

the dividend exclusion, GILTI, FDII, Net Operating Losses (NOLs), and special deductions as noted in this subsection.

1. The Federal dividend received deductions (DRD) are special deductions for Federal purposes, which are adjustments below line 28. As such, these provisions in the Federal consolidated rules do not apply for New Jersey purposes. New Jersey has its own dividend exclusion (see N.J.S.A. 54:10A-4(k)(5)). The rules and limitations governing the Federal dividend received deductions were not incorporated into N.J.S.A. 54:10A-4(k)(5). Pursuant to N.J.S.A. 54:10A-4.6.d, dividends paid by one member to another member of the combined group are eliminated from the income of the recipient. Furthermore, there also is a New Jersey corporation business tax credit for certain dividends received from non-combined subsidiaries (or a separate combined group that files its own New Jersey combined return and is itself a subsidiary), see N.J.A.C. 18:7-3.28.

2. The NOL-DRD ordering rules found at N.J.S.A. 54:10A-4(u), 54:10A-4(v), and 54:10A-4.6.h(1) (by operation of N.J.S.A. 54:10A-4(v)) also apply because they are provisions of the Corporation Business Tax Act. The Federal limitations that govern the interaction of the Federal net operating losses/net operating loss carryovers and the Federal dividend received deductions do not apply because the Federal dividend received deductions are special deductions under the Internal Revenue Code. Likewise, the Federal dividend deduction rules do not apply to N.J.S.A. 54:10A-4(k)(5) since the Federal dividend received deductions are special deductions for Federal purposes.

3. The only Federal rules with regard to a Federal special deduction that apply are the rules in relation to I.R.C. § 250 (see N.J.S.A. 54:10A-4.15, which specifically coupled the Act to I.R.C. § 250). None of the other Federal rules governing Federal special deductions apply. If a combined group has GILTI and FDII, and the members are eligible for the I.R.C. § 250 deductions and take the deductions for Federal tax purposes, the Federal consolidated return rules, and Federal rules governing the interaction of net operating losses and the I.R.C. § 250 deductions apply.

(j) New Jersey has its own tax credits and its own rules for tax credits, except regarding the New Jersey Research Tax Credit. Although the New Jersey Research Tax Credit has its own specific limitations, the Federal rules governing I.R.C. § 41 apply.

(k) In general, New Jersey follows the guidelines set forth pursuant to the Federal consolidated return regulations regarding I.R.C. § 108.

(l) For more on the interaction of the Federal rules in relation to New Jersey net operating losses and net operating loss carryovers (but not prior net operating loss conversion carryovers), see N.J.S.A. 54:10A-4.5.c.

18:7-21.28 Combined groups engaged in transportation of freight by air or ground

(a) All business income of a combined group engaged in the transportation of freight by air or ground shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the ton miles traveled by the combined group's mobile assets in this State by type of mobile asset and the denominator of which is the total ton miles traveled by the combined group's mobile assets everywhere. This section applies if 50 percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground. See N.J.A.C. 18:7-21.13(b).

(b) If 50 percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground, as described at (a) above, then (a) above applies, and N.J.A.C. 18:7-8.10A (dealing with the sourcing of receipts for certain services) does not apply.

(c) If less than 50 percent of the combined group's entire net income is derived from the transportation of freight by air or ground, then N.J.A.C. 18:7-8.10A (dealing with the sourcing of receipts for certain services) applies.

(d) This section shall apply to combined groups filing on a water's-edge group basis, a worldwide group basis, or an affiliated group basis.

(e) For the purposes at (a) above, receipts attributable to the income of certain international shipping companies and international airlines that were excluded from entire net income pursuant to N.J.S.A. 54:10A-4(k)(9) are not considered when determining whether 50 percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground. Thus, when the income is excluded from the entire net income of the group pursuant to N.J.S.A. 54:10A-4(k)(9), but 50 percent or more of the remaining income that is included in the combined group's entire net income is derived from the transportation of freight by air or ground the income, (a) above shall apply.

18:7-21.29 Change in combined group composition

(a) Members of a combined group shall notify the Director of a change in the combined group where a member dissolves, a merger of any kind occurs, a member withdraws from the group, a member ceases doing business, a member of the group is acquired by a third party not in the group, or additional members enter the group that are required to be included. Such notice shall be submitted in written form, as determined by the Director, not later than the due date, or, if an extension of time to file has been requested and granted, not later than the extended due date of the combined unitary tax return for the privilege period in which a change in the combined group occurs. See N.J.S.A. 54:10A-4.10.h.

(b) Such notification shall satisfy the requirements at N.J.A.C. 18:7-14.1 through 14.5.

(c) Subsections (a) and (b) above shall also apply to elective combined returns.

OTHER AGENCIES

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Notice of Proposed Substantial Changes Upon Adoption

Authority Assistance Programs Emerge Program Rules

Proposed Changes: N.J.A.C. 19:31-22.9 and 22.15

Proposed: January 18, 2022, at 54 N.J.R. 124(a).

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2021, c. 160.

Submit written comments by July 15, 2022, to:

Alyson Jones, Director of Legislative and Regulatory Affairs
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
ajones@njeda.com

Take notice that the New Jersey Economic Development (NJEDA) proposed amendments and a repeal and new rule on January 18, 2022 pertaining to the Emerge Program Rules. That rulemaking did not include language necessary to delineate the exception established at N.J.A.C. 19:31-22.9(a)2i. Specifically, language must be added to the original rulemaking (adopted elsewhere in this issue of the New Jersey Register) to clarify, consistent with NJEDA's rules and practice in similar prior programs, that a qualified business facility that consists of new construction has additional time to submit the required information pursuant to N.J.A.C. 19:31-22.9(a)2.

The prior rulemaking also included a provision regarding the relocation of a qualified business facility, which is unintentionally inconsistent with the Emerge statute. Specifically, N.J.S.A. 34:1B-344(c)1 provides that "an eligible business may change the location of the qualified business facility" if the relocation meets one of two criteria. In the original notice of proposal, at N.J.A.C. 19:31-22.15(b)1, the relocation is limited to

before certification of the capital investment. This is not consistent with the statutory criteria that requires an analysis of cost and net positive economic benefit of the alternate proposed qualified business facility reflecting occupancy for the remaining duration of the commitment period. Thus, the relocation may occur during the commitment period, which occurs after the certification of the capital investment.

Effect of Proposed Changes on Impact Statements Included in Original Proposal

The changes do not affect the Social, Economic, Jobs, Agriculture Industry, or Racial and Ethnic Community Criminal Justice and Public Safety Impacts; the Federal Standards Statement; the Regulatory Flexibility Analysis; or the Housing Affordability or Smart Growth Development Impact Analyses, as published in the original proposal.

Full text of the proposed substantial changes to the proposed amendments follows (additions to proposal indicated in italicized boldface *thus*; deletions from the proposal indicated in italicized cursive brackets {thus}):

SUBCHAPTER 22. EMERGE

19:31-22.9 Approval letter and commitment agreement

(a) Following approval by the Board, but before the issuance of tax credits, the Authority shall require an eligible business to execute and return an approval letter to the Authority. The Board’s award of the credits will be subject to conditions subsequently set forth in the approval letter. The conditions in the approval letter must be met in order to retain the approval of the tax credits prior to their issuance and receipt by the business pursuant to (i) below. Such conditions shall include, but not be limited to, the requirement to provide an estimated date of completion of the project; submission of periodic progress reports; submission of the information required {by} *at* (a)2 below; the requirement that the project complies with the prevailing wage requirements at P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b)8 and the Authority’s affirmative action requirements pursuant to P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3; that the project does not violate any environmental law requirements, including, but not limited to, Flood Hazard Area Control Act Rules, N.J.A.C. 7:13; and that the business submit a plan to meet the minimum environmental and sustainability standards.

1. (No change.)

2. Commencing with the date six months following the date the Authority and an eligible business execute the approval letter, the eligible business shall be required to demonstrate that it has obtained site plan approval for, as applicable, has committed financing for, as applicable, and has site control of, the qualified business facility in accordance with the time periods set forth in this paragraph, unless otherwise modified in the approval of the application by the Board.

i. Within the later of 12 months following the date of application approval by the Authority or six months following the date of execution of the approval letter, each approved business shall submit the information required at (a)2 above, except that a business shall have until the later of 24 months from the date of application approval or six months following the date of execution of the approval letter to submit such information *for a qualified business facility that consists of new construction.*

ii. (No change.)

(b) Upon satisfaction of the conditions in the approval letter, as determined by the Authority, the business shall execute a commitment agreement. The terms of the commitment agreement shall be consistent with the applicable eligibility requirements [of] *at* section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b), (c), (d), and (e), and shall include, but shall not be limited to, the following:

1. (No change.)

2. For a phased project, [an incentive] **a project** phase agreement which for each phase identifies a description of the phase, the expected capital investment, and number of new full-time jobs, and the time following acceptance of the [incentive] **commitment** agreement when each phase is to begin and be completed, with the awarding of tax credits under the [incentive] **commitment** agreement to be predicated on the number of full-time jobs created through the fulfillment of each [incentive] **project** phase agreement;

3.-7. (No change.)

8. Representations that the eligible business is in substantial good standing **with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury** or [meets the agreement requirements described at paragraph (1) of subsection b. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.7(c)1] **has entered into an agreement with the departments that includes a practical corrective action plan**, and that the project complies with all applicable laws, and specifically, that the project does not violate any environmental law, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

9. (No change.)

10. A provision acknowledging the Authority’s right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that the eligible business and each contractor and subcontractor performing work at the qualified business facility is in substantial good standing, as defined at N.J.A.C. 19:31-22.7(c), or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable; **and that each contractor or subcontractor performing work at the qualified business facility is registered as required pursuant to the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;**

11. A provision providing that if the eligible business is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-22.7(c), and has been given written notice thereof, including opportunity to be heard or to contest the determination, by the respective department, then the [Authority] **eligible business** may [suspend] **forfeit** the issuance of tax credits pending the resolution of the **underlying** violation(s) [or noncompliance, or if the violation(s) or noncompliance remain unresolved and the suspension continues for two years, then, at the Authority’s sole option, the eligible business may forfeit the tax credit for those years] **or other issues;**

12.-21. (No change.)

(c) For a project whose total project cost equals or exceeds \$10 million, in addition to the commitment agreement, an eligible business shall execute a community benefits agreement or agreements pursuant to subsection b. of section 73 of P.L. 2020, c. 156, as prescribed below:

1.-5. (No change.)

6. The community advisory committee shall produce an annual report, including an evaluation of whether the eligible business is in compliance with the terms of the community benefits agreement:

i. If the report from the community advisory committee and the certification from the eligible business pursuant to N.J.A.C. 19:31-22.10(a)5] **22.10(a)3** both indicate that the eligible business is in compliance with the community benefits agreement, then the eligible business shall be in compliance with the community benefits agreement. Absent extenuating circumstances and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the eligible business shall be based on the certification from the eligible business pursuant to N.J.A.C. 19:31-[22.10(a)5] **22.10(a)3.**

ii.-iii. (No change.)

7. (No change.)

8. An eligible business shall not be required to enter into a community benefits agreement pursuant to this subsection if the eligible business submits to the Authority a copy of the eligible business’s [redevelopment agreement and that] **approval letter from the Authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter or redevelopment agreement is certified by the chief executive of the municipality in which the project is located and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as**

determined by the Chief Executive Officer pursuant to rules adopted by the Authority.

(d) Upon completion of the capital investment and employment requirements of the program, an eligible business shall submit to the Authority certifications evidencing that the eligible business has satisfied the conditions of the program and the project agreement relating to the capital investment, employment, and other eligibility requirements, including, but not limited to, withholdings. If applicable, the certifications shall evidence that the eligible business has satisfied the requirements related to a mega project. The business must submit supporting evidence satisfactory to the Authority. Absent extenuating circumstances and the written approval of the Authority, the eligible business shall submit the certifications as described at (h) below within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline. However, the date of [completion] **certification** shall not occur later than four years following the date of approval of the application. The Authority may grant one additional extension of no more than one year, taking the date of completion to five years past the date of approval of the application, but only if:

1.-2. (No change.)

(e)-(f) (No change.)

(g) In any submission required by the Authority pursuant to the approval letter or the certifications at (f) above, the [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer**, shall certify that the information provided is true under the penalty of perjury.

(h) (No change.)

19:31-22.15 Effect of sale or lease of qualified facilities and relocation of qualified business facility

(a) (No change.)

(b) Except for a small business[, or an eligible business engaged primarily in a targeted industry with less than 50 employees at application]:

1. If the qualified business facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment

of the seller, provided, however, that any tax credits of tenants shall remain unaffected. If the business merges or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner. The seller shall forfeit all tax credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that an eligible business may change the location of the qualified business facility {before certification of the capital investment} if:

i. The new facility:

(1) (No change.)

(2) Does not meet all applicable location qualifying criteria or has less gross leasable area than the gross leasable area of the qualified business facility initially approved by the Authority, if the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program. The Authority shall require a [new cost benefit analysis] **cost comparison of the originally approved location and the alternate qualified business facility** illustrating the economics of the occupancy at the alternate proposed qualified business facility location for the remaining duration of the commitment period compared to the economics of continuing occupancy at the qualified business facility proposed to be vacated. The alternate proposed qualified business facility must be 90 percent or more of the aggregate cost of the qualified business facility proposed to be vacated. If less than 90 percent, the Authority shall review the business's decision to relocate, including supporting documentation evidencing the reasons for relocation, to determine if the relocation to the alternate qualified business facility is consistent with the Board's approval of the application for the qualified business facility to be vacated. The Authority shall recalculate the net positive economic benefit of the project to reflect the economics of occupancy at the alternate proposed location for the remaining duration of the net positive economic benefit test period. The award of tax credits shall be reduced consistent with the variations in qualifying criteria for the alternate qualified business facility location, as well as in a manner consistent with the revised net positive economic benefit calculation.

(c)-(d) (No change.)