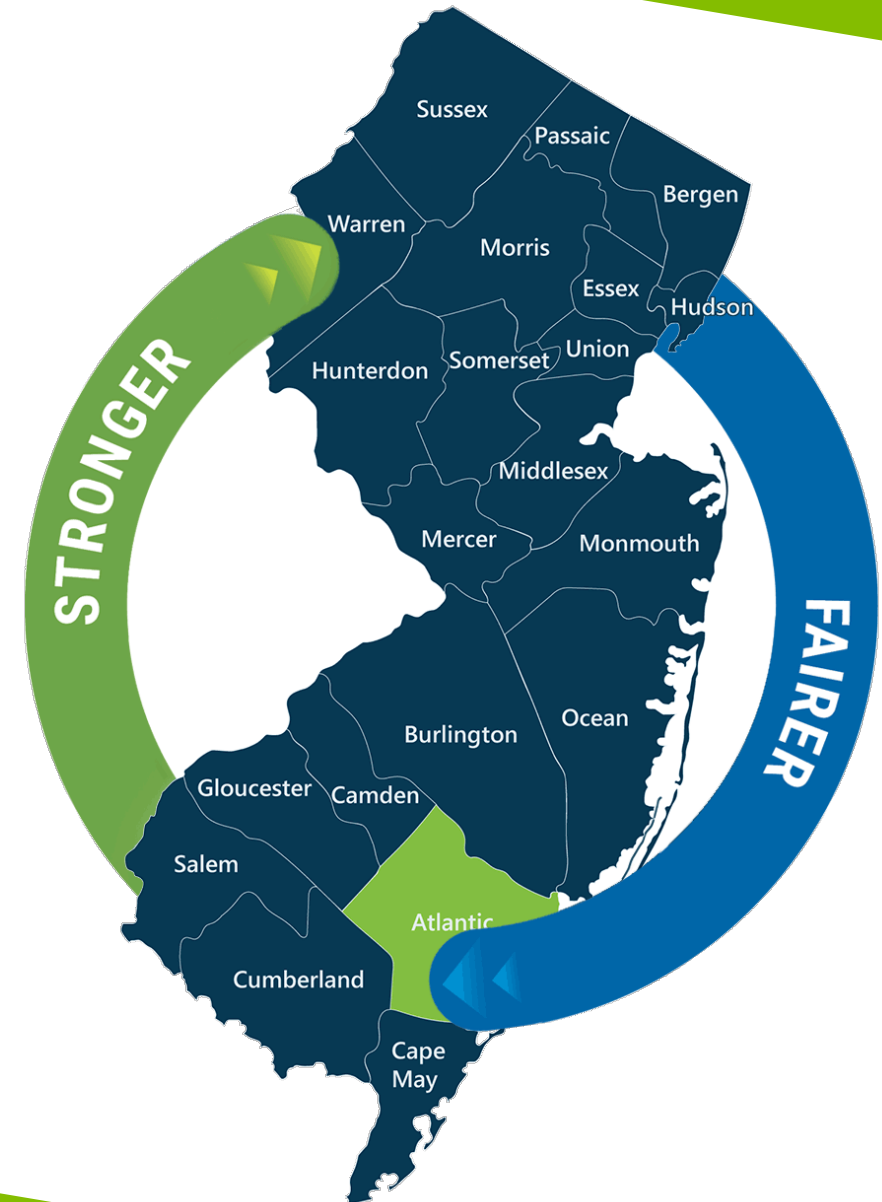


Food Desert Relief Tax Credit Program Listening Session

January 2023



About the NJ Economic Recovery Act

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

The ERA creates a package of **tax incentive, financing, and grant programs** that will build a stronger, fairer New Jersey economy.

The ERA is both a broad-based **recovery bill and reform bill** that will better position New Jersey to recover from economic crisis caused by the COVID-19 pandemic, while remaining true to the NJEDA's commitments to transparency and accountability.

Visit the NJEDA's website at www.njeda.com/economicrecoveryact to learn more about each of the programs within the ERA, or to provide general ERA feedback.

Executive Order No. 63

Pursuant to Governor Murphy's Executive Order No. 63, the NJEDA is providing opportunities for groups and stakeholders to engage with the NJEDA in crafting rules around the New Jersey Food Desert Relief Tax Credit Program.

We welcome constructive input on how to ensure new programs created through the ERA are structured and administered in a manner that drives opportunities for all residents and communities.

The NJEDA will begin the session with a presentation to summarize the information – opportunity for public feedback will be available following the NJEDA's presentation. It is expected that the entirety of the session will take up to 90 minutes.

Recording of Public Feedback Sessions

Members of the public wishing to submit written feedback on the New Jersey Food Desert Relief Tax Credit Program must do so via www.njeda.com/program-specific-feedback through January 9, 2023

Both New Jersey Food Desert Relief Tax Credit Program (“FDR”) public feedback sessions will be recorded and posted on www.njeda.com/program-specific-feedback so that members of the public unable to participate in a virtual session have the opportunity to review.

Public Feedback Policy

- ▶ **Feedback may be submitted verbally by using the “raise hand” function in Zoom, or in writing through the Q&A feature.** Input will not be accepted verbally until the NJEDA has concluded its presentation.
- ▶ **Each member of the public who wishes to speak during the public feedback period should use the “raise hand” function in Zoom.** The host will acknowledge each speaker in the order in which they raised their hand and will open the speaker’s microphone to make their statement.
- ▶ To ensure everyone that chooses to has an opportunity to speak, **each speaker will have a maximum of three (3) minutes to speak and should limit input to matters pertaining to the Economic Recovery Act of 2020 and the New Jersey Food Desert Relief Tax Credit Program.**
- ▶ **Each member of the public will have one opportunity to provide remarks.** If time remains at the end of the session, we will reopen the opportunity for additional remarks.
- ▶ **Speakers should not expect to engage in a dialogue. NJEDA staff may respond to basic questions or clarify a speaker’s input.** However, NJEDA staff are not obligated to answer impromptu questions or address remarks from members of the public.
- ▶ **Speakers and members of the public should at all times maintain proper decorum and shall provide their remarks in a civil manner.**

Please Note

NJEDA staff will summarize the information and provide context.

To access a copy of the slide presentation please visit www.njeda.com/program-specific-feedback.

For this presentation, please note the following:

Text highlighted in light green indicates areas where the NJEDA has exercised discretion to add clarity to the legislation.

Non-highlighted text is written into law which NJEDA does not have discretion to change.

Agenda

- 1 | Food Desert Relief Act Overview
- 2 | Overarching Features & Definitions
- 3 | Financing Gap Tax Credit
- 4 | Initial Operating Costs Tax Credit
- 5 | Additional Requirements

THE FOOD DESERT RELIEF ACT

The Food Desert Relief Act (FDRA) is part of the **New Jersey Economic Recovery Act of 2020 (ERA)**, a package of tax incentive, financing, and grant programs Governor Murphy signed into law in January 2021 to address the economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy. FDRA was amended in June 2022.



Facilitate development, construction, and sustainable operations of new supermarkets and grocery stores



Strengthen existing community assets by equipping them with the necessary equipment and infrastructure to provide healthier food options



Help food retailers respond to the shift to e-commerce, including for the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)



Identify and foster innovative solutions to alleviate food insecurity

The Food Desert Relief Act creates new strategies for NJEDA to address food security

Food Desert Relief Act (\$40M/year, 6 years = \$240M total)






Product Type	Tax Credits		Grants & Loans (funded by sale of tax credits)			Technical Assistance (funded by sale of tax credits)	
Allowable Uses	Project financing gap	Initial operating costs	Technology	Equipment	Food Security Initiatives	Assistance to entities eligible for tax credits, grants or loans	
Eligible Applicants	ONLY first or second supermarket or grocery store (16K+ SF) in food desert community (FDC)		Supermarket or grocery store in FDC (new or existing)	Mid-sized food retailer (2,500-16,000 sf) in FDC	Small food retailer (less than 2,500 sf) in FDC	Other entities that support food security	Food retailers, non-retailers (e.g. farms, food pantries), non-profits, training provider

Learn more at <https://www.njeda.com/food-desert-relief-program>

Food Desert Community Designation

The FDRA directed EDA to work with the Departments of Community Affairs and Agriculture to designate **up to 50 areas of the state as Food Desert Communities (FDCs)**

Designations were informed by a combination of **rigorous, data-driven analysis and community input.**

 Food Retail Environment	 Demographics	 Economic Factors	 Health Factors	 Community Factors
<ul style="list-style-type: none">• 2021 Limited Supermarket Area (NJDCA analysis)• 2021 Low Access Score (NJDCA analysis)• Food Swamp – unhealthy food access area (NJDCA analysis)• CDC Modified Retail Food Environment Index	<ul style="list-style-type: none">• Single mother head % of households• % non-Hispanic white• % African-American• % Hispanic• % of adults with a HS diploma	<ul style="list-style-type: none">• Unemployment rate (block group)• Poverty rate• Per capita income• % of households receiving public assistance• % of households receiving SNAP benefits• WIC participation rate	<ul style="list-style-type: none">• % of pop. that is obese (Health Dept. area)• % of adults rating health as poor or fair	<ul style="list-style-type: none">• % of households with internet access• % of housing non-seasonally vacant• % of households that are housing cost burdened• % of households with no vehicle• DCA Walkability Score• Municipal violent crime rate, 2016-18

<u>Rank</u>	<u>Food Desert Name</u>	<u>County</u>	<u>Composite Food Desert Factor Score</u>	<u>Food Desert Population (2020)</u>
1	North, Central and South Camden/Woodlynne*	Camden	86.2	44,702
2	Atlantic City*/Ventnor	Atlantic	78.8	41,382
3	Newark South	Essex	74.2	42,713
4	Newark West	Essex	72.7	49,065
5	Camden East/Pennsauken	Camden	72.1	49,689
6	Trenton West	Mercer	71.8	27,151
7	Newark North and Central	Essex	70.6	50,855
8	Newark East	Essex	69.7	40,427
9	Salem City*	Salem	69.6	5,296
10	Passaic City	Passaic	68.4	39,336
11	Trenton East	Mercer	68.1	57,113
12	Bridgeton/Fairfield Twp/Lawrence Twp*	Cumberland	65.3	29,167
13	Paterson South	Passaic	64.5	35,825
14	New Brunswick City	Middlesex	64.1	49,408
15	Paterson North	Passaic	63.9	46,602
16	Irvington Township	Essex	61.2	31,393
17	Asbury Park City	Monmouth	60.8	14,547
18	Jersey City South	Hudson	60.5	68,636
19	East Orange City	Essex	59.9	65,254
20	Penns Grove*/Carneys Point*	Salem	59.9	13,474
21	Elizabeth City	Union	58.5	69,264
22	Orange/West Orange/Montclair	Essex	57.8	50,522
23	Jersey City Central	Hudson	57.6	58,929
24	Perth Amboy City	Middlesex	57.0	30,997
25	Lindenwold/Clementon*	Camden	56.8	19,469

Food Desert Community Designations (#1 - 25)

<u>Rank</u>	<u>Food Desert Name</u>	<u>County</u>	<u>Composite Food Desert Factor Score</u>	<u>Food Desert Population (2020)</u>
26	Plainfield City	Union	56.4	37,829
27	Pleasantville/Absecon	Atlantic	56.0	9,874
28	Red Bank Borough	Monmouth	55.6	1,508
29	Lakewood North	Ocean	52.1	49,364
30	Jersey City North	Hudson	51.5	62,363
31	Woodbine Borough*	Cape May	51.2	2,128
32	Long Branch City	Monmouth	51.2	27,013
33	Millville/Commercial Twp*	Cumberland	49.9	25,634
34	Prospect Park/Haledon/Hawthorne	Passaic	49.4	11,846
35	Keansburg Borough*	Monmouth	49.1	9,755
36	Paulsboro Borough	Gloucester	48.8	2,282
37	Lakewood South	Ocean	48.5	49,831
38	North Bergen/West New York/Guttenberg	Hudson	48.4	48,711
39	Fairview Borough	Bergen	48.3	1,135
40	Egg Harbor City*	Atlantic	47.1	4,396
41	Burlington City	Burlington	46.1	6,101
42	Linden/Roselle	Union	45.7	36,659
43	Vineland City	Cumberland	45.2	13,273
44	Phillipsburg Town	Warren	44.4	13,823
45	Bayonne City	Hudson	42.7	28,718
46	Dover Town	Morris	42.5	10,478
47	Bound Brook Borough	Somerset	42.4	1,823
48	Union City	Hudson	34.9	23,926
49	High Bridge Borough	Hunterdon	26.5	1,221
50	Montague Township*	Sussex	25.1	3,792

Food Desert Community Designations (#26-50)

Agenda

1 | Food Desert Relief Act Overview

2 | Overarching Features & Definitions

3 | Financing Gap Tax Credit

4 | Initial Operating Costs Tax Credit

5 | Additional Requirements

What is the Food Desert Relief Tax Credit Program?



Established under the **Economic Recovery Act of 2020 (ERA)**



Can work in conjunction with **other ERA programs.**



Provides tax credits to incentivize **development and operations of new supermarkets and grocery stores in Food Desert Communities** in New Jersey



Applications are accepted on a **rolling basis**



Targeted to the **Food Desert Communities** designated by NJEDA, DCA, and Dept of Ag



Bolster **access to nutritious foods** for SNAP- and WIC-eligible New Jerseyans



Encourage **sustainability of supermarkets** after tax credits end, for a lasting impact on food security



Includes fiscal protections



Program **is funded to accept applications through 2027**

Key Features

- ▶ **Capped at \$240 million over 7 years**
 - Option to roll over unused program tax credits yearly as needed
- ▶ Two credits: **financing gap** tax credit & **initial operating costs** tax credit
 - ▶ Awards up to **20 - 40% of project costs**, capped at **project financing gap**
 - Up to 40% of project costs for the first new supermarket in an FDC
 - Up to 20% of project costs for the second new supermarket in an FDC
 - ▶ Awards up to **50 - 100% of operating costs**, capped at **operating shortfall**
 - Up to 100% of operating costs for the first new supermarket in an FDC
 - Up to 50% of operating costs for the second new supermarket in an FDC
- ▶ **To receive both tax credits** for a single supermarket or grocery store, **both applications must be reviewed & approved at the same time** and must contain **matching financial information**

Eligibility - Definitions

Supermarket or Grocery Store

A retail outlet **with a lease or ownership** of at least **16,000 square feet**, of which at least **80% is occupied by food and related products**, which products shall be based on industry standards, as determined by the authority, except that the food and related products shall not include alcoholic beverages and products related to the consumption of such beverages.

Eligibility - Definitions

Supermarket or Grocery Store

Square footage – minimum of 16,000 sq. ft.

Food retail space, food preparation space, food storage space, space subleased or licensed to vendors of food & related products

Cash registers, alcohol retail space, space subleased or licensed to non-food vendors, offices, restrooms, etc.

Eligibility - Definitions

Supermarket or Grocery Store

Square footage – minimum of 16,000 sq. ft.

Cash registers, alcohol retail space, space subleased or licensed to non-food vendors, offices, restrooms, etc.

80% of square footage for food & related products

Food retail space, food preparation space, food storage space, space subleased or licensed to vendors of food & related products

Eligibility - Definitions

New Supermarket or Grocery Store

A supermarket or grocery store that commenced **new construction of the building** or commenced **rehabilitation of at least 75 percent of its square footage**, after the effective date of the FDRA.

First or Second New Supermarket or Grocery Store

The **first and second** new supermarket or grocery store within **each FDC** to be **approved for tax credits** under the program by the authority, except that a supermarket or grocery store **may lose the designation** of first or second new supermarket or grocery store if the project does not meet **milestones** designated by the authority in a timely manner, as determined by the authority.

This means: to receive tax credits, a supermarket must be

- Newly constructed or rehabilitated after January 2021,
- One of the first two supermarkets in an FDC to be approved by NJEDA under this program, and
- On track with milestones set by NJEDA

Eligibility - Definitions

Supermarket or Grocery Store

- At least **16,000 square feet**
- **80%** is occupied by **food and related products**
 - Does not include alcohol

New Supermarket or Grocery Store

- Started **construction** or **rehabilitation** after January 7, 2021
- Rehabilitation must meet certain requirements

First or Second New Supermarket or Grocery Store

- **First and second** new supermarket or grocery store **within each FDC** to be **approved** for these tax credits
- If the project doesn't meet milestones, it may lose its designation as first or second

Eligibility - Definitions

Rehabilitation Of At Least 75% of Square Footage

Repair or replacement of **two or more major systems**, including but not limited to: a) roof, b) plumbing, c) heating and cooling (including refrigeration), d) electrical, e) load bearing structural systems, or f) weatherization (e.g. solar panels, siding, replacement windows and doors) where the **costs of such repair or replacement**, exclusive of soft costs that exceed 20 percent, equals **at least the greater of 75% of the property value** or a fair market lease discounted to present value of the supermarket or grocery store. The rehabilitation **must affect at least 75 percent of square footage** of the supermarket or grocery store. Property value shall be valued at the lesser of: the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority.

This means: To qualify as a new supermarket without new construction, the work done must

- Involve repairing or replacing at least two major systems,
- Cost at least 75% of property value, and
- Affect at least 75% of square footage

Eligibility - Definitions

Open the Supermarket or Grocery Store for Business to the Public

The date a new supermarket or grocery store that has

- a) received a **temporary certificate of occupancy and all certifications from State and local health departments required to operate**, and
- b) met the requirements of the incentive award,

opens for at least 60 hours a week and thereafter is operating on a full-time basis.

This means: For a supermarket to qualify as being open, it has to:

- Have a temporary certificate of occupancy,
- Have all required health department certifications,
- Meet incentive award requirements, and
- Open for at least 60 hours a week.

Eligibility - Definitions

Operating on a Full-Time Basis

Operating at least 60 hours a week every week of the year, absent unavoidable closures or other event approved by the Authority

Unavoidable Closures

Any closure due to weather, strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes similarly **beyond the control of the operator of the supermarket or grocery store** as determined in the sole discretion of the Authority.

This means: For a supermarket to qualify as being open, it has to stay open 60 hours a week, except when there are emergencies that mean it needs to close, unless it gets approval from NJEDA for an exception.

Definitions

Eligibility Period & Commitment Period

Financing Gap Tax Credit

Eligibility period

Commitment period

Initial Operating Costs
Tax Credit

Eligibility period

Commitment period

Supermarket or grocery
store opens to the public

Supermarket has reached
stable profitability

Opening 1 Year 2 Years 3 Years 4 Years 5 Years 6 Years 7 Years

This means: A financing gap tax credit is issued over four years. An initial operating costs tax credit is issued over three years. Both tax credits start when the supermarket is open to the public. After the tax credits end, the supermarket must continue to meet requirements until it has been open for seven years.

Agenda

- 1 | Food Desert Relief Act Overview
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- 4 | Initial Operating Costs Tax Credit
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Financing Gap Tax Credit - Eligibility

ELIGIBILITY CRITERIA

- ▶ **First or second new** supermarket located in a **designated FDC**
- ▶ Applicant **develops and opens** the supermarket for business
- ▶ Without the tax credit award, the project is **not economically feasible**
- ▶ With the tax credit award, the project will be **open for business for seven years** and **economically and commercially viable by the seventh year**, as evidenced by a **feasibility study**
- ▶ Development costs are reasonable and in line with industry standards
- ▶ **Project financing gap** exists
- ▶ Prevailing wage & affirmative action required
- ▶ Except demolition and site remediation, construction has **NOT** commenced
- ▶ Applicant commits that the supermarket will accept SNAP and WIC benefits
- ▶ Applicant commits that the supermarket will maintain at least **10% of retail space dedicated to fresh and/or frozen produce**
- ▶ Applicant commits that the supermarket will hold at least one **community listening session annually**

Eligibility - Definitions

Square Footage & Retail Space

Square footage – minimum of 16,000 sq. ft.

Cash registers, alcohol retail space, space subleased or licensed to non-food vendors, offices, restrooms, etc.

80% of square footage for food & related products

Food retail space, food preparation space, food storage space, space subleased or licensed to vendors of food & related products

Retail space controlled by the operator

10% of retail space
dedicated to fresh
and/or frozen **fruits**
and **vegetables**

Financing Gap Tax Credit - Definitions

Total Development Cost

Any and all **costs incurred for and in connection with the project** by the applicant and any affiliate of the applicant **until the opening** of the supermarket or grocery store to the public, or upon such other event evidencing project completion as set forth in the incentive grant agreement, which shall include, but is not limited, to project costs, soft costs, and cost of acquisition of land and buildings.

Project Area

Land or lands adjacent and **necessary to the operation of the new supermarket or grocery store**, including but not limited to parking lots, loading docks, and satellite refrigerated pods.

This means:

- Total development cost includes project costs plus soft costs, the cost of buying land or buildings, and other costs.
- Project area, which is used in calculating equity and project financing gap, can encompass more than just the supermarket itself.

Financing Gap Tax Credit - Definitions

Project Financing Gap

The **part of the total development cost**, including **reasonable and appropriate return on investment**, that **remains to be financed after all other sources of capital have been accounted for**, including, but not limited to, **applicant-contributed capital, which shall not be less than 20 percent** of the total development cost, which may include the value of any existing land and improvements in the project area owned or controlled by the developer, and the cost of infrastructure improvements in the public right-of-way, and **investor or financial entity capital or loans** for which the applicant, after making **all good faith efforts** to raise additional capital, **certifies that additional capital cannot be raised** from other sources on a non-recourse basis. Existing land and improvements in the project area shall be valued at the lesser of the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority.

Financing Gap Tax Credit - Definitions

Project Cost

The costs incurred in connection with the establishment of a supermarket or grocery store within a food desert community by the applicant until the earlier of the **opening of the supermarket or grocery store to the public** and the certification of costs pursuant to N.J.S.A. 19:28-8(f)), or until such other time specified by the Authority, based upon such other documentation evidencing opening to the public as set forth in the incentive award agreement for a specific supermarket or grocery store including the **costs relating to lands, buildings, improvements, real or personal property, or any interest therein**, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus **soft costs of an amount not to exceed 20 percent of the project costs**, and the **cost of infrastructure improvements**, including ancillary infrastructure projects. **Project cost shall not include the cost of acquiring land.** Project cost shall include otherwise qualifying costs incurred by an affiliate of the applicant. The fees paid by the applicant to the Authority associated with the application or administration of an incentive award pursuant to sections 35 through 42 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-303 through 34:1B-310) shall not constitute a project cost.

Financing Gap Tax Credit - Definitions

Equity

Applicant-contributed capital that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, the **value of any existing land and improvements in the project area owned or controlled by the applicant** less any mortgages when the applicant owns the project site, the cost of infrastructure improvements in the public right of way and any **other investment by the applicant in the project** deemed acceptable by the Authority. Property value shall be valued at the lesser of: the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. **Equity shall include Federal or local grants and proceeds from the sale of Federal or local tax credits**, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47, and New Market Tax Credit, 26 U.S.C. § 45D. **Equity shall not include State grants or tax credits or proceeds from redevelopment area bonds.**

Financing Gap Tax Credit - Definitions

Equity

This means: The applicant must contribute equity of at least 20% of the total development cost, which can include

- Cash,
- Deferred development fees,
- Project feasibility costs from within the last year,
- (If the applicant owns or controls the project area) the property value of the project area, minus any mortgages if the applicant is the property owner,
- The cost of infrastructure improvements in the public right of way,
- Federal or local grants,
- Proceeds from the sale of federal or local tax credits, and
- Any other investments in the project that NJEDA determines are acceptable as equity.

Equity cannot include State grants, State tax credits, or proceeds from redevelopment area bonds.

Financing Gap Tax Credit - Definitions

Reasonable and Appropriate Return on Investment

The discount rate at which the **present value of the future cash flows** of an investment **equal the cost of the investment**. For purposes of the analysis of the reasonable and appropriate return on investment, an **investment shall not include any Federal, State, or local tax credits and grants**.

Financing Gap Tax Credit - Award Size Criteria

LABOR HARMONY AGREEMENT

A labor harmony agreement shall be **required only if the State has a proprietary interest in the project**. A required labor harmony agreement shall remain in effect for as long as the State acts as a market participant in the project.

Under consideration:

Applicants for the financing gap tax credit will be **eligible for a higher cap on their tax credit amount if they require a labor harmony agreement for the supermarket operator**.

This means: A labor harmony agreement is voluntary, unless the State has a proprietary interest in the project. However, developers could be eligible for a higher tax credit if they require the supermarket operator to have a labor harmony agreement.

Award Size

Under consideration:

Award size is calculated as the **lower of the project financing gap or a cap as follows:**

	No labor harmony agreement	Labor harmony agreement
First supermarket in FDC	30% of project costs	40% of project costs
Second supermarket in FDC	15% of project costs	20% of project costs

Financing Gap Tax Credit - Application Review

Administrative Review and Application Completeness Check (list not exhaustive)



- ▶ Online application is **complete** and all forms are **signed**
- ▶ Project site is in a Food Desert Community
- ▶ Letter of support from governing body of municipality
- ▶ Project description, costs and financial information
- ▶ Projected number of employees
- ▶ Market/feasibility study by independent third party, covering eligibility period and commitment period
- ▶ Breakdown of uses and square footage (e.g. planogram)
- ▶ Commitment to accept benefits from SNAP and WIC
- ▶ **Anticipated construction schedule**
- ▶ Binding agreement between developer and supermarket operator
- ▶ **If there are applications for both** a financing gap tax credit and an initial operating costs tax credit relating to the same supermarket or grocery store, **both applications must be reviewed & approved at the same time and financial information submitted in both applications must match.** If an application for only one of the two credits is approved, a later application for the other credit relating to the same supermarket or grocery store will not be accepted.

Financing Gap Tax Credit - Application Review

Checks After Administrative Review and Application Completeness Check



Sister agency check for good standing



Review of reasonableness and alignment with industry standards



Legal review



Underwriting and financial analysis



EDA Board

Financing Gap Tax Credit - Additional Program Details

APPROVAL CONDITIONS

Within in one year after Board Approval, several conditions, known as approval letter conditions, will need to be met. These conditions include but are not limited to:

- Documentation of site control (site access, ownership or lease, etc.),
- Copies of all required permits,
- Prevailing wage and affirmative action monitoring,
- Floor plan,
- Site plan approval, if applicable,
- **Executed agreement with operator of the supermarket or grocery store, and**
- **Executed financial commitments.**

Financing Gap Tax Credit - Additional Program Details

PROGRESS REPORTS/ANNUAL REPORTS

Progress reports shall be submitted to the NJEDA **every 6 months during the project**, starting from 6 months from board approval through certification of completion.

Annual reports shall be submitted beginning at board approval. These will include but not be limited to:

- Certifications indicating continued compliance with:
 - The incentive award agreement,
 - The labor harmony agreement, if applicable,
 - The requirement to be operating on a full-time basis,
 - Prevailing wage and affirmative action requirements, and
 - Good standing with sister state agencies (DOL, DEP, Treasury).
- CPA-certified financial statements,
- Floor plan/planogram,
- SNAP vendor permit,
- WIC vendor agreement, and
- Evidence a community listening session was held.

Financing Gap Tax Credit - Additional Program Details

SUBMITTALS FOR COMPLETION

- ▶ Temporary certificate of occupancy
- ▶ Evidence that the supermarket or grocery store is open for business to the public
- ▶ Certification by CPA of actual project costs
- ▶ Floor plan identifying the actual uses and square footage for each use
- ▶ Copies of SNAP vendor permit and WIC vendor agreement or evidence of submitted application for SNAP and WIC retailer approval
- ▶ Certification of compliance with incentive award agreement
- ▶ If pursuing rehabilitation, certification from a licensed engineer that the applicant has repaired or replaced 2 or more major systems, affecting at least 75% of square footage
- ▶ Certification that the information provided is accurate
- ▶ Labor harmony agreement, if applicable
- ▶ Any other information that may be required by NJEDA

Financing Gap Tax Credit - Additional Program Details

REASONABLE AND APPROPRIATE RATE OF RETURN

At the **conclusion of the third year** of the eligibility period, the Authority shall **evaluate the applicant's return on investment and compare** that to the reasonable and appropriate **rate of return determined at Board approval**. If the actual return on investment exceeds the reasonable and appropriate return on investment determined at Board approval by **more than 15%**, the Authority shall **reduce the amount of tax credits** allowed in the certificate of compliance **for the fourth year by 20% of the amount in excess** of the reasonable and appropriate return on investment.

This means: This provision allows for NJEDA to true-up the actual and projected return of investment before the end of the eligibility period. The tax credit issued in the final year will be reduced by 20% of the **excess** profit.

Financing Gap Tax Credit - Additional Program Details

REASONABLE AND APPROPRIATE RATE OF RETURN

If within **seven years** of completion of the project the applicant **sells, leases, or subleases the supermarket or grocery store**, the Authority shall determine if the applicant's rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. **If the project final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval**, the Authority shall require the applicant to **pay up to 20% of the amount of the excess**, and such funds shall be deposited in the State General Fund.

This means: This provision only applies if there is a sale of the property within 7 years of completion. The applicant will pay 20% of the **excess** profit to NJEDA if they sell the property within 7 years of completion.

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Initial Operating Costs Tax Credit - Eligibility

ELIGIBILITY CRITERIA

- ▶ **First or second new** supermarket located in a **designated FDC**
- ▶ Applicant **owns, leases, or subleases, and operates** the supermarket
- ▶ Without the tax credit award, the project is **not economically feasible**
- ▶ With the tax credit award, the project will be **open for business for seven years** and **economically and commercially viable by the seventh year, as evidenced by a feasibility study**
- ▶ Projected operating costs are in line with industry standards
- ▶ An **initial operating costs shortfall** is expected during the eligibility period
- ▶ Prevailing wage & affirmative action required on construction & equipment installation
- ▶ Applicant commits that the supermarket will accept SNAP and WIC benefits
- ▶ Applicant commits that the supermarket will maintain at least **10% of retail space dedicated to fresh and/or frozen produce**
- ▶ Applicant commits that the supermarket will hold at least one **community listening session annually**

Initial Operating Costs Tax Credit - Definitions

Initial Operating Cost

Expenditures for the operation of a **first or second new** supermarket or grocery store within the **first three years after opening to the public**, but within a standard range based upon **industry standards**, as determined by the authority. **Initial operating costs shall not include inventory.** Initial operating costs **may include** expenditures for the operation of a first or second new supermarket or grocery store incurred **within one month prior to the opening to the public.**

This means: Initial operating costs are an eligible supermarket's costs within one month before opening and for three years after opening. These costs must be aligned with industry standards. Inventory (cost of goods) is not included.

If total costs are \$11M and cost of goods is \$7M, initial operating costs are $\$11\text{M} - \$7\text{M} = \mathbf{\$4\text{M}}$.

Initial Operating Costs Tax Credit - Definitions

Net Initial Operating Costs, aka Initial Operating Costs Shortfall

On a yearly basis and to the extent the remainder is a positive number, **initial operating costs**, including a **net operating profit acceptable to the Authority**, minus income associated with the operation of the supermarket or grocery store **after cost of goods sold**, including but not limited to sales income and income from subleases and licenses.

Net Operating Profit

Pre-income tax operating profit.

This means:

Initial operating shortfall = Initial operating costs + net operating profit – net income

If this is negative, there is no shortfall.

Net operating profit is after taxes, other than income taxes. Net operating profit is calculated as a percentage of sales and based on industry standards. Net income is after cost of goods.

Initial Operating Costs Tax Credit – Example Calculation

Initial Operating Cost Shortfall

Example:

Sales = \$10 Million

Other Income = \$0 Million

Total Costs = \$11 Million

Cost of Goods = \$7 Million

Net Operating Profit = 3% of Sales (will be calculated based on industry standards)

Initial Operating Costs = Total Costs – Cost of Goods Sold

Net Operating Profit (in \$) = Sales * Net Operating Profit (as % of Sales)

Net Income = Sales Income + Other Income – Cost of Goods Sold

Initial Operating Shortfall = Initial Operating Costs + Net Operating Profit – Net Income

Initial Operating Costs Tax Credit – Example Calculation

Initial Operating Cost Shortfall

Initial Operating Costs	$\begin{aligned} &= \text{Total Costs} - \text{Cost of Goods Sold} \\ &= \$11 \text{ Million} - \$7 \text{ Million} \\ &= \$4 \text{ Million} \end{aligned}$
Net Operating Profit (in \$)	$\begin{aligned} &= \text{Sales} * \text{Net Operating Profit (as \% of Sales)} \\ &= \$10 \text{ Million} * 3\% \\ &= \$0.3 \text{ Million} \end{aligned}$
Net Income	$\begin{aligned} &= \text{Sales Income} + \text{Other Income} - \text{Cost of Goods Sold} \\ &= \$10 \text{ Million} + \$0 \text{ Million} - \$7 \text{ Million} \\ &= \$3 \text{ Million} \end{aligned}$
Initial Operating Shortfall	$\begin{aligned} &= \text{Initial Operating Costs} + \text{Net Operating Profit} - \text{Net Income} \\ &= \$4 \text{ Million} + \$0.3 \text{ Million} - \$3 \text{ Million} \\ &= \mathbf{\$1.3 \text{ Million}} \end{aligned}$

Initial Operating Costs Tax Credit - Award Size

Award Size Limit - Initial Operating Cost Shortfall

Award size is calculated as the **lower of the initial operating cost shortfall** or a cap as follows:

- For the first supermarket in a FDC, 100% of initial operating costs
- For the second supermarket in a FDC, 50% of initial operating costs

Example:

Initial operating costs = \$4

Initial operating shortfall = \$1.30

\$1.30 / \$4 = 33%, so shortfall is 33% initial operating costs

33% is less than 100%, so the tax credit approved = \$1.30



Initial Operating Costs Tax Credit - Application Review

Administrative Review and Application Completeness Check (list not exhaustive)



- ▶ Online application is **complete** and all forms are **signed**
- ▶ Project site is in a Food Desert Community
- ▶ Letter of support from governing body of municipality
- ▶ Project description, costs and financial information
- ▶ Projected number of employees
- ▶ Market/feasibility study by independent third party, covering eligibility period and commitment period
- ▶ Breakdown of uses and square footage (e.g. planogram)
- ▶ Commitment to accept benefits from SNAP and WIC
- ▶ **Acknowledgment by prospective landlord that the applicant will operate a supermarket or grocery store**
- ▶ Binding agreement between landlord and operator
- ▶ **If there are applications for both** a financing gap tax credit and an initial operating costs tax credit relating to the same supermarket or grocery store, **both applications must be reviewed & approved at the same time and financial information submitted in both applications must match.** If an application for only one of the two credits is approved, a later application for the other credit relating to the same supermarket or grocery store will not be accepted.



Initial Operating Costs Tax Credit - Application Review

Checks After Administrative Review and Application Completeness Check



Sister agency check for good standing



Review of reasonableness and alignment with industry standards



Legal review



Underwriting and financial analysis



EDA Board

Initial Operating Costs Tax Credit - Additional Program Details

APPROVAL CONDITIONS

Within in one year after Board Approval, several conditions, known as approval letter conditions, will need to be met. These conditions include but are not limited to:

- Documentation of site control (site access, ownership or lease, etc.),
- Copies of all required permits,
- Prevailing wage and affirmative action monitoring,
- Floor plan, and
- **Evidence of sufficient liquidity or financing on an annual basis to operate the supermarket or grocery store.**

Initial Operating Costs Tax Credit - Additional Program Details

PROGRESS REPORTS/ANNUAL REPORTS

Progress reports shall be submitted to the NJEDA **every 6 months** during the project, starting from 6 months from board approval through opening for business.

Annual reports shall be submitted beginning at board approval. Certifications will be required to indicate **continued compliance** with the incentive award agreement and with the labor harmony agreement if applicable, as well as continued operating on a full-time basis, prevailing wage, affirmative action, and good standing with sister state agencies. Other required documentation will include CPA-certified financial statements, floor plan/planogram, SNAP vendor permit, WIC vendor agreement, and evidence a community listening session was held.

Agenda

1 | Food Desert Relief Act Overview

2 | Overarching Definitions

3 | Financing Gap Tax Credit

4 | Initial Operating Costs Tax Credit

5 | Additional Requirements

Additional Program Details

COMPLIANCE

Statutory Requirement: A material misrepresentation of fact in the application or incentive award agreement may result in rescission and recapture of tax credits awarded.

Proposed Rules:

- Potential consequences include:
 - Delay in receiving tax credit,
 - Full or partial forfeiture for the current and/or future years, and/or
 - Full or partial recapture.
- FDRA-specific **scenarios that may result in consequences** include but are limited to:
 - Disqualification as a SNAP or WIC vendor,
 - Project ceases to be a supermarket or grocery store,
 - Project is not operating on a full-time basis,
 - Project ceases to dedicate 10% of retail space to fresh and/or frozen produce, and
 - Failure to hold an annual community listening session.

Additional Program Details

COMPLIANCE

- Additional scenarios that may result in consequences include but are not limited to :
 - Failure to timely submit annual report or progress report absent extenuating circumstances and the written approval of the Authority,
 - Failure to be substantial good standing with the DOL, the DEP, or Treasury and failure to enter into a practical corrective action,
 - Failure to satisfy any labor harmony agreement requirement, if applicable,
 - Failure to meet prevailing wage requirements,
 - A material misrepresentation of fact in the application, incentive award agreement, project completion certification, annual report, or any related submissions, and
 - Failure to comply with requirements that each contractor or subcontractor performing work at the project is a Public Works Registered Contractor, has not been debarred by the DOL, and possesses a tax clearance issued by the Division of Taxation in the Department of Treasury.

Additional Program Details

COMPLIANCE

- If, based on new information, the Authority determines that recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits.
- If all or part of a tax credit sold or assigned pursuant to section 5 of P.L. 2020, c. 156 is subject to recapture, then the Authority shall pursue recapture from the applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

This means:

- If NJEDA learns new information that shows that funds should have been recaptured previously, those funds can be recaptured retroactively
- If the tax credit certificate is sold, the buyer will be held harmless upon recapture

Additional Program Details

COMPLIANCE – Cannabis Prohibitions

Pursuant to N.J.S.A. 24:6I-49(b)(2), the following are not eligible for a State or local economic incentive, including tax credits under the Food Desert Relief Act N.J.S.A. 34:1B-306, et seq.:

- a) a person or entity issued a license by the New Jersey Cannabis Regulatory Commission (NJ-CRC) to operate as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service, or that employs a NJ-CRC certified personal use cannabis handler to perform work for or on behalf of a cannabis establishment, distributor, or delivery service; or
- b) a property owner, developer, or operator of a project to be used, in whole or in part, by or to benefit a NJ-CRC licensed cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service, or to employ a NJ-CRC certified personal use cannabis handler to perform work for or on behalf of a cannabis establishment, distributor, or delivery service

Furthermore, from the date of application until the end of the Compliance Period, the issuance of a license by the NJ-CRC as described under (a) above or the use of the project site as described in (b) above shall invalidate the right of the Applicant and Co-Applicant to benefit from the Food Desert Relief Tax Credit as of the date of issuance of the license or certification and may result in the recapture of some or all of the Food Desert Relief Tax Credit award.

This means: Anyone who has or is issued a cannabis industry license is not eligible for FDR. A project that is or will be used for cannabis-related purposes or to benefit a cannabis business is not eligible for FDR.

Additional Program Details

Program Fees

Type of Fee	Financing Gap Tax Credit		Initial Operating Costs Tax Credit	
	Project Costs <\$10MM	Project Costs ≥\$10MM	Total Sales <\$20MM	Total Sales ≥\$20MM
Application Fee	\$2,500	\$10,000	\$2,500	\$5,000
Approval Fee	\$5,000	\$15,000	\$5,000	\$10,000
Issuance Fee	\$5,000	\$15,000	\$2,500	\$5,000
Servicing Fee (x7)	\$2,500	\$10,000	\$2,500	\$5,000
Transfer Fee	\$5,000	\$15,000	\$5,000	\$10,000
Minor Mod	\$2,000	\$5,000	\$2,500	\$5,000
Major Mod	\$5,000	\$15,000	\$5,000	\$10,000
Total (w/o mods or transfer)	\$30,000	\$110,000	\$27,500	\$55,000

Additional Program Information

Information Only Slides

Additional slides are available at the end of this presentation that provide additional details.

Public Feedback Policy Reminder

- ▶ **Feedback may be submitted verbally by using the “raise hand” function in Zoom, or in writing through the Q&A feature.** Input will not be accepted verbally until the NJEDA has concluded its presentation.
- ▶ **Each member of the public who wishes to speak during the public feedback period should use the “raise hand” function in Zoom.** The host will acknowledge each speaker in the order in which they raised their hand and will open the speaker’s microphone to make their statement.
- ▶ To ensure everyone that chooses to has an opportunity to speak, **each speaker will have a maximum of three (3) minutes to speak and should limit input to matters pertaining to the Economic Recovery Act of 2020 and the New Jersey Food Desert Relief Tax Credit Program.**
- ▶ **Each member of the public will have one opportunity to provide remarks.** If time remains at the end of the session, we will reopen the opportunity for additional remarks.
- ▶ **Speakers should not expect to engage in a dialogue. NJEDA staff may respond to basic questions or clarify a speaker’s input.** However, NJEDA staff are not obligated to answer impromptu questions or address remarks from members of the public.
- ▶ **Speakers and members of the public should at all times maintain proper decorum and shall provide their remarks in a civil manner.**

Recording of Public Feedback Sessions

Members of the public wishing to submit written feedback on the New Jersey Food Desert Relief Tax Credit Program must do so via www.njeda.com/program-specific-feedback through January 9, 2023

Both New Jersey Food Desert Relief Tax Credit Program (“FDR”) public feedback sessions will be recorded and posted on www.njeda.com/program-specific-feedback so that members of the public unable to participate in a virtual session have the opportunity to review.



Visit NJEDA.com/EconomicRecoveryAct for more information.



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Information Only - Comparison of Financing Gap Tax Credit & Aspire

	Aspire	Food Desert Relief Act – Financing Gap Tax Credit
Net benefit test required	Yes	No
Prevailing wage for building services	Yes, for the 10-year eligibility period	No
Prevailing wage for construction	Yes, for the 10-year eligibility period	Yes, during construction and for 2 years after the first certificate of compliance
Community benefits agreement	Yes	No
Allows co-applicants	Yes (HMFA joint projects)	Yes
Eligibility period	10 years	4 years
Commitment period	None	3 years
Labor harmony agreement	Required if the state has a proprietary interest in the grocery store	Required if the state has a proprietary interest in the grocery store; increases tax credit cap
Cap for tax credit as % of project costs	Distressed municipalities: 50% All other projects: 45%	First supermarket in FDC: 30% First supermarket in FDC w/ LHA: 40% Second supermarket in FDC: 15% Second supermarket in FDC w/LHA: 20%
Development project completion	Temporary Certificate of Occupancy obtained	When the store opens for business to the public
Geographic limits	Limited to eligible incentive areas	2 stores per FDC
Carryforward	2 years, only if impacted by disaster or emergency	10 years

Information Only

TRANSFER OF CREDIT

Business entity may apply for a tax credit transfer certificate:

- ▶ Business entity may sell or assign, in full or part, the tax credit transfer certificate to another taxpayer in exchange for private financial assistance. The minimum amount is **\$25,000**.
- ▶ Business entity shall not sell a tax credit transfer certificate for less than **85 percent** of the transferred credit amount (before present value discounting)
- ▶ A purchaser or assignee of a tax credit transfer certificate **shall not make any subsequent transfers**, assignments, or sales of the tax credit transfer certificate