

19:31-12.4 Application to the program

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable \$500.00 application fee. Complete applications must be received by June 30 for each State fiscal year thereafter.

(b) In order for the Department of Treasury, Division of Taxation to issue a certificate, each application submitted to the program shall include: a selling business application which includes the information set forth in (c) below; a spending certification form attesting to having spent the proceeds of the prior year's sale of tax benefits in accordance with the definition of allowable expenditures; a Buying Business Information Sheet which identifies the buying business name, address, telephone number, the estimated value of benefits to be transferred and from whom and a business certification; an agreement between the buying and selling business defining the terms of the sale of the certificate; and the Tax Benefit Identification Form which summarizes the accumulated net operating losses and research and development credits authorized to be sold and the value intended to be sold. For determination of eligibility for the program, the initial application package shall also include a selling business application and a spending certification form.

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

1. A description of the nature of the business conducted by the company;
2. A company business plan;
3. Annual consolidated financial statements for the two most recent full years, including balance sheets, operating statements, statements of cash flow and annual company financial statements for the same periods and/or tax returns for the same periods;
4. Net income projections for the year prior to application, the current year and the year after application;
5. Employment creation projections for the year of application and the next two years;
6. A list of all corporations and affiliated groups of corporations that directly or indirectly own or control 50 percent or greater of the selling business and the two most recent full years of financial statements for each;
7. An explanation of the actual or potential scientific and technological viability of the product(s), service(s) and/or process(es) produced in New Jersey;
8. A description of how the innovation of the product(s), service(s) and/or process(es) represents a competitive advantage in the business' field;
9. A description of how the proposed or expanded activities in the State of New Jersey can enhance and

diversify the State of New Jersey's capacity and competitiveness in the business' field;

10. A description of how the proceeds of the sale of the tax benefits can result in a significant increase in permanent, full-time employment in the State of New Jersey;

11. A description of how the proceeds of the sale of the tax benefits will result in a high rate of return on investment as expressed in increases anticipated in net income;

12. A description of efforts made during the past two years and projected two years to secure any form of financial assistance to support its operations; and

13. Any other supplemental information required by the Authority.

(d) Applications are processed through several layers of staff review and may then be recommended for consideration and official action of the Authority's Board of Directors at its scheduled public meeting.

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

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), rewrote the second sentence.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (a), deleted "July 28, 1999 for consideration in State FY 00 and by" preceding "June 30"; in (c)3, inserted "and/or tax returns for the same periods" at the end of the paragraph.

19:31-12.5 Evaluation process

(a) When all of the required information is received, the Authority shall perform its own review based on the following minimum criteria:

1. The threshold criteria of eligibility in which the applicant meets the definition of technology business or biotechnology business, and satisfies the standards in N.J.A.C. 19:31-12.3;

2. The actual potential scientific and technological viability of the applicant's business product(s), service(s) and/or process(es) as demonstrated by its:

- i. Uniqueness of concept;
- ii. Creditability/plausibility of concept; and
- iii. Scientific/technological resources of the applicant;

3. The degree to which the innovation of the applicant's product(s), service(s) and/or process(es) created in New Jersey offers a competitive advantage to the business and enhances and diversifies the State of New Jersey's capacity and competitiveness in the business' field;

4. The anticipated increase in permanent full-time employment resulting from the sale of the tax benefit;
5. The financial resources of the applicant including:
 - i. Projected change in net income;
 - ii. Liquidity;
 - iii. Market share; and
 - iv. Ability to access other financial assistance; and
6. Use of the proceeds of the anticipated sale of tax benefits.

(b) After completing its review under (a) above, a determination shall be made by the Authority as to the merits of the request and its adherence to the statutory requirements of the program. Upon this determination, if the applicant was authorized to sell and did sell tax benefits in the prior year, a spending certification is reviewed and a determination that the agreement is in conformance with the requirements of the program.

(c) If a positive determination is made, the requested approval is forwarded to the Division of Taxation for review.

19:31-12.6 Approval process

(a) Only the members of the Authority can deny an applicant's eligibility in the program.

(b) When the members deny a request, the minutes at which such denial occurs are submitted to the Governor.

(c) The members' action is effective 10 working days after the Governor's receipt of the minutes, provided no veto has been issued.

(d) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. The Authority cannot consider any new information about the project developed after the June 30 submission deadline. Only that information clarifies the application filed shall be reconsidered. In the event the company is reconsidered as eligible, its application shall be presented at the next available Board meeting.

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.

Amended by R.2001 d.242, effective July 16, 2001.
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (d), rewrote the first sentence.

19:31-12.7 Allocation of tax benefits

(a) The Program is authorized to provide \$40,000,000 of tax benefits over each fiscal year. In the event the total amount of transferable tax benefits approved exceeds these limitations or any subsequent limitations, the Authority shall allocate the transfer of tax benefits as follows:

1. Each company is limited to a maximum lifetime tax benefit of \$10 million.

2. Businesses with less than \$250,000 in tax benefits will be authorized to sell all of their benefits in the current year.

3. Businesses with more than \$250,000 in tax benefits will be authorized to sell at least \$250,000 of their benefits in the current year. In each successive year in which a selling business reapplies to the program, the applicant will be authorized to sell at least 50 percent of the amount sold in the prior year, with a minimum of \$250,000.

4. After the dollars are set aside in the amounts provided in (a)2 and 3 above, the remaining funds available to the program, in that fiscal year, shall be allocated among the businesses with more than \$250,000 of tax benefits. The available tax benefits shall be determined by reducing the amount of tax benefits to be transferred for each business by the minimum amount of tax benefits authorized for that business and then multiplying that amount by the following factor:

$$\frac{\text{Fiscal Year Dollar Authorization—}}{\text{Total Minimum Tax Benefits Authorized}} \div \frac{\text{Total Tax Benefits Requested to be Transferred—}}{\text{Total Minimum Tax Benefits Authorized}}$$

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

(b) In the event the authorized minimums exceed the authorized annual cap, applications shall be allocated benefits with priority given to those applicants with less than \$250,000 in tax benefits and to businesses with more than \$250,000 in tax benefits that are reapplying to the program pursuant to (a)3 above.

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), deleted "\$50,000,000 of tax benefits over State fiscal year 2000 and" following "provide" in the introductory paragraph.