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RULE ADOPTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

43 N.J.R. 1900(a)

Adopted Amendments: *N.J.A.C. 19:31-9.7 and 14*

Adopted Repeal and New Rule: *N.J.A.C. 19:31-14.17*

Business Retention and Relocation Assistance Grant Program

Proposed: May 2, 2011 at *43 N.J.R. 1192(a)*.

Adopted: July 1, 2011 by the New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer.

Filed: July 6, 2011 as R.2011 d.208, **without change**.

Authority: *N.J.S.A. 34:1B-1* et seq., P.L. 1996, c. 25 and P.L. 2010, c. 123.

Effective Date: August 1, 2011.

Expiration Date: November 9, 2017.

Summary of Public Comment and Agency Response:

No public comments were received.

Federal Standards Statement

The adopted amendments, repeal and new rule are not subject to any Federal standards or requirements; therefore, a Federal standards analysis is not required.

Full text of the adoption follows:

SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

19:31-9.7 Review of application and certification of project completion

(a)-(d) (No change.)

(e) Upon completion of the review of an application pursuant to (b) through (d) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits to be granted and, in the case of a residential developer, the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, and promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements P.L. 2007, c. 245 (*N.J.S.A. 34:1B-5.1*) and affirmative action requirements P.L. 1979, c. 303 (*N.J.S.A. 34:1B-5.4*), that the project does not violate any environmental law requirements, and requirements regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the urban transit hub tax credits.

2. (No change.)

(f)-(h) (No change.)

SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

19:31-14.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.25 (*N.J.S.A. 34:1B-112 et seq.*), as substantially amended by P.L. 2004, c.65, §§ 1 through 16 (the "Act") and P.L. 2010, c. 123. The Act provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The Act established a business retention and relocation assistance grant program ("BRRAG Program" or "Program"), a tax credit certificate transfer program, a sales and use tax exemption program, and an energy sales tax exemption program (for businesses located in New Jersey urban enterprise zones). The purpose of the BRRAG Program is to encourage economic development and to preserve jobs that currently exist in New Jersey, but which are in danger of being relocated to premises outside of the State. To implement that purpose, and to the extent that funding for the Program is available, the Program may provide grants of tax credits but in no case shall the amount of an individual grant of tax credits exceed the limitations set forth in this subchapter and further specified in the project agreement of an applicant for a grant of tax credits.

19:31-14.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to *section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563)* or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of *section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414)*. An entity may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes.

...

"Business" means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is

subject to the provisions of *N.J.S.A. 43:21-1* et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by an affiliate or based upon retained full-time jobs of an affiliate.

...

"Capital investment" means expenses that the business incurs following its submission of an application to the Authority pursuant to section 5 of P.L. 1996, c. 25 (*N.J.S.A. 34:1B-116*), but prior to the Capital Investment Completion Date, as shall be defined in the project agreement, for: the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property in this State; and obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility in this State. Provided, however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this definition, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with *section 168 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 168)*. For the purposes of this definition, cubicles and cubicles that include office equipment shall constitute capital investment. If the business is a tenant, expenses incurred on behalf of the tenant by the landlord and financed through the lease shall constitute capital investment expenses incurred by the tenant provided that the capital investment shall relate solely to the tenant's leasehold space and not the common areas of the building and shall be supported by the documentation referenced in *N.J.A.C. 19:31-14.6(a)1xii* and 14.10(a)2.

"Certificate of compliance" means a certificate issued by the Authority pursuant to section 9 of P.L. 1996, c. 25 (*N.J.S.A. 34:1B-120*).

...

"Commitment duration" means the tax credit term and five years from the end of the tax credit term specified in the project agreement entered into pursuant to section 5 of P.L. 1996, c.25 (*N.J.S.A. 34:1B-116*), as amended by P.L. 2004, c.65, and pursuant to this subchapter.

"Designated industry" means an industry identified by the Authority as desirable for the State to maintain, which may be designated and amended via promulgation of rules by the Authority to reflect changing market conditions.

...

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (*N.J.S.A. 34:8-67* et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, as full-time employment, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq. or an employee who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1* et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross

Income Tax Act, *N.J.S.A. 54A:1-1* et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"New business location" means the premises to which a business will relocate that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than the commitment duration or eight years, whichever is greater, from the date of relocation. A "new business location" also means the business's current location or locations if the business makes a capital investment equal to the total value of the business retention or relocation grant of tax credits to the business at that location or locations. In the event the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness, such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

...

"Program" means the Business Retention and Relocation Assistance Grant Program created pursuant to P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65, §§ 1 through 16 (*N.J.S.A. 34:1B-112* through 123) and P.L. 2010, c. 123, and provided in this subchapter.

"Project" means the relocation or maintaining of retained full-time jobs at the approved site as improved by the new business location. In the event that the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

"Project agreement" means an agreement between a business and the Authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount and tax credit term of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c. 25 (*N.J.S.A. 34:1B-112* et seq.).

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered the eligible positions of the business. A retained full-time job is one that will not be included in the calculation of a BEIP grant subsequent to being moved to the approved project site, under the agreement. The number of retained full-time jobs shall mean the business's number of permanent full-time jobs as referred to in the project description in the application and the agreement, which exist as of the effective date of the agreement. In order to demonstrate that a job meets this definition, a business must provide documentation that demonstrates the at-risk nature of these employees which shall include a certification of the business's chief executive officer that the jobs are at-risk at being located outside of New Jersey.

...

"Tax credit term" means the period of time commencing with the first issuance of tax credits and continuing during the period in which the recipient of a grant of tax credits is eligible to apply the tax credits pursuant to section 7 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.3*).

"Tax period" means the 12-month period selected by the business for the purposes of determining annual taxable income.

"Yearly tax credit amount" means \$ 1,500 times the number of retained full-time jobs. "Yearly tax credit amount" does not include the amount of any bonus award authorized pursuant to section 5 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.1*).

19:31-14.3 Eligibility criteria

(a) To qualify for the program, a business shall:

1. Enter into a project agreement with the Authority to undertake a project to:

i. Relocate or maintain a minimum of 50 retained full-time jobs from one or more locations within this State to a new business location or locations in this State; and

ii. (No change.)

(b) (No change.)

(c) A business shall demonstrate that the receipt of assistance pursuant to this program will be a material factor in the business' decision not to relocate the retained full-time jobs outside of New Jersey; except a business that relocates 1,500 or more retained full-time jobs covered by a project agreement from outside of a designated urban center to one or more new locations within a designated urban center shall not be required to make such a demonstration if the business applies for a grant of tax credits within six months of signing its lease or purchase agreement. A business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011 shall not be deemed ineligible for the grant due to the material factor requirement.

(d) A business shall demonstrate to the Authority, at the time application, that the grant of tax credits and resultant retention of full-time jobs and any capital investment will yield a net positive benefit to the State equaling at least 110 percent of the grant of tax credits during the commitment duration. The net benefit resulting from the retention of full-time jobs and any capital investment by a business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011, shall be calculated from the date of the initial grant pre-application meeting.

(e) (No change in text.)

19:31-14.4 Restrictions on eligibility

(a) (No change.)

(b) A business that is receiving any other grant by operation of State law shall be eligible to receive a grant of tax credits under this program provided:

1. (No change.)

2. The State will realize a net positive benefit from the grant of tax credits and resultant retention of full-time jobs and any capital investment when combined with any other State grants equaling at least 110 percent of the grant of tax credits during the commitment duration but not less than eight years, except upon approval of the State Treasurer.

3. Amounts received as grants from the Office of Customized Training pursuant to the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (*N.J.S.A. 34:15D-1 et seq.*), shall be excluded from the calculation of the total amount permitted.

(c) (No change.)

19:31-14.6 Application submission requirements

(a) Each application to the Authority shall include the following information in an application format prescribed by the Authority:

1. Business information shall include the following:

i.-x. (No change.)

xi. Unless excepted under *N.J.A.C. 19:31-14.3(c)*, certification that the availability of financial assistance from the State as provided in this program at the site proposed for approval is a material factor in the business' decision not to relocate outside of New Jersey and that the employees to be covered are at-risk of being relocated outside of the State, and instead, to undertake the project and to relocate the full-time jobs relating to the project in the State;

xii. If the applicant is a tenant with capital investment expenses incurred on behalf of the tenant by the landlord, the tenant's chief executive officer and the landlord shall certify to the amount of additional tenant improvements that the landlord is undertaking on behalf of the tenant and shall certify that the rent amortizes these tenant improvements over the term of the lease; and, the tenant shall provide evidence satisfactory to the Authority to support such certification, which may include evidence of comparable market rents;

xiii. (No change in text.)

xiv. Any other necessary and relevant information as determined by the Authority for a specific application.

2. Project information shall include the following:

i.-viii. (No change.)

ix. The terms of any lease agreements, either existing or proposed, or details of the purchase or building of the new business location;

x. (No change.)

xi. A description of employment, construction and related economic activity in order to inform the net benefit analysis and calculation of a bonus, if applicable;

xii.-xiii. (No change.)

xiv. Any other necessary and relevant information as determined by the Authority for a specific application.

3. The employee information shall include the following:

i.-ii. (No change.)

iii. Evidence of the applicant's potential relocation to another site within New Jersey, if the applicant is a BEIP grantee; and

iv. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

19:31-14.7 Review of application

(a) Applicants shall submit to the Authority a completed BRRAG Program application at least 45 days prior to moving to the new business location; provided, however, a business relocating 1,500 or more retained full-time jobs to one or more new locations within a designated urban center shall, if relocating to a leased location, submit an application within six months of executing its lease. A company that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of P.L. 2010, c. 123 shall not be deemed ineligible for the grant due to the requirement to apply 45 days before moving to the new business location. The application shall bear either a legible post-mark date or a date-received stamp from the Authority.

(b) The Authority shall conduct a review of the applications commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application or may

require the resubmission of the entire application, if incomplete. The Authority shall review, and provide a recommendation to the Chief Executive Officer regarding, the applications to determine whether the applicant:

1.-3. (No change.)

(c) In determining whether the company meets the net benefit analysis, as detailed in *N.J.A.C. 19:31-14.3(d)*, the Authority's consideration shall include, but not be limited to, the State taxes paid directly by and generated indirectly by the business, and taxes paid directly or generated indirectly by new or retained employees caused by the business's relocation or maintaining of full-time jobs. For a business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011, such determination shall be calculated from the date of the initial grant pre-application meeting.

Recodify existing (c)-(h) as (d)-(i) (No change in text.)

(j) If the application has been approved or approved with modification, the Chief Executive Officer shall notify the Director of the terms and conditions of the approval. Any approval or approval with modification shall be subject to completion of the project.

19:31-14.8 Determination of grant amount

(a) Subject to the limitation set forth in *N.J.A.C. 19:31-14.11(c)* and (d), grants of tax credits shall be approved for qualifying businesses according to the following schedule, and shall be issued upon the execution and satisfaction of the requirements of the project agreement between the Authority and the business with an approved project:

1. For a project that covers a business relocating or retaining 50 to 250 full-time employees, a grant of tax credits shall be for the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.1*), and may be applied against liability in the tax period in which the tax credit is issued;
2. For a project that covers a business relocating or retaining 251 to 400 full-time employees, a grant of tax credits shall be for two times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.1*), and may be applied against liability in the tax period in which the tax credit is issued and the following tax period, for one-half of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;
3. For a project that covers a business relocating or retaining 401 to 600 full-time employees, a grant of tax credits shall be for three times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.1*) and may be applied against liability in the tax period in which the tax credit is issued and the following two tax periods, for one-third of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;
4. For a project that covers a business relocating or retaining 601 to 800 full-time employees, a grant of tax credits shall be for four times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.1*) and may be applied against liability in the tax period in which the tax credit is issued and the following three tax periods, for one-fourth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;
5. For a project that covers a business relocating or retaining 801 to 1,000 full-time employees, a grant of tax credits shall be for five times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.1*) and may be applied against liability in the tax period in which the tax credit is issued and the following four tax periods, for one-fifth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance; and
6. For a project that covers a business relocating or retaining 1,001 or more full-time employees, a grant of tax credits shall be for six times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.1*) and may be applied against liability in the tax period in which the tax credit is

issued and the following five tax periods, for one-sixth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance.

(b) In considering the award and the amount of any grant of tax credits, the Authority may consider, as part of the Authority's overall review process, the following factors:

1.-6. (No change.)

7. Whether positions average at least 1.5 times the minimum hourly wage during the commitment duration;

8. The duration and extent of past operations by the business in New Jersey and any other information indicating the business' level of commitment to the State and the likelihood that the business will continue to operate in this State in the future; and

9. Any other necessary and relevant information as determined by the Authority for a specific application.

19:31-14.9 Bonus award

(a)-(b) (No change.)

(c) In addition to any grant of tax credits determined pursuant to section 7 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.3*), and in addition to any bonus award pursuant to (a) above, a bonus award equivalent to 50 percent of the amount of the grant of tax credits pursuant to section 7 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.3*) shall be made to any business that makes a capital investment in an amount that is at least twice that of the total value of the grant of tax credits granted pursuant to section 7 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.3*) and the grant of tax credits pursuant to this subchapter. A bonus award made pursuant to this subsection may be limited, so that when added to the tax credits granted pursuant to section 7 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.3*), the total amount shall not exceed 50 percent of the amount of the capital investment in this State.

19:31-14.10 Project agreement

(a) All applicants shall execute an approval letter and a project agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to:

1. The execution of a project agreement; and

2. For a tenant with capital investment expenses incurred on behalf of the tenant by a landlord, prior to execution of the project agreement, the tenant shall provide documentation satisfactory to the Authority consistent with the chief executive officer's certification in *N.J.A.C. 19:31-14.6(a)1xii* which may include, but not be limited to, a lease or letter of credit that demonstrates in the event of an early termination of the lease that the tenant is financially liable for the cost of the capital investment.

(b) The Authority staff may provide whatever assistance the Authority deems appropriate in the preparation of an application for approval of a project and may issue grants of tax credits pursuant to the project agreement entered between the Authority and the business.

(c) The project agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer:

1. The month and year in which the business will relocate its employees, the month and year in which the business will submit information relating to the relocation of the required number of retained employees required by *N.J.A.C. 19:31-14.11(b)* and, if applicable, the certification required by (c)2 below, and the State fiscal years for which the tax credits are allocated, which will not be subject to change without written approval of the Authority. Failure to adhere to these dates may lead to forfeiture of all or a part of the tax credits;

2. A requirement that a certification by a certified public accountant relating to the amount of eligible capital investment with supporting evidence satisfactory to the Authority shall be submitted by the business or, in the case of a tenant, the landlord prior to the commencement of the tax credit term. Provided that such certification and supporting evidence are satisfactory to the Authority, the tax credit certificate will be issued within 90 days of submission;

Recodify existing 2.-10. as 3.-11. (No change in text.)

(d) The project agreement shall provide that no tax credits issued as a grant of tax credits under the program may be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied equals or exceeds the amount of tax credits to be applied by the business.

(e) The project agreement shall further provide that the Authority is not liable in damages for the issuance or use of the tax credits; and that there is no guarantee that legislation will not be enacted that would cause further changes to P.L. 1996, c. 25 (*N.J.S.A. 34:1B-112* et seq.)

19:31-14.11 Tax credit applicable; when effective; when adjusted

(a) A tax credit issued pursuant to this program may be applied solely against liability in the tax period(s) and in the State fiscal year(s) prescribed in the project agreement and in the manner set forth in *N.J.A.C. 19:31-14.8(a)* and shall expire thereafter.

(b) By the date indicated in the project agreement, the applicant shall submit a certification to the Chief Executive Officer that it has relocated the retained employees. To the extent that the number of employees is less than the number indicated on its application but remains 50 or more, the award of tax credits shall be adjusted accordingly and the project agreement shall be amended to so reflect the reduction pursuant to *N.J.A.C. 19:31-14.13(b)*.

(c) The total value of the grants of tax credits approved by the Authority pursuant to this program that may be applied against tax liability in a fiscal year shall not exceed an aggregate annual limit of \$ 20,000,000. If the approval of a grant of tax credits pursuant to *N.J.A.C. 19:31-14.8(a)* would exceed the \$ 20,000,000 aggregate annual limit, the Authority may award a smaller grant of tax credits, no grants of tax credits or may assign credits to be issued in subsequent years, as necessary to comply with the aggregate limit.

(d) The total value of the grants of tax credits, issued pursuant this program, that a single business may apply against its tax liability shall not exceed an aggregate annual limit of \$ 10,000,000 in a fiscal year. A tax credit issued pursuant to this program may be applied against liability in the single tax period in which the tax credit or portion of the tax credit may be applied as prescribed in the project agreement and as set forth in *N.J.A.C. 19:31-14.8(a)* and shall expire thereafter.

19:31-14.12 New business location for the project

(a)-(c) (No change.)

(d) The business shall comply with the Authority's prevailing wage requirements, *N.J.A.C. 19:30-4*, and affirmative action requirements, *N.J.A.C. 19:30-3*, in the performance of the construction contract for the project, provided that prevailing wage shall not be required for construction commencing more than two years after an entity has executed with the Authority a commitment letter and the first payment or other provisions of assistance is received.

19:31-14.13 Reporting requirements and annual reports

(a) If requested by the Authority, a business which is awarded a grant of tax credits under this program shall submit a copy of the State tax return for the business showing business income or activity, appropriate to its form of ownership.

(b) As determined by the Authority, a business which is awarded a grant of tax credits under P.L. 1996, c. 25 (*N.J.S.A. 34:1B-112 et seq.*) shall submit annually, no later than March 1st of each year, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment duration, a certification of compliance that indicates that the business continues to maintain the number of retained full-time jobs as specified in the project agreement. Retained full-time jobs shall be calculated by averaging the monthly average of the business' retained full-time jobs in the previous calendar year, provided if the previous calendar year is the year in which the business submitted the certificate required by *N.J.A.C. 19:31-14.11(b)*, such calculation shall use only the months since the submission of the certificate. Upon receipt and review thereof during the tax credit term, the Authority shall issue a certificate of compliance indicating the amount of tax credits that the business may apply against liability pursuant to section 7 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.3*). Any reduction in the number of retained full-time jobs below the number prescribed under the terms of the project agreement shall proportionately reduce the amount of tax credits the business may apply against liability in that tax period and the credits that may no longer be applied for that tax period shall be forfeited. However, if in any tax period, the number of retained full-time jobs drops below the minimum number of retained full-time jobs indicated in the paragraph of subsection b. of section 7 of P.L. 2004, c. 65 (*N.J.S.A. 34:1B-115.3*) pursuant to which the project agreement was executed such that the business would no longer be eligible to apply the credits for the number of years for which it was approved, then the Authority shall reduce the amount of tax credits the business may apply against liability and the number of years in which the business may apply the tax credits. The grant shall be subject to recapture provisions pursuant to the project agreement.

(c) (No change in text.)

19:31-14.14 Fees

(a)-(c) (No change.)

(d) In addition to the fees in (a), (b) and (c) above, an annual servicing fee shall be paid to the Authority. The servicing fee shall be two percent of the annual tax credit amount that may be applied not to exceed \$ 75,000.

19:31-14.15 Events of default

(a) The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "event of default" under the project agreement:

1.-2. (No change.)

3. Failure to comply with any condition or requirement of the project agreement; or

4. The business fails to serve or perform in any other material respect any other term, covenant or condition of the business under the project agreement and this subchapter and such failure shall have continued for 30 days after the earlier of delivery to the business of written notice thereof from the Authority or the business's actual or constructive knowledge of such failure; provided, however, that if such failure is capable of cure, but cannot be cured by the payment of money or by diligent efforts within such 30-day period, but diligent efforts are properly commenced within the cure period and business is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional 45 days and in no case to extend beyond the expiration of the project agreement. Violations of the "events of default" provision of the project agreement shall be cause for immediate termination of the tax credit certificate as provided by law and repayment of State tax.

(b) Upon a default under the project agreement, in addition to any other remedies in the project agreement and available under this subchapter and under the Act, the Authority may withhold any payment not yet paid at the time of the default under the project agreement. The Authority shall provide written notice to the business of its intent to withhold, reduce or terminate the grant of tax credits. The business may request in writing reconsideration of the Authority's decision. The determination to withhold, reduce or terminate a grant of tax credits is solely within the Authority's discretion.

(c) Upon termination of the project agreement, in addition to any other remedies in the project agreement and available under this subchapter and under the Act, the Authority may require repayment of an amount of the grant of tax credits based on the period of time the business complied with the grant, provided, however, that the Authority may require repayment of the total amount paid to the business during the commitment duration if the default results from the business moving the project out of the State of New Jersey or the business being sold and moved out of the State of New Jersey.

19:31-14.16 Remedies

(a) Upon the occurrence of any event of default as described in *N.J.A.C. 19:31-14.15* and the project agreement, the Authority may, so long as such event of default is continuing, do one or more of the following as the Chief Executive Officer in his or her sole discretion shall determine, without limiting any other right or remedy the Authority or the Division of Taxation may have on account of such event of default:

1. The Authority may require the surrender by the business to the Authority of the tax credit certificate for suspension or cancellation; and/or

2. The Authority may exercise any other right or remedy that may be available under applicable law or under the project agreement, including, without limitation:

i. Recapturing all (for example, if a business is unable to certify the minimum job threshold during the commitment duration) or a portion of the grant of tax credits upon failure of the business to maintain for the remainder of the commitment duration 80 percent of the retained full-time jobs that it had during the last year of the tax credit term;

ii. Notifying the Director, who shall issue a recapture assessment which shall be based upon the proportionate value of the grant of tax credits that corresponds to the amount and period of noncompliance;

Recodify existing ii.-iv. as iii.-v. (No change in text.)

(b) For the purposes of determining the amount of the grant of tax credits to be recaptured, the amount shall include the sum of the following:

1. A cash payment in the amount of tax credits which were applied by the business or its assignee which amount may be reduced as set forth in (a)2i above;

2. Interest on the repayment amount referred to in (b)1 above at the rate equal to the statutory rate for tax deficiencies plus any penalties pursuant to the State Uniform Tax Procedure Law, *N.J.S.A. 54:49-1* et seq.; and

3. All costs incurred by the Authority and the Division of Taxation in connection with the pursuit of the sales tax repayment amount (including, but not limited to, counsel fees, court costs and other costs of collection).

(c) The rights and remedies of the Authority under this subchapter and the project agreement shall be cumulative and shall not exclude any other rights and remedies of the Authority or the Division of Taxation allowed by law with respect to any event of default under this subchapter of the project agreement.

19:31-14.17 Appeals

(a) The procedure for an appeal of the Board's action on an application to the program shall be as follows. An applicant may appeal the Board's action by submitting in writing to the Authority, within 30 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*. Appeals will be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of

the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his/her finding(s) and recommendation(s) on the merits of the appeal; and

3. The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final agency decision on the appeal.