NJ EDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

SUBJECT: Special Adopted New Rules and Concurrent Proposed New Rules – New Jersey PPE Manufacturing Tax Credit Program (N.J.A.C. 19:31-24)

Request

The Members are asked to approve:

1. The creation of the New Jersey Personal Protective Equipment Manufacturing Tax Credit (PMTC) Program, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020 (Sections 106 and 107 of P.L. 2020, c. 156; the "Act"), to encourage the development of PPE manufacturing and the creation of related jobs in the state; and
2. The attached special adopted new rules and concurrent proposed new rules for the PMTC Program and to authorize staff to: (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.

New Jersey Economic Recovery Act

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law.

The ERA presents a strong recovery and reform package that will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight applicants deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes 15+ economic development programs, including:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities; and
- Additional tax credits for film and digital media.

The program being presented for the Members' approval in this memorandum is the New Jersey PPE Manufacturing Tax Credit Program – one of the 15+ programs under the ERA. The PMTC Program is an incentive program designed to encourage PPE manufacturing here in New Jersey.

This memorandum provides a summary about the PMTC Program including general features of the program, eligibility criteria, specific program requirements, application process and the evaluation and approval process. The specific details – and what will be promulgated and will govern the program – are included in the attached rules proposed for Board approval.

Program Purpose & General Description

The primary purpose of the PMTC Program is to encourage PPE manufacturing in New Jersey, which will help create or retain manufacturing jobs, improve the public health and increase economic benefits to the State by providing more local sources of PPE supply.

The Program provides tax credits to projects that have invested in the development of PPE manufacturing within the state in tax years 2020-2022. The tax credits are based on the number of new or retained jobs involved in or supporting the manufacture of PPE in a Qualified Facility. To be eligible for the Program, a business must meet investment and hiring thresholds and the facility itself must meet one of five criteria based on location or use to be considered a Qualified Facility.

The PMTC Program awards tax credits for each Qualifying Full-Time Job involved in the manufacture of PPE ($10,000 per job). It also makes additional credits available for Qualifying Full-Time Jobs if the applicant meets certain other criteria that support the State's broader economic goals ($1,000 or $1,500 per job depending on the criterion). The total available credits for a taxpayer's project are limited to $500,000 for the applicable tax year or privilege period for which the taxpayer applies. The total available tax credits available under the PMTC Program is $10 million per year.

While the program awards tax credits for tax years 2020, 2021, and 2022, applicants will have an additional 18 months following the end of their selected tax year to apply for the Program. All applications must be submitted on or before June 30, 2024.

Key Defined Terms

Certain important terms appear frequently in this memorandum; their definitions and applications are summarized below.

Commitment Period: The statute requires that a business receiving tax credits under the PMTC Program must commit to retaining the jobs on which the credits are based for a period of five year or face potential recapture of the benefits. The commitment period begins on the date that the tax credits are issued by Treasury.

Completion Date of Capital Investment: Only projects that have completed their capital investment process are eligible for the PMTC program. The completion date of capital investment is defined as the date of a certificate of occupancy or other indication of completion. It establishes the tax year for which awarded credits will apply.

Personal protective equipment (PPE; defined by statute): The statutory definition of PPE includes "coveralls, face shields, gloves, gowns, masks, respirators, [and] safeguard equipment." The statute also authorizes the Authority to designate as PPE "other equipment designed to protect the wearer from the spread of infection or illness as may be modified from time to time by the board of the authority." Accordingly, Staff is requesting Members' approval to add head coverings and footwear coverings ("booties").

The Act requires the Authority to "consult with the Commissioner of Health related to any specification requirements for what manufactured products are to qualify as personal protective equipment." To meet this requirement, Staff discussed the PMTC Program, its structure and implementation and the proposed definition of PPE with a Deputy Commissioner of the Department of Health.

Qualified Facility (defined by statute): Statute provides that a facility must meet one of five criteria (detailed below) to meet the definition of a Qualified Facility. The term is used in determining both applicant eligibility and the amount of tax credits to be awarded.

Qualifying Full-Time Job (defined by statute): According to statute to be counted as a Qualifying Full-Time Job a position must (i) offer at least 35 hours per week of employment at a pay rate of at least $15 per hour, (ii) provide health benefits, and (iii) be involved in the manufacture of PPE. The term is used in determining both applicant eligibility and the amount of tax credits to be awarded.

Eligibility

The following highlights certain key eligibility requirements for the PMTC Program. Full eligibility details are contained in the draft proposed rules in section 24.3 and the ERA in sections 106 and 107. To be eligible, a project must meet various eligibility criteria at the time of

application and the applicant must submit certifications evidencing satisfaction of Program requirements and conditions.

Completed Project

Applications will only be accepted for projects that have completed their capital investment in the development of PPE manufacturing. All such capital investment must be completed no later than December 31, 2022. (Applicants will have up to eighteen months following a project's Completion Date of Capital Investment to submit their applications.)

Qualified Facility

As part of the eligibility requirements for the PMTC Program, the business must be located in a Qualified Facility. To be a Qualified Facility, the facility must be engaged in the manufacturing of PPE and must meet one of the following criteria:

- Located in a redevelopment area or rehabilitation area as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3);
- Located in a Smart Growth Area as identified by the Office of Planning Advocacy;
- A facility in which the manufacturing of personal protective equipment is part of a research collaboration between the applicant and a college or university located within the State;
- A facility in which the applicant has established an apprenticeship program or pre-apprenticeship program with a technical school or community college located within the State; or
- A building vacant for not less than seven years, in need of rehabilitation with a minimum of 250,000 square feet.

Capital Investment

As part of eligibility for the PMTC Program, the business must meet minimum capital investment requirements that vary based on the type of project (new construction vs rehab or improvement), size of the facility, and the county in which the Qualified Facility is located. Below is a table that reflects the capital investment requirements for the PMTC Program. For the purposes of this program, there are seven "southern counties" which are as follows: Atlantic, Burlington, Cape May, Cumberland, Gloucester, Ocean, Salem. The other 14 New Jersey counties are considered northern counties.

Project Type	Project Location	Minimum Capital Investment
New construction	Southern counties	$100/SF of gross leasable area
New construction	Northern counties	$120/SF of gross leasable area
Rehab or improvement	Southern counties	$10/SF of gross leasable area
Rehab or improvement	Northern counties	$20/SF of gross leasable area

Job Creation / Retention

In addition to being located in a Qualified Facility and meeting a minimum capital investment requirement, the applicant must create or retain a minimum number of Qualifying Full-Time Jobs, based on the location of the Qualified Facility. The requirement is the creation of at least five new jobs or the retention of at least 15 jobs in the seven southern counties, and the creation of at least 10 new jobs or the retention of at least 25 jobs in the northern counties.

Other Eligibility Requirements

In addition to meeting the program eligibility listed above, the applicant must be in substantial good standing with the NJ Department of Labor and Workforce Development, the NJ Department of Environmental Protection, and the NJ Department of Treasury (as determined by each Department). If a compliance issue exists, the applicant must have an agreement with the respective Department that includes a practical corrective action plan, as applicable. Furthermore, the applicant will be required to provide as a part of the application process a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury.

The Authority will also require that any applicant for the PMTC Program must comply with the Authority's standard Affirmative Action and Prevailing Wage requirements. Because applications will only be accepted upon a project's completion and the award is based on and requires a certain amount of capital investment, the proposed rules provide that Prevailing Wage applies to all capital investment, specifically including pre-application work. However, as these proposed rules serve as the notice to applicants of this requirement, Prevailing Wage applies only after the proposed rules become effective (upon filing with the Office of Administrative Law).

Tax Credit Award and Calculation

Tax credit amounts for the PMTC Program are calculated on a "per Qualifying Full-Time Job" basis, and the calculation is based on the sum of a base credit and all applicable Additional Credits.

The base credit is $10,000 for each Qualifying Full-Time Job involved in the manufacturing of PPE at the Qualified Facility.

To count as a Qualifying Full-Time Job, a position must meet several criteria. The employee must:

- Spend at least 50% of his or her time working on or in support of the manufacture of PPE;
- Perform at least 80% of his or her work at the Qualified Facility;
- Be employed for at least 35 hours a week;
- Be paid an hourly wage of not less than $15; and
- Be provided with health benefits under a plan authorized pursuant to State or federal law.

In addition to the base credit, additional bonus credits are available, as illustrated below, for all Qualifying Full-Time Jobs involved in the manufacture of PPE in the Qualified Facility if the project meets the following criteria:

Bonus Criteria	Tax Credit Bonus Amount (per job)
Qualifying FT Jobs in a facility of more 250,000 SF that has been vacant for seven years or more and in need of rehabilitation	$1,000 per job
Qualifying FT Jobs in a facility that has a research collaboration with a NJ college or university	$1,500 per job
Qualifying FT Jobs in a facility that has an apprenticeship or pre-apprenticeship program with a NJ technical school or community college	$1,000 per job

In recognition of the nature of starting and ramping up a new business, the applicant is allowed to count jobs created or retained as of the Start Date of Capital Investment and continuing for as much as 12 months following the Completion Date of Capital Investment. In all circumstances, jobs must have been created before the actual application date. This option may lead applicants to delay their application in order to take maximum advantage of the hiring done following the Completion Date of Capital Investment. For more detail, see: Application Requirements and Process, below.

All tax credits are one-time credits to be applied in the tax year of the Completion Date of Capital Investment. To qualify for the additional credits, the applicant must meet the additional credit criteria described above at the time of application.

An applicant that meets more than one criterion for the additional credits may be awarded the sum of the total additional credits for which it is eligible. However, the total award per project (for all types of credits under the PMTC Program) is limited to $500,000 per project.

Tax credits in excess of the applicant's liability in the taxable year of filing will be treated as refundable overpayments. .

Application Requirements and Process

Applications will be accepted for Completed Projects that have reached their Completion Date of Capital Investment on or before December 31, 2022. Applicants must submit their applications no later than 18 months following the close of the tax year of the Completion Date of Capital Investment.

The proposed rules were designed to recognize the natural flow of hiring for a new manufacturing enterprise (i.e., that some hiring takes place during the capital investment process, some will occur as the capital investment process is being completed and more will occur as the sales and hence the production requirements increase over time). In light of this timing, the rules allow the tax credit determination to be based on all Qualifying Full-Time Jobs created or retained from the Start Date of Capital Investment and continuing for as much as twelve months following the Completion Date of Capital Investment (but no later than the actual application date).

Post-Approval Process

Traditionally, most of the tax credit programs the Authority administers on behalf of the State of New Jersey are performance-based, meaning the project is preliminarily approved for a tax credit based on economic activity (i.e. job creation, capital investment, or qualified expenditures) that the project expects to generate, and the actual issuance of tax credits only occurs after the Authority verifies, through a post-approval certification process, to what extent the project actually delivered the economic benefits that the tax credit award was based on.

Because the projects of businesses applying for the PMTC Program will be completed at the time of application, the Authority will be able to determine at the time of application whether all necessary requirements have been met. Therefore, following approval by the Board, staff will send an Approval Letter to the applicant, which letter will include certain conditions subsequent that the applicant must meet in order to be and remain eligible for the award of tax credits. The applicant will execute and return the Approval Letter to the Authority.

Once the applicant has returned the executed Approval Letter, the Authority will notify the Division of Taxation of the final approval. The Division will then issue the tax credit certificate to the applicant. The applicant's use of the tax credit shall be limited by N.J.A.C. 19:31-21.9(a) or (b), as applicable.

Fees

The Authority will charge fees to each applicant, as follows:

- A one-time non-refundable application fee of $2,000;
- A one-time non-refundable approval fee of $5,000;
- An annual servicing fee of $2,000 to be submitted at the time the business submits its annual report;
- A non-refundable fee of $1,000 for each request for any administrative changes, additions, or modifications to the tax credit, provided that, if Staff deems the changes to be major, such as those requiring extensive staff time and Board approval, the fee will increase to $2,500; and
- A non-refundable fee of $2,500 to terminate an existing incentive agreement in order to participate in the PPE Manufacturing Tax Credit program, provided that, if Staff deems the changes to be major, such as those requiring extensive staff time and Board approval, the fee will increase to $7,500.

In addition, if the Authority incurs directs costs of due diligence, i.e., debarment/disqualification reviews, or other analyses by a third party retained by the Authority, the applicant will be required to reimburse the full amount of such costs.

Application Evaluation Process

Applications will be reviewed on a first-come, first-reviewed basis beginning with the completed application bearing the earliest submission date, subject to an annual cap of $10 million for each tax year 2020, 2021, and 2022.

Staff will review and confirm proof of business location, the amount of capital investment, the amount of new and retained jobs, the products manufactured and other information essential to determining eligibility and, if appropriate, the amount of tax credits awarded. Verification of the amount of capital investment and the number of jobs will be based on a certification by an independent qualified CPA. Other forms of verification could include but will not be limited to company financial statements, facility leases, payroll information, and other information and documentation that may be necessary to substantiate the information provided in the application.

Upon completion of the review of an application, Staff will submit a recommendation on the application and the tax credit amount to the Board for approval.

Ongoing Requirements

Eligible applicants must commit to employing Qualifying Full-Time Jobs for which tax credits are awarded for a period of five years and to certify that such jobs remain open annually during the five-year period.

Failure to maintain the number of jobs on which the tax credits were based will result in the recapture of the awarded credits in an amount based on the period of time the taxpayer has been in compliance and the number of qualifying full-time jobs that the taxpayer has maintained.

Rulemaking Process

The ERA authorizes the Authority to promulgate special adoption rules for the PMTC Program, which will be effective immediately upon filing with the Office of Administrative Law and continue for 360 days. In addition, Staff proposes pursuing concurrently the proposal of long-term rules, which will include a 60-day public comment process pursuant to the Administrative Procedures Act rulemaking procedures.

Compliance with Executive Order 63

In accordance with the Executive Order 63 directive to ensure outreach efforts are made to the public and affected stakeholders for agency rulemaking, the Authority issued a news release advising the public that the draft PMTC Program rules were available for review and of the opportunity to provide informal input.

The Authority staff convened one virtual public "Listening Session", which provided an overview of the PMTC Program draft rules and the opportunity for the public feedback, on Wednesday, June 9, 2021 at 5:30 PM.

Additionally, the public were able to submit written feedback through the NJEDA's Economic Recovery Act transparency website (www.njeda.com/economicrecoveryact) or through the newly established email account (PPEmanufacturingtaxcredit@njeda.com) from June 4th through June 14th, 2021.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to Section 101(b) of the Act, the Authority is required to appoint a Chief Compliance Officer (CCO) to manage the Division of Portfolio Management and Compliance in the Authority. Among the responsibilities of the CCO is to:

> *(4) prior to the adoption of any rule or regulation by the authority or the board related to the general administration of the programs administered by the authority pursuant to [the new act] or any other regulation specifically related to the recapture of economic development incentive award values, review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse;*

The Authority has designated Bruce Ciallella as the CCO and in that capacity he has reviewed the proposed rules and regulations for the PMTC Program. Subject to the Board taking action to approve the certification for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register, Mr. Ciallella is prepared to sign and submit the certification.

Program Evaluation Plan

Staff plans to establish a framework of key performance indicators (KPIs) to quantifiably measure over time how well the PMTC Program will meet the NJEDA's operational and strategic goals. Along with the goals and outcome of the program, the Authority will also ask applicants to supply demographic information related to the businesses applying for the PMTC Program, including demographic information with respect to the company's leadership. This information will be provided on a voluntary basis as this information is not necessary to determine eligibility under the program. This is part of the Authority's ongoing efforts to measure to what extent its programs and services are serving New Jersey's diverse residents, communities, and businesses. Other metrics are anticipated to focus on the PMTC Program's outreach efforts and volume of applicants, process and operational effectiveness, and economic development outcomes. The KPIs will provide valuable insight for staff and the Board to assess the effectiveness of the PMTC Program. These KPIs are still under development.

Request of the Members

The Members are asked to approve:

1. The creation of the PMTC Program, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020 (Sections 106 and 107 of P.L. 2020, c. 156; the "Act"), to encourage the development of PPE manufacturing and the creation of related jobs in the state; and
2. The attached special adopted new rules and concurrent proposed new for the PMTC Program, and to authorize staff to: (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.

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Tim Sullivan, CEO

Prepared by Doug Yorke and Eric Solomon

Attachments: Appendix A - Proposed New Rules – PMTC Program