



N.J. Stat. § 34:1B-207

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 387, and J.R. 27 (except for c. 324, 331, and 365)

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§ 34:1B-207. Short title

This act shall be known and may be cited as the "Urban Transit Hub Tax Credit Act."

History

L. 2007, c. 346, § 1, eff. Jan. 13, 2008.

Annotations

LexisNexis® Notes

Research References & Practice Aids

Cross References:

Definitions relative to the "Urban Transit Hub Tax Credit Act", see 34:1B-208.

Credit for qualified business facilities, conditions for eligibility; allowance, see 34:1B-209.

Transfer of Urban Transit Hub Tax Credit Program, see 34:1B-224.

Invest in New Jersey Business Grant Program, see 34:1B-239.

Employment grant component for eligible businesses., see 34:1B-240.

Limit on combined value of approved credits, see 34:1B-247.

Definitions, see 34:1B-209.2.

Developer allowed certain tax credits, see 34:1B-209.3.

Credit to business for wind energy facility; eligibility, see 34:1B-209.4.

Definitions relative to public contracts with private entities, see 52:18-42.

Developments, certain, within the jurisdiction of certain regional planning entities, projects financed with State funds, affordable housing, see 52:27D-329.9.

Administrative Code:

N.J.A.C. 19:31-9.9 (2013), NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Tax credit amount; application and allocation of the tax credit.

N.J.A.C. 19:31-18.4 (2013), NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Restrictions.

N.J.A.C. 19:31-18.9 (2013), NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Tax credit amount; application and allocation of the tax credit.

N.J.A.C. 19:31-18.14 (2013), NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Cap on total credits.

N.J.A.C. 5:80-33.2 (2013), CHAPTER NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY, Definitions.

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§ 34:1B-208. Definitions relative to the “Urban Transit Hub Tax Credit Act”

As used in this act:

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal 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 (C.34:1B-209).

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

“Business” means a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership, an S corporation, or a limited liability corporation. 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 incurred after, but before the end of the eighth year after, the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a. the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility or improvement to real property; and b. 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.

“Eligible municipality” means a municipality: (1) which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or which was continued to be a qualified municipality thereunder pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

“Full-time employee” means a person employed by the 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 a person who is employed by a professional employer organization pursuant to an

employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.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.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.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.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Mixed use project" means a project comprising both a qualified business facility and a qualified residential project.

"Partnership" means an entity classified as a partnership for federal income tax purposes.

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment located within a designated urban transit hub in an eligible municipality, used in connection with the operation of a business.

"Qualified residential project" shall have the meaning ascribed to that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

"Residential unit" means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

"Urban transit hub" means:

a.

- (1) property located within a 1/2-mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations, and
- (2) property located within a one-mile radius of the mid point of the platform area of such a rail station if the property is in a qualified municipality under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.) or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the federal Department of Housing and Urban Development, and
- (3) the site of the campus of an acute care medical facility located within a one-mile radius of the mid point of the platform area of such a rail station, and
- (4) the site of a closed hospital located within a one-mile radius of the mid point of the platform area of such a rail station;

b. property located within a 1/2-mile radius surrounding the mid point of one of up to two underground light rail stations' platform areas that are most proximate to an interstate rail station;

c. property adjacent to, or connected by rail spur to, a freight rail line if the business utilizes that freight line at any rail spur located adjacent to or within a one-mile radius surrounding the entrance to the property for loading and unloading freight cars on trains;

which property shall have been specifically delineated by the authority pursuant to subsection e. of section 3 of P.L.2007, c.346 (C.34:1B-209).

A property which is partially included within the radius shall only be considered part of the urban transit hub if over 50 percent of its land area falls within the radius.

“Rail station” shall not include any rail station located at an international airport, except that any property within a 1/2-mile radius surrounding the mid point of a New Jersey Transit Corporation rail station platform area at an international airport upon which a qualified business facility is constructed or renovated commencing after the effective date [Jan. 5, 2011] of P.L.2011, c.149 (C.34:1B-242 et al.) shall be deemed an urban transit hub, excluding any property owned or controlled by the Port Authority of New York and New Jersey.

History

L. 2007, c. 346, § 2, eff. Jan. 13, 2008; amended 2009, c. 90, § 31, eff. July 28, 2009; 2011, c. 89, § 1, eff. July 26, 2011; 2011, c. 149, § 10, eff. Jan. 5, 2012.

Annotations

LexisNexis® Notes

Notes

OLS Corrections:

Pursuant to R.S.1:3-1, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected a technical error in L. 2007, c. 346, § 2; and L. 2009, c. 90, § 31.

Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

Editor's Note:

Section 7 of L. 2011, c. 89 provides: “The provisions of P.L.2011, c.89 shall be severable, and if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect the validity of the remaining provisions of P.L.2011, c.89.”

Amendment Note:

2009 amendment, by Chapter 90, added the definitions of “Affiliate”, “Authority”, “Professional employer organization”, and “Residential unit”; deleted the definition of “Commission”, which read: “‘Commission’ means the New Jersey Commerce Commission”; in the definition of “Business”, added “an S corporation, or a limited liability corporation” to the first sentence and added the second sentence; in the first sentence of the definition of “Eligible municipality”, substituted “was exempt from local property taxation during tax year 2006” for “is exempt from local property taxation”; in the definition of “Full-time employee”, inserted “or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.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 inserted “or an employee who is a resident of another State but whose income is not subject to the ‘New Jersey Gross Income Tax Act,’ N.J.S.54A:1-1 et seq.”; in the definition of “Urban transit hub” (formerly one paragraph), inserted b. and c. and designated former provisions as a., in a., added “including all light rail stations, and property located within a one-mile radius of the mid point of the platform area of such a rail station if the property is in a qualified municipality under the ‘Municipal Rehabilitation and Economic Recovery Act,’ P.L.2002, c.43 (C.52:27BBB-1 et seq.)”, in the paragraph that follows c., inserted “which property shall have been specifically” and

substituted “authority” for “commission”, and added the colon at the beginning of the definition following “means”; and in the definition of “Capital investment”, substituted “a.” and “b.” for “(i)” and “(ii).”

2011 amendment, by Chapter 89, added the definitions of “Mixed used project” and “Qualified residential project”; and in the definition of “Urban transit hub”, inserted “at any rail spur located adjacent to or within a one mile radius surrounding the entrance to the property” in c., inserted “urban transit” preceding “hub” in the next to last sentence, and transferred the last sentence, pertaining to “Rail station”, to a separate paragraph.

2011 amendment, by Chapter 149, in part a. of the definition of “Urban transit hub”, added (3) and (4) and designated the former provisions as (1) and (2), and in (2), added “or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the federal Department of Housing and Urban Development, and”; and in the last paragraph of the definition of “Urban transit hub”, pertaining to “Rail station”, added the language beginning with “except that.”

Research References & Practice Aids

LexisNexis® Notes

Cross References:

Definitions relative to the “Grow New Jersey Assistance Act.”, see 34:1B-243.

Definitions, see 34:1B-209.2.

Developer allowed certain tax credits, see 34:1B-209.3.

Credit to business for wind energy facility; eligibility, see 34:1B-209.4.

Fee imposed on construction resulting in non-residential development; exemptions, see 40:55D-8.4.

Developments, certain, within the jurisdiction of certain regional planning entities, projects financed with State funds, affordable housing, see 52:27D-329.9.

Definitions relative to economic stimulus, see 52:27D-489c.

Administrative Code:

N.J.A.C. 19:31-18.2 (2013), NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Definitions.

N.J.A.C. 19:31-18.8 (2013), NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Determination of grant amount; bonus award.

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N.J. Stat. § 34:1B-209

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§ 34:1B-209. Credit for qualified business facilities, conditions for eligibility; allowance

a.

- (5) A business, upon application to and approval from the authority, shall be allowed a credit of 100 percent of its capital investment, made after the effective date [Jan. 13, 2008] of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility within an eligible municipality, pursuant to the restrictions and requirements of this section. To be eligible for any tax credits authorized under this section, a business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality. The value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) 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 (C.34:1B-209.3) and section 6 of P.L.2010, c.57 (C.34:1B-209.4).
- (6) A business, other than a tenant eligible pursuant to paragraph (3) of this subsection, shall make or acquire capital investments totaling not less than \$50,000,000 in a qualified business facility, at which the business shall employ not fewer than 250 full-time employees to be eligible for a credit under this section. A business that acquires a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller.
- (7) A business that is a tenant in a qualified business facility, the owner of which has made or acquired capital investments in the facility totaling not less than \$50,000,000, shall occupy a leased area of the qualified business facility that represents at least \$17,500,000 of the capital investment in the facility at which the tenant business and up to two other tenants in the qualified business facility shall employ not fewer than 250 full-time employees in the aggregate to be eligible for a credit under this section. The amount of capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility. Capital investments made by a tenant shall be deemed to be included in the calculation of the capital investment made or acquired by the owner, but only to the extent necessary to meet the owner's minimum capital investment of \$50,000,000. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.
- (8) A business shall not be allowed tax credits under this section if the business participates in a business employment incentive agreement, pursuant to P.L.1996, c.26 (C.34:1B-124 et seq.), relating to the

same capital and employees that qualify the business for this credit, or if the business receives assistance pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify for a tax credit under this section, based upon its capital investment and the employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-237 et seq.).

- (9)** Full-time employment for an accounting or a privilege period shall be determined as the average of the monthly full-time employment for the period.
- (10)** The capital investment of the owner of a qualified business facility is that percentage of the capital investment made or acquired by the owner of the building that the percentage of net leasable area of the qualified business facility not leased to tenants is of the total net leasable area of the qualified business facility.
- (11)** A business shall be allowed a tax credit of 100 percent of its capital investment, made after the effective date [July 26, 2011] of P.L.2011, c.89 but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility that is part of a mixed use project, provided that (a) the qualified business facility represents at least \$17,500,000 of the total capital investment in the mixed use project, (b) the business employs not fewer than 250 full-time employees in the qualified business facility, and (c) the total capital investment in the mixed use project of which the qualified business facility is a part is not less than \$50,000,000. The allowance of credits under this paragraph shall be subject to the restrictions and requirements, to the extent that those are not inconsistent with the provisions of this paragraph, set forth in paragraphs (1) through (6) of this subsection, including, but not limited to, the requirement that the business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality.
- (12)** In determining whether a proposed capital investment will yield a net positive benefit, the authority shall not consider the transfer of an existing job from one location in the State to another location in the State as the creation of a new job, unless (a) the business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality whether in-State or out-of-State, or (b) the business's chief executive officer, or equivalent officer, submits a certification to the authority indicating that the existing jobs are at risk of leaving the State and that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the authority may revoke any award of tax credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to. When considering an application involving intra-State job transfers, the authority shall require the company to submit the following information as part of its application: a full economic analysis of all locations under consideration by the company; 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. Based on this information, and any other information deemed relevant by the authority, the authority shall independently verify and confirm, by way of making a factual finding by separate vote of the authority's board, the business's assertion that the jobs are actually at risk of leaving the State, before a business may be awarded any tax credits under this section.

b.

- (1)** If applications under this section have been received by the authority prior to the effective date [Sept. 18, 2013] of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et

al.), then, to the extent that there remains sufficient financial authorization for the award of a tax credit, the authority is authorized to consider those applications and to make awards of tax credits to eligible applicants, provided that the authority shall take final action on those applications no later than December 31, 2013.

- (2) A business shall apply for the credit under this section prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), and shall submit its documentation for approval of its credit amount no later than April 26, 2021.
- (3) If a business has submitted an application under this section and that application has not been approved for any reason, the lack of approval shall not serve to prejudice in any way the consideration of a new application as may be submitted for the qualified business facility for the provision of incentives offered pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).
- (4) Tax credits awarded pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) for applications submitted to and approved by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), shall be administered by the authority in the manner established prior to that date.
- (5) With respect to an application received by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.) for a qualified business facility that is located on or adjacent to the campus of an acute care medical facility, (a) the minimum number of full-time employees required for eligibility under the program may be employed by any number of tenants or other occupants of the facility, in the aggregate, and the initial satisfaction of the requirement following completion of the project shall be deemed to satisfy the employment requirements of the program in all respects, and (b) if the capital investment in the facility exceeds \$100,000,000, the determination of the net positive benefit yield shall be based on the benefits generated during a period of up to 30 years following the completion of the project, as determined by the authority.

c.

- (1) The amount of credit allowed shall, except as otherwise provided, be equal to the capital investment made by the business, or the capital investment represented by the business's leased area, or area owned by the business as a condominium, and shall be taken over a 10-year period, at the rate of one-tenth of the total amount of the business's credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first certified by the authority as having met the investment capital and employment qualifications, subject to any reduction or disqualification as provided by subsection d. of this section as determined by annual review by the authority. 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.

The credit amount for any tax period ending after July 28, 2021 during which the documentation of a business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it.

The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the authority against tax liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year shall not exceed \$260,000,000.

The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business's total lease payments for occupancy of the qualified business facility for the tax period.

- (2) A business that is a partnership shall not be allowed a credit under this section directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or at the end of the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by the time and accompanied by the additional information as the director may require.
- (3) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

d.

- (1) If, in any tax period, fewer than 200 full-time employees of the business at the qualified business facility are employed in new full-time positions, the amount of the credit otherwise determined pursuant to final calculation of the award of tax credits pursuant to subsection c. of this section shall be reduced by 20 percent for that tax period and each subsequent tax period until the first period for which documentation demonstrating the restoration of the 200 full-time employees employed in new full-time positions at the qualified business facility 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; provided, however, that for businesses applying before January 1, 2010, there shall be no reduction if a business relocates to an urban transit hub from another location or other locations in the same municipality. For the purposes of this paragraph, a "new full-time position" means a position created by the business at the qualified business facility that did not previously exist in this State.
- (2) If, in any tax 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 accounting or privilege period prior to the credit amount approval under subsection a. of this section, 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.
- (3) If, in any tax period, (a) the number of full-time employees employed by the business at the qualified business facility located in an urban transit hub within an eligible municipality drops below 250, or (b) the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to paragraph (8) of subsection a. of this section, employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its workforce in the last tax accounting or privilege period prior to the credit amount approval under this section, 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 250 or an increase above the 20 percent reduction 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.
- (4)
 - (i) If the qualified business facility is sold in whole or in part during the 10-year 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 tenants shall remain unaffected.

- (ii) If a tenant subleases its tenancy in whole or in part during the 10-year 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.

e.

- (1) The Executive Director of the New Jersey Economic Development Authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement P.L.2007, c.346 (C.34:1B-207 et seq.), including, but not limited to: examples of and the determination of capital investment; the enumeration of eligible municipalities; specific delineation of urban transit hubs; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a credit, including the enumeration of the certification procedures and allocation of tax credits for different phases of a qualified business facility or mixed use project; and provisions for credit applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the credit.
- (2) Through regulation, the authority shall establish standards based on the green building manual prepared by the Commissioner of Community Affairs, pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), 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.

History

L. 2007, c. 346, § 3, eff. Jan. 13, 2008; amended 2009, c. 90, § 32, eff. July 28, 2009; 2011, c. 89, § 2, eff. July 26, 2011; 2011, c. 149, § 11, eff. Jan. 5, 2012; 2012, c. 35, § 1, eff. Aug. 7, 2012; 2013, c. 161, § 4, eff. Sept. 18, 2013; 2015, c. 252, § 1, eff. Jan. 19, 2016; 2017, c. 314, § 1, eff. Jan. 16, 2018.

Annotations

Notes

OLS Corrections:

Pursuant to R.S.1:3-1, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected technical errors in L. 2007, c. 346, § 3.

Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

Editor's Note:

Section 7 of L. 2011, c. 89 provides: "The provisions of P.L.2011, c.89 shall be severable, and if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect the validity of the remaining provisions of P.L.2011, c.89."

L. 2013, c. 161, as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Assembly Bill No. 3680) earlier in the session.

Amendment Note:

2009 amendment, by Chapter 90, in a.(1), substituted “authority” for “New Jersey Commerce Commission” and added the second and third sentences, in a.(2), substituted “\$50,000,000” for “\$75,000,000” in the first sentence, in a.(3), substituted “\$50,000,000” for “\$75,000,000”, substituted “\$17,500,000” for “\$25,000,000”, inserted “and up to two other tenants in the qualified business facility”, and inserted “in the aggregate” in the first sentence and added the third and fourth sentences, and in a.(4), deleted “or if the business is a licensee as defined pursuant to section 33 of P.L.1977, c.110 (C.5:12-33)” from the end of the first sentence and added the third sentence; in c.(1), inserted “or area owned by the business as a condominium” in the first sentence, and in c.(3), deleted “or pursuant to the ‘New Jersey Gross Income Tax Act,’ N.J.S.54A:1-1 et seq.” from the end and made related changes; in d.(1), inserted “for businesses applying before January 1, 2010” following “provided, however, that”, and in d.(2), substituted “20 percent” for “10 percent” and substituted “in the last tax accounting or privilege period prior to the credit amount approval under this section” for “in the last tax accounting or privilege period prior to the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), or in the last tax accounting or privilege period prior to the credit amount approval under this section, whichever is greater”; added e.(2) and designated the former provisions of e. as e.(1), and in e.(1), substituted “Economic Development Authority” for “Commerce Commission”; and substituted “authority” for “commission” throughout c.(1) and d.

2011 amendment, by Chapter 89, added a.(7) and a.(8); in b., deleted “a business” preceding “shall submit its documentation”; in c.(1), inserted the third paragraph; in d.(3), designated former provisions as (a), inserted “or (b) the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to paragraph (8) of subsection a. of this section, employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its workforce in the last tax accounting or privilege period prior to the credit amount approval under this section”, and inserted “or an increase above the 20 percent reduction”; and in e.(1), inserted “including the enumeration of the certification procedures and allocation of tax credits for different phases of a qualified business facility or mixed use project.”

2011 amendment, by Chapter 149, in c.(1), substituted “is first certified” for “is first approved” in the first sentence and substituted “uncertified” for “unapproved” in the second paragraph; and in d.(2), inserted “subsection a. of.”

2012 amendment, by Chapter 35, substituted “\$1,750,000,000” for “\$1,500,000,000” in the last sentence of a.(1); in b., substituted “prior to July 1, 2014” for “within five years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.)” and “no later than July 28, 2017” for “within eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.)”; and in the second paragraph of c.(1), substituted “July 28, 2017” for “the date eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.).”

2013 amendment, by Chapter 161, added “except as may be increased by the authority as set forth in paragraph (5) of subsection a. of P.L.2009, c.90 (C.34:1B-209.3) and section 6 of P.L.2010, c.57 (C.34:1B-209.4)” in the last sentence of a.(1); rewrote b., which formerly read: “A business shall apply for the credit prior to July 1, 2014, and shall submit its documentation for approval of its credit amount no later than July 28, 2017”; and substituted “\$260,000,000” for “\$150,000,000” in the third paragraph of c.(1).

2015 amendment, by Chapter 252, substituted “agreement, pursuant to P.L.1996, c.26 (C.34:1B-124 et seq.)” for “grant” in the first sentence of a.(4); inserted the commas around “but not limited to” in the second sentence of a.(7); substituted “April 26, 2019” for “April 26, 2017” in b.(2); substituted “July 28, 2019” for “July 28, 2017” in the second paragraph of c.(1); substituted “at the end of” for “with” in c.(2); inserted the comma following “eligibility period” in d.(4)(i) and d.(4)(ii); inserted the commas around “however” in d.(4)(i); substituted “P.L.2007, c.346 (C.34:1B-207 et seq.), including” for “this act, including” in e.(1); in e.(2), substituted “authority” for “Economic Development Authority” and inserted the comma following “Commissioner of Community Affairs”; and made stylistic changes.

Research References & Practice Aids

Cross References:

Definitions relative to the "Urban Transit Hub Tax Credit Act", see 34:1B-208.

Definitions relative to the "Grow New Jersey Assistance Act.", see 34:1B-243.

Developer allowed certain tax credits, see 34:1B-209.3.

Credit to business for wind energy facility; eligibility, see 34:1B-209.4.

Administrative Code:

N.J.A.C. 19:31-9.2 (2013), NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Definitions.

N.J.A.C. 19:31-18.2 (2013), NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Definitions.

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N.J. Stat. § 34:1B-209.1

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 387, and J.R. 27 (except for c. 324, 331, and 365)

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§ 34:1B-209.1. Application for tax credit transfer certificate.

A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the executive director of the authority for a tax credit transfer certificate, covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business. The tax credit transfer certificate, upon receipt thereof by the business from the director and the executive director of the authority, may be sold or assigned, in full or in part, in an amount not less than \$25,000 of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5. The certificate provided 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. The sale or assignment of any amount of a tax credit transfer certificate 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. 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 credit by the business that originally applied for and was allowed the credit.

History

L. 2009, c. 90, § 33, eff. July 28, 2009; amended 2013, c. 161, § 5, eff. Sept. 18, 2013; 2014, c. 63, § 1, eff. Oct. 24, 2014.

Annotations

Notes

Editor's Note:

L. 2014, c. 63, as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Assembly Bill No. 3213) earlier in the session.

The title to L. 2014, c. 63 designates the act as the "Economic Opportunity Act of 2014, Part 3."

L. 2013, c. 161, as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Assembly Bill No. 3680) earlier in the session.

Amendment Note:

2013 amendment, by Chapter 161, inserted “in an amount not less than \$100,000 of tax credits, although one transfer in each tax period may be in an amount less than \$100,000” in the second sentence; and added “before considering any further discounting to present value which shall be permitted” in the fourth sentence.

2014 amendment, by Chapter 63, substituted “\$25,000 of tax credits” for “\$100,000 of tax credits, although one transfer in each tax period may be in an amount less than \$100,000” in the second sentence.

Research References & Practice Aids

Cross References:

Developer allowed certain tax credits, see 34:1B-209.3.

Credit to business for wind energy facility; eligibility, see 34:1B-209.4.

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N.J. Stat. § 34:1B-209.2

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 387, and J.R. 27 (except for c. 324, 331, and 365)

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§ 34:1B-209.2. Definitions

As used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-209.2 and C.34:1B-209.3), the terms “affiliate,” “authority,” “capital investment,” “eligible municipality,” “partnership,” “residential unit,” and “urban transit hub” shall have the same meanings as ascribed thereto in the “Urban Transit Hub Tax Credit Act,” P.L.2007, c.346 (C.34:1B-207 et seq.), as amended by P.L.2009, c.90 (C.52:27D-489a et al.), provided that all references therein to “business” and “qualified business facility” shall be deemed to refer respectively to “developer” and “qualified residential project,” as such terms are defined in this section. Provided however, for purposes of a “mixed use project” as that term is defined and used pursuant to subparagraph (b) of paragraph (4) of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3), “qualified business facility” means that term as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208). In addition, as used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-209.2 and C.34:1B-209.3):

“Developer” shall have the same meaning as “business,” as such term is defined in the “Urban Transit Hub Tax Credit Act,” P.L.2007, c.346 (C.34:1B-207 et seq.), as amended by P.L.2009, c.90 (C.52:27D-489a et al.).

“Qualified residential project” means any building, complex of buildings or structural components of buildings consisting predominantly of residential units, located in an urban transit hub within an eligible municipality.

History

L. 2009, c. 90, § 34, eff. July 28, 2009; amended 2011, c. 89, § 3, eff. July 26, 2011.

Annotations

LexisNexis® Notes

Notes

OLS Corrections:

Pursuant to R.S.1:3-1, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected technical errors in L. 2011, c. 89, § 3.

Editor’s Note:

Section 7 of L. 2011, c. 89 provides: “The provisions of P.L.2011, c.89 shall be severable, and if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect the validity of the remaining provisions of P.L.2011, c.89.”

Amendment Note:

2011 amendment, by Chapter 89, in the first paragraph, substituted “provided” for “except” in the first sentence, and inserted the second sentence, pertaining to a mixed use project; and in the definition of “Qualified residential project”, deleted “including a mixed used project” preceding “consisting predominantly.”

Research References & Practice Aids

LexisNexis® Notes

Cross References:

Definitions relative to the “Urban Transit Hub Tax Credit Act”, see 34:1B-208.

Developer allowed certain tax credits, see 34:1B-209.3.

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N.J. Stat. § 34:1B-209.4

This section is current through New Jersey 217th Second Annual Session, L. 2017, c. 387, and J.R. 27 (except for c. 324, 331, and 365)

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§ 34:1B-209.4. Credit to business for wind energy facility; eligibility

a.

(13) A business, upon application to and approval from the authority, shall be allowed a credit of 100 percent of its capital investment, made after the effective date [Aug. 19, 2010] of P.L.2010, c.57 (C.48:3-87.1 et al.) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified wind energy facility located within an eligible wind energy zone, pursuant to the restrictions and requirements of this section. To be eligible for any tax credits authorized under this section, a business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified wind energy facility will yield a net positive benefit to the State. The value of all credits approved by the authority pursuant to this section may be up to \$100,000,000, except as may be increased by the authority if the chief executive officer judges certain qualified offshore wind projects to be meritorious. Credits provided pursuant to this section shall not be applicable to the cap on the credits provided in section 3 of P.L.2007, c.346 (C.34:1B-209).

(14)

(6) A business, other than a tenant eligible pursuant to subparagraph (b) of this paragraph, shall make or acquire capital investments totaling not less than \$50,000,000 in a qualified wind energy facility, at which the business, including tenants at the qualified wind energy facility, shall employ at least 300 new, full-time employees, to be eligible for a credit under this section. A business that acquires a qualified wind energy facility after the effective date [Aug. 19, 2010] of P.L.2010, c.57 (C.48:3-87.1 et al.) shall also be deemed to have acquired the capital investment made or acquired by the seller.

(7) A business that is a tenant in the qualified wind energy facility, the owner of which has made or acquired capital investments in the facility totaling more than \$50,000,000, shall occupy a leased area of the qualified wind energy facility that represents at least \$17,500,000 of the capital investment in the qualified wind energy facility at which at least 300 new, full-time employees in the aggregate are employed, to be eligible for a credit under this section. The amount of capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility. Capital investments made by a tenant shall be deemed to be included in the calculation of the capital investment made or acquired by the owner, but only to the extent necessary to meet the owner's minimum capital investment of \$50,000,000. Capital investments made by a tenant and not allocated to meet the

owner's minimum capital investment threshold of \$50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified wind energy facility.

- (8)** The calculation of the number of new, full-time employees required pursuant to subparagraphs (a) and (b) of this paragraph may include the number of new, full-time positions resulting from an equipment supply coordination agreement with equipment manufacturers, suppliers, installers and operators associated with the supply chain required to support the qualified wind energy facility.

For the purposes of this paragraph, "full time employee" shall not include an employee who is a resident of another state and whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., unless that state has entered into a reciprocity agreement with the State of New Jersey, provided that any employee whose work is provided pursuant to a collective bargaining agreement with the port district in the wind energy zone may be included.

- (15)** A business shall not be allowed a tax credit pursuant to this section if the business participates in a business employment incentive grant relating to the same capital and employees that qualify the business for this credit, or if the business receives assistance pursuant to the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.).

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

- b.** A business shall apply for the credit by August 1, 2016, and a business shall submit its documentation for approval of its credit amount by August 1, 2019.
- c.** The credit allowed pursuant to this section shall be administered in accordance with the provisions of subsection c. of section 3 of P.L.2007, c.346 (C.34:1B-209) and section 33 of P.L.2009, c.90 (C.34:1B-209.1), except that all references therein to "qualified business facility" shall be deemed to refer to "qualified wind energy facility," as that term is defined in subsection f. of this section.
- d.** The amount of the credit allowed pursuant to this section shall, except as otherwise provided, be equal to the capital investment made by the business, or the capital investment represented by the business' leased area, and shall be taken over a 10-year period, at the rate of one-tenth of the total amount of the business' credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first approved by the authority as having met the investment capital and employment qualifications, subject to any disqualification as determined by annual review by the authority. 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. The credit amount for any tax period ending after the date eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) during which the documentation of a business' credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available. The amount of the credit allowed for a tax period to a business that is a tenant in a qualified wind energy facility shall not exceed the business' total lease payments for occupancy of the qualified wind energy facility for the tax period.
- e.** The authority shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement this section, including but not limited to: examples of and the determination of capital investment; nature of businesses and employment positions constituting and participating in an equipment supply coordination agreement; determination of the types of businesses that may be eligible and expenses that may constitute capital improvements; promulgation of procedures and forms necessary to apply for a credit; and provisions for applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the credit.

The rules established by the authority pursuant to this subsection shall be effective immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 12 months and may,

thereafter, be amended, adopted or readopted in accordance with the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

- f. As used in this section: the terms “authority,” “business,” and “capital investment” shall have the same meanings as defined in section 2 of the “Urban Transit Hub Tax Credit Act,” P.L.2007, c.346 (C.34:1B-208), except that all references therein to “qualified business facility” shall be deemed to refer to “qualified wind energy facility” as defined in this subsection.

In addition, as used in this section:

“Equipment supply coordination agreement” means an agreement between a business and equipment manufacturer, supplier, installer, and operator that supports a qualified offshore wind project, or other wind energy project as determined by the authority, and that indicates the number of new, full-time jobs to be created by the agreement participants towards the employment requirement as set forth in paragraph (2) of subsection a. of this section.

“Qualified offshore wind project” means the same as the term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

“Qualified wind energy facility” means any building, complex of buildings, or structural components of buildings, including water access infrastructure, and all machinery and equipment used in the manufacturing, assembly, development or administration of component parts that support the development and operation of a qualified offshore wind project, or other wind energy project as determined by the authority, and that are located in a wind energy zone.

“Wind energy zone” means property located in the South Jersey Port District established pursuant to “The South Jersey Port Corporation Act,” P.L.1968, c.60 (C.12:11A-1 et seq.).

History

L. 2010, c. 57, § 6, eff. Aug. 19, 2010; amended 2012, c. 35, § 3, eff. Aug. 7, 2012; 2013, c. 161, § 25, eff. Sept. 18, 2013.

Annotations

LexisNexis® Notes

Notes

OLS Corrections:

Pursuant to R.S.1:3-1, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected technical errors in L. 2010, c. 57, § 6.

Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

Editor's Note:

The effective date of L. 2007, c. 346, referred to in this section, is Jan. 13, 2008.

L. 2013, c. 161, as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Assembly Bill No. 3680) earlier in the session.

Amendment Note:

2012 amendment, by Chapter 35, substituted “\$1,750,000,000” for “\$1,500,000,000” in the third sentence of a.(1).

2013 amendment, by Chapter 161, in a.(1), rewrote the former third and fourth sentences as the present third sentence, which read: “The value of all credits approved by the authority pursuant to this section may be up to \$100,000,000, except as may be increased by the authority as set forth below; provided, however, that the combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.), P.L.2009, c.90 (C.52:27D-489a et al.), and P.L.2010, c.57 (C.48:3-87.1 et al.) shall not exceed \$1,750,000,000. The authority shall monitor application and allocation activity under P.L.2007, c.346 after taking into account the allocation under P.L.2007, c.346 and if sufficient credits are available to those qualified business facilities for which applications have been filed or for which applications are reasonably anticipated, and if the chief executive officer judges certain qualified offshore wind projects to be meritorious, the aforementioned cap may, in the discretion of the chief executive officer, be exceeded for allocation to qualified wind energy facilities in such amounts as the chief executive officer deems reasonable, justified and appropriate” and added the last sentence; and in b., substituted “by August 1, 2016” for “within five years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.)” and “by August 1, 2019” for “within eight years after the effective date of P.L.2007, c.346.”

Research References & Practice Aids

LexisNexis® Notes

Cross References:

Credit for qualified business facilities, conditions for eligibility; allowance, see 34:1B-209.

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