A.C. 19:31-9.12.

#### 19:31-9.11 Cap on total credits

The value of all credits approved by the Authority shall not exceed \$1,500,000,000 of which the Authority may approve up to \$150,000,000 in credits in the aggregate for residential developers making capital investments in qualified residential projects, provided that for each qualified residential facility, the residential developer shall be allowed tax credits of no more than 20 percent of its capital investment. Based on application and allocation activity and if sufficient credits are available, the Authority may direct that the \$150,000,000 cap be exceeded for allocation to qualified residential projects, as is deemed reasonable, justified and appropriate.

New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.11, Reporting requirements, recodified to N.J.A.C. 19:31-9.14.

#### 19:31-9.12 Reduction and forfeiture of tax credits

(a) Unless excepted pursuant to (a)2 below, the amount of the annual credit otherwise available shall be reduced by 20 percent for that tax period if:

1. Fewer than 200 full-time employees at the qualified business facility or, if the applicant is a tenant and has qualified under N.J.A.C. 19:31-9.3(a)2iii, fewer than 200 full-time employees in the aggregate are employed in new full-time positions in any tax period.

i. This reduction will remain for each subsequent tax period until the first period for which documentation demonstrating the restoration of the 200 full-time employees employed in new full-time positions at the qualified business facility has been reviewed and approved by the Authority.

ii. Once documentation restoring the 200 full-time employees employed in new full-time positions has been approved, for the current tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

2. For businesses applying before January 1, 2010, there shall be no reduction if a business relocates to an urban transit hub from another location or locations in the same municipality.

(b) If, in any tax 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 accounting or privilege period prior to the credit amount approval under this section, 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 subsection 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. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the 250 full-time employees at the qualified business facility.

(c) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility drops below 250, then the business shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 250 has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

(d) If in any year the qualified residential facility no longer meets the definition thereof, the residential developer or his assignee shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating that the qualified residential facility meets such definition has been reviewed and approved by the Authority, for which tax period

and each subsequent tax period the full amount of the annual credit shall be allowed.

Recodified from N.J.A.C. 19:31-9.10 and amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In the introductory paragraph of (a), substituted "available" for "determined pursuant to final calculation of the award of tax credits"; rewrote the introductory paragraph of (a)1, and (b) and (d); and in (a)2, substituted "For businesses applying before January 1, 2010, there" for "There". Former N.J.A.C. 19:31-9.12, Events of default, repealed.

### 19:31-9.13 Effect of sale or lease of qualified facilities

(a) The tax credit amount shall be forfeited in the event of sale of the qualified business facility or sublease of the business's tenancy as follows:

1. If the qualified business facility is sold in whole or in part during the 10-year 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, except that any credits of tenants shall remain unaffected. The new owner may not apply for tax credits based upon the seller's capital investment. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

2. If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period, the sublessee shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods, except that if the sublessor tenant retains sufficient capital investment and employment to remain eligible for the program, the forfeiture shall affect only the credits attributable to the subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the sublessee shall be subtracted.

(b) In the event of sale of the qualified residential facility in whole or in part, the seller may either retain the tax credit amount or assign to the new owner a tax credit amount equal to the amount of the capital investment that is sold, provided that the capital investment sold represents at least \$17,500,000 of the capital investment in the facility. In order to determine the amount of capital investment sold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the square footage of the portion of the qualified residential facility that is sold and the denominator of which is the total square footage of the qualified residential facility.

(c) Tenants in a qualified residential project are not eligible to apply for tax credits and an owner may not assign tax credits to a tenant.

Repeal and New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Section was "Remedies".

**19:31-9.14 Reporting requirements; letter of compliance**

(a) After notification pursuant to N.J.A.C. 19:31-9.7(h), the business shall furnish to the Authority a report certified by a certified public accountant 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 full-time positions employed at the qualified business facility, the number pertaining to the business's Statewide employment, 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;

2. 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 or this subchapter.

(b) Failure to submit a copy of its annual report or submission of the annual report without the information required above, may result in forfeiture of any annual tax credits to be received by the business unless the Authority determines that there are extenuating circumstances excusing the business from the timely filing required.

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

(d) 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 may take all or a portion of the credits allocable to the tax privilege period.

(e) The Authority shall prepare and transmit to the Governor and the Legislature on or before November 1st of each year, a report concerning the impact of the program on employment in urban transit hubs.

Recodified from N.J.A.C. 19:31-9.11 and amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Section was "Reporting requirements". Rewrote the introductory paragraph of (a) and (a)2; in (c), substituted "tax credit certificate" for "project agreement"; added new (d); and recodified former (d) as (e). Former N.J.A.C. 19:31-9.14, Appeals, recodified to N.J.A.C. 19:31-9.15.

**19:31-9.15 Appeals**

(a) The procedure for an appeal of the Authority's action on an application to the program shall be as follows. An applicant may appeal the Authority's action on an application to the program by submitting in writing to the Authority, within 30 days from the date of the Authority's action, an explanation as to how the applicant has met the program criteria and may also request an informal hearing. In the event the

application is reconsidered as eligible for the program, such application shall be presented for action to the Board.

(b) In the event of an adverse decision after an informal hearing under (a) above, or if a business determines not to seek an informal hearing, and providing further, that the dispute or controversy is a contested case, as defined in N.J.S.A. 52:14B-2(b), a business may request, within 45 days of the written decision resulting from the informal hearing or the determination of the Authority if any informal hearing is not sought, a formal hearing.

(c) Upon filing of the initial pleading in a contested case, the Authority may either retain the matter for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions 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.

(d) Every determination of a dispute or controversy arising from this subchapter by the Authority, constituting final agency action by the Authority, shall be embodied in a written decision, which shall set forth findings of fact and conclusions of law pursuant to the applicable rules of the Office of Administrative Law.

Recodified from N.J.A.C. 19:31-9.14 by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.15, Severability, recodified to N.J.A.C. 19:31-9.16.

**19:31-9.16 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.

Recodified from N.J.A.C. 19:31-9.15 by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

**SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM****19:31-10.1 Applicability and scope**

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.26, as amended by P.L. 2003, c.166. This Act establishes the Business Employment Incentive Program, a special business assistance program to provide grants to businesses located in, or relocating to, New Jersey that create new jobs in New Jersey.

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Added "as amended by P.L. 2003, c.166" at the end of the first sentence.

**19:31-10.2 Definitions**

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

“Act” means the New Jersey Economic Development Authority Act, N.J.S.A. 34:1B-1 et seq. as amended and supplemented.

“Advanced computing” means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

“Advanced computing company” means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced computing for the purpose of developing or providing products or processes for specific commercial or public purposes.

“Advanced materials” means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

“Advanced materials company” means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced materials for the purpose of developing or providing products or processes for specific commercial or public purposes.

“Authority” means the New Jersey Economic Development Authority.

“Base employment number” shall mean the number of employees the business has employed in the State of New Jersey at the time of application for the grant.

“Base years” means the first two complete calendar years following the effective date of an agreement, except that in those instances where significant construction/renovation of the project requires a certificate of occupancy to be awarded prior to occupancy of the project site, the base years will commence upon the issuance of a certificate of occupancy by the municipality.

“Biotechnology” means the continually expanding body of fundamental knowledge about the functioning of biological

systems from the macro level to the molecular and subatomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

“Biotechnology company” means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a person, whose headquarters or base of operations is located in New Jersey, engaged in providing services or products necessary for such research, development, production, or provision.

“Bonds” means bonds, notes, or other obligations issued by the Authority pursuant to the Act.

“Business” means a corporation, sole proprietorship; partnership, corporation that has made an election under Subchapter S corporation, or any other business entity through which income flows as a distributive share to its owners; limited liability company; a nonprofit corporation; or any other form of business organization located within or outside this State. A grant received by a partnership, Subchapter S corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed. Business shall also include co-employers pursuant to an employer leasing agreement in accordance with N.J.S.A. 34:8-67 et seq., between an entity that qualifies as a business hereunder and a professional employment organization; provided, however, that for purposes of paying the grant, payment shall be made solely to the entity and not to the professional employment organization.

“Business Employment Incentive Commitment Letter” or “Commitment Letter” means the written commitment issued by the Authority which sets forth the terms and conditions that must be met by the business in order to receive the grant.

“Commitment duration” means 1.5 times the term of the grant.

“Consumer Price Index” means the consumer price index developed by the United States Bureau of Labor Statistics for