

(f) When the notice of approval has been accepted by the applicant and returned to the Authority, a list of closing instructions shall be mailed to the applicant or attorney for the applicant.

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

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

In (d)1, substituted "in the case of a loan may" for "will" following "Authority and" in the introductory paragraph, and inserted a reference to corporate guarantees in ii; in (e), rewrote the first sentence; and in (f), inserted "applicant or" preceding "attorney".

19:31-11.9 Disbursement of financial assistance

(a) All requests for disbursements of the financial assistance shall be submitted by the applicant with a certification from the contractor or consultant that the requested moneys have been or will be spent in accordance with a Department approved scope of work.

(b) The recipient of financial assistance 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.

(c) In the case of a grant, payment shall be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the discharger or other responsible party.

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

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

In (b), deleted a reference to grants.

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), inserted "or will be" preceding "spent in accordance".

19:31-11.10 Attorney General review

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

19:31-11.11 Fees

(a) An application fee shall be charged as follows:

1. \$250.00 for residential tanks per facility;
2. \$500.00 for nonresidential tanks up to six tanks per facility; and
3. \$1,000 for seven or more nonresidential tanks per facility.

(b) An annual surcharge as set forth in (b)1 through 3 below shall be imposed upon the owner or operator of a

facility who does not maintain evidence of financial responsibility in accordance with N.J.S.A. 58:10A-25 or pursuant to 42 U.S.C. §§ 6991 et seq., as determined by the Department.

1. Facilities with one or two petroleum underground storage tanks shall pay \$1,500.

2. Facilities with three to six petroleum underground storage tanks shall pay \$3,500.

3. Facilities with more than seven petroleum underground storage tanks shall pay \$6,000.

(c) Payment shall be due within 30 days of receipt of an invoice.

19:31-11.12 Public record

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

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

Deleted a reference to grants.

SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

19:31-12.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1997, c.334. This Act establishes a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in New Jersey.

19:31-12.2 Definitions

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

"Allowable expenditures" means costs incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including, but not limited to, the expenses of fixed assets, such as the construction, acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures.

"Authority" means the New Jersey Economic Development Authority.

"Biotechnology" means the continually expanding body of fundamental knowledge about the function 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 the body of fundamental knowledge.

“Biotechnology business” means an emerging company that has a headquarters or base of operations located in New Jersey and is 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 corporation that has a headquarters or base of operations located in New Jersey, and that is engaged in providing services or products necessary for such research, development, production, or provision.

“Buying business” means a business with the financial ability to purchase the unused net operating loss carryover and/or unused research and development 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” means the certificate issued by the Division of Taxation certifying to the selling business amounts of unused net operating loss carryover and/or unused research and development tax credit carryovers.

“Net operating loss” means the excess of the deductions over the gross income used in computing entire net income in a specific year without regard to the net operating loss carryover to that year and the dividend exclusion, as provided in N.J.S.A. 54:10A-4(k)(6)(C).

“New or expanding” means a technology or biotechnology company that has fewer than 225 employees of whom at least 75 percent are employed in New Jersey.

“Program” means the Technology Business Tax Certificate Transfer Program.

“Research and development tax credits” means a tax credit against corporation business tax liabilities for taxpayers who have performed qualified research activities in New Jersey, calculated in the manner as the Federal tax credit for increasing research activities. The credit is based on qualified expenditures in New Jersey beginning on or after January 1, 1994. It provides a credit of 10 percent of the excess qualified research expenses over a base amount plus 10 percent of the basic research payments. Taxpayers must complete New Jersey Division of Taxation—Corporate Business Tax Form 306 to claim their credit. The amount of credit claimed for any single tax year cannot exceed 50 percent of that year’s tax liability prior to the consideration of this credit and it cannot reduce the tax liability below the statutory minimum, as set forth in N.J.S.A. 54:10A-5.24.

“Selling business” means a new or expanding technology and/or biotechnology business that has unused net operating loss carryover and/or unused research and development tax credits which it wishes to “sell.”

“Technology business” means an emerging business, that has a headquarters or base of operations located in New Jersey, and that employs some combination of the following: highly educated and/or trained managers and workers employed in New Jersey who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service.

“Unused net operating loss carryover” means net operating loss for any tax year ending after June 30, 1984 shall be a net operating loss carryover to each of seven years following the loss. The amount of net operating loss for any taxable year shall be carried to the earliest taxable year. The portions of loss which shall be carried is the excess, if any, of the amount of the loss over the sum of the entire net income, computed without regard to the dividend exclusion, as provided in N.J.S.A. 54:10A-4(k)(6)(B).

“Unused research and development tax credits” means the amount of tax credit otherwise allowable which cannot be applied because it would reduce the tax liability below 50 percent of the liability prior to consideration of the credit or it reduces the tax below the statutory minimum, as provided in N.J.S.A. 54:10A-5.24(b).

19:31-12.3 Eligibility

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

1. Meets the definition of a technology or biotechnology business;
2. Has unused amounts of research and development tax credits and/or unused net operating loss carryover;
3. In the two most recent years of the business, reports negative net or no income or has revenues over expenses of less than 110 percent and is not directly or indirectly 50 percent or greater owned or controlled by another corporation that has positive income in any of the two previous full years of operations as determined on its financial statements or is part of a consolidated group of affiliated corporations, as filed for Federal income tax purposes, that in aggregate has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its combined financial statements; and
4. Employs fewer than 225 people of which at least 75 percent work in New Jersey.

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)3, inserted “or no” following “negative net”.

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 three 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 or loss for the three most recent fiscal years;
5. The number of permanent full time jobs created by the applicant over the course of the two most recent calendar 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 efforts made during the past two years to secure any form of financial assistance to support its operations; and

11. 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.

Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (c), substituted "three" for "two" in 3, rewrote 4 and 5, deleted former 10 and 11, recodified former 12 as 10 and deleted "and projected two years", and recodified former 13 as 11.

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 degree to which the proposed financial assistance will result in significant growth in permanent full-time employment based upon the increase in permanent full time employment in the two most recent calendar years;

5. The financial resources of the applicant including:
- i. The degree to which the proposed financial assistance demonstrates the prospect of a significant positive change in net income or loss based upon the recent net income or loss trend;
 - 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 preliminary 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, the applicant will receive notification of preliminary approval that will state the conditions that must be met before the Authority will issue final approval. The notification of preliminary approval will state that the Authority will forward the application to the Division of Taxation only upon receipt of the following:

1. A Buying Business Information Sheet which identifies the buyer, the amount of tax benefits to be sold and the selling price;
2. A Tax Benefit Identification Form on which the applicant lists the amount of tax benefits they wish to sell and the years that the Net Operating Loss's and/or Research and Development tax credits were incurred;
3. A Private Financial Assistance Form specifying how the applicant will expend the private financial assistance for allowable expenditures for the operations of the company;
4. An executed form of the standard selling agreement, with the Private Financial Assistance Form attached as an exhibit; and
5. If the applicant was authorized to sell and did sell tax benefits in the prior year, a spending certification that attests that the applicant spent the proceeds of the prior year's sale of tax benefits in accordance with the prior year's Private Financial Assistance Form.

(c) After approval of the tax benefit by the Division of Taxation as evidenced by the issuance of a tax certificate which will be sent to the Authority, the Authority will issue final approval of the grant and release the tax certificate only upon the receipt of a certificate from the applicant, dated the date of the closing of the sale of the tax benefit certificate that states, among other matters, that:

1. The information in the application form continues to be accurate in all material respects; and

2. As of the date of the certificate, the company is operating as a new or expanding emerging biotechnology or technology business and has no current intention to cease operating as a new or expanding emerging biotechnology or technology business.

Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (a), rewrote 4 and 5i.

Amended by R.2002 d.334, effective October 7, 2002.

See: 34 N.J.R. 2414(a), 34 N.J.R. 3531(b).

Rewrote (b) and (c).

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.