

Food Desert Relief Tax Credit Auction

Frequently Asked Questions

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Auction Basics

1. What is the Food Desert Relief Tax Credit Auction?

The Food Desert Relief Tax Credit Auction will auction Corporation Business Tax (CBT) and Insurance Premiums Tax (IPT) credits to New Jersey taxpayers. In accordance with the Food Desert Relief Act, the sale of tax credits will fund future grant, loan, and/or technical assistance programs to support food security. These programs will be designed to increase access to nutritious food for the 1.5 million residents of New Jersey's [50 designated Food Desert Communities \(FDCs\)](#), which span a diverse range of communities across all the state's counties.

2. What is the Food Desert Relief Act?

The Food Desert Relief Act (FDRA) was signed into law by Governor Phil Murphy on January 7, 2021, as part of the Economic Recovery Act. The law allocates \$40 million in tax credits annually for six years (a total of \$240 million), beginning in 2021, to the New Jersey Economic Development Authority (NJEDA). These tax credits may be awarded to encourage development and operation of supermarkets in New Jersey's 50 designated Food Desert Communities, through the [Food Desert Relief Tax Credit Program](#), or may be sold by the NJEDA to raise funds for grant, loan, or technical assistance programs that strengthen food security in these communities. This tax credit auction falls under the latter usage.

3. What volume of tax credits will be sold during the 2023 auction? (Updated October 12, 2023)

On October 12, 2023, the Authority announced that the amount of CBT and IPT credits available in the 2023 auction would be increased from \$10 million to \$15 million. This change is consistent with the Authority's ability to increase the amount available after the auction opens, based on demand, up to a maximum of \$50 million as approved by the NJEDA Board in April 2023.

4. Against what types of tax liability may the tax credits be applied?

Program tax credits can be applied against New Jersey Corporation Business Tax (CBT) liability, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), as well as New Jersey Insurance Premiums Tax

(IPT) liability, sections 2 and 3 of 12 P.L.1945, c.132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (N.J.S.A. 17:32-15), and N.J.S.A. 17B:23-5.

5. Has the NJEDA offered this program before? Has it been oversubscribed?

This is the first time the Food Desert Relief Tax Credit Auction has been offered. The NJEDA has previously offered a corporate tax credit auction through the New Jersey Innovation Evergreen Fund (NJIEF) program. That auction was oversubscribed in 2022.

6. How does this program compare to the New Jersey Innovation Evergreen Fund (NJIEF) tax credit auction?

The NJEDA held the first NJIEF tax credit auction in 2022, offering \$50 million of CBT credits. The key differences between the Food Desert Relief Tax Credit Auction and the NJIEF auction are summarized in the table below.

	Food Desert Relief Tax Credit Auction	NJIEF Tax Credit Auction
Tax credit types	CBT & IPT	CBT & IPT
Minimum price per dollar of tax credits	\$0.85	\$0.75
Minimum tax credit request	\$500,000	\$500,000
Strategic commitment required	No	Yes, required as part of bid
Advisory board participation required	No	Yes
Reporting required	No	Yes, annually on status of strategic commitment
All bidders receive guaranteed minimum	No	Yes, \$500,000
Auction frequency	No plans for a second auction.	Auctions may be held annually, provided that a sufficient amount of the funds raised in the previous auction(s) have been invested.

7. How are auction bids evaluated?

Eligible bids will be evaluated based on offer price, or the price the bidder will pay per dollar of tax credits.

8. Is there a minimum or maximum amount of tax credits that must be purchased through this auction? (Updated August 17, 2023)

Bidders (also called “applicants”) must submit a bid to purchase **at least \$500,000** of tax credits. There is no limit on the amount of tax credits applicants may bid on, up to the amount of tax credits available through the auction.

If the auction is over-subscribed, not all bidders will receive the full amount requested. The eligible bids will be ranked by price and available tax credits will be awarded starting with the highest bidders, until the tax credits are fully allocated. Authority staff will determine the

clearing price, defined as the highest price at which the amount of tax credits requested at or above that price equals or exceeds the total amount available for purchase. Bidders offering a purchase price below the clearing price will be declined. If the amount requested at the clearing price exceeds the amount remaining after bids above the clearing price are accounted for, bidders offering a purchase price equal to the clearing price will receive a prorated amount based on the amount requested at the clearing price.

9. What is the minimum offer price allowable?

The offer price is the price an applicant is willing to pay for \$1 of tax credits. Food Desert Relief Act credits may not be purchased for less than 85% of face value (85 cents on the dollar).

10. Are the tax credits being purchased from other companies that earned the credits in prior years? Or are these new credits being issued for the first time?

These are new credits being issued for the first time. They are not tied to any company's performance in or compliance with another NJEDA program.

11. Do participating companies have any ongoing commitments or compliance requirements following their purchase of tax credits through the auction?

No. Unlike the NJIEF tax credit auction, this auction has no strategic commitment component and no ongoing compliance requirements for purchasers after the tax credit purchase transaction takes place. More information on the requirements of the NJIEF tax credit auction can be found [here](#).

Using the Tax Credits

12. Can the tax credits be applied against Gross Income Tax?

No, program tax credits can only be applied against New Jersey CBT liability, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and New Jersey IPT liability, sections 2 and 3 of 12 P.L.1945, c.132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (N.J.S.A. 17:32-15), and N.J.S.A. 17B:23-5.

13. Can the tax credits be used to offset the corporate surtax?

No, the Food Desert Relief Act (N.J.S.A. 34:1B-307) only authorizes the tax credit to be deductible against the taxpayer's tax liability due pursuant to N.J.S.A. 54:10A-5, 54:18A-2, 54:18A-3, 17:32-15, and 17B:23-5. It does not allow the credit to be used against the surtax imposed pursuant to N.J.S.A. 54:10A-5.41.

14. Can the tax credits be used to offset NJ PTE taxes? (Question added August 31, 2023)

No, program tax credits can only be applied against New Jersey CBT liability, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and New Jersey IPT liability, sections 2 and 3 of 12 P.L.1945, c.132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (N.J.S.A. 17:32-15), and N.J.S.A. 17B:23-5.

15. Can a company purchase both CBT or IPT credits through the tax credit auction?

Each application, including the bid, is limited to a single type of tax credit. However, a company could choose to submit two applications in order to bid for both CBT and IPT credits.

16. In what years can the auctioned tax credits be applied?

Purchasers must apply the purchased tax credits in the purchaser's privilege period in which the sale of the tax credits is approved. Any tax credits that are unused due to the order of priority of tax credits established by the New Jersey Division of Taxation may be carried forward for use in the next seven privilege periods.

For example, for purchasers with a calendar year privilege period, tax credit awards approved by the Authority in calendar year 2023 must be applied against the liability due pursuant to the purchaser's 2023 CBT or IPT return. Program tax credits may not be carried back to apply to prior year amended tax filings. In this example, a purchaser could not apply the 2023 CBT or IPT credit to an amended 2022 tax filing.

17. How will purchasers apply program tax credits to their tax returns?

Following notification of approval, purchasers must execute a tax credit purchase contract with the NJEDA and remit the purchase amount less any refundable deposit. The New Jersey Division of Taxation will then issue a tax credit certificate that must be filed with the tax return of the same privilege period as the credits. The Division of Taxation generally requires at least 20 days to issue tax credit certificates, but this timing is subject to change.

18. What is the order of priority in which program tax credits can be applied?

The Director of the Division of Taxation shall prescribe the order of priority of the application of the credits awarded under the Food Desert Relief Act and any other credits allowed by law. The amount of the credit applied pursuant to the Food Desert Relief Act against the tax imposed pursuant to section 5 of P.L. 1945, c.162 (N.J.S.A. 54:10A-5) shall not reduce a taxpayer's tax liability for a privilege period to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L. 1945, c.162 (N.J.S.A. 54:10A-5).

Any credit sold shall be valid in the privilege period in which the sale is completed, and any unused portion thereof may be carried forward into the next seven privilege periods or until exhausted, whichever is earlier.

To use the tax credit for CBT liability, the holder of the tax credit must claim the tax credit on the taxpayer's applicable CBT return; currently, this is done through Schedule A-3. For up-to-date information on CBT returns and forms, please see the Division of Taxation's CBT website at <https://www.nj.gov/treasury/taxation/cbt/index.shtml>.

To use the tax credit for IPT liability, the holder of the tax credit must claim the tax credit on the taxpayer's applicable IPT return; currently, this is done through Schedule A. For up-to-date information on IPT returns and forms, please see the Division of Taxation's Insurance Tax website at <https://www.state.nj.us/treasury/taxation/insurance.shtml>.

This FAQ is not tax advice. Holders of program tax credit certificates should consult their tax professionals about the use of their tax credits.

19. How will organizational changes, such as name changes or mergers, of a tax credit purchaser impact the usability of the tax credits?

Any purchaser that undergoes organizational changes must contact the NJEDA as soon as possible to ensure continued eligibility under the program and, if eligible, any corresponding changes to program documents, agreements, and the tax credit certificate. If the tax credit certificate has been issued, the use of the tax credit certificate is also subject to applicable tax laws, regulations, and requirements.

20. Can members of a combined group filing a unitary return purchase tax credits through the auction?

The Food Desert Relief tax credit will be issued in the name of the approved purchaser, regardless of whether that purchaser files CBT as part of a combined group. Additional information regarding tax credits and combined reports can be found in the Division of Taxation's Technical Bulletin TB-90(R) (currently revised as of March 18, 2021) at <https://www.nj.gov/treasury/taxation/pdf/pubs/tb/tb90.pdf>. Applicants should consult their tax professionals about how CBT credits may apply to affiliates or other entities included in purchaser's unitary tax return.

21. Can partnerships or S corporations participate in the auction?

Partnerships or New Jersey S corporations may participate. Credits awarded to partnerships or New Jersey S corporations shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method. Such alternate distribution agreement must be provided to the Division of Taxation and must be accompanied by any additional information as the Director of the Division of Taxation requires. CBT credits may not be applied against personal gross income tax liability.

22. Can pass-through entities pass through Food Desert Relief tax credits to individuals?

See answer to questions 12 and 21 above. CBT credits may not be applied against personal gross income tax liability.

Eligibility

23. What types of entities may participate in the auction?

Corporate entities and insurance companies interested in purchasing tax credits to offset their CBT and/or IPT liability may purchase tax credits through the auction. Applicants must meet other eligibility criteria, including, but not limited to, obtaining a tax clearance certificate from the Division of Taxation (which requires the entity to be registered to do business in the State).

24. Does a company need to be involved in the food industry or located in a Food Desert Community to participate in the auction?

No. The auction is open to all companies that have CBT and/or IPT liability in New Jersey. Any company meeting the eligibility criteria is encouraged to participate, and participants will have no commitments or compliance requirements related to the auction or NJEDA food security programs once purchase transactions have taken place. Once the auction has concluded, NJEDA will use the proceeds from the auction to fund future grant and loan programs and technical assistance to strengthen food security in Food Desert Communities in New Jersey.

25. Must a company be headquartered in New Jersey to participate in the auction?

No, the location of the company's headquarters is not an eligibility criterion. However, applicants should consider the applicability of the tax credit against their existing New Jersey CBT or IPT liability.

26. Can corporations that hold tax credits from other NJEDA programs such as the Grow NJ Program and the Evergreen program purchase tax credits sold through the Food Desert Relief Tax Credit auction?

Yes, corporations that hold tax credits from other NJEDA programs can still purchase tax credits sold through the Food Desert Relief Tax Credit Auction.

27. If my company participates in the tax credit auction, does this preclude us from participation in any other NJEDA program?

Companies that participate in the Food Desert Relief Tax Credit Auction are not precluded from participating in other NJEDA programs or purchasing future tax credits from NJEDA programs, e.g. Evergreen.

28. Can companies that are engaged in prohibited activities in Belarus or Russia purchase program tax credits?

No. Companies engaged in prohibited activities in Russia or Belarus, as such term is defined in P.L.2022, c. 3., sec. (1)(e), except as permitted by federal law, may not purchase program tax credits.

Auction Process

29. Will bidders automatically receive the requested amount of tax credits indicated in their bids?

No. The Food Desert Relief Tax Credit auction is a competitive auction and bidders must satisfy eligibility criteria. After the bid window closes, NJEDA staff will review the bids for completeness and eligibility. If the amount of tax credits requested exceeds the total amount available for purchase, the Authority may seek best and final offers from all bidders.

Authority staff will rank the eligible bids based on purchase offer price, from highest to lowest. Authority staff will determine the clearing price, defined as the highest price at which the amount of tax credits requested at or above that price equals or exceeds the total amount available for purchase.

Bidders offering a purchase price below the clearing price will be declined. Bidders that are declined may appeal within 5 business days after written notice of a decision.

If the amount requested at the clearing price exceeds the amount remaining after bids above the clearing price are accounted for, bidders offering a purchase offer price equal to the clearing price will receive a prorated amount based on the amount requested at the clearing price. There is no minimum tax credit award, and such proration could result in tax credit awards below the minimum tax credit request of \$500,000.

If more tax credits are available than the aggregate amount requested in bids, eligible bidders, starting with those ranked highest, may elect to increase their purchase amount.

30. What does proration mean in the context of the Food Desert Relief Tax Credit Auction?

If demand for program tax credits exceeds the supply of tax credits in the auction, and the amount requested at the clearing price exceeds the amount remaining after bids above the clearing price are accounted for, bidders at the clearing price will receive a prorated amount of their total request. An example of this proration is available in the [Auction Process Overview](#). There is no minimum tax credit award, and such proration could result in tax credit awards below the minimum tax credit request of \$500,000.

31. What is the application fee associated with this program?

There are no application fees associated with this program. All applications must include a refundable deposit equal to the lesser of 10% of the total tax credit purchase offer or \$500,000. The deposit will be applied towards the final tax credit purchase amount.

If a bid is declined (either for missing documentation, ineligibility, or an offer price below the clearing price), the deposit will be refunded to the auction participant.

Bidders are required to pay the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

32. Will an application be reviewed if the refundable deposit wire is not initiated by the deadline?

All applications must include a refundable deposit equal to the lesser of 10% of the total tax credit purchase offer or \$500,000. This deposit must be initiated, AND documentation that the deposit has been initiated must be provided to NJEDA, by 5:00 PM ET on October 18, 2023, or the bid will be considered incomplete and will be declined.

The deposit becomes non-refundable on the effective date of the tax credit purchaser contract. If the approved bidder does not execute the contract, the deposit will be returned. An approved bidder that fails to execute the contract, or a bidder that executes the contract but fails to pay the remainder of the purchase offer within 30 days of approval, shall not be eligible to participate in an NJEDA tax credit auction for one year.

33. What is the expected length of time between the 10% deposit and when the tax credit is issued by the state?

We expect that there will be three to four months between the close of the auction application, when the 10% deposit must be initiated, and the issuance of the tax credit certificate.

34. When is the final payment due once the credit is awarded? (Added August 31, 2023)

The final payment will be due 30 days after the agreement is executed. We anticipate executing agreements in late December or early January, with payment then due in late January or early February.

35. Can bidders increase the amount of program tax credits requested after the application period closes?

At time of application bidders can indicate whether they would like to purchase extra tax credits if the supply of tax credits offered through the auction exceeds the demand. These bidders may purchase additional tax credits, with priority assigned by bid price.

36. What happens if a successful bidder opts not to pursue the credits? Is there a penalty?

The required 10% deposit becomes non-refundable on the effective date of the tax credit purchase agreement. If the approved bidder does not execute the agreement, the 10% deposit will be returned. An approved bidder that fails to execute the agreement, or a bidder that executes the agreement but fails to pay the remainder of the purchase offer within 30 days of executing the agreement, shall not be eligible to participate in an NJEDA tax credit auction for one year, including both a potential future FDRA tax credit auction as well as future New Jersey Innovation Evergreen Fund tax credit auctions (per the Evergreen tax credit auction rules) within one year.

If a bidder does not wish to (or is unable to) follow through on their submitted bid, the credits can be offered by the Authority to other bidders, in order from highest bidder to lowest, without need of re-auction, for the same purchase price per tax credit dollar offered by these other bidders.

Transferring Credits

37. Can tax credit purchasers sell program tax credits to other buyers?

Yes, purchasers may apply to the Authority and the Division of Taxation for a tax credit transfer certificate. A tax credit may be sold or assigned, in full or in part, to another person that may have a tax liability pursuant to section 1 of P.L. 1950, c.231, N.J.S.A. 17B:23-5, section 5 of P.L.1945, c.162, and sections 2 and 3 of P.L. 1945, c.132. One transfer may be granted and at a minimum purchase price of 85% of face value (or 85 cents on the dollar). Once a tax credit is applied to a return it can no longer be sold.

38. Are there limits on the amount of tax credits that can be transferred or the transfer price?

A tax credit may be sold or assigned, in full or in part, to another person that may have a tax liability pursuant to section 1 of P.L. 1950, c.231 (N.J.S.A. 17:32-15), N.J.S.A. 17B:23-5, section 5 of P.L.1945, c.162 (N.J.S.A. 54:10A-5), and sections 2 and 3 of P.L. 1945, c.132 (N.J.S.A. 54:18A-2 and 54:18A-3), in an amount not less than \$25,000. The tax credit purchaser shall not sell or assign the tax credit transfer certificate for consideration received by the tax credit purchaser of less than 85 percent of the transferred credit amount.

39. Where can I find more information about transferring these tax credits?

More information can be found in the Food Desert Relief Act (N.J.S.A. 34:1B-303 through 34:1B-310) as well as in the regulations for the Food Desert Relief Tax Credit Program Regs (N.J.A.C. 19:31-28.11).

Application

40. When does the application open and close? (Question added August 17, 2023)

The Food Desert Relief Tax Credit Auction will open on September 18, 2023, at 10:00 AM ET and close on October 18, 2023, at 5:00 PM ET.

41. How do I access the application for the Food Desert Relief Tax Credit Auction?

When the application opens on September 18, participants will be able to access it [here](#). To prepare for the launch of the application, potential applicants may review a sample application [here](#).

42. What is the purpose of the application questions about development subsidies?

These questions are required by P.L. 2007, c.200, with the goal of gathering consolidated data and increasing transparency around economic development subsidies provided by public bodies in the state. This section of the application is not part of the eligibility review.

43. Are applications considered an Open Public Record that can be requested under the Open Public Records Act?

Under the Open Public Records Act (OPRA), all government records are presumed public, unless they fall under one or more of the 27 specific exemptions contained in OPRA (N.J.S.A. 41:1A-1, N.J.S.A. 47:1A-1.1). Two such exemptions include:

- Trade secrets and proprietary commercial or financial information, and
- Information which, if disclosed, would give an advantage to competitors or bidders.

If an application or related documents for the Food Desert Relief Tax Credit Auction were requested from NJEDA under OPRA, NJEDA staff will contact the applicant(s) to inform them of the request and afford the applicant an opportunity to assert any applicable exemptions that may apply. A legal basis must be identified for each exemption claimed. More information about the Open Public Records Act can be found at <https://www.nj.gov/grc/laws/act/>.

44. Can you work on an application, save it, and then go back at a later time and complete the next section?

Yes. The first time you save an application using the Save button, a link will be sent to your email from the Cognito platform so you can re-open your saved application and continue working on it later.

45. Can multiple people within the same organization work on the same application, or can only one person work on an application?

Yes. In order to do this, the link that is sent via email after saving will need to be shared with all parties working on the application. Multiple people cannot edit the application simultaneously.

46. Who do I contact if I have additional questions? (Question added August 17, 2023)

Questions must be submitted to FDRTCAuction@njeda.gov by 5:00 PM ET on September 5, 2023. Answers will be posted on a rolling basis, no later than 5:00 PM on September 11. Any answers provided will also be shared publicly so that all bidders have the same information.