

(c) Each application for a zone boundary revision shall be accompanied by a resolution from the municipal governing body supporting the request.

12A:121-1.5 Time for zone boundary revisions

(a) A municipality in which a zone is located may apply for a boundary revision five years or more after the original designation date.

(b) No subsequent application for a zone boundary revision may be made for at least five years after the date the UEZA approves a prior zone boundary revision.

Amended by R.1993 d.645, effective December 20, 1993.
See: 25 N.J.R. 4582(a), 25 N.J.R. 5933(b).

12A:121-1.6 Evaluation of a zone boundary revision application

(a) The Administrator shall evaluate each zone boundary revision application considering the following factors:

1. The likelihood that the boundary revision will alleviate general problems of economic distress within the existing zone and the proposed area to be covered under the boundary revision;
2. The likelihood that the boundary revision will help alleviate problems of high unemployment in the municipality and the zone area;
3. The likelihood that the boundary revision will result in investment of new capital in the zone and the proposed area to be covered under the boundary revision;
4. Whether the boundary revision will help alleviate blighted conditions in the zone and the proposed area to be covered under the boundary revision;
5. Whether the boundary revision will aid in modernizing or reoccupation of industrial or commercial structures within the zone and the proposed area to be covered under the boundary revision; and
6. The likelihood that the boundary revision will strengthen and broaden the municipal tax base.

(b) After the Administrator's evaluation is complete, he or she shall forward the application for the UEZA's review, modification, denial, and/or approval.

(c) Notwithstanding the provisions of this subchapter, the Authority may, in its discretion, consider a request for zone boundary revisions if it deems the special conditions of the application to be of exceptional merit.

SUBCHAPTER 2. DISCRETIONARY EXTENSION OF 50 PERCENT SALES TAX EXEMPTION TO URBAN ENTERPRISE ZONE MUNICIPALITIES

12A:121-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement P.L. 1983, ch. 303, as amended by P.L. 1988, ch. 93, the New Jersey Urban Enterprise Zones Act, and to specifically implement provisions pertaining to the discretionary power of the UEZA to extend the 50 percent sales tax exemption to those urban enterprise zone municipalities which do not currently have such a benefit.

(b) The Act provides for the establishment of the UEZA, which is to designate certain areas of the State as Urban Enterprise Zones (UEZs). The Act also provides that the UEZA exercise continuing review and supervision of the implementation of zone development plans.

(c) Applications and questions concerning a UEZ should be directed to:

Urban Enterprise Zone Program
New Jersey Commerce and Economic Growth
Commission
20 West State Street, PO Box 820
Trenton, New Jersey 08625-0820

Amended by R.2004 d.178, effective May 3, 2004.
See: 35 N.J.R. 5482(a), 36 N.J.R. 2199(a).

12A:121-2.2 Zone municipality application for 50 percent sales tax exemption

(a) Each application for the 50 percent sales tax exemption shall be accompanied by a certified resolution of the governing body of the municipality supporting the application.

(b) Each application for the 50 percent sales tax exemption shall be accompanied by a benefit statement prepared by the municipality or its agent. The benefit statement shall include, but is not limited to:

1. The number of permanent fulltime jobs to be created in the municipality and the existing UEZ if the exemption were to be granted;
2. The increase in the valuation of real property in the municipality and the existing UEZ if the exemption were granted;
3. The extent to which the granting of the exemption would contribute to the economic and social revitalization of the municipality and the existing UEZ;
4. Any other information the UEZA deems relevant or necessary for the purpose of evaluation of the municipal application.

(c) Each application for the 50 percent sales tax exemption shall be accompanied by an analysis of the impact on the other UEZs in the State of New Jersey if the exemption were granted. The impact analysis shall include, but is not limited to:

1. An analysis of whether the exemption would have an effect on the valuation of UEZ municipalities;
2. An analysis of whether the exemption would have an effect on the social and economic revitalization of other UEZ municipalities;
3. An analysis of whether the exemption would have an effect on the growth of businesses in other UEZ municipalities;
4. An analysis of the increase or decrease of State Tax and other revenues to be created if the exemption were to be granted.

12A:121-2.3 Time for municipal application for 50 percent sales tax exemption

An existing New Jersey Urban Enterprise Zone municipality may apply to the UEZA at any time for the 50 percent sales tax exemption.

12A:121-2.4 Evaluation of 50 percent sales tax exemption municipal application

(a) The Administrator shall evaluate each municipal application for the 50 percent sales tax exemption, considering the following factors:

1. The probability that the granting of the exemption will create permanent fulltime new jobs in the applying municipality;
2. The probability that the granting of the exemption will increase the valuation of real property in the applying municipality;
3. The probability that the granting of the exemption will contribute to the economic and social revitalization of the applying municipality;
4. The probability that the granting of the exemption will significantly increase the economic activity of the applying municipality;
5. The probability that the granting of the exemption will increase the capital expenditures to be undertaken by qualified zone businesses in the applying municipality;
6. The social and economic impact that the granting of the exemption will have on other State of New Jersey Urban Enterprise Zone municipalities; and
7. The extent to which the granting of the exemption will further the purposes and intent of the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq.

(b) After the evaluation is completed, the Administrator shall forward to the UEZA the following items for their review:

1. The evaluation of the application completed by the Administrator;
2. The application and accompanying documents submitted by the municipality; and
3. Any written comments received from interested parties concerning the application of the municipality for the exemption.

(c) The UEZA shall, within 120 days from the completion of the evaluation by the Administrator, review the application of a municipality for the 50 percent sales tax exemption and advise the municipality that:

1. The application has been approved;
2. The application has been denied; or
3. The application remains under consideration pending receipt of additional specified information.

SUBCHAPTER 3. ENERGY SALES TAX EXEMPTION PROGRAM

12A:121-3.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Commerce, Economic Growth and Tourism Commission (the "Commission") to implement P.L. 2004, c.65 (the "Act"), and specifically, section 23 of the Act (N.J.S.A. 52:27H-87.1). Section 23 of the Act establishes an energy sales tax exemption program (the "Program") to provide for an exemption of sales and use tax for retail sales of electricity and natural gas and their transport to a qualified business in a New Jersey urban enterprise zone for consumption in the zone, or a vertically integrated combination of qualified businesses manufacturing a single product within a single redevelopment area within an enterprise zone, that employs at least 500 people at least 50 percent of which are directly employed in a manufacturing process. The program is established under the jurisdiction of the Commission, and is to be administered by the Commission, in accordance with the procedures for obtaining the exemption as may be provided under the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303, the Sales and Use Tax Act, P.L. 1966, c.30, and this subchapter.

12A:121-3.2 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 Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

“Application” means the authorized application form submitted to the Commission from a business for approval of an energy sales tax exemption.

“Authority” means the New Jersey Urban Enterprise Zone Authority created pursuant to P.L. 1983, c.303, which is in the Commission.

“Board of Directors” means the Board of Directors for the New Jersey Commerce, Economic Growth and Tourism Commission.

“Commission” means the New Jersey Commerce, Economic Growth and Tourism Commission established pursuant to N.J.S.A. 52:27C-61 et seq.

“Directly employed” means employed as an employee, and not as an independent contractor, and directly involved in the manufacturing process of the business applying for the energy sales tax exemption.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Employ” means for purposes of this subchapter, utilize the productive services of people as full-time employees. “Full-time employee” is defined at N.J.A.C. 12A:2-1.2.

“Energy sales tax exemption” means the energy sales and use tax exemption for retail sales of energy and utility service approved by the Secretary pursuant to the Act and this subchapter.

“Enterprise zone” or “urban enterprise zone” or “UEZ” means an urban enterprise zone designated by the New Jersey Urban Enterprise Zone Authority created by the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303.

“Family of products” means a group of products that, when taken together, are primarily (at least 60 percent) used, purchased and sold as a single product, product line, or brand marketing.

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

“New Jersey Urban Enterprise Zone Program or “UEZ Program” means the program administered by the Authority pursuant to P.L. 1983, c.303.

“Qualified group” means a group of businesses that consist of a group of two or more persons:

1. Each of which is a qualified business and all of which are located within a single redevelopment area adopted pursuant to the “Local Redevelopment and

Housing Law,” P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.);

2. That collectively employ at least 500 people within a single redevelopment area within an enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process;

3. Are each engaged in a vertically integrated business, evidenced by the manufacture and distribution of a product or family of products that, when taken together, are primarily used, packaged and sold as a single product;

4. Each use the energy and utility service for the exclusive use or consumption of each of the persons that comprise a group within an enterprise zone; and

5. Each of which contributes at least 60 percent of its product towards the manufacture of the single, integrated product.

“Redevelopment area” means an area determined to be in need of redevelopment or to be a blighted area as further defined at N.J.S.A. 40A:12A-3.

“Secretary” means the Chief Executive Officer and Secretary of the New Jersey Commerce, Economic Growth and Tourism Commission.

12A:121-3.3 Eligibility criteria

(a) To qualify for energy sales tax exemption for the retail sale, transmission, or distribution of electricity and natural gas, an applicant shall be required to be certified by the Authority to receive the benefits of the New Jersey Urban Enterprise Zone Program pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303, and the applicable rules of the Commission; and shall be further required to be either:

1. A qualified business that employs at least 500 people within an enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process, for the exclusive use or consumption of such business within the enterprise zone; or

2. A group of two or more persons:

- i. Each of which is a qualified business and all of which are located within a single redevelopment area adopted pursuant to the “Local Redevelopment and Housing Law, P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.);

- ii. That collectively employ at least 500 people within a single redevelopment area within an enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process;

- iii. That are each engaged in a vertically integrated business, evidenced by the manufacture and distribution of a product or family of products that, when taken

together, are primarily used, packaged and sold as a single product, product line or brand marketing; and

iv. That collectively use the energy and utility service (which may be in separate accounts) for the exclusive use or consumption of each of the persons that comprise a group within a single redevelopment area within an enterprise zone.

12A:121-3.4 Requests for applications

(a) The Commission shall process applications for the energy sales tax exemption through its New Jersey Urban Enterprise Zone Program. Initial application requests shall be to the Commission, Office of Urban Programs, 20 West State Street, PO Box 820, Trenton, New Jersey 08625.

(b) Annual renewal for applicants satisfying the criteria of N.J.A.C. 12A:121-3.3(a)1 will be made during the annual re-certification process in accordance with UEZ Program procedures at N.J.A.C. 12:120-2. For applicants approved within six months prior to their next re-certification date, the requirement for annual renewal shall be deferred to the following re-certification date provided such date is not more than 18 months hence.

(c) Renewal applications by applicants satisfying the criteria for N.J.A.C. 12A:121-3.3(b)2 shall be required to be submitted annually within 45 days prior to the expiration date of the energy sales tax exemption.

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Codified the former first through third sentences as present (a) through (c), respectively; added the second sentence in (b); and in (c) substituted "Renewal" for "Certificate" and "by" for "for".

12A:121-3.5 Submission requirements

(a) Each application for the energy sales tax exemption submitted to the Commission shall include the following:

1. The name, address and Employer Identification Number (EIN), also known as a Federal tax identification number of the applicant;

2. The address of the facility which is the subject of this application;

3. The number of total employees at the site for which the exemption application is being submitted;

4. The number of full-time employees that are directly employed in the manufacturing process of the applicant;

5. The name and address of the company(ies) that supply, transmit, and distribute electricity and natural gas to the facility;

6. The account identification numbers and billing information including contact name for each account identified in (a)5 above;

7. An estimate of the facility's annual quantity use of electricity and natural gas;

8. A description of the nature of the business and the facility for which this application is being made;

9. The North American Industrial Classification System identification number(s) applicable to the applicant;

10. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey; and

11. Such additional information as may be required by the Secretary to provide a complete and accurate description of the business that is applying for this exemption.

(b) Applicants seeking to qualify for the energy sales tax exemption as a qualified group shall first establish that they are engaged in a vertically integrated business activity. Such activity shall be evidenced by a thorough description of the principal business activity that will occur at each location in the single redevelopment area within the enterprise zone and an explanation, satisfactory to the Commission, of how these business activities are integrally connected to each other in a manner that produces a common, manufactured product(s). This description shall include at least one specific, verifiable, measure of how such integration shall be monitored. For example, a business might submit that 90 percent of its manufactured output is physically packaged with the product made by another member of the vertically integrated group.

(c) Once the businesses seeking to qualify for the energy sales tax exemption as a qualified group are determined by the Commission to be a vertically integrated business activity, then the group application will be evaluated in combination with the other members of the group to determine if the group is eligible as a qualified group.

1. Each application submitted to the Commission by a group of vertically integrated qualified businesses shall include the submission requirements of (a) above for each individual business in the group.

2. In addition to (c)1 above, the application shall be required to provide evidence satisfactory to the Commission that all individual businesses in the group are located within a single redevelopment area.

3. The group as a whole, rather than each individual business, shall be considered in meeting eligibility requirements of directly employing at least 500 people within the single redevelopment area within the enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process.

(d) In the case of a qualified group, each time an application from a new business seeking to be added to, or an existing business seeking to be deleted from, the qualified group, the submission requirements of this section shall be required to be satisfied promptly for the group as so changed. If no new businesses are added or existing business are

deleted during the year, the annual renewal requirements of N.J.A.C. 12A:121-3.4 for qualified groups shall apply.

Amended by R. 2006 d.197, effective May 15, 2006.
See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Inserted "including contract name" in (a)6; and in (c) substituted "the businesses" for "a business", "are" for "is" and "the group" for "its", inserted "a" preceding "vertically" and inserted "activity".

12A:121-3.6 Application and review procedures

(a) Applicants shall submit to the Commission's Office of Urban Programs a completed Application for Energy Sales Tax Exemption. The application, signed by an authorized representative of the business, shall bear either a legible postmark date or a date-received stamp from the Commission.

(b) The Commission shall conduct a review of the applications in the order received, commencing with the application bearing the earliest submission date. The Commission may require the submission of additional information to complete the application or may require the submission of the entire application, if incomplete. The Commission shall review the applications to determine whether:

1. The application complies with the eligibility criteria;
2. The application satisfies the submission requirements; and
3. The application adequately provides information for the subject applicants.

(c) The Commission's Office of Urban Programs, after reviewing the application, shall make a recommendation to the Secretary, who after consideration of that recommendation, shall approve, approve with modifications, or deny an application in the program.

(d) Upon completion of the review of an application pursuant to (b) above, the Commission shall notify the applicant whether the application has been approved by the Secretary.

1. In the event that an application is approved, the Secretary will notify the applicant, the President of the Board of Public Utilities and the Director, that a qualified business or a qualified group has met the requirements for the energy sales tax exemption. In accordance with P.L. 1966, c.30 (N.J.S.A. 54:32B-1 et seq.). The Division of Taxation shall then issue an Exemption Certificate (UZ-6) to the qualified business or qualified group.

2. In the event that an application is denied, the applicant shall be notified of the denial and the reasons for such denial.

3. After notification of a denial, should the circumstances change so that the applicant reasonably believes its application will be approved, the applicant may reapply to the program no earlier than 90 days from the date the Secretary issued the denial.

(e) Once a qualified group is approved, each member of the group shall be subject to all the same provisions and procedures as any other qualified manufacturing business that is not a member of a qualified group. However, if the Secretary subsequently determines that a previously qualified group is no longer eligible for the energy sales tax exemption, then each member of that group shall be required to immediately surrender its exemption certificate to the Secretary.

Amended by R. 2006 d.197, effective May 15, 2006.
See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Inserted "signed by an authorized representative of the business," in the second sentence of (a); inserted (c); and recodified former (c) and (d) as (d) and (e).

12A:121-3.7 Monitoring, inspection, and reporting

(a) The Commission, and agents of the State of New Jersey, shall monitor compliance with respect to the eligibility criteria for this energy sales tax exemption. An applicant or any business that is approved to receive this exemption benefit shall permit any agent of the State of New Jersey to enter said business during reasonable business hours to determine compliance with the eligibility criteria of the program. Failure to permit access to determine eligibility will result in the forfeiture of the exemption benefit and may require repayment of sales and use tax previously exempted from payment, as the Commission shall determine.

(b) Each qualified business and qualified group that receives this energy sales tax exemption shall be required to maintain records documenting all of its tax-exempt purchases. This information must be supplied to the Commission upon request. In addition, a report summarizing the totals of all exempt energy purchases must be provided for the prior year as a component of the annual renewal or recertification application.

(c) Each qualified business and qualified group that receives approval of its application for the energy sales tax exemption shall notify the Commission if it ceases to meet the manufacturing and employment requirements for the energy sales tax exemption for more than a total of three weeks in any two consecutive months.

Amended by R. 2006 d.197, effective May 15, 2006.
See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).
Added (c).

12A:121-3.8 Rescission

(a) The Secretary, in addition to any other rights or remedies available pursuant to law, may withhold, reduce, or terminate this sales and use tax exemption or any portion thereof for good cause. The circumstances under which this may occur include, but are not limited to:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or rules;

2. Failure to comply with any condition or requirement of the Urban Enterprise Zone Program;

3. Failure to maintain the employment levels stipulated in the Urban Enterprise Zone Program;

4. Submission of false or misleading information, or failure to submit relevant or complete information to the Commission;

5. Any act of insolvency, the filing of a petition in bankruptcy (voluntary or involuntary) or the existence of other conditions affecting the financial integrity of the applicant; or

6. Failure to comply with any condition, term, or requirement of the Commission relating to this program.

(b) The Secretary shall provide written notice to the business of its intent to rescind the applicant's qualification status for the energy sales tax exemption benefit. The

determination to rescind the benefit shall be solely within the Secretary's discretion.

(c) The Secretary shall provide notice of the determination to rescind to the Director, who shall rescind the sales and use tax exemption certificate issued to the business.

(d) Any rescission of the energy sales tax exemption will require repayment by the business or group of all exempted tax payments, and such penalties as may be assessed in accordance with the State Uniform Tax Procedure Law, R.S. 54:48-1 et seq. from the effective date of the rescission as determined by the Commission.

12A:121-3.9 Appeals

Appeals under this subchapter shall be subject to the appeals procedures governing the subchapter on sales and use tax exemption at N.J.A.C. 12A:2A-2.13.