

## New Jersey Innovation Evergreen Fund (NJIEF) Tax Credit Auction Frequently Asked Questions

### **1. How many tax credits may be sold under the program?**

The Authority may auction up to \$60 million of corporate business tax credits annually through the program life, not to exceed \$300 million in aggregate. If additional credits are available from the rollover of unsold prior year tax credits, more than \$60 million of tax credits may be sold. The annual amount available for auction will be posted to the EDA's website in advance of the auction. If the Evergreen Fund has more than \$50 million of unallocated capital, it may not hold an auction. The timing of the auction may be established by the CEO of the Authority during the year.

### **2. What volume of tax credits will be sold during the program's current-year auction?**

For the 2022 auction year, a pilot amount of \$50 million of tax credits was made available for purchase. Please see the program website for updates regarding the amount of tax credits available for purchase through subsequent auctions.

### **3. Against what types of tax liability may the program credits be applied?**

Program tax credits can only be applied against New Jersey Corporation Business Tax (CBT) and Insurance Premium Tax (IPT) liability, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c 132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 for the current privilege period as of the date of the credit's approval. A purchaser may carry forward an unused credit in the seven subsequent privilege periods.

### **4. Can program tax credits be applied against Gross Income Tax?**

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

### **5. Can the program tax credits be used to offset the corporate surtax?**

No, the tax credit statute for the Evergreen program (N.J.S.A. 34:1B-294) only authorizes the tax credit to be deductible against the taxpayer's tax liability due pursuant to N.J.S.A. 54:10A-5 and does not allow the credit to be used against the surtax imposed pursuant to N.J.S.A. 54:10A-5.41.

### **6. Is there a minimum or maximum amount of tax credits that can be purchased under this program?**

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, however the NJEDA may not sell more than \$60 million of tax credits in any annual program auction (unless additional rollover credits remain from prior program years). If an auction is over-subscribed, bids will be pro-rated down to ensure no bidder receives less than \$500,000 of tax credits. If the proration were to result in any bidder receiving less than \$500,000 of tax credits, the Authority shall award tax credits only to the highest scored bidders that would result in a proration with at least

\$500,000 of tax credits for such bidders.

**7. What is the minimum financial bid price allowable under the program?**

The financial bid price is the price an applicant is willing to pay for \$1 of tax credits. Program credits may not be purchased for less than the minimum price established by the Authority, currently set at 75% of face value (75 cents on the dollar).

**8. In what years can program tax credits be applied?**

Purchasers must apply the purchased tax credits in the purchaser's privilege period in which the tax credits are approved, and 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 in calendar year 2025 must be applied against the liability due pursuant to the purchaser's 2025 CBT 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 program 2025 CBT credit to an amended 2024 tax filing.

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

Following the approval from the Board of the Authority, purchasers must execute an approval letter and a tax credit purchaser 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.

**10. 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 this program and any other credits allowed by law. The amount of a credit applied pursuant to this Act and this program against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability of the tax credit purchaser to an amount less than the statutory minimum provided at subsection (e) of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

To use the tax credit, the holder of the tax credit must claim the tax credit on the taxpayer's applicable corporation business tax return or insurance premium tax return. For up-to-date information on corporation business tax returns and forms, please see the Division of Taxation's Corporation Business Tax website at <https://www.nj.gov/treasury/taxation/cbt/index.shtml>. For up-to-date information on insurance premiums tax returns and forms, please see the Division of Taxation's Corporation Business Tax website at <https://www.nj.gov/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.

**11. How will organizational changes, such as name changes or mergers, of a program tax credit purchaser impact the usability of program 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 program tax credit certificate has been issued, the use of the tax credit certificate is also subject to applicable tax laws, regulations, and requirements.

**12. What is a strategic commitment?**

All Evergreen Program tax credit auction bids must include a strategic commitment, whereby, tax credit purchasers offer strategic support to strengthen the State's innovation ecosystem. Commitments are submitted in tandem with the tax credit purchase offer and are a scored component of bids.

Bidders can include in their strategic commitment initiatives tailored to their unique positioning and needs. For more information about strategic commitments and examples, please see the program [Strategic Commitment Flyer](#) and the relevant section of the program [Board Memorandum](#), which includes the current scoring rubric.

**13. Does the program include a minimum requirement for strategic commitments?**

Valid strategic commitments will specifically identify the objective of the commitment, details of how the strategic commitment will be achieved, and milestones to indicate when the commitment is achieved, including the forms of documentation that will be provided to EDA staff to verify achievement. Bidders must also specify the financial cost to the bidder of each component included in the strategic commitment. Potential purchasers may review the program [Auction Bid Scoring Guidelines](#), which includes the current scoring rubric.

**14. Can a subsidiary or affiliate of a parent company purchase the tax credits if the entity completes a unitary tax return at the parent level?**

The Evergreen tax credit will be issued in the name of the approved purchaser. 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 and IPT tax credits may apply to affiliates or other entities included in purchaser's unitary tax return.

**15. Must a corporation be headquartered in New Jersey to participate in the auction?**

No, the location of the corporation's headquarters is not an eligibility requirement. However, applicants should consider the applicability of the tax credit against their existing New Jersey

CBT and IPT liability, the ability to achieve the proposed strategic commitment, and the requirement to participate in NJIEF Advisory Board functions.

**16. Can the NJEDA help connect my company to partner organizations working in the innovation ecosystem to collaborate on a strategic commitment?**

There are many excellent organizations such as non-profits, trade organizations, university centers, accelerators, incubators, and angel investment groups that are always looking for corporate partners. The program website includes a non-exhaustive menu of [Potential Strategic Engagement Partners](#) to assist potential purchasers in identifying relevant ecosystem stakeholders in New Jersey's innovation ecosystem. As a government agency, the NJEDA may refer you to all relevant parties known to NJEDA, however, this does not constitute an endorsement or recommendation of any specific entity or group referenced. Interested ecosystem stakeholders may contact the NJEDA at [NJIEF@njeda.gov](mailto:NJIEF@njeda.gov) for inclusion.

**17. What is a strategic commitment component?**

Components of a strategic commitment represent portions of the commitment with unique deliverable results, dates of completion, and estimated costs. For example, if an applicant plans to host a start-up networking event and offer an internship program, the networking event is one component and the internship is another component, and each will be scored independently.

**18. What constitutes a valid strategic commitment within a complete and fully submitted application?**

Each strategic commitment put forward by applicants may be unique, but at a minimum must indicate the objective of the commitment, details of how the strategic commitment will be achieved, the financial cost to the bidder of the commitment components, and milestones to indicate when the commitment is achieved, including the forms of documentation that will be provided to EDA staff to verify achievement. Using the example of a networking event as a submitted strategic commitment, EDA may require the bidder propose the purpose of the event, the approximate location, the date by when the event will occur, the expected number of attendees, the cost to host or sponsor the event to the bidder, and the proposed documentation that will be provided to the EDA to verify completion of the event.

**19. Are strategic commitment bids binding?**

Strategic commitment bids, along with the tax credit purchaser offer, cannot be reduced following bid application submission. Applicants may withdraw their tax credit purchaser application to be removed from the application review process. Alternatively, applicants may increase their financial bid and/or strategic commitment bid during a best and final offer process. The Authority's request for best and final offers shall not connote approval. Approval is solely granted by the Board of the Authority. If approved, the strategic commitments will be included as the bidder's contractual commitment in the approval letter and tax credit purchaser contract. The refundable deposit due with the application will become non-refundable following execution of the tax credit purchaser contract.

**20. Can Program tax credit purchasers revise strategic commitments after approval?**

Purchasers may submit written requests to the NJEDA to modify approved strategic

Commitments if unforeseen circumstances arise. Modified strategic commitment components must achieve at least 90% of the approved commitment component cost and 90% of the associated score when applying the Board approved scoring rubric.

**21. How are auction bids scored?**

An applicant's auction bid score is the sum of the tax credit purchase offer score and the strategic commitment scores. The tax credit purchase offer score is the price the applicant is willing to pay for \$1 of tax credits. For example, a tax credit purchase offer of \$0.90 on the dollar receives a score of 0.90.

Strategic commitments are scored based on the total financial and in-kind cost of the proposed strategic commitment, as a proportion of tax credits requested. The program scoring rubric is published in the [Auction Bid Scoring Guidelines](#). If an applicant receives a strategic commitment score of 0.30 and a tax credit purchase offer score 0.90, the applicant's total score is 1.20.

**22. Can an applicant submit a bid with multiple strategic commitments?**

Applicants can submit a strategic commitment with multiple components, but bids will be limited to one strategic commitment. The strategic commitment will be scored based on the aggregate total cost of the strategic commitment components as a proportion of tax credits requested.

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

No, the NJIEF tax credit auction is a competitive auction and bidders must satisfy eligibility criteria. If demand for program tax credits from eligible bidders exceeds the supply of tax credits in any given auction, tax credit awards will be prorated based on total bid scores. See answer to FAQ #6 above.

If supply of program tax credits exceeds the demand, eligible bidders may have the opportunity to purchase more credits without increasing their strategic commitment.

**24. What does proration mean in the context of the NJIEF tax credit auction?**

If demand for program tax credits exceeds the supply of tax credits in any given auction, tax credit awards will be prorated based on total bid scores and the percentile ranking of those scores relative to other bidders. The program proration methodology and formula is publicly available in the program [Auction Bid Scoring Guidelines](#).

**25. Are tax credit purchasers that fail to complete strategic commitment components included in their bid obligated to return tax credits awarded through the program?**

No. Absent extenuating circumstances or written consent by the Authority, a tax credit purchaser that fails to fund 80% of the strategic commitment component must pay the difference between the cost of the strategic commitment component and the amount completed. The Authority will not accept performance of a different or modified strategic commitment component without Authority approval as described in FAQ # 20 above. Purchasers will be granted a one-year cure period to return to compliance before any payment is required.

**26. What is the consequence for failing to complete a strategic commitment?**

See answer to question to FAQ #25 above.

**27. 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. Note, transfer applications must be received in the same privilege period the tax credits are approved. One transfer may be granted and at a minimum purchase price of 85% of face value (or 85 cents on the dollar). While the tax credit certificate may transfer, the original purchaser will remain the party obligated under the tax credit purchaser contract to complete its Strategic Commitment and participate on the New Jersey Innovation Evergreen Advisory Board. Additionally, 10 percent of the consideration received by a tax credit purchaser from the sale or assignment of a tax credit transfer certificate shall be remitted to the NJEDA prior to the issuance of the tax credit transfer certificate.

**28. 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 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), in an amount not less than \$100,000. The tax credit purchaser shall not sell or assign a tax credit transfer certificate allowed pursuant to this section for consideration received by the tax credit purchaser of less than 85 percent of the transferred credit amount.

**29. If tax credit purchasers transfer program tax credits, are they still responsible for completing strategic commitments included in their bids?**

Yes, original purchasers remain the party responsible under the tax credit purchaser contract for completing strategic commitments after transferring program tax credits.

**30. What types of entities may participate in the program auction?**

Corporate entities interested in purchasing tax credits to offset their CBT liability may purchase program tax credits. 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).

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.

**31. Can pass-through entities pass through program tax credits to individuals?**

See answer to FAQ #30 above. CBT or IPT credits may not be applied against personal gross income tax liability.

**32. Can a subsidiary of a parent company that purchases program tax credits complete the strategic commitment?**

Yes, although the tax credit purchaser will remain responsible to complete all obligations outlined in the tax credit purchaser contract, including the completion of the strategic commitment. To the extent this circumstance is anticipated, the applicant must describe it in the application to ensure proper verification. In the event strategic commitments are not completed, the tax credit purchaser will be subject to the remedies described in FAQ #25 above.

**33. Can corporations that hold tax credits from other NJEDA programs such as the GROW NJ Program purchase tax credits sold through the NJIEF auction?**

Yes, corporations that hold tax credits from other NJEDA programs can still purchase tax credits sold through the NJIEF auction in keeping with program requirements.

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

There is no preclusion that prevents participation from any other NJEDA administered program by virtue of participation in the NJIEF program. No undue financial advantage shall inure to a tax credit purchaser due to its participation in this program. During the 12-month period after the approval of the award of tax credits to a tax credit purchaser, the Authority shall not approve a qualified investment or follow-on investment to a venture firm that is managed; beneficially owned, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; or whose direction of investments are controlled by a tax credit purchaser.

**35. Will an application be reviewed if the refundable deposit wire is not received?**

All applications must include a refundable deposit equal to 10% of the total tax credit purchase offer, not to exceed \$500,000. Refundable deposit wire transfers must be initiated by the date the tax credit auction application period closes. Applications will not be considered complete until the NJEDA receives the deposit via wire. If the deposit wire transfer is initiated after the application period closes, that application will be rejected as incomplete. The refundable deposit will become non-refundable upon execution of the tax credit purchaser contract. The deposit will be applied towards the final tax credit purchase amount.

**36. 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 10% of the total tax credit purchase offer, not to exceed \$500,000. The deposit becomes non-refundable upon execution of the tax credit purchaser contract. However, 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.

**37. 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 without needing to increase their strategic commitment. Priority is assigned by bid score.

**38. Who should my firm nominate to sit on the New Jersey Innovation Evergreen Fund Advisory Board?**

At time of application each auction applicant must designate a relevant individual in its organization to sit on the New Jersey Innovation Evergreen Fund Advisory Board. This individual should have a professional background relevant to innovation, startups, or research and development, and serve in a senior position within the organization. Advisory Board members shall serve in an uncompensated capacity, to be appointed through a process to be determined by the Chief Executive Officer of the Authority from among tax credit purchasers and other strategic partners identified by the Chief Executive Officer, to support the State's innovation ecosystem.

**39. What are the expected obligations of NJIEF Advisory Board Members?**

Advisory Board members must serve for a year-long period and attend at least the majority of meetings and events that the NJEDA schedules each year for participation by the members. The regulations do not provide for a specific number of meetings or events. It is contemplated there will likely be four in-person or virtual board meetings in the first year, with the potential for additional sessions as determined by the Authority based on the experience with the program and NJIEF Advisory Board feedback. The NJEDA-convened meetings will enable participants to engage across the NJIEF program platform with other corporations, investors and high-growth businesses to present learnings from their strategic commitments, share feedback for the next auction, and offer guidance on programmatic initiatives to support the innovation economy. If

this requirement goes unmet, the company will be ineligible from auction participation for the next twelve months.

**40. How will NJIEF Advisory Board Members be selected?**

- i) The CEO of the Authority may select Advisory Board members from among tax credit purchasers of the current auction.
  - a. Selections from among tax credit purchasers may be made based on nominees' ability to provide guidance and networking opportunities to qualified businesses and to provide feedback and guidance on the Evergreen Fund program to other Advisory Board members and the Authority.
  - b. In evaluating nominees' ability to execute the functions of the New Jersey Innovation Evergreen Fund Advisory Board, the CEO of the Authority may evaluate (i) a tax credit purchaser's role within the New Jersey innovation ecosystem, (ii) the size of the company, and (iii) the seniority of the nominee's role and relevance to the innovation ecosystem.
  - c. Selected nominees will be notified in writing by the Authority. Absent extenuating circumstances or written consent by the Authority, any selected purchaser that fails to participate in at least half the Advisory Board events in the year will not be eligible to participate in any tax credit auction in the 12 months after the purchaser's selection.
  - d. Tax credit purchasers that are not selected to participate on the Advisory Board will be notified in writing by the Authority and will be released of their requirement to attend Advisory Board meetings.
- ii) Additionally, the CEO of the Authority may also determine if other strategic partners not participating in the current auction would add value to the Advisory Board, including prior Advisory Board members.
  - a. In evaluating strategic partners' ability to add value to the New Jersey Innovation Evergreen Advisory Board, the CEO of the Authority may evaluate (i) strategic partners' role within the New Jersey innovation ecosystem and (ii) the scale of the organization.
  - b. If the CEO determines that any such other strategic partners may add value, the Authority will invite the strategic partner in writing to nominate a representative for the Advisory Board. The CEO will then assess the seniority of the nominee's role and relevance to the innovation ecosystem.
  - c. If the CEO determines that the nominee is appropriate for the Advisory Board, the Authority will invite the strategic partner to participate on the Advisory Board through its nominated representative. Any invited strategic partner may decline to participate on the Advisory Board.

**41. Can tax credit purchasers change their representative to the New Jersey Innovation Evergreen Advisory Board?**

Yes, however, the purchaser shall promptly notify the Authority in writing of any change to the Advisory Board representative whether or not such Advisory Board representative has been appointed to serve on the Advisory Board. Said notice shall include the name, title, phone

number and email address of the replacement Advisory Board representative. The purchaser shall only nominate subsequent Advisory Board representative that have professional experiences and credentials substantially similar to the initial Advisory Board representative, as determined by the Authority.

**42. Can companies that purchase program tax credits apply, or cause venture firms that they own, control, or manage to apply, for Evergreen Fund investment capital purchase program tax credits?**

During the twelve-month period after the approval of the award of tax credits to a tax credit purchaser, the NJEDA shall not approve a qualified investment or follow-on investment to a venture firm that is managed; beneficially owned, through rights, options convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; or whose direction of investments are controlled by a tax credit purchaser.

**43. Can corporations 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.

**44. Who, in addition to the CEO, may certify program applications and execute Program closing agreements?**

For the purposes of certifying the Program application and executing program closing agreements, the following roles that have signing authority on behalf of the applicant may be considered equivalent officers for North American operations who can also sign Program certifications and closing agreements:

- For a corporation: a principal executive officer at the minimum level of vice president;
- For a partnership: a general partner;
- For a sole proprietorship: the proprietor;
- For other than above: the person with legal responsibility for the application.