

**CHAPTER 2A****COMMISSION ASSISTANCE PROGRAMS****Authority**

P.L. 2004, c. 65, §§ 1-17 and 19-23.

**Source and Effective Date**

R.2005 d.143, effective May 16, 2005.  
See: 37 N.J.R. 237(a), 37 N.J.R. 1739(a).

**Chapter Expiration Date**

Chapter 2A, Commission Assistance Programs, expires on May 16, 2010.

**Chapter Historical Note**

Chapter 2A, Commission Assistance Programs, was adopted as R.2005 d.143, effective May 16, 2005. See: Source and Effective Date.

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**SUBCHAPTER 1. TAX CREDIT CERTIFICATE TRANSFER PROGRAM****12A:2A-1.1 Applicability and scope**

(a) The rules in this subchapter are promulgated by the New Jersey Commerce, Economic Growth and Tourism Commission (the "Commission") to implement P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65 (the "Act"), and specifically section 17 of the Act (N.J.S.A. 34:1B-120.2). The Act provides several incentive programs

aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The Act established a business retention and relocation assistance grant program, a tax credit certificate transfer program (the "BRRAG Tax Credit Certificate Transfer Program" or "Program"), a sales and use tax exemption program, and an energy sales tax exemption program (for businesses located in New Jersey urban enterprise zones). The BRRAG Tax Credit Certificate Transfer Program is hereby established as a Program under the jurisdiction of the Commission and shall be administered by the Chief Executive Officer and Secretary of the Commission, in cooperation with the Division of Taxation in the Department of the Treasury. The Commission may also enter into a memorandum of understanding with the New Jersey Economic Development Authority, which administers the Technology Business Tax Certificate Transfer Program (see N.J.A.C. 19:31-12), to provide administrative assistance to the BRRAG Tax Credit Certificate Transfer Program, pursuant to N.J.S.A. 52:27C-73.

(b) The purpose of the Program is to allow businesses in this State with unused amounts of BRRAG tax credit to surrender those tax credits to other corporations desiring such credits which in exchange will provide private financial assistance to assist in the funding of costs incurred by the relocating business. A BRRAG tax credit may be applied against liability arising in the tax period in which the tax credit is issued and the tax period next following, and shall expire thereafter. However, it is possible that unused credits that remain stranded in the allowable periods may be utilized in the event of future additional liability, like an audit assessment. Therefore, eligibility for this program will require the business to certify that, to the best of its knowledge, it cannot use the tax credits originally issued for the tax periods in which the credits are allowable.

**12A:2A-1.2 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.

"Agreement" or "project agreement" means an agreement between a business and the Commission that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65 §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123).

"Application" means the application submitted to the Commission from the seller of BRRAG tax credits, for approval of the BRRAG tax credit transfer certificate.

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

“BRRAG program” means the tax credit grant program created pursuant to P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65 §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123), and provided in N.J.A.C. 12A:2-1.

“BRRAG tax credit certificate transfer program” or “Program” means the Business Retention and Relocation Assistance Grant Tax Credit Transfer Program created pursuant to section 17 of the Act (N.J.S.A. 34:1B-120.2).

“Business” means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is subject to the provisions of N.J.S.A. 43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State for purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business.

“Business retention or relocation grant of tax credits” or “grant of tax credits” means a grant which consists of the value of corporation business tax credits against the liability imposed pursuant to section 5 of P.L. 1945, c.162 (N.J.S.A. 54:10A-5) or credits against the taxes imposed on insurers pursuant to P.L. 1945, c.132 (N.J.S.A. 54:18A-1 et seq.), section 1 of P.L. 1950, c.231 (N.J.A.C. 17:32-15), and N.J.S.A. 17B:23-5, provided to fund a portion of retention and relocation costs pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, and pursuant to N.J.A.C. 12A:2-1.

“Business retention or relocation tax credit” or “BRRAG tax credit” means the tax credit that a business obtains through the BRRAG program.

“Buying business,” means a business with the financial ability to purchase the unused BRRAG tax credits from an unaffiliated selling business. For the purpose of this definition, the test of affiliation is whether the same entity directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of both the selling and buying businesses.

“Certificate” or “BRRAG tax credit transfer certificate” means the certificate issued by the Division of Taxation certifying to the selling business amounts of unused BRRAG tax credit. The certificates are issued in the form of corporation business tax credit and insurance premiums tax credit transfer certificates.

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

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

“New business location” means the premises that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than eight years from the date of relocation. A new business location may also include the premises from which the business moves on a temporary basis due to the rehabilitation of permanent premises that also qualifies as reconstruction as “reconstruction” is defined in the Uniform Construction Code, N.J.A.C. 5:23-6.3. In that case, the move to the permanent premises will trigger availability of the grant of tax credits.

“Private financial assistance” means the assistance that the buying business provides the selling business to assist in the funding of costs incurred by the relocating business.

“Project” means the construction, renovation or expansion of facilities at the approved site as described in the project description in the application and the agreement that will become the business’s new business location.

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

“Selling business” means a business that has unused BRRAG tax credits issued under P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, and otherwise allowable which it wishes to “sell.”

“Total allowable relocation costs” means \$1,500 times the number of retained full-time jobs. “Total allowable relocation costs” does not include the amount of any bonus award authorized pursuant to section 5 of P.L. 2004, c.65 (N.J.S.A. 34:1B-115.1).

### 12A:2A-1.3 Eligibility criteria

(a) A business shall be eligible to apply to the program if the business:

1. Entered into a BRRAG project agreement pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2000, c.65 and N.J.A.C. 12:2A-1 and is not in default of that BRRAG project agreement;
2. Has unused amounts of BRRAG tax credits issued and otherwise allowable;

2. The Secretary may exercise any other right or remedy that may be available under applicable law or under the project approval agreement, including, without limitation:

- i. Requesting the Division of Taxation recover the sales tax repayment amount and any additional repayment amount pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq.;
- ii. Recovering damages for loss of a bargain for any default during the commitment duration which damages the parties agree that the Secretary's actual damages would be difficult to predict, and that the sales tax repayment amount and any additional repayment amount represents a reasonable approximation of such amount;
- iii. Terminating the project approval agreement; or
- iv. Proceeding by appropriate court action (legal or equitable) to enforce the terms of the project approval agreement.

(b) In the event of default, statutory interest shall be calculated from the date of default through the date of payment for all purchases made by the business or project participant pursuant to the exemption certificate issued under the Act.

(c) The rights and remedies of the Secretary under this subchapter and the project approval agreement shall be cumulative and shall not exclude any other rights and remedies of the Secretary or the Division of Taxation allowed by law with respect to any event of default under this subchapter or the project approval agreement.

#### **12A:2A-2.13 Appeals**

(a) The procedure for an appeal of the Secretary's action on an application to the program shall be as follows. An applicant may appeal the Secretary's action on an application to the program by submitting in writing to the Commission, within 30 days from the date of the Secretary's action, an explanation as to how the applicant has met the program

criteria. Only the information that clarifies the application filed shall be reconsidered. In the event the application is reconsidered as eligible for the program, such application shall be presented for action at the next available Board of Directors' meeting.

(b) In general, appeals arising from decisions of the Secretary may be requested in writing, and an opportunity given for an informal hearing on the papers, in person or via telephone with Commission staff. Such written request for any informal hearing must be made within 30 days of the receipt of the Secretary's decision.

(c) In the event of an adverse decision after an informal hearing under (b) 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 Secretary if any informal hearing is not sought, a formal hearing.

(d) Upon filing of the initial pleading in a contested case, the Secretary 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.

(e) Every determination of a dispute or controversy arising from this subchapter by the Commission, constituting final agency action by the Secretary 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.

#### **12A:2A-2.14 Severability**

If any section, subsection, provision, clause, or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.