

Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-209).

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

“Aviation district” means the area within a one-mile radius of the outermost boundary of the “Atlantic City International Airport,” established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24).

“Board” means the Board of the New Jersey Economic Development Authority.

“Business” means an applicant proposing to own or lease premises, or that has acquired the premises within 24 months prior to project application, in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is a partnership, an S corporation, or a limited liability company or a non-profit corporation. If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates. In connection with a regional distribution facility of foodstuffs, the business entity or entities that own or lease such facility shall qualify as a business regardless of the type of the business entity or entities that own or lease such facility; the ownership or leasing of such facility by more than one business entity; or the ownership of the business entity or entities that own or lease such facility. Such ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or leasing by affiliates. Such members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. For the purposes of a regional distribution facility of foodstuffs, leasing shall include subleasing and tenants shall include subtenants. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

“Capital investment” in a qualified business facility means expenses by a business or any affiliate of the business incurred after application for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; obtaining and installing furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168 and 179), for the operation of a business on real property in a building, structure, facility, or improvement to real property, including associated soft costs; and receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13); or any of the preceding. Capital investment includes obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings or other environmental components required to attain the level of silver rating or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified business facility, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. In a Garden State Growth Zone, the following qualify as a capital investment: any and all development, redevelopment and relocation costs, including, but not limited to, site acquisition if made within 24 months of application to the Authority, engineering, legal, accounting, and other professional services required; and relocation, environmental remediation, and infrastructure improvements for the project area, including, but not limited to, on- and off-site utility, road, pier, wharf, bulkhead, or sidewalk construction or repair. A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord if pertaining primarily to the premises of the qualified business facility, and, if pertaining generally to the qualified business facility being acquired or leased, shall be allocated to the premises of the qualified business facility on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility. The capital investment described in this definition may include any capital investment made or acquired within 24 months prior to the date of application, so long as the amount

of capital investment made or acquired by the business, any affiliate of the business, or any owner after the date of application equals at least 50 percent of the amount of capital investment, allocated to the premises of the qualified business facility being acquired or leased on the basis of the gross leasable area of such premises in relation to the total gross leasable area in the qualified business facility made or acquired prior to the date of application.

“Commitment period” means the period of time that is 1.5 times the eligibility period.

“Complex of buildings” means buildings that are part of the same financing plan and operational plan.

“Deep poverty pocket” means a population census tract having a poverty level of 20 percent or more, and which is located within the qualified incentive area.

“Disaster recovery project” means a project located on property that has been wholly or substantially damaged or destroyed as a result of a Federally declared disaster which, after utilizing all disaster funds available from Federal, State, county, and local funding sources, demonstrates to the satisfaction of the Authority that access to additional funding authorized pursuant to the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161, is necessary to complete such redevelopment project, and which is located within the qualified incentive area.

“Distressed municipality” means a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

“Eligibility period” means the period in which a business may claim a tax credit under the Grow New Jersey Assistance Program, beginning with the tax period in which the Authority accepts certification of the business that it has met the capital investment and employment requirements of the Grow New Jersey Assistance Program and extending thereafter for a term of not more than 10 years, with the term to be determined solely at the discretion of the applicant, at the time of approval.

“Eligible position” or “full-time job” means a full-time position in a business in this State that the business has filled with a full-time employee. To be eligible as an eligible position or full-time job, the employee must have his or her primary office at the qualified business facility and must spend at least 80 percent of his or her time at the qualified business facility, or spend any other period of time generally accepted by custom or practice as full-time employment at

the qualified business facility, as determined by the Authority.

“Full-time employee” means a person: who is employed by a business 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, or 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, and 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., or who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a business who works for the partnership 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, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. and who, except for purposes of the Statewide workforce, is provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law. With respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal: the requirement that employee health benefits are to be provided shall be deemed to be satisfied if such benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; full-time employment shall include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent; 35 hours of employment per week at a qualified business facility shall constitute one “full-time employee,” regardless of whether or not the hours of work were performed by one or more persons. For any project located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or any project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, 30 hours of employment per week at a qualified business facility shall constitute one “full-time employee,” regardless of whether or not the hours of work were performed by one or more persons, and the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the employees of the business are covered by a collective bargaining agreement. “Full-time employee”

19:31-18.3 Eligibility criteria

(a) In order to be considered for a Grow New Jersey tax credit, the chief executive officer of a business shall demonstrate at the time of application that the business, expressly including its landlord or seller, will make, acquire, or lease a capital investment equal to or greater than, the applicable capital investment required in (a)1 below at which it will retain full-time jobs and/or create new full-time jobs in an amount equal to or greater than, the applicable number in (a)2 below.

1. For all projects approved after September 18, 2013, the effective date of P.L. 2013, c. 161, the minimum capital investment required shall be reduced by one-third (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties:

i. For the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development premises for continued similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of \$20.00 per square feet of gross leasable area;

ii. For the new construction of an industrial, warehousing, logistics, or research and development premises for similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of \$60.00 per square feet of gross leasable area;

iii. For the rehabilitation, improvement, fit-out, or retrofit of an existing premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$40.00 per square feet of gross leasable area; and

iv. For the new construction of a premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$120.00 per square feet of gross leasable area. For purposes of this subparagraph, non-industrial premises shall include vacant industrial premises that are unleased and unoccupied.

2. The minimum number of new or retained full-time jobs required shall be reduced by one-quarter (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties.

i. For a business that is a technology startup company or a manufacturing company, a minimum of 10 new or 25 retained full-time jobs.

ii. For a business engaged primarily in a targeted industry other than a technology startup company or a manufacturing company, a minimum of 25 new or 35 retained full-time jobs.

iii. For any other business, a minimum of 35 new or 50 retained full-time jobs;

3. The business shall also demonstrate to the Authority that:

i. The qualified business facility shall be constructed in accordance with the minimum environmental and sustainability standards;

ii. The proposed capital investment and the resultant retention and creation of full-time jobs will yield a net positive economic benefit, equaling at least 110 percent of the requested tax credit allocation amount, to the State, as calculated pursuant to N.J.A.C. 19:31-18.7(c) prior to taking into account the value of the requested tax credit, and shall be based on the benefits generated during the first 20 years following the completion of the project, except that:

(1) For a mega project or a project located in a Garden State Growth Zone, the determination shall be based on the benefits generated during a period of up to 30 years following the completion of the project; and

(2) For a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the net positive economic benefit determination shall be based on the benefits generated during a period of up to 35 years following completion of the project, and shall equal at least 100 percent of the requested tax credit allocation;

iii. The award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program. If, in a Garden State Growth Zone, the site was acquired or leased prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site. In satisfaction of this requirement, with respect to a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, the award of tax credits will be a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a

Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority; and

iv. For a non-gaming business facility within an established Tourism District to qualify as a tourism destination project, the facility will have a significant impact on the economic viability of the Tourism District within which it is located by satisfying the following:

(1) Having a capital investment in excess of \$50,000,000, excluding any capital investment for site acquisition, at which more than 250 full-time employees of a business are created or retained; and

(2) Demonstrating to the satisfaction of the Authority a combination of two or more of:

(A) Positive financial benefit to the District;

(B) A net increase in visitors to the District;

(C) An increase in marketing dollars spent on the District; or

(D) The addition of unique amenities or services to the existing project or District.

(b) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(c) A business shall be treated as owner of a qualified business facility if it holds fee simple title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

(d) Pursuant to P.L. 2013, c. 161, a business may apply for tax credits under the program for more than one project pursuant to one or more applications.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a)3iii, substituted “; and” for a period at the end, and added (a)3iv.

19:31-18.4 Restrictions

(a) The Authority, pursuant to P.L. 2013, c. 161, shall not enter into an incentive agreement with a business that has previously received incentives pursuant to the Business Retention and Relocation Assistance Act, P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.), the Business Employment Incentive Program Act, P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.), or any other program administered by the Authority unless:

1. The business has satisfied all of its obligations underlying the previous award of incentives or is compliant

with section 4 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-245). In the instance of the business terminating an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, the Authority shall recapture all or part of any award, provided that such permitted recapture may be calculated to recognize the period of time that the business was in compliance prior to termination and such recapture amount may be paid after approval by the Authority of the business's application for a tax credit incentive award under P.L. 2013, c. 161, but the recapture amount must be paid before the Authority shall execute the incentive agreement, which shall be executed within 18 months following the date of approval of the business's application;

2. The capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives; or

3. The incentives pursuant to the Business Retention and Relocation Assistance Grant (BRRAG) Program Sales and Use Tax Exemption, sections 19 through 22 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-185 through 188) are awarded simultaneously with the Grow New Jersey Tax credit.

(b) A project that consists solely of point-of-final-purchase retail facilities, excluding catalog distribution centers, shall not be eligible for a grant of tax credits. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. For a qualified business facility that is a mixed-use project that includes retail facilities and that is located in a Garden State Growth Zone or the Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, retail facilities in an amount up to 7.5 percent of the mixed-use project may be included in the mixed-use project application for a grant of tax credits along with the non-retail facilities and that application may include in the aggregate the pro-rata number of full-time employees employed by any number of tenants or other occupants of the included retail facilities. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this subsection, a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by a full-service supermarket or grocery store, located in a Garden State Growth Zone that qualified under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or a tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), or catalog distribution centers shall not be considered point-of-final-purchase retail facilities.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Added new (a); deleted former (a) through (c) and (e) through (i); recodified former (d) as (b); and rewrote (b).

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (b).

19:31-18.5 Application submission requirements

(a) Each application to the Authority made by a business 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. The prospective future address of the business (if different);

iv. The type of the business;

v. The 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. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

xi. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

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;

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 financial information demonstrating ability to complete the capital investment;

iii. The estimated value of the capital investment;

iv. 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 pursuant to N.J.A.C. 19:31-18.3(a)3ii, taking into account the criteria listed at N.J.A.C. 19:31-18.7(c). In determining whether a proposed capital investment will yield a net positive benefit, the business's chief executive officer, or equivalent officer for North American operations, shall submit a certification indicating that:

(1) Any existing full-time jobs are at risk of leaving the State or being eliminated;

(2) Any projected creation or retention, as applicable, of new full-time jobs would not occur but for the provision of tax credits under the program; and

(3) The business's chief executive officer, or equivalent officer for North American operations, has reviewed the information submitted to the Authority and that the representations contained therein are accurate provided, however, that in satisfaction of (a)2iv(1) and (2) above, the certification with respect to a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and

Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, shall indicate that the provision of tax credits under the program is a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority. If the site was acquired within 24 months prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site. 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. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project 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;

vi. Identification of the site of the proposed qualified business facility, including the block and lot of the site as indicated upon the local tax map. For purposes of determining geographical location of a qualified business facility that extends over more than one geographical location, the qualified business facility shall be considered in the geographical location with the most beneficial total tax credit amount;

vii. A project schedule that identifies projected move dates for the proposed qualified business facility;

viii. A schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

ix. 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; and, if an application involves intra-State job transfers, a full economic analysis of all

locations under consideration by the business, as well as all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist;

x. The total number of anticipated new and retained full-time jobs 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

xi. 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;

ii. The average annual wage and benefit rates of full-time employees and new and retained full-time jobs at the qualified business facility;

iii. 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

iv. Any other necessary and relevant information as determined by the Authority for a specific application.

(b) The business applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-18.6(a).

(c) A business shall be allowed to assign their ability to apply for the tax credit under this subchapter to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone, as determined by the Authority.

(d) The non-profit organization in (c) above or an organization operating a qualified incubator facility may make an application on behalf of a business which meets the requirements for the tax credit, or a group of non-qualifying businesses or positions, located at a qualified business facility, that shall be considered a unified project for the purposes of the incentives provided under this section.

1. For purposes of this subsection, "positions" mean full-time employees who are employed by a business at a qualified incubator facility and who spend at least 16 hours a week at the qualified incubator facility.

(e) For any project located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et

seq.), or any project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, a business may assign its ability to apply for the tax credit under this subsection to the developer of the facility. The developer may make an application on behalf of the business which meets the requirements for the tax credit, or a group of non-qualifying businesses located at the business facility, that shall be considered a unified project for the purposes of the incentives provided under this section, and the developer may apply for tax credits available based on the number of jobs provided by the business or businesses and the total capital investment of the business or businesses and the developer.

(f) In addition to the information required pursuant to (a) above, any applicant authorized pursuant to (c), (d), and (e) above shall be required to submit:

1. Evidence of the assignment to apply for the tax credit from the assignee or the party on whose behalf it is making the application;

2. The name of the assignee or the party on whose behalf it is making the application;

3. The contact information of the assignee or the party on whose behalf it is making the application;

4. The New Jersey employer identification number of the assignee or the party on whose behalf it is making the application;

5. The Federal employer identification number of the assignee or the party on whose behalf it is making the application; and

6. If the applicant is a non-profit authorized under (c) above, the mission statement of the non-profit organization.

(g) A business that has already applied for a tax credit incentive award prior to September 18, 2013, the effective date of P.L. 2013, c. 161, but who has not yet been approved for such tax credits, or has not executed an agreement with the Authority, may proceed under that application or seek to amend such application or reapply for a tax credit incentive award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions of the program.

Amended by R.2015 d.014, effective January 20, 2015.
See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.
See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (a)2iv(3), (a)2vi, and (c); added new (d) through (f); and recodified former (d) as (g).

of additional capital investment in the qualified business facility, provided, however, that in no event will the amount of capital investment exceed the amount of capital investment previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. 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. The business shall submit a certification of the chief financial officer of the business, which certification shall be acceptable to the Authority, evidencing that the business has satisfied the conditions relating to any employment requirements. The number of new and retained full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of additional jobs located at the qualified business facility, and, except as set forth in N.J.A.C. 19:31-18.11(e), in no event will the number of jobs exceed the number of jobs previously approved by the Board. To the extent a business has received an award, for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs. In the event the number of new and/or retained full-time jobs is reduced below the number of new and/or retained full-time jobs in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

3. Absent extenuating circumstances and the written approval of the Authority, the certification with respect to capital investment and employment shall be submitted within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline, however, in no event, shall the incentive effective date occur later than four years following the date of approval of an application by the Authority.

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.

(g) 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, within 90 days of the submission of the certifications and evidence satisfactory to the Authority, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate which will be based on the information

submitted in the certifications under (f) above, provided it shall not exceed the maximum amount determined by the Board under (d) above. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance issued by the Authority.

Amended by R.2015 d.014, effective January 20, 2015.
See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.
See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (c) and (e).

Amended by R.2015 d.201, effective December 21, 2015.
See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In the introductory paragraph of (f), deleted "of a certified public accountant, which may be made pursuant to an 'agreed upon procedures' letter acceptable to the Authority" following "certifications"; and in (f)1 and (f)2, inserted the first sentence.

19:31-18.8 Determination of grant amount; bonus award

(a) The total amount of tax credit for an eligible business shall be for each new or retained full-time job as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period; however, except as set forth in N.J.A.C. 19:31-18.11(e), the total tax credit amount credited annually to the business shall not exceed the maximum amount determined by the Board under N.J.A.C. 19:31-18.7(d) and the amount calculated pursuant to N.J.A.C. 19:31-18.7(g), divided by the number of years in the eligibility period.

(b) The base amount of the tax credit for each new or retained full-time job shall be as follows:

1. For a qualified business facility located within an urban transit hub municipality or Garden State Growth Zone or is a mega project, \$5,000 per year;
2. For a qualified business facility located within a distressed municipality but not qualifying under (b)1 above, \$4,000 per year;
3. For a project in a priority area, \$3,000 per year; and
4. For a project in other eligible areas, \$500.00 per year.

(c) In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased if the qualified business facility meets any of the following priority criteria or other additional or replacement criteria determined by the Authority from time to time in response to evolving economic or market conditions:

1. For a qualified business facility located in a deep poverty pocket or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the Federal Department of Housing and Urban Development, an increase of \$1,500 per year;
2. For a qualified business facility located in a qualified incubator facility, an increase of \$500.00 per year;

3. For a qualified business facility located in a mixed-use development that incorporates sufficient moderate income housing on site that is made available to accommodate a minimum of 20 percent of the full-time employees of the business, an increase of \$500.00 per year;

4. For a qualified business facility located within a transit-oriented development, an increase of \$2,000 per year;

5. For a qualified business facility, other than a mega project or a project in a Garden State Growth Zone, at which the capital investment in industrial premises for industrial use by the business is in excess of the minimum capital investment required for eligibility pursuant to subsection b. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244), an increase of \$1,000 per year for each additional amount of investment, as measured in square feet of measured gross leasable area, that exceeds the minimum amount required for eligibility by 20 percent, with a maximum increase of \$3,000 per year;

6. For a business with new full-time jobs and retained full-time jobs at the project with a median average salary in excess of the existing median average salary for full-time workers residing in the county in which the project is located, or, in the case of a project in a Garden State Growth Zone, a business that employs full-time jobs at the project with a median average salary in excess of the median average salary for full-time workers residing in the Garden State Growth Zone, an increase of \$250.00 per year during the commitment period for each 35 percent by which the project's average salary levels exceeds the county or Garden State Growth Zone average salary, with a maximum increase of \$1,500 per year;

7. For a business with large numbers of new full-time jobs and retained full-time jobs during the commitment period, the increases shall be in accordance with the following schedule:

i. If the number of new full-time jobs and retained full-time jobs is between 251 and 400, \$500.00 per year;

ii. If the number of new full-time jobs and retained full-time jobs is between 401 and 600, \$750.00 per year;

iii. If the number of new full-time jobs and retained full-time jobs is between 601 and 800, \$1,000 per year;

iv. If the number of new full-time jobs and retained full-time jobs is between 801 and 1,000, \$1,250 per year;

v. If the number of new full-time jobs and retained full-time jobs is in excess of 1,000, \$1,500 per year;

8. For a business in a targeted industry, an increase of \$500.00 per year;

9. For a qualified business facility exceeding the Leadership in Energy and Environmental Design's "Silver" rating standards or completes substantial environmental remediation, an additional increase of \$250.00 per year;

10. For a mega project or a project located within a Garden State Growth Zone at which the capital investment

in industrial premises for industrial use by the business is in excess of the minimum capital investment required for eligibility pursuant to subsection b. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244), an increase of \$1,000 per year for each additional amount of investment, as measured in square feet of measured gross leasable area, that exceeds the minimum amount by 20 percent, with a maximum increase of \$5,000 per year;

11. For a project in which a business retains at least 400 jobs and is located within the municipality in which it was located immediately prior to the filing of the application hereunder and is the United States headquarters of an automobile manufacturer, an increase of \$1,500 per year;

12. For a project located in a municipality in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties with a 2007 Municipality Revitalization Index rank greater than 465, an increase of \$1,000 per year;

13. For a project located within a half-mile of any light rail station constructed after September 18, 2013, the effective date of P.L. 2013, c. 161, an increase of \$1,000 per year;

14. For a marine terminal project in a municipality located outside the Garden State Growth Zone, but within the geographical boundaries of the South Jersey Port District, an increase of \$1,500 per year;

15. For a project located within an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 6), and which is located within a quarter mile of at least one United States highway and at least two New Jersey State highways, an increase of \$1,500 per year;

16. For a project that generates solar energy on site for use within the project of an amount that equals at least 50 percent of the project's annual electric supply service needs, an increase of \$250.00 per year; and

17. For a qualified business facility in a vacant commercial building or campus having over 1,000,000 square feet of office or laboratory space available for occupancy for a period of over one year that the Authority designates, as listed on the Authority's website at www.njeda.com, an increase of \$1,000 per year.

(d) The gross amount of the tax credit for an eligible business for each new or retained full-time job shall be the sum of the base amount as set forth pursuant to (b) above and the various additional bonus amounts for which the business is eligible pursuant to (c) above, subject to the following limitations:

1. For a mega project or a project in a Garden State Growth Zone, the gross amount for each new or retained full-time job shall not exceed \$15,000 per year;

2. For a qualified business facility located within an urban transit hub municipality, the gross amount for each

new or retained full-time job shall not exceed \$12,000 per year;

3. For a qualified business facility in a distressed municipality the gross amount for each new or retained full-time job shall not exceed \$11,000 per year;

4. For a qualified business facility in other priority areas, the gross amount for each new or retained full-time job shall not exceed \$10,500 per year;

5. For a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed \$6,000 per year; and

6. For a disaster recovery project, the gross amount for each new or retained full-time job shall not exceed \$2,000 per year.

(e) After the determination by the Authority of the gross amount of tax credits for which a business is eligible pursuant to (d) above, the final total tax credit amount shall be calculated as follows:

1. For each new full-time job, the business shall be allowed tax credits equaling 100 percent of the gross amount of tax credits for each new full-time job; and

2. For each retained full-time job, the business shall be allowed tax credits equaling the lesser of 50 percent of the gross amount of tax credits for each retained full-time job, or one-tenth of the capital investment, which will be the lesser of actual capital investment or the business's proposed amount approved at application, divided by the number of retained and new full-time jobs per year over the grant term of ten years, unless the jobs are part of a mega project that is the United States headquarters of an automobile manufacturer located within a priority area or a qualified business facility in a Garden State Growth Zone, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job, or unless the new qualified business facility would replace a facility that has been wholly or substantially damaged as a result of a Federally declared disaster, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job. The per retained full-time job tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) into the amount of capital investment in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g), provided that in no event shall the gross amount of tax credits per retained full-time job exceed the gross amount calculated at the approval of the application. Based on this per retained full-time job calculation, any reduction in the number of retained full-time jobs shall proportionately reduce the amount of tax credits for that year.

(f) For each application approved by the Board, the amount of tax credits available to be applied by the business annually shall not exceed:

1. Thirty-five million dollars (\$35,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority;

2. Thirty million dollars (\$30,000,000) and provides a net positive economic benefit to the State with respect to a mega project or a qualified business facility in a Garden State Growth Zone;

3. Ten million dollars (\$10,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in an urban transit hub municipality;

4. Eight million dollars (\$8,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in a distressed municipality;

5. Four million dollars (\$4,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in other priority areas, but not more than 90 percent of the withholdings of the business's employees from the qualified business facility; and

6. Two-and-a-half million dollars (\$2,500,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in other eligible areas, but not more than 90 percent of the withholdings of the business's employees from the qualified business facility.

(g) Under (f) above, with the exception of a project located within a Garden State Growth Zone which qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, that divides the total capital investment of the project by the total number of full-time jobs at that project, for each application for tax credits in excess of \$4,000,000 annually, the amount of tax credits available to be applied by the business annually shall be the lesser of the maximum amount under the applicable paragraph or an amount determined by the Authority necessary to complete the project, with such determination made by the Authority's utilization of a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations, as applicable; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-

of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the Authority, including, but not limited to, factors affecting the decision of the business to relocate, the Authority shall independently verify and confirm the amount necessary to complete the project.

(h) Notwithstanding anything to the contrary in (a) through (g) above, for a project located within a Garden State Growth Zone that qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the total tax credit shall be:

1. For a project that creates or retains 35 or more full-time jobs new to the municipality and makes a capital investment of at least \$5,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$2,000,000 each year of the grant term;

2. For a project that creates or retains 70 or more full-time jobs new to the municipality and makes a capital investment of at least \$10,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$3,000,000 each year of the grant term;

3. For a project that creates or retains 100 or more full-time jobs new to the municipality and makes a capital investment of at least \$15,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$4,000,000 each year of the grant term;

4. For a project that creates or retains 150 or more full-time jobs new to the municipality and makes a capital investment of at least \$20,000,000, the total tax credit

amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$5,000,000 each year of the grant term; or

5. For a project that creates or retains 250 or more full-time jobs new to the municipality and makes a capital investment of at least \$30,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs as defined for this program at that project divided by 10 years.

6. For projects approved under this subsection, the per full-time employee tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) into the lesser of the amount of capital investment in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) or the award of tax credits approved by the Board pursuant to N.J.A.C. 19:31-18.7(d). Based on this per full-time employee calculation and provided the business continues to meet the minimum number of employees required in subparagraphs (a), (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), any reduction in the number of employees shall proportionately reduce the amount of tax credits for that year, that is, the number of full-time employees will be multiplied by the per full-time employee calculation done at certification.

Amended by R.2015 d.014, effective January 20, 2015.
See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.
See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (c)15, deleted "and" from the end; in (c)16, substituted "; and" for a period; added (c)17; rewrote (e)2, (f)1, and (g); in the introductory paragraphs of (h)1 through (h)5, inserted "new to the municipality"; and added (h)6.

19:31-18.9 Tax credit amount; application and allocation of the tax credit

(a) For each tax accounting or privilege period during the eligibility period, a business may apply the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years (fractions of a cent rounded down) subject to the provisions of the Act and this subchapter.

(b) The business may apply the credit against the tax liability otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and/or capital investment requirements of the program shall be applied on the basis of the allocation(s) submitted pursuant to the application, provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the business facility or employees at the business facility during the tax period for which the tax credits are issued.

(c) The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter. The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period during which it was transferred or in any of the next three successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

(d) Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director of the Division of Taxation in the Department of the Treasury accompanied by any additional information as the Director may require.

(e) In connection with a regional distribution facility of foodstuffs, the business entity or entities may distribute credits to members, shareholders, partners, or other ownership or leasing participants in accordance with their respective interests. If the business entity or entities or their members, shareholders, partners, or other ownership or leasing participants lease space in the facility to members, shareholders, partners, or other ownership or leasing participants or others as tenants in the facility, the leases shall be treated as a lease to an affiliate, and the business entity or entities shall not be subject to forfeiture of the credits. For the purposes of this subsection, leasing shall include subleasing and tenants shall include subtenants.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (c) and (d).

19:31-18.10 Incentive agreement

(a) All approved applicants shall execute an approval letter and an incentive agreement with the Authority to establish the

terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to, the execution of an incentive agreement.

(b) The incentive agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer of the Authority:

1. A detailed description of the proposed project, which will result in job creation or retention, and the number of new or retained full-time jobs that are approved for tax credits;

2. The eligibility period of the tax credits, including the first year for which the tax credits may be claimed;

3. A requirement that the applicant maintain the project at a location in New Jersey for the commitment period, with at least the minimum number of full-time employees as required by the program, which shall include consideration of bonus award(s) and net positive economic benefit test pursuant to N.J.A.C. 19:31-18.3(a)3ii and the amount of tax credits previously received by the business during the eligibility period, and a provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the business does not remain in compliance with the requirements in this paragraph for the commitment duration. Such recapture may include interest on the recapture amount at the rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies, plus any statutory penalties and all costs incurred by the Authority and the Division of Taxation in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. If all or part of any tax credits awarded is subject to recapture, the Authority will pursue recapture from the business and not from a tax credit transfer certificate purchaser. Tax credit transfer certificate purchasers shall be subject to all other limitations and conditions that apply to the use of the tax credits by the business, including, but not limited to, reduction and forfeiture provisions and the requirement of a letter of compliance for the relevant tax period;

4. Personnel information that will enable the Authority to administer the program;

5. A requirement that the certifications relating to the amount of eligible capital investment and number of employees with supporting evidence satisfactory to the Authority shall be submitted by the business in accordance with N.J.A.C. 19:31-18.7(f);

6. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;

7. Certifications by the business, including the following: the State's financial support will yield a net positive economic benefit to the State;

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

9. Annual reporting requirements for the number of full-time employees for which the tax credits are to be made;

10. 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;

11. Audit of the payroll records, as deemed necessary by the Authority;

12. Indemnification and insurance requirements;

13. Limitations on the grant of tax credits;

14. A provision which permits the Authority to amend the agreement;

15. Default and remedies; and

16. Reporting requirements.

(c) The incentive agreement shall further provide that the Authority is not liable in damages for the issuance or use of the tax credits; and that there is no guarantee that legislation will not be enacted that would cause further changes to P.L. 2011, c. 149.

Amended by R.2015 d.014, effective January 20, 2015.
See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Section was "Project agreement". Rewrote the section.
Amended by R.2015 d.132, effective August 17, 2015.
See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).
Rewrote (b)3.

19:31-18.11 Reporting requirements and annual reports

(a) After notification pursuant to N.J.A.C. 19:31-18.7(g), the business shall furnish to the Authority an annual report certified by the chief financial officer of the business in a format as may be determined by the Authority, which shall contain the following information:

1. The number of full-time employees and new or retained full-time positions employed at the qualified business facility, the number of full-time employees in its Statewide workforce, total lease payments, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and failure to submit the certified report within 120 days, absent extenuating circumstances and the written approval of the Authority, will result in forfeiture of the tax credit for that privilege period. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs; and

2. A certification indicating whether or not the business is aware of any condition, event, or act, which would cause

the business not to be in compliance with the approval, the Act, the incentive agreement, or this subchapter.

(b) The tax credit certificate may provide for additional reporting requirements.

(c) In conducting its annual review, the Authority may require a business to submit any information determined by the Authority to be necessary and relevant to its review.

(d) Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance will indicate whether the business or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.

(e) For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an additional tax credit award representing an increased base credit amount for that tax period and each subsequent tax period, for each additional full-time employee added above the number of full-time employees specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this subsection; provided that the adjustment may not affect other obligations under the incentive agreement to maintain a minimum number of employees. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time employees added above the number of full-time employees specified in the incentive agreement. Following EDA staff acceptance of the annual report, it shall notify the Director of the Division of Taxation and the business shall receive an increased tax credit certificate.

(f) For a project located within a Garden State Growth Zone which qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27 BBB-1 et seq.), or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which qualifies for a tax credit pursuant to subparagraph (ii) of subparagraphs (a) through (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), if, in any tax period the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement such that the business shall then meet the minimum number of employees required in subpara-

graphs (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), then the Authority shall recalculate the total tax credit amount per full-time employee by using the certified capital investment of the project allowable under the applicable subparagraph and the number of full-time employees certified on the date of the recalculation and applying those numbers to subparagraphs (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount shall be adjusted accordingly pursuant to this section. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time employees added above the number of full-time employees specified in the incentive agreement. Following EDA staff acceptance of the annual report, it shall notify the Director of the Division of Taxation and the business shall receive an increased tax credit certificate.

Amended by R.2015 d.014, effective January 20, 2015.
See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.
See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (e), deleted “, which following review by EDA staff, the Board will determine whether to approve the request” following the fourth occurrence of “agreement”, and inserted the last sentence; and added (f).
Amended by R.2015 d.201, effective December 21, 2015.
See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In the introductory paragraph of (a), substituted “the chief financial officer of the business” for “a certified public accountant”.

19:31-18.12 Tax credit certificate

(a) The tax credit certificate shall set forth the following terms:

1. The starting date of the tax period and the commitment duration;
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; and
6. Reporting requirements and the requirement for an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

19:31-18.13 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, in an amount not less than \$25,000 pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

(b) The initial sale or assignment of any amount of a tax credit allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted.

(c) In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-18.5(a)1xiv.

(d) Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of

P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

(e) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In (a), inserted "the" preceding "Treasury", and substituted "\$100,000 in tax credits, provided that one transfer consisting of any remainder that is less than \$100,000, may be made in each tax period for less than \$100,000" for "\$1,000,000 in tax credits".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (a), inserted "in an amount not less than \$25,000", and deleted the former fourth sentence; and rewrote (b).

19:31-18.14 Cap on total credits

The combined value of all credits approved by the Authority pursuant to P.L. 2007, c. 346 and P.L. 2010, c. 57 (N.J.S.A. 34:1B-207 et seq.) prior to December 31, 2013, shall not exceed \$1,750,000,000, except as may be increased by the Authority as set forth in paragraph (5) of subsection a. of P.L. 2009, c. 90 (N.J.S.A. 34:1B-209.3).

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

19:31-18.15 Reduction and forfeiture of tax credits

(a) If, in any tax period during the eligibility period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. The Statewide workforce shall not include full-time employees at any point-of-final-purchase retail facilities, unless the award includes full-time employees engaged in final point of sale retail.

(b) If, in any tax period during the eligibility period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area drops below 80 percent of the number of new

and retained full-time jobs specified in the certification approved by the Authority pursuant to N.J.A.C. 19:31-18.7(g), then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 80 percent of the number of jobs specified in the certification approved by the Authority pursuant to N.J.A.C. 19:31-18.7(g).

(c) The credit amount allowed for a tax period for which documentation of a business's credit amount remains uncertified by the Authority, as of a date three years after the closing date of that period, shall be forfeited, although credit amounts for the remainder of the eligibility period shall remain available to it.

(d) Provided a business complies with all other requirements of the program, the amount of tax credits a business may take in a tax period shall be reduced in proportion to the reduction in the number of new or retained full-time jobs, as indicated in the annual report, below the number of full-time jobs specified in the incentive agreement. For projects for which awards are calculated pursuant to N.J.A.C. 19:31-18.8(h), if the number of new and retained full-time jobs, as indicated in annual report, is reduced below the required number to qualify under a subsection thereof, the tax credits that the business may take shall be rescored under the subsection that corresponds to the number of new and retained full-time jobs reported. Any tax credits that the business could not take because of a reduction under this subsection shall be forfeited.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a), inserted the last sentence.

19:31-18.16 Effect of sale or lease of qualified facilities

(a) If the qualified business facility is sold by the owner in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that any credits of the business shall remain unaffected.

(b) Unless otherwise permitted in this subchapter, if a tenant subleases its tenancy in whole or in part during the eligibility period, the new tenant shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In (a) and (b), deleted "10-year" preceding "eligibility"; and in (a), inserted "by the owner", and substituted "the business" for "tenants".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (b), substituted "Unless otherwise permitted in this subchapter, if" for "If".