

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 subsidizes 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, including 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 facility 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-fundable 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-fundable 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).

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

(e) In the event that the applicant receives notification of preliminary approval, that notification will state the conditions that must be met before the Chief Executive Officer will issue a final approval. The notification of preliminary approval will state that the Chief Executive Officer will forward the application to the Division of Taxation only upon receipt of the following:

1. A statement, dated the date of the closing of the sale of the tax credit transfer certificate that states, among other matters, that as of the date of the certificate, the selling business is operating and has no current intention to cease operating;
2. A completed Tax Benefit Identification Form that identifies the accumulated BRRAG tax credits, the amount intended to be sold, and the years that the BRRAG tax credit were incurred;
3. A Buying Business Information Sheet that identifies the buying business' name, address, telephone number, the estimated value of the tax credits to be transferred, and from whom and a certification that the buying business is not an affiliate;
4. An executed form of standard selling agreement between the buying and selling business defining the terms and conditions of the sale of the tax certificate(s), with the Private Financial Assistance Form attached as an exhibit;
5. A Private Financial Assistance Form specifying how the applicant will expend the private financial assistance for allowable expenditures for the expenses incurred in by the selling business in connection with the operation of the business in the State; and
6. Information evidencing that the amount of private financial assistance to be made by the buying business is equal to at least 75 percent of the amount of the to be surrendered BRRAG tax credit of the selling business.

(f) In the event that an application is denied for either preliminary or final approval, the applicant shall be notified of the denial and the reasons for such denial.

Recodified from N.J.A.C. 12A:2A-1.6 and amended by R.2010 d.231, effective October 18, 2010.
See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (e), substituted "Chief Executive Officer" for "Secretary" throughout; in (a) and the introductory of (b), substituted "Authority" for "Commission" throughout; in (c), deleted "of Directors" following "Board" and "recommend to" following "shall"; in (d), substituted "After action by the Board, the Chief Executive Officer" for "The Secretary, after receipt and consideration of the recommendation from the Board of Directors,"; deleted former (f); and recodified former (g) as (f).

19:31-15.7 Fees

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable fee of \$2,500.

(b) A non-refundable fee of \$750.00 shall be paid for each request for any administrative changes, additions or modifica-

tions to the grant; and a non-refundable fee of \$1,500 shall be paid for any major changes, additions or modifications to the grant, such as those requiring extensive staff time and Board approval.

New Rule, R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-1.7, Appeals, recodified to N.J.A.C. 12A:2A-1.8.

Recodified from N.J.A.C. 12A:2A-1.7 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

19:31-15.8 Appeals

The procedure for appeals arising from the Chief Executive Officer's action on an application to the program as well as appeals arising from other decisions of the Chief Executive Officer relating to the program shall be the procedures set forth at N.J.A.C. 19:31-14.17.

Recodified from N.J.A.C. 12A:2A-1.7 and amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Updated the N.J.A.C. reference.

Recodified from N.J.A.C. 12A:2A-1.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer's" for "Secretary's" and "Chief Executive Officer" for "Secretary" and updated the N.J.A.C. reference.

SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM

19:31-16.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority, after consultation with the Director of the Division of Taxation in the Department of the Treasury, to implement sections 19 through 22 of the Business Retention and Relocation Assistance Act, P.L. 2004, c.65 (the "Act"), which provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The purpose of the sales and use tax exemption program is to encourage economic development and to preserve jobs that currently exist in New Jersey. Qualifying businesses will be exempt from sales and use tax for eligible property located or placed at a business location for a construction and or renovation project pursuant to the terms and conditions of a project approval agreement. The sales tax exemption certificate, which applies only to property purchased for installation in that approved project will allow the business to purchase machinery, equipment, furniture and furnishings, fixtures and building materials other than tools and supplies for placement at the project location without the imposition of sales and use tax until the new facility is functional, as further specified in this subchapter.

Recodified from N.J.A.C. 12A:2A-2.1 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Economic Development Authority" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')", deleted the second sentence and deleted "the Program" following "purpose of", and inserted "sales and use tax exemption program".

19:31-16.2 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 approval agreement" means the project approval agreement between a business and the Authority governing the terms and conditions of the project approval for the sales tax exemption program. The Agreement describes the project, the date the commitment duration shall commence, the extent of sales tax exemption, the conditions and limitations of the sales tax exemption, the representations and reporting obligations of the business, and other such provisions which further the purposes of P.L. 2004, c.65, §§ 19 through 22 (N.J.S.A. 34:1B-185 through 188).

"Application" means the application submitted by a business for the sales tax exemption program, pursuant to P.L. 2004, c.65 §§ 19 through 22.

"Approved site" means the site of the project in the New Jersey Development and Redevelopment Plan designated Planning Area 1 or 2 locations; however, if the site of the project is not located in either of such Planning Areas, the project involves renovation or expansion of an existing facility, and the project satisfies all other criteria of the program, as determined by the Secretary, the site may also be an approved site.

"Authority" means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority.

"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, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. 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.

"BEIP grant" means the grant made to a business by the New Jersey Economic Development Authority pursuant to the provisions of P.L. 1996, c.26 (N.J.S.A. 34:1B-124 et al).

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Commitment duration" means five years from the later of the relocation of all of the retained full-time jobs included in the project, which shall not be more than one year from the issuance of a temporary certificate of occupancy, or the completion date specified in the project approval agreement entered into pursuant to section 19 through 22 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-185 through 188).

"Completion date" generally means the earlier of the date of the issuance of a temporary certificate of occupancy with respect to an approved site or in cases where no temporary certificate of occupancy is issued, one year from the project commencement date, as specifically set forth in the project approval agreement.

"Construction contract" means for purposes of undertaking the project, any contract for the acquisition, construction, improvement or installation of those portions of the project subject to sales tax or installation of eligible property. For purposes of this definition, the term "installation" means installation by a contractor, which involves access to pipes or wires within walls or any other alteration or modification of the project, but shall not include the delivery, locating, relocating, moving, assembling or setting up or eligible property by the provider of such property or the business's employees or any installation of such eligible property (including, but not limited to, machinery, apparatus and equipment) if such installation is made pursuant to a purchase contract by the provider of such property.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Eligible affiliate" means any person with respect to which the business:

1. Possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by contract or otherwise; and
2. Owns, either directly or indirectly, at least 51 percent of the voting stock or other equity or ownership interest of such person.

"Eligible property" means machinery, equipment, furniture and furnishings, fixtures, and building materials, but "eligible property" shall not include "motor vehicles" as defined pursuant to section 2 of P.L. 1966, c.30 (N.J.S.A. 54:32B-2),

parts with a useful life of one year or less, or tools or supplies used in connection with the eligible property. Eligible property does not include machinery or equipment purchased, rented or leased by a project participant construction manager, contractor, or subcontractor under contract with the business for their own use on the project.

“Full-time employee” means a person who is employed 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. “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” shall not include a child, grandchild, parent or spouse of an individual who has direct or indirect ownership of at least five percent of the profits, capital, or value of the business.

“Headquarters” means the single location that serves as the national administrative center of a business or the worldwide administrative center of a key division of the business, at which the primary office of the chief executive officer or chief operating officer of the business or the key division of the business, as well as the offices of the management officials responsible for key businesswide functions such as finance, legal, marketing, and human resources, are located.

“Life sciences business” means a business engaged principally in the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products; or physical and biological research; or biotechnology.

“Manufacturing facility” means a business location at which more than 50 percent of the business personal property that is housed in the facility is eligible for the sales tax exemption pursuant to subsection a. of section 25 of P.L. 1980, c.105 (N.J.S.A. 54:32B-8.13) for machinery, apparatus or equipment used in the production of tangible personal property.

“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.

“Program” means the sales and use tax exemption program established under the jurisdiction of the Commission and administered by the Secretary, pursuant to P.L. 2004, c.65 §§ 19 through 22 and this subchapter.

“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 and that will be related to retained full-time jobs. The eligible scope of the project shall accommodate no more than 20 percent above the number of retained full-time jobs. In the event that the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness, such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

“Project participant” means an eligible affiliate of the business or any construction manager, contractor or subcontractor that performs acquisition, construction, equipping, installation or improvements for the project and any other entities working on the project that use the sales tax certificate.

“Research and development facility” means a business location at which more than 50 percent of the business personal property that is purchased for the facility is eligible for the sales tax exemption pursuant to section 26 of P.L. 1980, c.105 (N.J.S.A. 54:32B-8.14) for property used in research and development.

“Retained full-time jobs” means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of the members of a “controlled group of corporations” as defined pursuant to section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563, shall be considered the eligible positions of a single employer. A retained full-time job is one that will not be included in the calculation of a BEIP grant subsequent to being moved to the approved project site.

“Sales tax certificate” means the sales and use tax exemption certificate issued by the Director to the business upon approval by the Secretary of the terms and conditions of the agreement.

“Sales tax exemption” means the sales and use tax exemption approved under an agreement pursuant to the Act, and for purposes of this program, the sales tax exemption shall be administered pro rata to reflect the eligible scope of the project, based on the number of retained full-time jobs increased no more than 20 percent (eligible scope) relative to the sum of the number of all of the jobs of all employers

located at an approved project site during the commitment duration period.

“Sales tax recapture amount” means either:

1. If the event of recapture occurs during the commitment duration, provided the reduction of retained full-time jobs in the aggregate from execution of the project approval agreement until the event of recapture does not exceed 20 percent of the number of the retained full-time jobs: the sum of 1i, ii and iii below. To the extent the reduction of retained full-time jobs in the aggregate exceeds 20 percent of the number of retained full-time jobs, penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq., may also be imposed.

i. A portion of the amount of the sales and use taxes, which would have been payable on all eligible property purchased for the project if the property was not purchased with the sales tax certificate based upon the proportionate value of such amount that corresponds to the reduction of retained full-time jobs and the period of noncompliance;

ii. Interest on the amount referred to in 1i above at the rate equal to the statutory rate for sales tax deficiencies; and

iii. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax recapture amount (including, but not limited to, counsel fees, court costs and other costs of collection); or

2. If the event of recapture occurs prior to the commitment duration, provided the reduction of retained full-time jobs in the aggregate from execution of the project approval agreement until the event of recapture does not exceed 20 percent of the number of retained full-time jobs: the sum of 2i, ii and iii below. To the extent the reduction of retained full-time jobs in the aggregate exceeds 20 percent of the number of retained full-time jobs, penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq., may also be imposed.

i. A portion of the amount of the sales and use taxes, which would have been payable on all eligible property purchased for the project if the property was not purchased with the sales tax certificate based upon the proportionate value of such amount that corresponds to the reduction of retained full-time jobs and the failure to comply for any portion of the commitment duration;

ii. Interest on the amount referred to in 2i above at the rate equal to the statutory rate for sales tax deficiencies; and

iii. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax recapture amount (including, but

not limited to, counsel fees, court costs and other costs of collection).

“Sales tax repayment amount” means the sum of:

1. The amount of sales and use taxes which would have been payable on all eligible property purchased for the project if the property was not purchased with the sales tax certificate; provided that if repayment is the result of a default of the agreement during the commitment duration, this amount shall be reduced by an amount allocable to the proportionate amount of the sales and use tax that corresponds to the period of time in which the business was in compliance measured from the completion date until the date of default;

2. Interest on the repayment amount referred to in paragraph 1 above at the rate equal to the statutory rate for sales tax deficiencies plus any penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq.; and

3. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax repayment amount (including, but not limited to, counsel fees, court costs and other costs of collection).

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

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

In definition “Business”, in the first sentence substituted “Subchapter S of Chapter One” for “subchapter S of chapter one”, inserted “of” preceding “1986” and substituted “either within or outside” for “within” and added the second sentence; and added the final sentence to definition “Project”.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In definition “Full-time employee”, deleted “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.,” following “full-time employment.”

Amended by R.2008 d.38, effective February 19, 2008.

See: 39 N.J.R. 3278(a), 40 N.J.R. 885(a).

In definition “Commitment duration”, inserted “the later of the relocation of all of the retained full-time jobs included in the project, which shall not be more than one year from the issuance of a temporary certificate of occupancy, or”; in definition “Project”, substituted “and that will be related to retained full-time jobs. The eligible scope of the project shall accommodate no more than 20 percent above the number of retained full-time jobs.” for the period following the first occurrence of “location”; in definition “Sales tax exemption”, inserted “to reflect the eligible scope of the project,” “increased no more than 20 percent (eligible scope)”, “sum of the” and “of all employers” and substituted “all of the” for “total”; added definition “Sales tax recapture amount”; and in definition “Sales tax repayment amount”, substituted “penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq.” for “statutory penalties” in paragraph 2, and inserted “to” in paragraph 3.

Amended by R.2008 d.53, effective March 3, 2008.

See: 39 N.J.R. 4385(a), 40 N.J.R. 1355(a).

In definition “Business”, inserted “, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder”.

Recodified from N.J.A.C. 12A:2A-2.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In definition “Agreement”, substituted “Authority” for “Commission”; added definitions “Authority”, “Board” and “Chief Executive Officer”; deleted definitions “Board of Directors”, “Commission” and “Secretary”; rewrote definition “Full-time employee”; in the

introductory paragraphs of 1 and 2 of definition "Sales tax recapture amount", inserted a comma following "et seq."; and in paragraphs liii and 2iii of definition "Sales tax recapture amount" and in paragraph 3 of definition "Sales tax repayment amount", substituted "Chief Executive Officer" for "Secretary".

19:31-16.3 Eligibility criteria

(a) Program eligibility requires that:

1. A business shall have operated continuously in New Jersey, in whole or in part, in its current form or as a predecessor entity, for at least 10 years prior to filing an application with the Authority;

2. A business certify and represent that the availability of financial assistance from the State as would be provided in the approval of the business's application for the program will be an important inducement to the business to undertake the project and to relocate full-time jobs in the State; and

3. A business shall satisfy at least one of the following four criteria:

i. The business has 1,000 or more full-time employees in the State and the project involves relocating 500 or more full-time employees into a new business location or locations;

ii. The business is a life sciences business or a manufacturing facility and the project is: constructing one or more new research and development facilities, constructing one or more new manufacturing facilities in this State, or relocating to a new headquarters in this State that will employ 250 or more full-time employees whose jobs are retained full-time jobs.

iii. The business is a life sciences business or a manufacturing business and the project is constructing a new, or substantially rehabilitating a vacant, property that will separately or collectively:

(1) Be predominantly a new research and development facility;

(2) Be predominantly a new manufacturing facility;

(3) House the headquarters of the business; or

(4) Separately or collectively be a combination of (a)3iii(1), (2) and (3) above; provided, that the new or substantially rehabilitated facility will house a minimum of 250 full-time employees whose jobs are retained full-time jobs. For the purposes of this sub-subparagraph, "predominantly" means a majority of the employees housed in the new facility are engaged in that activity; or a majority of the square footage of the new facility is used in that activity; or a majority of the total value of the investment made will be employed in that activity; or other measures of activity as may be determined by the Secretary that

demonstrate that a critical concentration of research and development, manufacturing, or both, will occur at the new facility; or

iv. The business was, at the time of enactment of P.L. 2004, c.65, § 21, receiving a structured finance special guarantee pursuant to N.J.A.C. 19:31-2.1(c)3ii(5) for the project.

(b) For the purposes of determining a number of full-time employees pursuant to this section, the full-time employees of the members of a "controlled group of corporations" as defined pursuant to section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563, shall be considered the employees of a single employer.

(c) In addition to the eligibility criteria of (a) above, the project must be located at an approved site.

1. To be an approved site, the location for the project shall be situated in designated Planning Area 1 or 2, as defined in the State Development and Redevelopment Plan adopted by the State Planning Commission (pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et al.)).

2. Notwithstanding (c)1 above, a project involving the renovation or expansion of an existing facility that is not located in designated Planning Area 1 or 2 may be eligible to participate in the program, at the determination of the Secretary, if all other applicable criteria are satisfied.

3. A business located in an urban enterprise zone designated pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303 (N.J.S.A. 52:27H-60 et seq.) as of June 30, 2004 shall not be eligible to participate in this program if the relocation project is from a facility within the urban enterprise zone to a facility outside an urban enterprise zone.

4. Notwithstanding (c)3 above, if the relocation is to a facility already owned or leased by the same business and that business already employs at least the same number of persons as those being relocated from the urban enterprise zone, it may be eligible to apply.

(d) Program eligibility further requires that a business shall provide evidence and certify that it is not in default with any other program administered by the State of New Jersey.

(e) A project may be completed in up to two phases provided that it will be the national headquarters of a life sciences or manufacturing company, and will include a significant research and development, a significant manufacturing facility, or combination thereof if:

1. The first completed phase will house at least 200 full-time employees and the second phase will house at least 100 additional employees; and

2. The project is pre-approved for phases and that all phases are completed within 30 months of project approval.

(f) If a project consists of both point-of-purchase retail facilities, as defined at N.J.A.C. 19:31-14.2, and non-retail facilities, only the portion consisting of non-retail facilities shall be eligible for the 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).

Added (f).

Recodified from N.J.A.C. 12A:2A-2.3 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a)1, substituted "Authority" for "Commission"; and in (f), updated the N.J.A.C. reference.

19:31-16.4 Requests for applications

All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625, on forms and/or in a manner prescribed by the Authority.

Recodified from N.J.A.C. 12A:2A-2.4 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote the section.

19:31-16.5 Submission requirements

(a) Each application to the Authority shall include the following information in an application format prescribed by the Authority:

1. Business information shall include the following:

- i. The name of the business;
- ii. The address of the business;
- iii. The type of business;
- iv. Principal products and services;
- v. The contact person for this application;
- 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 number of years of operation in New Jersey including evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of the application;
- x. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey;
- xi. Certification that the availability of financial assistance from the State as provided in this program at the site proposed for approval is an important inducement to the business to undertake the project and to relocate the full-time jobs relating to the project in the State; and

xii. Any other necessary and relevant information as determined by the Secretary for a specific application.

2. Project information shall include the following:

- i. An overall description of the proposed project;
- ii. The current location(s) (address(es)) and number of employees for each site that is subject to this application;
- iii. The location(s) employees will be relocated from and identify the location(s) employees will be relocated to as per this application. Include number of employees for all sites;
- iv. A description of the quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;
- v. A description of any capital investments made by the business at the new business location;
- vi. Identification of the site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) or if the site is outside the jurisdiction of the State Plan, evidence of approval under the applicable comprehensive management plan;
- vii. A project schedule that identifies projected move dates for each site;
- viii. A schedule of short-term and long-term employment projections of the business in the State based upon the relocation;
- ix. The terms of any lease agreements or details of the purchase or building of the new business location;
- x. An estimate of the projected retained State tax revenues resulting from the relocation;
- xi. A description of the type of contribution the business can make to the long-term growth of the State's economy and a description of the potential impact on the State's economy if the jobs are not retained;
- xii. Evidence of alternative relocation plans, such as an analysis of the cost effectiveness of remaining in this State versus relocation under the alternative plans; and
- xiii. Any other necessary and relevant information as determined by the Secretary for a specific application.

3. The employee information shall include the following:

- i. A written certification the employees that will be the subject of this application are full-time employees and receive health care benefits;

ii. The number of employees at the project site that are included in a BEIP grant calculation. Compare this to the number of employees that are subject to an application made under this section. Include the New Jersey Economic Development Authority BEIP project identification number;

iii. Evidence that the New Jersey Economic Development Authority has been notified of the applicant's potential relocation to another site within New Jersey, if the applicant is a BEIP grantee;

iv. A certification that the business will maintain 95 percent of the retained full-time jobs for at least the first two years of the commitment duration, and will maintain a minimum of 90 percent of the retained full-time jobs for the remainder of commitment duration; and

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

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Deleted (a)4.

Recodified from N.J.A.C. 12A:2A-2.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), substituted "Authority" for "Commission" twice; in (a)3v, substituted "Chief Executive Officer" for "Secretary"; and deleted (a)4.

19:31-16.6 Application and review procedures

(a) Applicants shall submit to the Chief Executive Officer a completed Sales Tax Exemption Program application. The application shall bear either a legible post-mark date or a date received stamp from the Authority.

(b) The Authority shall conduct a review of the applications commencing with the application bearing the earliest submission date, including those applications submitted to the Authority prior to May 16, 2005. 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 Authority shall review the applications to 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) The Board shall approve, approve with modifications, or deny an application in the program.

(d) The minutes of the meeting at which such action occurs are submitted to the Governor for review and become effective 10 working days of the Governor's receipt of the minutes unless earlier approval or vetoed.

(e) If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.

(f) When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.

(g) If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.

(h) If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of the grant upon request by the business.

(i) In the event that an application is approved, the Chief Executive Officer will notify the Director of the terms and conditions of the approval and the Director shall issue a certificate pursuant to the terms and conditions of the project agreement. In the event that an application is denied, the applicant shall be notified of the denial and the reasons for such denial.

Recodified from N.J.A.C. 12A:2A-2.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (b), substituted "Authority" for "Commission" throughout; in (a), substituted "Chief Executive Officer" for "Secretary"; in the introductory paragraph of (b), deleted "and provide a recommendation to the Secretary regarding," following the second occurrence of "review"; in (c), substituted "Board" for "Secretary after receipt and consideration of the recommendation from the Board of Directors,"; in (d), substituted "The" for "When the Board of Directors recommends to either approve or deny a request, the"; rewrote (e); added new (f), (g) and (h); recodified former (f) as (i); and in (i), substituted "Chief Executive Officer" for "Secretary" and deleted "project" preceding and "agreement" following "approval".

19:31-16.7 Project approval agreement

(a) If the Board approves the application to the program, participation in the program is conditioned upon the applicant executing a project approval agreement with the Chief Executive Officer to establish the terms and the conditions of the project approval.

(b) The terms and conditions of the project approval agreement shall include, but not be limited to, the following:

1. Terms establishing the starting date, or event that will determine the starting date and ending date, of the commitment duration;

2. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of sales and use tax will be extended to the period of the commitment duration;

3. Certifications by the business, including the following: eligibility for the program and participation in the program as an important inducement in the business' decision not to relocate outside of New Jersey and to relocate the project in the State;

4. Requirements for undertaking the project;

5. Requirements on maintaining the existence of the business and not relocating the project;

6. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;

7. Indemnification and insurance requirements;

8. Limitations on the scope and use of the sales tax exemption;

9. Default and remedies; and

10. Reporting requirements.

Recodified from N.J.A.C. 12A:2A-2.7 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Board" for "Secretary" and "Chief Executive Officer" for "Secretary".

19:31-16.8 Undertaking the project

(a) Once the project approval agreement is fully executed by the business and the Chief Executive Officer, the business shall complete the project and seek a temporary certificate of occupancy and such other permits and approvals as may be required in a timely manner.

(b) The business shall design, acquire, install, and operate the project in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) related to zoning, building, safety, and environmental quality.

(c) The business shall not use any hazardous substance on, from, or affecting the project in any manner which violates any environmental law, and shall keep or cause the project to be kept free of hazardous substances, except as provided in applicable environmental law.

(d) To the extent that the business or its project participants (and not an unaffiliated third party who is not a project participant) have undertaken the construction of the project, the business shall comply with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), in the performance of construction contracts.

(e) The Authority encourages a business constructing a project to comply with the Authority's affirmative action re-

quirements set forth at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4).

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Rewrote (d); and added (e).

Recodified from N.J.A.C. 12A:2A-2.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Chief Executive Officer" for "Secretary"; in (d), substituted "Authority's" for "Commission's" and "P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1)" for "N.J.S.A. 52:27C-73.1 and implementing rules at N.J.A.C. 12A:2A-3"; and rewrote (e).

19:31-16.9 Sales and use tax exemption limitations

(a) The duration of the sales tax exemption shall be limited. In general, the sales tax certificate shall not apply to purchases initiated by the business after the date that the temporary certificate of occupancy is issued, or in cases where no temporary certificate of occupancy is issued shall not apply to purchases initiated by the business more than one year from the project commencement date; however, the duration of the sales tax certificate shall be pursuant to the terms and conditions of the project approval agreement.

(b) The scope of the sales tax exemption shall be limited. Any exemption from State sales and use taxes resulting from or occasioned by a business's use of the sales tax certificate shall be limited to purchases of eligible property that will be located at the approved site that are made between the commencement and completion dates by the business or a project participant. The sales tax exemption shall:

1. Only be utilized for materials which shall be purchased, completed, constructed or installed by the business or a project participant in connection with the project (and not with any intention to sell, transfer or otherwise dispose of any such materials to another party); and

2. Not be available for any cost of motor vehicles, tools, and parts with a useful life of one year or less, utilities, cleaning service or supplies, maintenance or any otherwise taxable services or property.

(c) The use by project participants of the sales tax exemption shall be limited. If the business undertakes the project, in whole or in part pursuant to a contract with a project participant, the project participant may utilize the business's sales tax exemption for purchases of eligible property for the project, provided that each project participant shall comply with all of the terms and conditions of this subchapter, the project approval agreement, the sales tax certificate and any reporting requirements. A project participant may not use the sales tax certificate issued to the business, except as authorized by the project approval agreement, which shall be strictly construed to limit use, and the business and the project participant shall be jointly or severally liable for any misuse.

(d) Notifications of violations of the terms and conditions of the sales tax exemption shall be addressed as follows. In

the event that a project participant utilizes the sales tax exemption provided pursuant to the sales tax certificate in violation of the terms and conditions of this subchapter and or the project approval agreement, and the business is aware of such violation, the business shall promptly deliver notice of the violation to the Chief Executive Officer, and the business shall, upon demand by the Chief Executive Officer, pay to the Division of Taxation the sales or use tax that would have been paid on purchases not authorized by the project approval agreement in an amount equal to all such authorized sales or use tax exemptions claimed, subject to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., with regard to unpaid sales or use tax, penalty and interest.

Recodified from N.J.A.C. 12A:2A-2.9 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (d), substituted "Chief Executive Officer" for "Secretary" twice.

19:31-16.10 Reporting requirements

(a) During the term of the project approval agreement, on the 15th business day of the quarter, the business that is party to the agreement shall furnish to the Chief Executive Officer a certified report of all purchases of eligible property made in the preceding quarter on which the sales tax exemption was claimed, including the date of purchase, an itemized description, amount of purchase, name of project participant that purchased the item, and name of vendor. "Certified" for purposes of this section means that the veracity of the report is attested by the business, and does not entail a certification by an outside accountant based upon an audit of any type.

1. A business having difficulty obtaining the itemized information from subcontractors on third-party construction contracts may file an estimated allocation of the costs of eligible property incurred under the construction contract, pursuant to the percentage determined by the Board, which shall be consistent with industry standards, and made available to the public upon its approval by the Board. Such estimated allocation shall be included in the certified report of all purchases of eligible property. The election of alternative reporting shall be set forth in the project approval agreement, and once selected, may not be revoked or the percentage changed, pursuant to the terms of that agreement.

(b) During the term of the project approval agreement, 30 days prior to each anniversary of the commencement date of the agreement, the business shall furnish to the Chief Executive Officer a certified report in a format as may be determined by the Chief Executive Officer which shall contain the following information:

1. A certification indicating whether or not the business is aware of any condition, event or act which constitutes a default or an event of default of the agreement, or which would constitute an event of default with the giving of notice or passage of time, or both, under the project approval agreement;

2. A written description of the present status of construction and use of the project and a description of any anticipated material change in the use of the project or in the number of employees located or to be located at the project;

3. For the applicable reporting year, the total amount of the sales tax that would have been paid on purchases of eligible property by or on behalf of the business but for the fact that the sales tax exemption provided was claimed and aggregated as a total from the commencement date; and

4. Any other reports required under the project approval agreement, such as the information provided to the Chief Executive Officer demonstrating the number of retained full-time jobs maintained by the business.

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

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

In (a), inserted "made in the preceding quarter" in the first sentence and substituted "section" for "subchapter" in the second sentence of the introductory paragraph and added (a)1.

Recodified from N.J.A.C. 12A:2A-2.10 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer" for "Secretary" throughout; and in (a)1, deleted "of Directors of the Commission" following the first occurrence of "Board" and "of Directors" following the second occurrence of "Board".

19:31-16.11 Fees

(a) A non-refundable application fee of \$1,000 shall accompany every application for grant assistance.

(b) An annual servicing fee in an amount equal to two percent of the sales tax exemption used in the previous year, with a cap of \$75,000, shall be payable until the quarterly reports pursuant to N.J.A.C. 19:31-16.10(a) are no longer required to be filed.

(c) A non-refundable fee of \$750.00 shall be paid for each request for any administrative changes, additions or modifications to the grant; and a non-refundable fee of \$1,500 shall be paid for any major changes, additions or modifications to the grant, such as those requiring extensive staff time and Board approval.

New Rule, R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-2.11, Events of recapture and default, recodified to N.J.A.C. 12A:2A-2.12.

Recodified from N.J.A.C. 12A:2A-2.11 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (b), updated the N.J.A.C. reference.

19:31-16.12 Events of recapture and default

(a) The occurrence of any one of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulations of any administrative or

governmental body) shall constitute an event of recapture under the project approval agreement:

1. The business reduces or relocates the retained full-time jobs, such that the number of retained full-time jobs falls below the number required pursuant to N.J.A.C. 19:31-16.5(a)3iv (greater than five percent during the first two years of the commitment duration; greater than 10 percent during the remainder of the commitment duration) but has relocated at least the threshold number for project eligibility, 250 or 500 (as applicable to the type of business and as may be reduced up to five percent or 10 percent, as applicable); or

2. The business notifies the Authority, prior to the commitment duration, that it will not relocate 100 percent of the retained full-time jobs set forth in the project approval agreement, but will relocate at least the threshold number for project eligibility, 250 or 500, as applicable to the type of business.

(b) The occurrence of any one or more of the events in (b)1 through 6 below (whether such events shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulations of any administrative or governmental body) shall constitute an "event of default" under the project approval agreement. Violations of the "events of default" provision of the project approval agreement shall be cause for immediate termination of the sales tax certificate as provided by law and repayment of the State sales tax.

1. The business fails to strictly observe or comply with the limitations and conditions of the use of the sales tax exemption as set forth in this subchapter, the sales tax certificate and the project approval agreement;

2. Any representation or warranty made by the business in its application or in the project approval agreement that is false, misleading, or inaccurate in any material respect;

3. Failure to comply with any condition or requirement of the project approval agreement;

4. The business reduces or relocates the retained full-time jobs below the threshold number for project eligibility, either 250 or 500, as applicable to the type of business and as may be reduced up to five percent or 10 percent, as applicable;

5. The business fails to pay the sales tax recapture amount in a timely manner; or

6. The business fails to serve or perform in any other material respect any other term, covenant or condition of the business under the project approval agreement and this subchapter and such failure shall have continued for 30 days after the earlier of delivery to the business of written notice thereof from the Chief Executive Officer or the business's actual or constructive knowledge of such fail-

ure; provided, however, that if such failure is capable of cure, but cannot be cured by the payment of money or by diligent efforts within such 30-day period, but diligent efforts are properly commenced within the cure period and the business is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional 45 days and in no case to extend beyond the expiration of the project approval agreement.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In the introductory paragraph of (a), substituted "events" for "event" following "whether such"; and rewrote (a)4.

Amended by R.2008 d.38, effective February 19, 2008.

See: 39 N.J.R. 3278(a), 40 N.J.R. 885(a).

Section was "Events of default". Added new (a); recodified former (a) as (b); in the introductory paragraph of (b), substituted "the events in (b)1 through 6 below" for "the following events" and "approval agreement." for "agreement;" and inserted the last sentence; in (b)4, substituted "below the threshold number for project eligibility, either 250 or 500, as applicable to the type of business and as may be reduced up to five percent or 10 percent, as applicable" for "above the percentages certified pursuant to N.J.A.C. 12A:2A-2.5(a)3iv (greater than five percent during the first two years of the commitment duration; greater than 10 percent during the remainder of the commitment duration)" and deleted "or" from the end; added new (a)5; recodified former (a)5 as (a)6; and in (a)6, inserted "the" preceding "business is diligently" and deleted the former last sentence.

Recodified from N.J.A.C. 12A:2A-2.11 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-2.12, Remedies, recodified to N.J.A.C. 12A:2A-2.13.

Recodified from N.J.A.C. 12A:2A-2.12 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a)1, updated the N.J.A.C. reference; in (a)2, substituted "Authority" for "Commission"; and in (b)6, substituted "Chief Executive Officer" for "Secretary".

19:31-16.13 Remedies

(a) Upon the occurrence of an event of recapture as described in N.J.A.C. 19:31-16.12 and the project approval agreement, the Chief Executive Officer may demand the payment of the sales tax recapture amount, and in his or her sole discretion, may request that the Director of the Division of Taxation recover the sales tax recapture amount.

(b) Upon the occurrence of any event of default as described in N.J.A.C. 19:31-16.12 and the project approval agreement, the Chief Executive Officer may, so long as such event of default is continuing, do one or more of the following as the Chief Executive Officer in his or her sole discretion shall determine, without limiting any other right or remedy the Chief Executive Officer or the Division of Taxation may have on account of such event of default:

1. The Chief Executive Officer may require the surrender by the business to the Chief Executive Officer of the sales tax certificate for suspension or cancellation; and/or

2. The Chief Executive Officer 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 Chief Executive Officer'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.

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

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

Amended by R.2008 d.38, effective February 19, 2008.
See: 39 N.J.R. 3278(a), 40 N.J.R. 885(a).

Added new (a); recodified former (a) through (c) as (b) through (d); and in (c), inserted "or recapture" twice.

Recodified from N.J.A.C. 12A:2A-2.12 and amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

In (a) and in the introductory paragraph of (b), updated the N.J.A.C. reference. Former N.J.A.C. 12A:2A-2.13, Appeals, recodified to N.J.A.C. 12A:2A-2.14.

Recodified from N.J.A.C. 12A:2A-2.13 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer" for "Secretary" throughout; in (a) and the introductory paragraph of (b), updated the N.J.A.C. references; and in (b)2ii, substituted "Chief Executive Officer's" for "Secretary's".

19:31-16.14 Appeals

(a) The procedure for an appeal of the Board's action on an application to the program shall be as follows. An applicant may appeal the Board's action on an application to the program by submitting in writing to the Authority, within 30 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Only the information that clarifies the application filed shall be re-considered. In the event the application is reconsidered as

eligible for the program, such application shall be presented for action at the next available Board meeting.

(b) In general, appeals may be requested in writing, and an opportunity given for an informal hearing on the papers, in person or via telephone with Authority staff. Such written request for any informal hearing must be made within 30 days of the receipt of the Board'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 Board if any informal hearing is not sought, a formal hearing.

(d) Upon filing of the initial pleading in a contested case, the Board 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 Authority, constituting final agency action 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. 12A:2A-2.13 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-2.14, Severability, recodified to N.J.A.C. 12A:2A-2.15.

Recodified from N.J.A.C. 12A:2A-2.14 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (b), substituted "Board's" for "Secretary's" throughout; in (a), (b) and (e), substituted "Authority" for "Commission"; in (a), deleted "of Directors" following "Board"; in (b), deleted "arising from decisions of the Secretary" following "appeals"; and in (e), deleted "by the Secretary" following "action".

19:31-16.15 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.

Recodified from N.J.A.C. 12A:2A-2.14 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Recodified from N.J.A.C. 12A:2A-2.15 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION
PROGRAM FOR CERTAIN COUNTIES

19:31-17.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement P.L. 2005, c. 374 (the "Act"), and specifically, section 2 of the Act. Section 2 establishes an energy sales tax exemption program (the "Program") for retail sales of electricity and natural gas and their transport to a business in counties designated for the 50 percent tax exemption under section 1 of P.L. 1993, c. 373 that employs at least 50 people at that facility, at least 50 percent of whom are directly employed in a manufacturing process, and provided that the energy and utility services are consumed exclusively at that facility. The Program is to be administered by the Authority in accordance with the procedures for obtaining the exemption as may be provided under the Sales and Use Tax Act, P.L. 1966, c. 30, and this subchapter.

Recodified from N.J.A.C. 12A:2A-4.1 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Economic Development Authority (Authority)" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')" and "Authority" for "Commission," preceding "in accordance", and deleted "established under the jurisdiction of the Commission, and is" following "Program is".

19:31-17.2 Definitions

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

"Act" means P.L. 2005, c. 374, the Act extending the eligibility for the sales use tax exemption of energy and utility service purchases by certain manufacturing-intensive businesses in Urban Enterprise Zones and certain counties with reduced sales tax and amending P.L. 2004, c. 65.

"Application" means the authorized application submitted to the Authority from a business for approval of an energy sales tax exemption under the program.

"Authority" means the New Jersey Economic Development Authority.

"Board" means the Board of the New Jersey Economic Development Authority.

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"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 utilize the productive services of people as full-time employees. "Full-time employee" is defined at N.J.A.C. 19:31-14.2.

"Energy sales tax exemption" means the energy sales and use tax exemption for retail sales of energy and utility service approved by the Chief Executive Officer pursuant to the Act and this subchapter.

"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.

"Program" means the energy sales tax exemption program for retail sales of electricity and natural gas and their transport to a business in counties designated for the 50 percent tax exemption under section 1 of P.L. 1993, c. 373, that employs at least 50 people at that facility, at least 50 percent of whom are directly employed in a manufacturing process, and provided that the energy and utility services are consumed exclusively at that facility, as authorized by P.L. 2005, c. 374 and this subchapter.

"Qualified county" means a county that is designated for the 50 percent sales tax exemption under section 1 of P.L. 1993, c. 373 (N.J.S.A. 54:32B-8.45).

Recodified from N.J.A.C. 12A:2A-4.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In definition "Application", substituted "Authority" for "Commission"; added definitions "Authority", "Board" and "Chief Executive Officer"; and deleted definitions "Commission" and "Secretary"; in definition "Employ", updated the N.J.A.C. reference; and in definition "Energy sales tax exemption", substituted "Chief Executive Officer" for "Secretary".

19:31-17.3 Eligibility criteria and condition for exemption

(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:

1. To operate a manufacturing facility in a qualified county; and
2. Employ at least 50 people at that facility, at least 50 percent of whom are directly employed in the manufacturing process.

(b) The exemption is limited to retail sales of electricity and natural gas that are consumed at the manufacturing facility located in the qualified county.

Recodified from N.J.A.C. 12A:2A-4.3 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).